218 Va. 314
CLERK
SUPREME COURT OF VIRGINIA
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APR 25 1977
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761270

CURTIS DARNELL POINDEXTER,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

JOINT APPENDIX

Lawrence D. Wilder, Esq.
James L. Whitehurst, Esq.
2703 East Broad Street
Richmond, Virginia 23223

Counsel for Appellant

Marshall Cooke, Esq.
Assistant Attorney General
Attorney General's Office
Supreme Court Building
Richmond, Virginia 23219

Counsel for Appellee

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

TABLE OF CONTENTS

APPENDIX PAGES

1. INDICTMENT FOR POSSESSION AND USE OF A SAWED OFF SHOT GUN 1

2. INDICTMENT TO MALICIOUSLY CAUSE BODILY INJURY TO HENRY A. KENNON 2

3. INDICTMENT FOR MURDER 3

4. INDICTMENT FOR ATTEMPTED MURDER OF TROOPER D.G. HENLEY 4

5. NOTICE DATED JANUARY 5, 1976 5

6. MOTION FOR CHANGE OF VENIRE FACIAS DATED JANUARY 5, 1976 6

7. MOTION FOR CHANGE OF VENUE 7

8. MEMORANDUM IN SUPPORT OF DEFENDANTS MOTION TO DISMISS COMMONWEALTH MOTION FOR CHANGE OF VENUE 8-13

9. ORDER GRANTING THE CHANGE OF VENUE 14

10. NOTICE OF APPEAL AND ASSIGNMENT OF ERROR 15-17

11. MOTION TRANSCRIPT DATED JANUARY 16, 1976 18-73

12. AFFIDAVIT OF ELDER BEN CANNADY 74

13. AFFIDAVIT OF ALBERT M. BAZANELLA 75

14. AFFIDAVIT OF JAMES WARE PLEASANTS 76-77

15. AFFIDAVIT OF ROBERT C. BUNTING 78-79

16. AFFIDAVIT OF B. L. HILL 80-81

17. AFFIDAVIT OF E. A. TERRELL, III 82-83

18. AFFIDAVIT OF W. D. GUILD 84-85

19. AFFIDAVIT OF E. W. HARLOW 86-87

20. AFFIDAVIT OF F. E. GALLION, JR. 88-89

21. AFFIDAVIT OF WILLIAM JEAN JONES 90-91

22. AFFIDAVIT OF CLIFTON T. VAWTER 92-93

23. AFFIDAVIT OF ELSIE A. VAUGHT 94-95

24. AFFIDAVIT OF WILLIAM N. VAUGHAN 96-97

25. EXHIBIT NUMBER "2" (SCRAPBOOK) 98

July 14, 1975

COMMONWEALTH OF VIRGINIA

VS:

INDICTMENT FOR A FELONY

522

CURTIS DARNELL POINDEXTER

The Grand Jury charges that:

On or about 13th day o February 19 75, in The County of Louisa, Virginia, Curtis Darnell Poindexter did have in his possession and did use a sawed off shot gun in a crime of violence, to-wit: murder.

Virginia Code Section 18.1-268.2

A true bill.

FOREMAN

7-14-75

A Copy-Teste

Clerk

Filed in the Clerk's Office of the Circuit Court of Augusta County

March 5, 1976

Teste:

Dep. Clk.

6.

IN THE CIRCUIT COURT OF THE COUNTY OF LOUISA

July 14, 1975

COMMONWEALTH OF VIRGINIA

VS: INDICTMENT FOR A FELONY

#519

CURTIS DARNELL POINDEXTER

The Grand Jury charges that:

On or about February 13, 1975, in The County of Louisa, Virginia, Curtis Darnell Poindexter did maliciously cause bodily injury to Henry A. Kennon with the intent to maim, disfigure or kill.

Virginia Code Section 18.1-65

A true bill.

FORMAN

7-14-75

H. A. Kennon

William Payne

Same as #523

A Copy-Teste

Clerk

Filed in the Clerk's Office of the Circuit Court of Augusta County

March 5, 1976

Teste

Clk.

July 14, 1975

COMMONWEALTH OF VIRGINIA

VS: INDICTMENT FOR A FELONY

#523

CURTIS DARNELL POINDEXTER

The Grand Jury charges that:

On or about February 13 1975, in The County of Louisa, Virginia, Curtis Darnell Poindexter did feloniously kill and murder Judge E. A. Cunningham.

Virginia Code Section 18.1-21

A true bill.

George Cooper
7-14-75 FOREMAN

To be arraigned
Sept 3
Atty Retained
Chester
L Douglas Wilder

A Copy-Teste

Filed in the Clerk's Office of the Circuit Court of Augusta County
March 5, 1976
Teste
Rudolph K. Shawver Clk.

July 14, 1975

COMMONWEALTH OF VIRGINIA

VS: INDICTMENT FOR A FELONY

CURTIS DARNELL POINDEXTER #621

The Grand Jury charges that:

On or about February 13 1975, in The County of Louisa, Virginia, Curtis Darnell Poindexter did feloniously attempt to murder and kill Trooper D. G. Henley.

Virginia Code Section 18.1-21

A true bill.

7-14-75 FOREMAN

Same as #623

A Copy-Teste

Clerk

Filed in the Clerk's Office of the Circuit Court of Augusta County March 5, 1976

Teste: Lloyd L. Shaver Dep. Clk.

NOTICE

TO: Lawrence Douglas Wilder, Esquire
3206 P. Street
Richmond, Virginia 23223

and

Francis Chester, Esquire
Gordonsville
Virginia 22942

TAKE NOTICE, that on the 12th day of January, 1976 at 2:00 p.m., I shall Move the Honorable David F. Berry, Judge of the Louisa County Circuit Court, for an Order changing the venue, or in the alternative, the venire facias, for the trial of the above-captioned case as more fully set out in the attached Motion for Change of Venire Facias, said Motion for Change of Venue having been mailed to Counsel above, said Court sitting in the Courthouse at Louisa, Virginia.

COMMONWEALTH OF VIRGINIA

BY: _____
Attorney for Commonwealth

Stephen C. Harris
Attorney for the Commonwealth of Virginia for Louisa County
P. O. Box 56
Louisa, Virginia 23093

C E R T I F I C A T E

This is to certify that I have on this 5th day of January, 1976, mailed, postage prepaid, a true copy of the foregoing Motion to Lawrence Douglas Wilder, Esquire, 3206 P. Street, Richmond, Virginia, 23223 and to Francis Chester, Esquire, Gordonsville, Virginia 22942, counsel for Defendant.

_____
Stephen C. Harris

A Copy-Teste

_____
Clerk

Filed in the Clerk's Office of the Circuit Court of Augusta County
March 5, 1976
Teste

DATE 1-5-76 Deputy Clerk
Anne C. Long

MOTION FOR CHANGE OF VENIRE FACIAS

Commonwealth of Virginia moves, pursuant to Virginia Code Section 8-208.26, for an Order changing the venire facias and asks that a jury panel be brought in from another county for the trial of this case, said Motion based upon wide spread local prejudice and bias in Louisa County making it impossible to assemble a jury from within which would give to the Commonwealth and to the Defendant a fair and impartial trial.

COMMONWEALTH OF VIRGINIA

BY: _____
ATTORNEY FOR THE COMMONWEALTH

Stephen C. Harris
Commonwealth's Attorney for Louisa County
P. O. Box 56
Louisa, Virginia 23093

C E R T I F I C A T E

This is to certify that I have on this 5th day of January, 1976, mailed, postage prepaid, a true copy of the foregoing Motion to Lawrence Douglas Wilder, Esquire, 3206 P. Street, Richmond, Virginia, 23223 and to Francis Chester, Esquire, Gordonsville, Virginia 22942, counsel for Defendant.

_____
Stephen C. Harris

A Copy-Teste

_____
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
_____ D. Clk.

MOTION FOR CHANGE OF VENUE

Commonwealth of Virginia moves, pursuant to Virginia Code Section 19.2-251, for an Order changing the venue for the trial of the above-captioned case to the Circuit Court of on the grounds that there exists in Louisa County such local prejudice as does render impossible a fair and impartial trial for the Commonwealth and for the Defendant.

COMMONWEALTH OF VIRGINIA

BY: _____
ATTORNEY FOR THE COMMONWEALTH

STEPHEN C. HARRIS
Attorney for the Commonwealth for Louisa County
P. O. Box 56
Louisa, Virginia 23093

C E R T I F I C A T E

This is to certify that I have on this 2nd day of January, 1976, mailed, postage prepaid, a true copy of the foregoing Motion to Lawrence Douglas Wilder, Esquire, 3206 P. Street, Richmond, Virginia, 23223 and to Francis Chester, Esquire, Gordonsville, Virginia, 22942, counsel for Defendant.

_____
Stephen C. Harris

A Copy-Teste

_____
Clerk

FILED
DATE 1-2-76 Deputy

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF LOUISA

COMMONWEALTH OF VIRGINIA Plaintiff

-versus-

CURTIS DARNELL POINDEXTER Defendant

MEMORANDUM IN SUPPORT OF DEFENDANTS
MOTION TO DISMISS COMMONWEALTH MOTION
FOR CHANGE OF VENUE

FACTUAL SUMMARY

The defendant, Curtis Darnell Poindexter, was charged and indicted for murder of Judge Stuart A. Cunningham and felonious assualt of Sheriff Henry A. Kennon, et al, and was tried with a jury, the Honorable David Berry presided and trial ensued for five full days due to a funeral of a juror's mother, who died during the trial. The Commonwealth had moved for a change of Venire Facias pursuant to statute and the motion was denied on motion of counsel for the defendant. The Court permitted individual voir dire of the jurors and approximately forty-six were called. Of that number, two were excused for physical disabilities, two were excused because of their relationship to the decedent or witnesses, approximately twelve were excused because they felt there would be reservations relative to a finding of not guilty by virtue of insanity. One was excused after exclaiming that, "He would have to be off his rocker to do that."

The Court was painstaking in pointing out to each juror questioned that the guilt or innocence or the facts material and necessary to prove guilt of the defendant would in all likelihood not be an issue in the case and in all probability the sole issue would be whether at the time of the offense, the defendant was insane in accordance with instructions

which the Court would subsequently give the jury. There was never any contention by the Commonwealth nor the defendant that there was any pre-trial publicity as to the mental status of the defendant. A full day was set aside for the voir dire examination and subsequently twelve jurors were chosen who assured the Court that they could and would render a fair trial both to the Commonwealth and the defendant. The make up of the jury was nine whites, three blacks, seven women and five men. A full day was set aside for the jury to receive the Courts instructions and to hear argument of counsel. At the conclusion of which the jury reported to the Court that they were hopelessly dead-locked. The Court subsequently declared a mistrial.

QUESTIONS PRESENTED

1. Does the Commonwealth have standing to question fairness of a trial?

2. Whether a fair trial is denied because members of the jury may have learned through news accounts certain facts about the crime with which he was charged?

ISSUES

1. Does due process extend to the state?

2. What is the test to be applied in assessing due process claims arising out of alleged pre-trial publicity and juror knowledge?

3. What policy should the courts follow in examining the due process cases?

ARGUMENT

Section 19.2-251 Code of Virginia (1950) as amended provides that a Circuit Court may on motion of the accused or of the Commonwealth order the venue for the trial to be changed to some other Circuit Court. There is no questioning the descretion given the Courts deciding such motions. Curiously, all of the cases decided by the Virginia Supreme Court deal with petitions by persons accused of crimes. Though the statute permits the Commonwealth to make the motion, it is silent as for whose benefit said motion is to be made.

It is paradoxical that a statutory right given defendant and waived by the defendant can be raised by someone in his behalf Rees v. Commonwealth; 203 Virginia 850, 127 S. E. (2d) 406, clearly places the burden of proof on the "prisoner" and that he was not entitled to a change of venue or venire where there was not evidence of inflammatory newspaper or radio coverage of the case, no evidence of mass prejudice, hostility, or threat or mob action, either before the jury was sworn or during the course of the trial, nor unusual difficulty in securing an impartial jury. In instant case, it would seem the Commonwealth is put in the awkward position of saying that the defendant could not get a fair trial when the accused says otherwise. The statute does not give the Commonwealth any right. Sixteen years ago, in Marshall v. United States, 360 U.S. 310 (1959) (per curiam), the Supreme Court reversed a federal narcotics conviction based on a verdict delivered by a jury whose members had been exposed to newspaper accounts of the defendant's prior convictions. Although the Court relied on its inherent supervisory power over the adminitration of justice in the federal courts to support the decision, four cases decided during the 1960's indicated that constitutional rights are implicated in cases involving jury familiarity with a defendant's past.

In Irvin v. Dowd, 366 U. S. 717 (1961), a request for a change of venue had been denied in a murder trial despite intense publicity which included press releases from the prosecutor's office and statements by local police officials that the defendant had confessed to six murders, including the one for which he was tried. After examining the coir dire and makeup of the final jury panel, the Court reversed the conviction on the ground that defendant did not receive a trial by a fair and impartial jury as required by the sixth and 14th amendments.

In the other three cases, the Court did not have to go so far as to examine the voir dire.

In Rideau v. Louisiana, 373 U.S. 723 (1963), the trial judge denied a motion for a change of venue despite the fact that, on three occasions, a local television station had shown a 20 minute interview with the defendant in which he confessed to the felony-murder with which he was later charged. Reversing the conviction without inspecting the contents of the voir dire, the Supreme Court determined that due process was presumptively denied whenever a defendant is tried in a community where such an interview has been televised. Prejudice was also presumed in Estes v. Texas. Among the circumstances that prompted this result were the existence of massive pretrial publicity and the fact that four members of the jury panel which convicted Billy Sol Estes had watched telecasts of pretrial hearing. Similarly, in Sheppard v. Maxwell, 384 U. S. 333 (1966), the total atmosphere of Dr. Samuel Sheppard's trial was infected by prejudicial publicity in the news media and exacerbated by the trial judge's failure to take any precautions to insulate the jury.

Courts have differed as to the effect of Irvin, Rideau, Estes, and Sheppard upon the Marshall Court's restriction of its holding to federal cases. In United States ex. rel. Doggett v. Yeager, 472 F.2d 229 (3rd Cir. 1973), the United States Court of Appeals for the Third Circuit held that, in certain circumstances, prejudice, and therefore a constitutional violation, would be presumed whenever a juror is exposed to media accounts of the defendant's criminal history. In 1974 the Fifth Circuit Court of Appeals rejected this approach in Murphy v. Florida, 495 F.2d 553 (5th Cir. 1974), when it refused to extend Marshall beyond its application to federal prosecutions under the supervisory power. The Supreme Court granted certiorari to resolve the apparent conflict, 419 U. S. 1088 (1974), and issued its first major decision on pretrial publicity and the right to a fair trial since 1966, Murphy v. Florida, 421 U. S. 794 (1975). The Court held that mere juror knowledge of a defendant's criminal past would not give rise to a presumption of a denial of due process,

and that, in the future, such cases would be decided by us of a "totality of the circumstances" test.

In rejecting Murphy's due process claim, the Supreme Court divided eight to one, holding that juror prejudice is not presumed from mere knowledge of a defendant's notoriety, that no inherent prejudice was shown herent prejudice was shown here, and that the total circumstances of the case did not rise to the level of a constitutional violation. Chief Justice Burger filed a separate concurrence, emphasizing the view that had the case been federal, the Court's Supervisory power would have dictated a reversal due to the lack of precaustions taken by the trial judge. Justice Brennan dissented, feeling that the circumstances of the case were clearly prejudicial and constituted violations of the due process clause on the basis of a prior Supreme Court case, Irvin v. Dowd, 366 U. S. 717 (1961).

Justice Marshall, writing for the eight man majority, framed the issue in the case as "whether the petitioner was denied a fair trial because members of the jury had learned from news accounst about a prior felony conviction or certain facts about the crime with which he was charged, 421 U. S. at 795. This question necessarily involved the resolution of several issues, including (1) does Marshall v. United States, 360 U. S. 310 (1959), apply to a state criminal case, (2) what is the test to be applied in assessing due process claims arising out of alleged pretrial publicity and juror knowledge, and (3) what policy should the courts follow in examining the due process claims.

Justice Marshall first disposed of petitioner's contention that Marshall, expressly decided on the Court's supervisory power over the federal court system, had been extended by subsequent cases to the states. Although factually similar to the instant situation, Marshall was found by the Court to be of no precedential value, as it applies only to federal cases.

Justice Marshall tehn addressed what he perceived to be the real issue in the case: not whether the four subsequent state court cases extended Marshall to the states, but rather whether Murphy's claim fell factually under one of these state cases as a violation of due process. In doing this, Justice Marshall set up a two-part test to examine Murphy's due process claim. First, he looked at the three cases in which prejudice was presumed: Rideau, Estes, and Sheppard. Noting that those cases were totally "lacking in the solemnity and sobriety to which a defendant is entitled" under our constitutional system, Justice Marshall stated: "They cannot be made to stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process."

The case involves a seemingly irresolvable conflict of basic constitutional rights. On the one hand is the right of free press under the first amendment, U. S. Const. Amend. I, conflicting on the other hand with some of the basic rights of an accused under the constitutional system, U. S. Const. amends. V, VI, XIV. While the Murphy Court did not explicitly address the problem of striking the balance between these fundamental rights, any discussion of pretrial publicity and its effects on due process necessarily involves the conflict, at least implicity.

CONCLUSION

For the reasons herein stated, the defendant submits that the state had no standing to assert a denial of due process as the rights of the defendant have not been proven from the facts to be prejudicial nor does defendant make any such claim. Accordingly, the motion should be dismissed.

Rec'd & Filed
JAN 13 1970
Anne C. Long
Deputy Clerk

A Copy-Teste
Clerk

ORDER

This day came the Attorney for the Commonwealth, Stephen C. Harris, and Curtis Darnell Poindexter, the Defendant, in proper person in the custody of the Sheriff of Louisa County, and by his retained counsel, L. Douglas Wilder and Francis Chester, on the indictment returned by a lawful grand jury for Louisa County on the 14th day of July, 1975;

NOW, upon the motions duly filed herein reguesting a change in the venue in the trial of this proceeding, or in the alternative, a change in the venire facias, the papers filed in support of said motion; upon the opposition of the Defendant thereto; the motion having been duly submitted and due deliberation having been had thereon; it is ORDERED that the said motion for change of venue is hereby granted. The trial of the indictment is hereby transferred to the Circuit Court of Augusta County and, on motion of the Defendant, the case is continued until the 17th day of May, 1976 at 9:30 a.m. for the trial thereof.

It is further ORDERED that the Clerk forthwith transmit the complete record of this proceeding, together with all exhibits therein, to the Clerk of the Circuit Court of Augusta County.

And the accused is remanded to the custody of the Sheriff of Louisa County.

ENTER: David F. Berry
JUDGE

A Copy-Teste
Jean P. Cage
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Rudolph L. Shuman Dep. Clk.

COMMONWEALTH OF VIRGINIA Plaintiff

-versus-

CURTIS DARNELLE POINDEXTER Defendant

NOTICE OF APPEAL
AND ASSIGNMENT OF ERROR

Comes now the defendant, by counsel, and gives notice of appeal from a judgment of this Court based on a jury verdict on May 25, 1976, and assigns the following as error:

1. That the venue in this case from the County of Louisa to the County of Augusta as such granting of the motion of the Commonwealth was contrary to the law and the evidence in the case as well as accepted legal standards.

2. That the jury panel was all white and that the Commonwealth Attorney's Office knew or should have known that the ratio of Whites to Blacks in Augusta County approximates 96% to 4% all militating against the interests of the defendant who is Black.

3. That the Court erred in refusing to allow counsel individual void-dire of the panel to ascertain certain potential prejudices or interests of the individual jurors and that such action deprived the defendant of being tried by a jury of his peers according to constitutional authority.

4. The Court erred in allowing the picture of the deceased Judge portraying him nude on a slab in the morgue to be introduced into evidence when fact of death and the cause of death and the fact that the defendant was the criminal agent responsible for the death was never contradicted but moreover stipulated; said introduction of the photograph could only inflame the passions of the jury and ultimately prejudice their thinking.

5. The Court erred in refusing instructions profferred by counsel for defendant.

6. The Court erred in instructing the jury that they were not to construe its comments or actions as any indication of its feelings about the case prior to giving general instructions had the effect of attempting corrective action for past actions and called particular attention to the behavior of the Court throughout the entire trial proceeding.

7. The Court erred in restricting counsel for defendant of the perjury which the Commonwealth's star surprise witness perjured himself and limited counsel to show only that the witness was not employed for the City of Richmond and further that he did not resign from the penitentiary. Much evidence directly bearing on his credibility was excluded from the jury.

8. The Court erred in allowing Dr. Dimitrous to testify as an expert other than for the determination of the competence of the defendant to stand trial as this was the sole reason he examined the defendant.

9. The Court further erred as will be more fully reflected in the transcript and same will be made known to the Court as the transcript becomes available.

RESPECTFULLY SUBMITTED

CURTIS DARNELLE POINDEXTER

By _____
Counsel

Lawrence Douglas Wilder, Esquire
3026 P Street
Richmond, Virginia 23223

CERTIFICATION

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Stephen C. Harris, Attorney for the Commonwealth, P. O. Box 159, Louisa, Virginia 23093, this 17th day of June, 1976.

Filed in the Clerk's Office of the
Circuit Court of Augusta County
June 21, 1976.
Teste:
Dep. Clk.

Lawrence Douglas Wilder

VIRGINIA: IN THE CIRCUIT COURT OF LOUISA COUNTY

COMMONWEALTH OF VIRGINIA,

Plaintiff

v.

CURTIS DARNELL POINDEXTER,

Defendant

APPEARANCES:

Stephen C. Harris, Esquire
Commonwealth's Attorney
Louisa, Virginia

Charles R. Haugh, Esquire
435 Park Street
Charlottesville, Virginia
Attorney for the Commonwealth

L. Douglas Wilder, Esquire
3026 P Street
Richmond, Virginia 23223
Attorney for Defendant

Francis Chester, Esquire
R. F. D. No. 2, Box 456
Gordonsville, Virginia
Attorney for Defendant

January 16, 1976

COURT: All right, gentlemen, we will note for the record that we are taking up at this point the case of Commonwealth against Curtis Darnell Poindexter - I believe five cases which are being heard together. There are two motions which are pending which have been scheduled for 2 o'clock on this date, a motion by Mr. Harris, Commonwealth's Attorney for a change of venue or in the alternative for a change in the venire facias. Mr. Harris, are you ready to proceed on the motion at this time, sir?

HARRIS: Yes sir, yes we are.

COURT: Senator Wilder?

WILDER: Yes sir. Your Honor, did the Court get the copy of the brief I sent it? I addressed it to Charlottesville...

COURT: I think I do have it.

WILDER: Very well, sir, I just wanted to make sure. If you hadn't, I have an additional copy here.

COURT: No, I don't have it here...

WILDER: I just wanted to know if you got it...

COURT: Yes, I have already gone over it. Whether I've got it here, I'm not sure.

WILDER: Thank you sir.

COURT: All right, now Mr. Harris, it's your motion, you may open and close. I will hear from counsel at this time. There

may be evidence which you wish to present in connection with the motion.

HARRIS: A very brief opening on the part of the Commonwealth. The evidence which we are about to present here on behalf - in support of the motion for a change in venue primarily and in the alternative, a change of venire facias, we feel is conclusive. The fact that the pre-trial publicity as far as this second trial is concerned, primarily emphasizing on the publication and publicity concerning the insanity established the defendant at the time he committed the alleged offenses and also stemming from the bias and local prejudice found in Louisa County which runs somewhat in favor of the defendant and some of it runs in favor of the Commonwealth, we feel for these reasons that the venue in this case should be changed.

COURT: All right, Senator.

WILDER: May it please the Court, the Section 19.2-251 of the Code which authorizes the Court on motion of the accused or the Commonwealth to order the venue for the trial change, does not assign the Commonwealth a right and as I have understood a motion for change of venue or venire facias, the question is one of due process. The Commonwealth is not going to be tried, the defendant is going to be tried and procedurally, I would think that the Commonwealth has no standing to question whether the defendant could receive a fair trial, where the defendant waives it. Now conceivably, there could be a situation

1 in which the Commonwealth has had information relaid to its
2 office that the defendant could not receive a fair trial. This
3 could be prior to appointment of counsel. This could be where
4 the defendant is in custody and for that reason he could on -
5 make the motion that the trial be moved to another place or
6 that if the persons in the area were such as to bring him to the
7 conclusion that the defendant couldn't receive a fair trial
8 from that jury, then to bring the jury in from a different
9 area. But where the defendant says I can receive a fair trial,
10 where the defendant says I do not want to be tried by other than
11 my peers, I don't think the Commonwealth has a right superior
12 to that. The statute is silent as to what takes place in a
13 situation where the Commonwealth says we want to move the trial
14 some place and where the defendant says I'm satisifed being
15 tried where I am. And I think procedurally, the Commonwealth
16 has to show that it has the right to make the motion, not on
17 his behalf, but on behalf of the defendant because all of the
18 cases that I have read and all of the cases addressed in the
19 brief refer to the constitutional rights, the guarantees of
20 due process and certainly the Commonwealth in its advance of
21 this motion upon the court, that it would be denied due process
22 because the Commonwealth is the prosecuting arm of this
23 incident. For that reason I would say to the court in addition
24 to the cases that I cited, that the Commonwealth has no standing
25 to begin with. The first case that we have on it, the four

1 cases that we are speaking of, speaking of Rees v. Commonwealth,
2 the most celebrated case in Virginia, prior to certain other
3 cases...
4 HARRIS: Excuse me, we would respectfully object to
5 this, the fact at this point we feel that argument would be
6 better after the evidence is in and...
7 WILDER: I don't plan to put any evidence in, that's
8 the reason I saved my remarks for that..
9 COURT: The objection is well taken at this point
10 Mr. Wilder. We will have to consider that as part of the
11 closing Senator...
12 WILDER: All right, thank you.
13 COURT: All right, Mr. Harris, if you wish to present
14 evidence in support of your motion, you may call the witnesses
15 at this time sir.
16 HARRIS: Your Honor, the evidence that we have and
17 I believe is provided for by case law and perhaps by the statute,
18 we present 13 affidavits here, duly executed by citizens of this
19 County and they speak for themselves.
20 COURT: Have counsel for the defendant been given copies
21 of these?
22 HARRIS: Yes sir.
23 WILDER: Yes sir, we have.
24 COURT: Any objection to their being admitted?
25 WILDER: I object to the affidavits being admitted into

1 evidence. The statute calls for affidavits to be prepared as
2 I understand it for purposes of making the motion...
3 COURT: Yes sir.
4 WILDER: But the affidavits certainly would be hearsay
5 and I object to it on that basis.
6 COURT: The Court will allow these to be made part of
7 the motion itself and will receive them for the limited purpose
8 of being in support of the motion...
9 HARRIS: That's all they are being offered for...
10 COURT: All right, and the defendant's exceptions are
11 noted to the Court's allowing these to be made a part of the
12 record.
13 WILDER: Thank you sir.
14 COURT: All right, I will take the time to read these.
15 Do you have anything other than the affidavits you wish to
16 offer?
17 HARRIS: Your Honor, in the same vein and for the
18 same/limited purpose of the motion, we offer - the Commonwealth offers
19 a scrapbook which purports to contain newspaper clippings
20 concerning this incident, stemming from February 13, 1975, to
21 date. None have been intentionally omitted. These are from
22 newspapers of general circulation within Louisa County, central
23 Virginia, the Daily Progress, the Richmond Times Dispatch,
24 Richard News Leader and the Fredericksburg Free Lance Star.
25 COURT: Which papers again sir?

1 HARRIS: Central Virginia, the Daily Progress, the
2 Richmond News Leader, Richmond Times Dispatch and the Fredericks-
3 burg Free Lance Star.
4 WILDER: Now that certainly is not covered by the
5 statute and I would object to that as being purely hearsay,
6 clearly hearsay.
7 COURT: Well it depends on the basis of the motion.
8 I suppose if it's pre-trial publicity, that's one of the -
9 how would you prove it otherwise?
10 WILDER: By having the people from the - the best
11 witnesses, the best evidence - in other words I don't know
12 whether that was in those newspapers or not and I can't cross
13 examine that scrapbook.
14 COURT: All right, I will take that under consideration
15 Mr. Wilder and I will reserve my ruling on the admissibility
16 of the newspaper clippings. You do have copies of them or
17 were you all...
18 WILDER: No sir...
19 COURT: You do not. I will allow counsel to examine
20 that while I read the other then if you will Mr. Harris...
21 HARRIS: All right, sir..
22 COURT: And I will look at your affidavits and then
23 counsel for the defendant may examine the newspaper clippings.
24
25 (Off record)

1 COURT: All right, any other evidence you wish to offer
2 Mr. Harris?
3 HARRIS: Your Honor, I wish to offer the notebook and
4 counsel for the defendant has had additional opportunity to
5 examine it - in support of this motion...
6 COURT: All right, Mr. Wilder, I will hear further from
7 counsel on your objections to the proposed evidence of the
8 newspaper clippings in the form of a scrapbook. I will ask
9 that the Court Reporter mark that as Commonwealth's Exhibit
10 number 2....I have admitted the affidavits as exhibit number 1...
11 for identification as exhibit 2 for this hearing.
12
13 (Commonwealth's Exhibit number 1, affidavits, were
14 so marked by the Court Reporter at this time as well as the
15 scrapbook, marked as Commonwealth's Exhibit number 2 for
16 identification)
17
18 WILDER: Your Honor, there are some references in that
19 scrapbook to certain newspapers and dates. There are other
20 pages in which there aren't any references to any newspaper
21 or date, that has been run off in someone's printing press at
22 home. My objection is that it would not be the best evidence
23 and if there were going to be evidence offered of pre-trial
24 publicity, the best evidence would be to bring in the editor
25 of the paper, along with the paper to verify that he printed

it or some representative of the newspaper that they printed it, it was on that certain date, and then he could be subjected to cross examination. Other than that, the actual newspapers themselves, should have been brought in, uncut, unmarked. For instance we don't know whether as to not - I certainly have no quarrel with Mr. Harris' assertion that nothing was purposely left off and I think it's a fine scrapbook for that purpose, of a scrapbook preserved for that day, but it certainly wouldn't serve the purpose of being the best evidence in this case and I would object to it on that grounds.

COURT: All right, Mr. Harris.

HARRIS: Very briefly. I think that the evidence that we have propounded here in support of the motion, namely the scrapbook, is under the circumstances the best practical evidence. I think it would put the Commonwealth and the victim newspapers to an inordinate expense, to have the editors here, to have exact originals of the papers. Of course, I can vouch that everything in there is authentic and that it has been copied - some of the papers that have been copied were sent to us by the newspapers themselves, been stamped and dated, others we copied from newspaper clippings that we were able to borrow only. Everything in there is in chronological order and so I think that part of Mr. Wilder's objection is not well taken if you consider it as a whole. I feel there is no harm, no prejudice to this defendant if that is introduced and allowed to

1 come in for the reason that it's being prepared.

2 COURT: Anything further, Mr. Wilder, it's your objection.

3 WILDER: Yes sir, I would think that the whole purpose

4 of showing that there is prejudice, is what the purport of the

5 evidence is and I would say that the newspaper editor - you

6 only cited three papers as I recall - certainly wouldn't have

7 been difficult to have those persons come from Richmond and

8 Charlottesville and the Central Virginia paper or some representa-

9 tive to come here and then we could cross examine him. And for

10 that reason it's not the best evidence and it would be hearsay

11 - strictly hearsay first of all and then it's not the best evidence

12 if it's not hearsay. So I make a dual motion to exclude it on

13 those grounds.

14 COURT: All right, gentlemen, it is a matter which is

15 - gets outside of the rules of ordinary evidence. It seems to

16 me that while it may not be the best evidence, and Mr. Wilder's

17 point is that a more specific proof could have been made. But

18 I say for the purposes of this hearing that the practicalities

19 of dealing with these things, such as the number of people that

20 might be involved, number of newspapers, I am sure give rise to

21 the suggestion by the Supreme Court in previous cases that

22 affidavits be allowed in support of these motions. And where it

23 deals with the publicity that may or may not be involved - while

24 it does not speak entirely on the point, I see no reason why the

25 Court should not accept that as evidence bearing on this

question, realizing, of course, that it is hearsay. And the Court accepts it, noting Mr. Wilder's exceptions and we will deal with it as hearsay evidence along with the affidavits. So that will be admitted over the defendant's objections as Commonwealth's Exhibit 2 for this motion.

(Commonwealth's Exhibits 1 and 2 admitted into evidence at this time)

COURT: Any other evidence Mr. Harris?

HARRIS: Your Honor, that concludes our evidence in chief on the motion.

COURT: All right, is there any evidence to refute or to be offered by the defendant Mr. Wilder?

WILDER: No, Your Honor.

COURT: All right, gentlemen, I am going to study these briefly. I am sure that a lot of them are covering the same thing but I am going to review generally the scrapbook at this time.

(Off record for Court to view the exhibits)

COURT: All right, I have reviewed the affidavits and the scrapbook which have been admitted as Commonwealth's Exhibit 1 and 2, is there any other evidence from either side?

HARRIS: Your Honor, we have no other evidence and I ask at this stage of the proceeding that the Court take judicial notice of the geographical location that is mentioned within the affidavits; that they are of a wide variety of geographical locations within Louisa County, as can easily be seen from looking at a County map.

COURT: All right, although it is not personally a matter within the Court's knowledge, it certainly would be a proper one for the Court to take judicial notice of and the locations are specified and if they can be pinpointed on the map, they will be acknowledged then as judicially noticeable Mr. Harris. Any other evidence?

HARRIS: That's our evidence Your Honor.

COURT: Now as I understand it, it is the Commonwealth's motion. The Commonwealth must sustain it and that gives the Commonwealth the right to open and close on the motion as I understand it and I will allow you to do that at this time Mr. Harris.

HARRIS: Thank you, Your Honor. Your Honor, the first thing I would like to do is to cite to the Court, somewhat an exhaustive or review of the criminal law in this country. In 46 A.L.R.III, at 295 and specifically at page 329, starting at Section 16, Grounds for a change of Venue, General inability of the State to obtain a fair trial - although I will be glad to present the Court with this Xerox copy of this material, I would

like to just point out two or three small matters within there - that the general weight of authority in this country, when you have a State statute, which authorizes the Commonwealth to so move as Virginia does, then it is held that this is entirely proper upon the showing of good cause by the Commonwealth. In other words this flies in the face of Mr. Wilder's memorandum that the State has no standing at all as far as criminal procedure. Inability of the State to obtain a fair and impartial trial in the County as a ground for granting a change of venue was proper in a number of cases as the Court can see. Also bringing up the point that Mr. Wilder mentioned, in contemplation of law continued the Court, it is as much the duty of the prosecuting officer to insure that one accused of a crime, a fair and impartial trial as it is his duty to demand such for the State. So the State actually has standing - the Commonwealth does on both sides of the motion - if there is any prejudice for or against the Commonwealth or for or against the defendant because it's the Commonwealth's Attorney's duty to see that the defendant does have a fair and impartial trial, both as far as evidence and bias against him and for him. And it is with this in mind that we are operating this treatise to the Court if it sees fit to accept this Xerox copy....

COURT: Have you got copies for other counsel?

HARRIS: No sir, I do not...

COURT: Well I think it would be more appropriate to

1 summarize it then Mr. Harris...

2 HARRIS: All right, sir.

3 COURT: Because that way counsel wouldn't have the

4 benefit of responding to it, but by summarizing it, they can

5 at least respond to it.

6 HARRIS: All right, sir. Your Honor, this treatise

7 states that upon certain grounds, basically local prejudice

8 and bias is shown, that where there is an appropriate State

9 statute, such as Virginia has, then it is entirely proper

10 within the broad discretion of the trial court to change the

11 venue on motion of the State and over the objection of the

12 accused. Also within that we are dealing with a Kentucky case,

13 Keeling v. Commonwealth, found in 178, Kentucky, 624, according

14 to the Court, the purpose of this provision of this provision

15 was to secure to the Commonwealth the opportunity to have a

16 trial by a jury free from the influence of any prevailing

17 prejudice, such as often finds it way into the courtroom and

18 consciously or unconsciously causes jurors to lean toward

19 that party which has the support of the dominant opinion. The

20 court observed that every trial judge has seen in jury trials

21 the silent operation and effect of a strong public sentiment,

22 although such sentiment may not manifest itself in such a way

23 that would enable the trial court to correct its harmful con-

24 sequences. That is the type of bias and local prejudice that

25 we are concerned with here today sir. That basically, sir,

1 summarizes this section that has been cited and that would be
2 the extent of my reference to that. We would cite next the
3 case of Newberry v. Commonwealth, a virginia case, 192, Va. 819,
4 and this is a very important case and good law in Virgina because
5 indeed on a Commonwealth's motion to change of venire facias,
6 over the objection of the defendant, this was done by the trial
7 court and was upheld by the Supreme Court of Appeals of Virginia.
8 And several very pertinent bits of language in it - of course it
9 dealt with Section 8 of the Constitution, which said that
10 in criminal prosecutions a man has a right to demand cause
11 and nature of his accusation, be confronted with his accusors
12 and witnesses, to call for evidence in his favor and to a speedy
13 trial by an impartial jury of his vicinage. And, of course,
14 the word vicinage means the territorial jurisdiction of the
15 court. And then the Court went on - that this provision of
16 the Virginia Bill of Rights was designed we think to guarantee
17 the accused such rights as he had under the common law at the
18 time the provision was adopted; that is the right to an impartial
19 jury in the vicinage or jurisdiction in which the crime is
20 alleged to have been committed, subject to the right of the
21 Court to draw a jury from or to change the place of the trial
22 to another jurisdiction when ever it reasonably appears that an
23 impartial jury cannot be found in the jurisdiction in which
24 the venue is laid. It guarantees to an accused a trial by an
25 impartial jury of his vicinage one which is free from

1 prejudice even for or against him. It was not designed as an
2 avenue of escape for one charged with the commission of an
3 offense where a fair and impartial jury cannot be secured in
4 his vicinage nor was it intended under such circumstances
5 to put that community beyond the protection of the law. Without
6 going into the facts of that base, that's just basically citing
7 to the court and opposing counsel...
8 COURT: What were the grounds in the request for a change
9 of venire?
10 HARRIS: The grounds sir, were local prejudice and
11 the inability to get a fair and impartial jury. Your Honor,
12 in the motion and the evidence which we have introduced, in
13 support of it, I would like to bring out that the insanity
14 issue was highly publicized as evidenced by this scrapbook,
15 starting on page 56 and going through at least page 70. The
16 newspapers give full accounts of the insanity treatment in
17 the trial, the psychiatric medical testimony in the trial, the
18 - all phases of the insanity issue were discussed, discussed
19 thoroughly in those newspapers as evidenced by the scrapbook.
20 And we feel that is extremely important in this instance; it
21 was a fact that was lacking the last time, when the court finally
22 determined - when the defendant was relying on the defense of
23 insanity, the Court would consider these cases as a whole because
24 there was one basic defense, that of insanity at the time of
25 the commission of these alleged acts; that there had been very

1 little discussion of or press on the issue of insanity. And
2 now we are faced with a totally different circumstance - we have
3 reporting in the newspapers as evidenced by this scrapbook of
4 virtually almost everything that was said in this court about
5 psychiatric testimony and about the way it was received. There
6 are headlines in there about how the jurors were enthralled
7 by the defense of the psychiatric testimony and various things
8 like that. It can be very misleading, very much biased in
9 favor of the defendant in this type of defense and we submit
10 that these newspapers have been as shown by the affidavits
11 widely read in this county and that virtually it would be im-
12 possible to find citizens who are eligible for jury duty that
13 have not been prejudiced and biased by this. We would also like
14 to show that the newspapers as evidenced in the scrapbook,
15 starting on page 70 and going through to 77, the very way that
16 this jury did unofficially reported deadlocked. The newspapers
17 even contained the 8/4 split as it supposedly was, the way the
18 jury verdict held. Of course, we have no way of knowing that that
19 in fact was the way they held. I don't think it would be proper
20 to find out. It's certainly what people have read in the papers
21 and so many people, too many people and I suppose most people
22 tend to believe what they read in the papers. It's - the fact
23 that this first jury trial ended with 8/4 in favor of the defense
24 and we feel that that's highly prejudicial - it's been highly
25 publicized and it's been highly discussed. All these issues, the

1 insanity, the way the first trial ended, and the contents of the
2 first trial, have been widely discussed in the community, as
3 far as the only evidence that we had. We only had the Common-
4 wealth's evidence in this case as far as on this motion. The
5 defendant has put no evidence in at this time and we contend
6 that that's unrebuttable - it's been widely discussed, all the
7 issues, the insanity, the contents and the deadlock of the first
8 jury - all to the prejudice of the Commonwealth. We feel
9 that because the Court was faced with a different situation
10 the last time, and because of this highly prejudicial news
11 coverage, highly exhaustive news coverage as evidenced by the
12 exhibit here and because of the extreme discussions that have
13 been going on in this community, that there are such subjective
14 biases and prejudices and feelings in this community that it would
15 be virtually impossible to assemble a fair and impartial jury
16 to give justice to both sides in this case. And we feel that
17 you in your broad discretion as a trial judge in this case
18 have it upon yourself the duty to make a decision here and
19 we feel that the only evidence before you is such that there is
20 only one decision you can make sir, and that is that the venue
21 is this case should properly be changed and changed to a place
22 which is appropriate within your jurisdictional thinking. And
23 we so ask.
24 COURT: All right, Mr. Wilder.
25 WILDER: May it please the Court, in response to the

1 Court's inquiry as to what were the grounds in the Newberry case,
2 and that's Newberry v. Commonwealth, 192 Va., 819, the facts
3 werethat there was a motion for a change of venire facias. What
4 Mr. Harris didn't say to the Court and I'm quite certain that
5 he didn't do it intentionally, but that the defendant was indicted
6 for murder and after several unsuccessful attempts by the trial
7 court to secure an impartial and fair jury panel from the county
8 in which the venue was laid, was tried before and convicted by
9 a jury summoned from a nearby county. What happened in this
10 case, the records show that during six sessions of the court,
11 beginning in October and continuing through the following June
12 unsuccessful efforts were made to secure an impartial jury in
13 that county. During those proceedings more than 100 persons
14 were summoned on five separate writs of venire facias and were
15 examined and that only 16 tentatively qualified. A panel of 47
16 was available for examination on the date to which the case had
17 been postponed but sworn as a witness, the Clerk testified that
18 mostof them were disqualified in light of the facts that the
19 defendant's contentions were without merit. The trial Court
20 properly exercised its discretion larged in it by the statute and
21 granting a change of venire upon the sufficient showing that
22 that was reasonably necessary in order to obtain qualified
23 jurors. I support this case. I would certainly offer it on
24 behalf of my contention that out of six separate occasions that
25 they tried to secure a jury panel, they were unable to do so.

1 But in our case the defendant was charged and indicted, came
2 on to be tried, the Court permitted individual voir dire
3 examination of the jurors. Approximately 46 were called. Of
4 that number 2 were excused for physical disabilities, 2 were
5 excused because of their relationship to the decedent or witnesses;
6 approximately 12 were excused because they felt that there were
7 reservations relative to a finding of not guilty by virtue of
8 insanity, one excused after saying that the defendant would
9 had to have been onhis rocker to do that. The court was pains-
10 taking in pointing out to each juror questioned that the guilt
11 or innocence or the facts material necessary to prove guilt
12 of the defendant were in all likelihood not be an issue in the
13 case and in all probability the sole issue whether at the time
14 of the offense the defendant was insane in accordance with
15 instructions which the Court subsequently gave the jury. There
16 was never any contention by the Commonwealth, nor the defendant
17 that there was any pre-trial publicity as to the mental status
18 of the defendant. A full day was set aside for the voir dire
19 examination and subsequently 12 jurors were chosen to assure
20 the court that they could and would render a fair trial both
21 to the Commonwealth and the defendant. The makeup of the jury
22 were 9 whites, 3 blacks, 7 women and five men. A full day was
23 set aside for the jury to receive the Court's instructions and
24 to hear argument of counsel, at the conclusion of which the jury
25 reported to the court that they were hopelessly deadlocked.

1 Now Your Honor, the - neither the UP or AP wire service voted
2 this case the number one news story in Virginia - all over the
3 State. This was not a case that was going to be read about in
4 Louisa County and not read about in Virginia, Norfolk and I'm
5 quite certain that there isn't a nook or cranny in the Common-
6 wealth from Tennessee to West Virginia, that somebody somewhere
7 hadn't heard about this case. One of the problems that we have
8 is that it is unfortunately a case bordering on sensationalism,
9 and yet on the other hand, there isn't one thing in this scrap -
10 book, not one thing at all, which is inflammatory, which shows
11 any threat of mob action, and as I was contending in the opening
12 remarks, in the case of Rees v. Commonwealth, which is at 203
13 Va., 850, 127 S.E. 2nd, 406, the burden of proof is on the
14 person who is claiming that a change of venue is necessary or
15 a change of venire. The Court held that there was no evidence
16 of inflammatory newspaper or radio coverage of the case, no
17 evidence of mass prejudice, hostility or threat of mob action,
18 either before the jury was sworn or during the course of the trial
19 nor any unusual difficulty in securing an impartial jury. The
20 Commonwealth hasn't shown any of those isolated instances to
21 occur in this case. There isn't the slightest bit of any mass
22 prejudice, no hostility, no threat of mob action - he singles
23 out the fact that this case has been reported in the newspapers.
24 Now this is balancing the free press against the rights of the
25 defendant and the Court, the Supreme Court in the Rees case

1 held that a defendant had no standing to question as to whether
2 he should be entitled to a change of venue under the circumstances.
3 Sixteen years ago in the case of Marshall v. the United States,
4 a Federal case, 360, U.S., page 310, decided in 1959, the
5 Supreme Court reversed a Federal narcotics conviction based on
6 a verdict delivered by a jury whose members had been exposed to
7 newspaper accounts of the defendant's prior convictions. The
8 Court in that instance relied on its adherent supervisory power
9 over the administration of justice. Since that time four cases
10 were decided during the 60's which indicated that constitutional
11 rights are implicated in cases involving jury familiarity
12 with the defendant's past. In Irvin v. Dowd , decided in
13 1961, at 366 U.S., 717, a request for change of venue had been
14 denied in a murder trial despite intense publicity which included
15 press releases from the prosecutor's office and statements by
16 local police officials that the defendant had confessed to six
17 murders, including the one for which he was tried. After
18 examining the voir dire and the makeup of the final jury panel,
19 the court reversed the conviction on the grounds that the
20 defendant did not receive a fair trial by a fair and impartial
21 jury as required by the 6th and 14th Amendments. In the other
22 three cases, the Court did not have to go so far as to examine
23 the voir dire. In the Rido v. U.S. case, 373 U.S., 723, decided
24 in 1963, the trial judge denied a motion for a change of venue
25 despite the fact that on three occasions the local television

station had shown a 20 minute interview with the defendant in which he confessed to the felony - murder with which he was later charged and reversed the conviction without inspecting the contents of the voir dire, the Supreme Court determined that due process was presumptively denied whenever a defendant is tried in a community where such an interview has been televised. The Billy Sol Estes case, prejudice was also presumed in that case - among the circumstances that prompted this result were the existence of massive pre-trial publicity and the fact that four members of the jury panel which convicted Billy Sol Estes had watched telecasts of the pre-trial hearing. In the Shepherd case - Dr. Sam Shepherd, out in Cleveland, 384, U.S., page 333, a 1966 case, the Court held that the total atmosphere of Dr. Sam Shepherd's trial was infected by prejudicial publicity in the news media and exacerbated by the trial judge's failure to take any precautions to insulate the jury. And in reading the opinion of the case the court related to the language by saying that it almost reduced itself to a carnival atmosphere. Now courts have differed as to the effects of the Irvin, Rido, Estes and Shepherd cases upon the Marshall's Court restrictions of its holding to Federal cases. In U. S. - relation of Doggett v. Yeager, a Federal case decided in 1973, 472 Fed. 2nd, 229, United States Court of Appeals for the Third Circuit, held that in certain circumstances, prejudice and therefore a constitutional violation would be

1 presumed whenever a jury is exposed to media accounts of the
2 defendant's criminal history. Now in 1974, we have the
3 case of Murf the Surf - it was the celebrated beach comber
4 down in Florida. The Fifth Circuit Court of Appeals rejected
5 this approach in Murphy v. Florida, 495, Fed. 2nd, 553, decided
6 in 1974, when it refused to extend Marshall beyond its applica-
7 tion to Federal prosecutions under the supervisory power. The
8 Supreme Court granted certiorari to resolve the apparent conflict
9 in the case of 419, U.S. 1088 decided in 1974, and issued its
10 first major decision on pre-trial publicity and the right to a
11 fair trial since 1966. Murphy v. Florida, 421, U.S. 794, decided
12 this year, 1975, the Court held that mere juror knowledge of
13 a defendant's criminal past, even if they knew about his criminal
14 past, would not give rise to a presumption of denial of due
15 process and that in the future such cases would be decided
16 by the use of the totality of the circumstances test. In
17 rejecting Murphy's due process claim, the Supreme Court divided
18 eight to one, holding that juror prejudice is not presumed
19 from mere knowledge of the defendant's notarity; that no adherent
20 prejudice was shown and that the total circumstances of the
21 case did not rise to the level of a constitutional violation.
22 Chief Justice Berger filed a separate concurrence emphasizing
23 that the case had it been Federal, the Court's supervisory
24 power would have dictated a reversal. The question that we
25 are confronted with here, is does Marshall v. United States, 360

1 U.S., 310 apply to a State criminal case - what was the test
2 to be applied in assessing due process claims arising out
3 of alleged pre-trial publicity and juror knowledge and what
4 policies should the courts follow. Well the court found that
5 there was not sufficient evidence of pre-trial publicity and
6 even if the jurors knew of a prior - of the defendant's prior
7 record, that that in and of itself, would not be prejudicial.
8 Now we don't have that situation in the instant case. The only
9 thing you have in this case is that all of the things in the
10 scrapbook here, that the defendant shot and killed Judge Stewart
11 Cunningham, two, that he feloniously assaulted Sheriff Henry
12 Kennon, two state Troopers were shot at, and Deputy Rosensohn
13 was shot. The defendant has never denied that so it's not a
14 question of whether there is guilt or innocence, as to whether
15 he did this or did not do it. And I would submit to the court
16 that unless a person were here to hear the testimony of the
17 psychiatrists, unless a person were here to see how they
18 testified, to feel the ring of sincerity in what they were saying
19 and how they were saying it, there is no way they can make their
20 minds up until they hear it. And I say further to the Court,
21 that the affidavits that we have in the file and the statute
22 specifically states that the affidavits must state the reasons
23 why a fair trial could not be had. Messrs. Gill, Vogt, Bazzanella,
24 Bunting, Hill and Terrill, all say the same thing and they conclude
25 by saying "There is a tremendous influence in Louisa County which

1 flows from the Poindexter family also from the feelings of Judge
2 S. A. Cunningham and this has and will continue to have the
3 effect of creating a heavy bias in these cases." That's what
4 this man says,because of these factors it is now difficult
5 to obtain a fair and impartial trial. We look to what Mr.
6 Pleasants said "It is my observation that the vast majority of
7 the County's citizens has now become firmly polarized on the
8 issues of this defendant's guilt or innocence, including insanity
9 or sanity." Not one person in these affidavits states that he
10 is prejudice. I have noted - I have looked in everyone of them.
11 There are 13 - not one person here says that he couldn't give
12 a fair trial and what they are saying with the affidavits -
13 which are clearly hearsay - that where the statute calls for
14 affidavits to be presented supporting the reasons and grounds
15 why a fair trial could not be had, it calls for the type of
16 testimony to say that I am John Jones and I have done such and
17 such a thing, I have observed this, been here and I cannot give
18 a fair trial. I cannot do it - John Smith cannot do it. But
19 we have the ephemeral evanescent here. We have - these people
20 out there can't do it. They can't do it and submit to the Court
21 that that jury that we selected - I know that the jury as the
22 court indicated if we were in California sometimes ittakes three,
23 four, six weeks, eight weeks - New York - two or three months to
24 select a jury - if we were there we might have the situation.
25 But we selected a jury for this very serious case in a day's

1 time, examined them and we had nothing that would relate to the
2 Newberry case. We had nothing at all to show that there were
3 six unsuccessful attempts to secure the venire. I don't know
4 that the case ever will be easy and that is where we come to.
5 We come to the fact that the trial of a long suit and especially
6 one that involves a serious case such as this is difficult. It's
7 difficult for the community trying, it's difficult for the judge
8 who has to preside over it, it's difficult for the jurors who
9 have to sit in deliberation and eventual judgment of the rights
10 of the accused as to whether he in fact is guilty or as to
11 whether he is not and what eventual disposition will be made
12 of him. It's difficult for the Commonwealth's Attorney. It
13 places a strain on the court in terms of security and last, but
14 not least, it places a great strain on those persons who are
15 associated in terms of representing the defendant. But the fact
16 that it is difficult does not mean that it must not be. The only
17 true way to really resolve this is to have the defendant tried
18 by a jury of his peers, for those persons who would be in a
19 position to say and feel what he would do. Now in examining
20 the affidavit of Mr. Harlow, it really says just about nothing.
21 It is my observation that there has been so much discussion
22 concerning all aspects of this case in the community, that it is
23 now impossible to have a fair and impartial jury trial in Louisa
24 County. Why? And I asked the question after each one of these
25 affidavits Your Honor, why, why can't you have a fair and impartial

1 trial in Louisa? And once we got the jurors questions and answers
2 in there and the Court finally told them - we are not speaking
3 about guilt or innocence - the only thing we are talking about
4 is whether at the time of the commission of the offense, the
5 defendant knew the difference between right and wrong or whether
6 he was psychotic. Now I don't believe that this could ever be
7 determined until you have had an opportunity to be present in
8 the courtroom to hear it. As I have indicated the burden is
9 on the Commonwealth to prove - the Commonwealth has not borne
10 that burden. They have submitted to the court 13 affidavits
11 which are relying on what other people said, not the affiants
12 themselves. They have submitted a scrapbook - I am going to
13 ask Mr. Chester in just a moment to relate at least one or two
14 aspects in this scrapbook as to relevance on this case. And
15 then we get to the question as to when the defendant objects.
16 Mr. Harris has pointed out over the defendant's objections -
17 certainly a man would want to object to having his trial carried
18 some place when they have tried to convict him for six times
19 and they couldn't. And he certainly objected because he said
20 he wanted to be tried here and they never were able to get a
21 jury - now why we don't know? We don't know the facts. But if
22 this case, the only thing we are talking about is fairness. Can
23 you get a fair trial and the defendant says yes, I can get a fair
24 trial where I am. And there has not been a scintilla of evidence
25 produced here today that he could not get a fair trial. There

has been a summonsing of the evidence to the extent of saying that we don't believe it. But the court doesn't have one factual situation before it to fasten its findings as to whether in fact the defendant could receive a fair trial. There has been nothing - and I don't know how the jury split. I have not talked to any members of the jury, don't intend to. I have heard some references, seen some references as to how the jury split. The court knows through its years of experience that what goes on in the jury room is almost like trying to guess what takes place in one of these every day soap box operas. You never know - you never know - I don't know whether it was 8 to 4. I don't know whether it was 10 to 2. I have seen circumstances where jurors have voted 11 to 1 for acquittal and come back in five minutes and say 12, zip for guilt. And what makes people change their minds we don't know. To that extent I am not saying that is prejudicial at all - doesn't influence anybody. They do know that the court declared a mistrial after the jury had been deadlocked after 5 hours of deliberation and again I say to you that that is not an inordinate amount of time but considering that we are not use to that type of jury deliberations in Virginia, I think the court certainly waited long enough for the jury to make its deliberation and I think they were sincere when they said they were hopelessly deadlocked. If the Court, please, I will ask Mr. Chester to make a few remarks.

COURT: All right, Mr. Chester.

1 CHESTER: May it please the Court, Mr. Harris, Senator
2 Wilder, we now come down to the point here of just what are we
3 faced with. Your Honor, we are faced with a defendant who has
4 the most to lose by remaining here in Louisa County. He is the
5 one that is on trial, not the Commonwealth. He is represented
6 by I feel two capable attorneys and those two attorneys are
7 coming before this court and saying Your Honor, that we feel
8 the defendant could come before this community and get a fair
9 and impartial trial. We are also saying Your Honor, that the
10 Commonwealth can do likewise. But again as Senator Wilder has
11 indicated, and I wishto re-emphasize, it is the defendant that's
12 on trial and not the Commonwealth. Now let's take specifics
13 if we may, Your Honor. The publications that the Commonwealth
14 has presented to the court, many of these publications have
15 state wide circulation and I specifically mention the Richmond
16 Times Dispatch and the Richmond News Leader; also the Washington
17 Post has had various articles on this particular case. It is
18 also carried by the various national and international wires.
19 I dare say Your Honor, that Senator Wilder in his endeavors
20 and activities other than as an attorney and myself in my
21 activities, other than as an attorney, in dealing with people
22 throughout the state, I have yet met a person at any corner
23 of this state that has not had knowledge of this particular
24 trial and the facts concerning it. This is a state wide case,
25 a case of great importance. Now Your Honor, we have this first

trial and I feel, as His Honor has indicated that it was a very fair and just trial. The newspapers, the radio, the T.V. media, all were very mature in the way they reported the facts in this case. If Your Honor, would go through this particular folder here of clippings from the various newspapers, and I dare say the evidence also would appear on television and was heard on radio, there is not one instance in here of prejudicial reporting. They are reporting what they saw or heard as the facts in the case. So therefore, Your Honor, if we don't try it here in Louisa County, where do we try it? Southwest Virginia, southeast Virginia, northern Virginia - all of the people in the State know about the case. Now let's go specifically to what did take place on that one day when we started to select a jury. It took us a whole day but Your Honor as you recall, we had approximately 100 prospective jurors that we empanelled. We went through two thirds of them Your Honor, less than two thirds and we got a panel, a jury panel that was perfectly satisfactory to the Commonwealth's Attorney and perfectly satisfactory to the defendant. It certainly is not abnormal. The Commonwealth's Attorney is saying that we can't select a proper jury. Well Your Honor, the first trial is evidence of the fact that it can be done. Now the Commonwealth's Attorney is saying well we have had a lot of talk about the state of mind of the defendant atthe time the incident took place. Senator Wilder has indicated it takes the 12 men or women, listening to the testimony of the

psychiatrist or physiologist, as the case may be, and listening and seeing all the witnesses as they appear before the court, only then can the jury make a final determination as to whether or not this defendant was or was not insane at the time of the alleged crimes of February 13, 1975. Now Your Honor, this particular scrapbook that the Commonwealth has presented to the court, there is one particular article in here that I would like with the court's permission to read and paraphrase if I may. In fact I think I should read it, it's short enough Your Honor and it's very, very important. It appeared in the Charlottesville, Albemarle Tribune - it's a small paper as Your Honor knows. This appears on page 75 of the scrapbook. It's an editorial. It was printed on Thursday, December 18, 1975. "Times have changed in Old Virginia. Nothing has caught the attention of this writer in recent times more than the just ended trial of Curtis Darnell Poindexter, a Louisa County, young black man charged with the murder of the judge of that county, which ended in a mis-trial, a hung jury Tuesday evening. The mere fact that this black man was tried by a jury of citizens of his own county and defended by one black and one white attorney, who did not deny that he had slain the judge, but contended that he was insane when he committed the acts, amply points up the fact that the bitter racial hatred that pervaded Virginia a decade or two ago, has greatly subsided. We venture to say that 10 to 15 years ago under similar circumstances, short wraith would have been made

1 of the accused by most, any Virginia jury trying a black man
2 for murder of a member of the opposite race. Moreover, the
3 lengthy psychiatric examinations given the accused as was done
4 in the Poindexter case would have been unheard of. Of course,
5 while the trial ended in a hung jury and the accused is subject
6 to be tried again by another jury, this fact does not detract
7 from our contention that Poindexter thus far has received every
8 benefit of law and that his race does not seem to have played
9 any significant role in the proceedings. So regardless of the
10 outcome, it is refreshing to know that some Virginia courts and
11 juries seem to be giving due consideration to cases, not races
12 in trying to arrive at justice, which is as it should be in
13 all criminal cases irrespective of who is involved. In the
14 Poindexter case, both the prosecution and defense seems to have
15 carried out their duties in a highly dignified and impartial
16 manner to which they deserve much credit from the citizens of
17 that county." Your Honor, if we take and say that this case
18 must be tried elsewhere other than in Louisa County, we are
19 implying that the people in this community are immature to
20 handle a case of this magnitude and I say Your Honor, that
21 Louisa County is a grown up community, intellectual that can
22 handle this case and I prayerfully petition as with Senator
23 Wilder, that this case be continued here in Louisa County.
24 Thank you sir.
25 COURT: All right, Mr. Haugh.

1 HAUGH: May it please the Court, Your Honor, may the
2 record show that I am assisting Mr. Harris in the prosecution
3 of this case and would like to end our final argument for
4 the Commonwealth.
5 COURT: All right, Mr. Haugh.
6 HAUGH: May it please the Court, Your Honor, we agree
7 with Mr. Wilder that a mistrial in the first case of this
8 defendant is not grounds for a change of venue. We have nothing
9 inour motion or evidence to even remotely suggest that Your
10 Honor. Now Mr. Wilder and Mr. Chester argue in effect that the
11 defendant is the one being tried and that therefore, only the
12 defendant can make such motions as are before the Court at this
13 time. The Newberry opinion - the case of Newberry v. Common-
14 wealth, 192, 819, commented on by both attorneys refers to a
15 change of venue as well as a change of venire in ruling in favor
16 of the right of the Commonwealth to make such motions as are
17 before the Court and of the right of the Court to grant such
18 motions. So while the facts are not in point and we don't
19 assume that they are - we know that they are not - the law as
20 set forth in this case is applicable here and reading from page
21 824 where it is the contention - "the right of an accused to
22 a trial in the county in which the offense was committed" and
23 then I am skipping some - "was not unconditional or absolute,
24 but was limited by or subject to the authority of the court,
25 upon the motion of the prosecution to cause the proceeding to be

1 removed to, or a jury to be drawn from, another county, when
2 an impartial jury could not be obtained or an impartial trial
3 could not be had in the jurisdiction in which the venue was laid."
4 So Your Honor, while counsel for the defendant argues that this
5 court cannot do that, the Supreme Court of Virginia says the
6 court can do it. Mr. Wilder argues that everybody in this
7 State has heard about this case. That may be true, Your Honor,
8 I am sure it has been widely followed in some areas but Your
9 Honor I think is experienced enough to know that the feeling of
10 the people in southwest Virginia are not going to be as personal
11 as the feelings of the people in Louisa County. And that's
12 what we are dealing with today, not where the case should be
13 transferred to, if this court decides to change the venue,
14 but whether or not the case should be changed to another venue.
15 Now Mr. Wilder mentioned the case of Rees v. Commonwealth,
16 203, Va. 850, but in that case where the defendant's motion
17 for a change of venue was denied, the court expressly found
18 that there was no evidence, no evidence that the defendant
19 could not receive a fair or impartial trial in that area, no
20 evidence at all Your Honor, and that differs from our case.
21 Now many of the newspaper articles contain statements of those
22 closely connected with the case, or the trial of this case
23 before, which are inflammatory. Your Honor, has read these
24 and I mention one about committing cold blooded murder, and
25 maybe fool the people on an insanity plea, things of that sort.

1 Your Honor has read these, I'm not trying to quote them. Again
2 Mr. Wilder points out that the individual affiants in this case
3 did not give their personal belief. But Your Honor, Mr. Harris
4 sought affidavits, not from 13 individuals giving their personal
5 opinion but from individuals who had close and - contact with
6 many, many other citizens of Louisa County and giving, based
7 on their conversations with these other citizens -/what the majority
8 of the other people of Louisa thought. We feel Your Honor that
9 if we would have come in here as the Commonwealth and presented
10 affidavits of 13 individuals, giving only their personal belief,
11 that it would not be as strong, and would not be as persuasive
12 as getting it from 13 individuals, store owners, shop owners,
13 filling station owners, and attendants, those who had talked to
14 many, many hundreds of people of Louisa County and to tell you
15 what those people think. Now Your Honor, the case of Farrow
16 v. Commonwealth, 197 Va., 353, places the burden on the Common-
17 wealth in these cases to show clearly that there is such a wide
18 spread feeling of prejudice on the part of the citizens of the
19 County, as will be reasonably certain to prevent a fair and
20 impartial trial. Now what we have as far as our evidence is
21 concerned, is 13 affidavits representing citizens from various
22 and sundry sections of Louisa County, as well as copies of
23 newspaper stories or articles that Your Honor has viewed. These
24 affidavits are full and complete and recite the facts upon
25 which the opinions are based. Now Mr. Wilder argues why can't

there be a fair and impartial trial. Because, Your Honor, according to the various affidavits the opinion of the people of the county - Louisa County, have become polarized on this subject. Your Honor, I would like to call your attention to a few of these affidavits, one William N. Bond, the owner and manager of Louisa Laundry and Cleaners located in Louisa. It goes on to say how he has talked to many people, he encountered them daily. Based upon my daily contacts with a large number of Louisa County citizens - goes on to say, I'm skipping some - it is my observation that there exist such local prejudice in Louisa County. Such local prejudice. The affidavit of Clifton T. Butler, owner and operator of Butler's Store, located one and one half miles west of the town of Louisa, based upon my daily contacts with a large number of Louisa County citizens. Skipping some more - it is my observation that there exist such local prejudice in Louisa County that it is impossible for a fair and impartial trial to be had. Then there is Mr. Gallion's affidavit, owner and operator of Piedmont Service Station, located at Boswell's Tavern in Louisa County - based upon my daily contacts with a large number of Louisa County citizens - he goes on to say that my observations there positively exist local prejudice in Louisa County that it is not impossible for a fair and impartial trial to be held in Louisa County. The affidavit of James W. Pleasants, foreman for the iron workers at the North Anna Power Station located in Louisa - based upon my daily contacts

1 in this community, it is my observation that there exist such
2 local prejudice here that it would be impossible to have a fair
3 trial. Goes on to recite various newspapers and then it says
4 thus it is my observation that the vast majority of the County
5 citizens have now become permanently polarized on the issues.
6 And again, Your Honor, an affidavit of William Gene Jones, a 35
7 year old black citizen of Louisa County - based upon my daily
8 contacts in this community, it is my observation that there
9 exist such local prejudice here that it would be impossible
10 to have a fair trial. And it goes on to say - I'm skipping some
11 a great number of local citizens have already made up their
12 minds in this matter. And he concludes that it is my observation
13 that the trial must be moved from Louisa County in order to give
14 justice to both sides. And finally Your Honor, the affidavit of
15 Elder Ben Kennedy, Pastor of the True Way of the Cross Church
16 of Christ, a 45 year old black man - that in my daily routine
17 I have the opportunity to meet many citizens and have discussed
18 the case that is now pending. It is my observation - and I
19 skip a little bit - that both Curtis Darnell Poindexter and the
20 Commonwealth will not receive a fair and impartial trial if
21 held in Louisa County. Then he concludes - I feel it would be
22 impossible for either party to receive a fair and impartial
23 trial in Louisa County. If it please the Court Your Honor, the
24 - under the rules of procedure, the Supreme Court has allowed
25 motions of this type to be heard on affidavits as well as other

exhibits. These affidavits are very complete. They are very meaningfully. They are full of facts - that they have talked to people; that they have read the papers; they know these people read the papers, they have heard discussions and the opinion of these affiants based on a large number of people that they have talked to from all corners of Louisa County is that there cannot be a fair and impartial trial in Louisa County. Now Mr. Chester mentioned the editorial in the Charlottesville-Albemarle Tribune - from Charlottesville. Your Honor he commended this court is saying that all the rules had been obeyed, that all sides got a fair trial to this point. I just believe Your Honor, that if the Court follows the evidence in this case, and grants a change of venue, that again that paper would commend you for observing the rights of the Commonwealth and the defendant. Thank you.

COURT: Now gentlemen, we have right much in the way of material that I would like to review briefly again. I have a little bit before a quarter of four - I am going to adjourn and go to chambers for the time we have remaining until four o'clock. Then we will reconvene and I will give counsel my decision at that time. But I will be in chambers and I will review this matter further when we come back at four o'clock.

(Brief recess)

1 COURT reconvened.

2

3 COURT: All right, gentlemen, we are back on the record
4 for the decision with regard to the motion for a change of venue.
5 I noticed that in the alternative there is a motion for a change
6 of venire as well, filed contemporaneously with the other
7 motion as I understand.

8 Now for the purposes of this decision it seems to me
9 that in addition to the items that have been admitted into
10 evidence as Commonwealth's Exhibits 1 and 2, the Court should
11 note for the record certain aspects of the previous trial and
12 take judicial notice thereof. Now while they are not admitted
13 as separate items of evidence, I don't think this court can
14 divorce itself from the knowledge which has arisen in dealing
15 with the other trial. There are several circumstances which
16 should be commented upon. Counsel will recall that a motion
17 for a change of venire was made in that case and denied, motion
18 having been made by the Commonwealth's Attorney and having been
19 supported by testimony that a great number of people in the
20 community had become so fixed in their opinions as to the guilt
21 or innocence of the accused, that it would be very unlikely, if
22 not impossible to obtain a fair and impartial jury. Now the
23 court dealt with that in this regard, it took the motion under
24 advisement and awaited the outcome of further psychiatric
25 examination of the defendant, after which the court reconvened

the parties and again considered the motion. And at that time required counsel to state quite frankly, or at least asked counsel to do so and they complied - to state what frankly the issues in the case would be in order for the court to deal with that motion. And Mr. Chester and Mr. Wilder very frankly stated that the defense would be that of insanity and that it did not appear, although they would not say so categorically, it did not appear that there would be an issue with regard to whether the defendant committed the acts charged with. Now in that posture, the Court examined again the motion for a change of venire and again considering the issue which would be presented to the jury, decided that there was no exposure at that time which would give rise to the danger of the impartiality and fairness of a jury with regard to the question presented. Now the Court has tried the case with a jury. The jury's verdict has been publicized, speculated upon, commented upon obviously and again we have the question presented with regard to whether or not a fair and impartial jury could be obtained in this county or whether trying this case in Louisa County would endanger the fairness and impartiality which every trial must have. I must say, of course, from the newspaper scrapbook that certainly there has been a great deal of publicity since the trial, apparently almost as much, if not as much, as appeared before the trial, which means that we now have a different situation from that which existed at the time the court made its ruling with regard

1 to the motion for a change of venire. The question has been
2 raised as to whether or not the Commonwealth can even make
3 a showing as to its interest or whether it's limited to a showing
4 of prejudice to the accused. The statute says that a court
5 may change the venue for good cause shown on motion of the
6 accused or the Commonwealth, no further clarification. And
7 I think it's the construction of those words "for good cause
8 shown" that we have to deal with it. The removal in this case
9 would be discretionary I think without any doubt. The authority
10 is there, the question is whether or not the court should
11 exercise it, that is the discretion. In that regard again the
12 court I think should take judicial notice of the jury trial
13 that has been had and which resulted in a mistrial and the evi-
14 dence adduced at that trial, the publicity which flowed from
15 it and during the trial. The fact as Mr. Wilder pointed out
16 and the court noticed it in the December 25 issue of the Richmond
17 News Leader of 1975, that the crime which is the basis of this
18 trial charged against the defendant was designated the top news
19 story in Virginia in 1975, among the top ten - of course they
20 considered this ranked number 1 as the top news story. As
21 counsel have pointed out, the mere publicity itself, is no
22 basis for changing the venire or the venue. It's a question
23 of whether or not the impartiality of the trial and the fairness
24 of the trial is going to be so effected by that news coverage
25 as to make it appropriate that the court deal with it on this

1 motion in the manner requested by the Commonwealth, that is
2 this question - whether or not readers and hearers of the
3 news broadcasts and other media in transmitting what has occurred
4 before, during or since this trial with regard to the case
5 already tried and with regard to the allegations generally,
6 whether the readers and hearers have been so influenced as to
7 form an opinion. As we know news is a daily part of our lives
8 and people expect to deal with it and live with it and jurors
9 must live with it. We are not to move cases out of the community
10 in which they should be properly tried just because there is
11 a news coverage. That is not the criteria. Now one of the things
12 that the court should comment on in dealing with this motion
13 here in taking the judicial notice of the physical and other
14 aspects of the previous trial - it was pointed out to the court
15 at the time that the jury was brought to this courtroom by
16 the Sheriff of this court that it would be inappropriate to
17 use the District Courtroom because of the evidence and shots
18 were still visible and the problems that would arise from
19 sending the jury panel to that area because of it being the
20 scene of the crime. And because of that the court kept the
21 entire jury panel in this courtroom and dealt with the jury
22 panel in small groups in a small room to the right of the bench
23 as the court sits. Now that obviously would be with us again
24 in dealing with the physical limitations probably in a more
25 pronounced fashion. We called approximately 100 jurors before.

1 I would certainly expect that a number in excess of that would
2 have to be called the next trial although we were able to get
3 a jury panel before we had used more than half of that 100.
4 The fact is that a largejury panel would have to be called
5 from Louisa County - that much is apparent to this court. Now
6 the news coverage indicates and the affidavits speak to this
7 point that a large portion of the population in Louisa County
8 have taken sides with the issues presented in this case.
9 Whichever side they take is immaterial. In view the publicity
10 in light of the affidavits it seems to the court that this
11 is a case in which the fairness and impartiality, which is
12 so essential to the trial, may well be in danger. The questions
13 that would haveto be decided may not take the same direction
14 as before. I cannot say that they will. Counsel I don't think
15 would be bound - there would still be two issues to be decided
16 on a not guilty plea. First, the defendant - did the defendant
17 commit the offenses charged against him, and secondly, if so
18 was he so deranged as to be not guilty of the crime by reason
19 of insanity at the time of the commission of the offenses.
20 Now I think it is important to realize that those issues are
21 still essential in the case. While no evidence was offered
22 to refute the commission of the acts, it does not appear there
23 will...
24 WILDER: I can say to the Court that there will not
25 be...

COURT: I would certainly assume that Mr. Wilder, that there would not be an issue on the question of whether the acts were committed as charged. But the sole question would be whether or not the defendant was so deranged as to be insane at the time of the offense or offenses within the legal definition. Now that gives rise to the question of whether or not that issue has been so exposed to the public as to render the impartiality and fairness of the trial in danger. Now this much also strikes the court - it seems to be a matter of inference here and one which the court in its discretion seems to me should consider. And that is whether or not there is going to be either conscious or unconscious intimidation on the part of those or against those who might be called to act as jurors. Here we have a case in which a sitting Judge has been slain on the bench and in the process of his court proceedings. He has been - the defendant has been tried in the very courthouse building, although not in the same general - specific vicinity, in the general vicinity. And that courtroom is part of the facilities of the courthouse generally and gives rise to some difficulty. As you all recall a motion was made for a view. The court denied it. That very presence of the courtroom itself and the circumstances of the crime have somewhat an overpowering effect as one thinks of it and is exposed to it. As Mr. Wilder pointed out when the time came for the argument on the question of whether or not a view

1 could be permitted, the court did not permit it and as I recall
2 the motion was not renewed. But I must say I had grave mis-
3 givings about allowing it. Now the fact is that that courtroom
4 is a very, very short distance removed in this same building.
5 And I'm of the opinion that it is going to put any juror to an
6 awful lot of pressure just living and dealing with it under
7 those conditions. I cannot discount that effect, whether it's
8 one way or the other. And I am inclined to think that having
9 exposed this defense of insanity to the degree that it has been
10 exposed, it puts even greater pressure now on those who would be
11 called and those who would be called upon to decide the issues and
12 have to live with that decision after the issue has been decided.
13 Maybe people should not be spared that but it seems to me we
14 have done a lot already in order to deal with this case in Louisa
15 County within the limitations of what we have dealt with. And
16 I think the trial was conducted, as I indicated at the conclusion
17 of it, in a very fine fashion by both sides. But we are dealing
18 here with the difficulty, not only of empanelling the jury, but
19 dealing with the case after it is started, thecourtroom facilities
20 being highly over burdened at least in the initial stages. I
21 don't believe this much publicity or the effect of this much
22 publicity would exist in a more remote area. And I think to a
23 large degree that the atmosphere of intimidation which exist
24 or could exist might be completely removed. And I don't say
25 that intimidation would exist as to either side. I'm frank to

1 say that I don't know which side would out weigh the other but
2 I'm convinced that intimidation, unconsciously would exist
3 because of the significance and the notarity of this case and
4 the impact upon this community of what has occurred. The
5 Court therefore, finds that the Commonwealth, under this showing
6 has made out a case for a good cause for the court to grant the
7 motion for a change of venue. And again with regard to the
8 motion for a change of venire, I will say this, that the problems
9 with dealing with a change of venire, it seems to me are so
10 adherent in this atmosphere, in the courtroom itself, andin
11 bringing people in from out of the area to try the case here,
12 I think the court should deal with it on the change of venue
13 rather than on a change of venire. I will undertake to schedule
14 this case in a jurisdiction which would give the least in-
15 convenience to all parties. I am aware of the fact that there
16 were 20 some witnesses called in this case, a large number of
17 whom were characterwitnesses for the defendant and a great
18 distance that they might be called upon to travel might work
19 a hardship on them. The physical difficulties in dealing with
20 a change of venire in my opinion that the court should take
21 judicial notice of, is that Louisa is a small community insofar
22 as accommodating visitors. Whether I commented on it before
23 or not, I think it was certainly adherent in the court's decision
24 that bringing in a panel of jurors from out of the area would
25 give rise to difficulties in accommodating those people from the

1 standpoint of overnight and eating facilities. And I think as
2 a practical matter this should be considered as a change of venue
3 rather than calling in an outside panel. Now I'm sure defense
4 counsel wish to note their objections to the court's so ruling...
5 WILDER: Yes sir...
6 COURT: And they are so noted and for the reasons
7 already stated, as Mr. Wilder and Mr. Chester have pointed out,
8 there are legal points which give rise to the question of due
9 process, whether or not the defendant is the only one who can
10 claim it - all these points, of course, are preserved and
11 your objections having been stated in argument. Now this much
12 the court has already done during the time I've been waiting for
13 other matters to be cleared. I am aware of the fact that Mr.
14 Wilder is about to go into the General Assembly which will be
15 in session for at least 60 days, beginning January 14th I
16 believe; that his residence is in Richmond, Mr. Chester is
17 living here in Louisa,-Mr. Haugh, will you be in the case?
18 HAUGH: Yes, Your Honor.
19 COURT: And Mr. Horan, is no longer in it, is that
20 correct?
21 HAUGH: We don't know that yet Your Honor.
22 COURT: I see, well you all may have other counsel.
23 I am thinking in terms of all the parties here and I am inclined
24 to do this - I'm not leaving it to you all to suggest but I'm
25 merely pointing out what I have already considered because

1 I can't leave it open for anybody to select a site, I think
2 the Court must do that and deal with it within the judicial
3 system, as far as the administrative action of the judges.
4 Route 64, Interstate 64 is the most common route of travel
5 to everybody involved and I have noted that the news coverage
6 and the television coverage have largely been confined to this
7 particular area or at least in the Richmond to Charlottesville
8 area. And we are situated so that we have a natural geographic
9 barrier so to speak, which is the Blue Ridge Mountains, and
10 it separates to a large extent the activities and the news
11 which take place east of those mountains as opposed to west
12 of those mountains. Interstate 64 goes right in the direction
13 of the county which I am considering and that is Augusta
14 County. It's very accessible to everybody involved it seems
15 to me unless possibly Mr. Horan who would have to be traveling
16 in a different area - from a different area. I have talked
17 with the Judge of that court, Judge Moffett, and have alerted
18 him to the possibility that this would occur, just a matter of
19 a fewminutes ago. And I am prepared at this point to consider
20 with counsel a trial date with the prospect of this case being
21 tried in the Circuit Court of Augusta County. I realize that
22 Mr. Wilder is entitled to 30 days after the ending of the
23 General Assembly session I believe, and of course, I will be
24 glad to hear from you with regard to your scheduling Mr. Wilder.
25 The General Assembly is the single most significant point to

1 deal with in scheduling.

2 WILDER: Your Honor, depending on when the trial would

3 be there is some talk about a two week recess and then coming

4 back but even so it shouldn't be 60 days. I would like to

5 suggest to Mr. Harris that maybe we could do something sometime

6 in May.

7 COURT: All right, sir, do you want to set a time in

8 May?

9 WILDER: The only bad date that I have at this time

10 is May 7 and May 19th - any other dates are agreeable.

11 HARRIS: Your Honor, the Commonwealth has no unavailable

12 dates.

13 COURT: All right, now Mr. Haugh.

14 HAUGH: May it please the court, I have a condemnation

15 case in your court in Albemarle County on May 13th, but if

16 you would bear with me on that for later...

17 COURT: Yes sir. I think this case would require

18 a considerable give and take on the part of the court's

19 schedule too, because I believe that five days should be set

20 aside for the trial of this case, that is a week. Now Mr.

21 Wilder, I have discussed with Judge Moffett, the possibility

22 of the week of May 3 - can you resolve that?

23 WILDER: I can resolve that..

24 COURT: Now I am thinking in terms of your schedule,

25 General Assembly and giving you time and moving as early as we

can because I think you should be afforded the earliest date that you ask for...

WILDER: Thank you sir.

COURT: All right, now let's do this then, theweek of May 3rd - Monday, May 3rd would be set for the trial.

CHESTER: Your Honor, I am going to have a little problem with that...

COURT: Excuse me Mr. Chester, I didn't mean to overlook your schedule..

CHESTER: That's okay - May3rd - we traditionally have our wool fair and international sheep goat trials in the earlier part of May and I would like to have time to be able to develop and work with this case.

COURT: Which week?

CHESTER: April 30th, May 1st and 2nd - and that's cutting it awfully close. It is a major event in the area. If it please the court, I would like to have at least one week to work on it...

COURT: How about looking at May 10th - I'm not sure how that will suit Judge Moffett because I was trying to get some dates that he would be there...

WILDER: That's agreeable with me...

COURT: Well let's see now, we would have to re-schedule Mr. Haugh's case but there is plenty of time to do that. I will call Judge Moffett, if you all will stand by and let me check

1 with him about the week of May 10th gentlemen, and see what we
2 can do about accommodating his schedule...
3 HAUGH: I think the week of the 17th all of us would
4 be available if you want to...
5 COURT: Mr. Chester, what about that? Mr. Wilder...
6 CHESTER: May 17th would be fine...
7 COURT: May 17th or May 10th? How about May 24th?
8 WILDER: Yes sir..
9 COURT: All right, let's see what we can do. All right,
10 if counsel will stand by, I will contact Judge Moffett to see
11 what we can do about those dates.
12
13 (Brief recess)
14
15 COURT: Now gentlemen, I hope we have accommodated as
16 many people as we can with this date - we have scheduled it
17 for May 17th - the week of May 17th. Now Judge Moffett says
18 they customarily convene Court at 9:30 in Augusta County.
19 Counsel should be mindful of that. With regard to the case
20 the Court will enter an order transferring the case to the Circuit
21 Court of the County of Augusta. The Clerk will be directed to
22 forward the files of all the pending cases and thereafter, all
23 action will be taken by that court. With regard to the defendant's
24 presence, either there or wherever he is being presently kept,
25 I will leave it up to counsel and the Commonwealth's Attorney

as to how and when you might want him transferred. It may be much more convenient for him to remain at the State Farm where he has been kept during the pendency of the case and have him transferred just prior tothe trial. But if you all wish to be heard on that, I am sure Judge Moffett will enter an order in the manner you all agree to or if you have some selection as to when he should be transferred, I am sure he would be happy to do that, or I will consider it if appropriate - anyone of the Judges here would act on that.

HARRIS: Your Honor, I had one other matter to take up with the court before the court divest itself of further jurisdiction and that is to recognize Charles F. Rosensohn who I had summoned here today, to appear in the Augusta County Circuit Court on May 17th at 9:30 A.M.

COURT: Now is that for the purpose of being a witness?

HARRIS: Yes sir.

COURT: All right, now Mr. Rosensohn state your full name sir?

ROSENSOHN: Charles F. Rosensohn.

COURT: Now Mr. Rosensohn, you have been summoned by the Commonwealth's Attorney of this County as a witness in the case of Commonwealth against Curtis Darnell Poindexter. This case has been scheduled for trial in the Circuit Court of Augusta County at 9:30 A.M. on Monday, May 17th of 1976. You are therefore recognized by this court to appear there at that

date at that time in the Circuit Court building in Augusta County, City of Staunton, without further subpoena.

HARRIS: Thank you sir.

COURT: All right, gentlemen, the court hereby divest itself of further jurisdiction.

COURT ADJOURNED.

STATE OF VIRGINIA AT LARGE:

I, Jean D. Easton, Notary Public in and for the State of Virginia at Large, having been so duly commissioned and qualified do hereby certify that the foregoing hearing was duly taken by me at the time and place specified in the caption hereof,

I further certify that said hearing was correctly taken by me by mechanical methods and that the same was accurately written out in full and transcribed into the English language and that said transcript is a true, accurate and correct record of such hearing.

I do further certify that I am neither attorney nor counsel for or related to any of the parties to the action in which this hearing was taken and further that I am not an employee of any attorney or counsel representing the parties who are financially interested in this action.

Given under my hand and seal this 22nd day of June, 1976.

My Commission expires May 3, 1980.

Jean D. Easton
Notary Public

Filed in the Clerk's Office of the
Circuit Court of Augusta County
July 26, 1976
Teste:
Lydia L. Shaw Dep. Clk.

CLERK'S CERTIFICATE

I, Rudolph L. Shaver, Clerk of the Circuit Court of Augusta County, Virginia, do hereby certify that the foregoing writing, consisting of 54 pages, is the original transcript of the hearing on January 16, 1976 in the Circuit Court of Louisa County, pertaining to change of venue, and received and filed in my office as Clerk of the Circuit Court of Augusta County on the 26th day of July, 1976, in the cases of Commonwealth of Virginia Vs. Curtis Darnell Poindexter.

GIVEN under my hand this 26th day of July, 1976.

Rudolph L. Shaver
Clerk of the Circuit Court of
Augusta County, Virginia

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

Elder Ben Cannady, being duly sworn, deposes and says:

I am a 45 year old black man residing in Mineral, Virginia located in Louisa County, Virginia. I am a pastor for the True Way of The Cross Church of Christ and am also employed by Johnson Construction Company also located in Louisa County.

That in my daily routine, I have the opportunity to meet many citizens and have discussed the cases now pending against Curtis Darnell Poindexter with them. It is my observation that the citizens of Louisa County feel that due to the publicity on television and in newspapers, both Curtis Darnell Poindexter and the Commonwealth will not receive a fair and impartial trial if held in Louisa County.

Due to personal feelings of the Louisa citizens for the Poindexter family and for the family of the late S. A. Cunningham I feel it would be impossible for either party to receive a fair and impartial trial in Louisa County.

Filed in the Clerk's Office of the Circuit Court of Augusta County
March 5 1976
Teste: Ludwyn R. Shaw Jr. Clk.

Elder Ben Cannady
ELDER BEN CANNADY

1-12-76
DATE

Taken, sworn and subscribed before me in my County and State this 12th day of January, 1976.

My Commission Expires: July 15, 1979.

Susan Whitlock Chick
Notary Public

A Copy-Teste
Shaw P. Cyre Clerk

AFFIDAVIT

Albert M. Bazzanella, being duly sworn, deposes and says:

I am a self-employed carpenter and reside in the Wares Cross Roads Community of Louisa County.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of the citizens have regularly read the various articles in The Central Virginian and The Richmond Times Dispatch and have seen and listened to extensive news coverage on television touching on all aspects of the cases now pending against Curtis Darnell Poindexter. I have observed that these citizens have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents. Because of these factors, it is now difficult and to obtain a fair and impartial trial for both sides in this matter in Louisa County.

That there is a tremendous influence in Louisa County which flows from the Poindexter family and also from the feelings for Judge S. A. Cunningham and this has and will continue to have the effect of creating a heavy bias in these cases.

Filed in the Clerk's Office of the Circuit Court of Augusta County March 5, 1976
Teste: Rudolph L. Chaney Dep. Clk.

ALBERT M. BAZZANELLA

DATE Jan 11 1976

Taken, sworn and subscribed before me in my County and State aforesaid this 11th day of January, 1976.

My Commission Expires: July 15, 1979.

Notary Public

A Copy-Teste
Clerk

AFFIDAVIT

James Ware Pleasants, being duly sworn, deposes and says:

I am a foreman for the Ironworkers at the North Anna Power Station located in Louisa County, Virginia and I am a resident of said county just west of the Town of Mineral corporate limits.

Based upon my daily contact in this community, it is my observation that there exists such local prejudice here that it will be impossible to have a fair trial for Curtis Darnell Poindexter and for the Commonwealth of Virginia. A great number of local citizens have prejudged this matter, including the issue of the defendant's sanity at the time of the alleged acts. This, in part, has been caused by the extensive publicity since the first trial with the details of the psychiatric testimony being widely publicized. The citizens with whom I have had contact have read extensively in the Fredericksburg Free Lance Star and The Central Virginian as well as having listened to and viewed radio and television coverage of the same. Thus, it is my observation that the vast majority of the County's citizens have now become firmly polarized on the issues of this defendant's guilt or innocence, including the sanity or insanity of said defendant at the time of the commission of acts with which he is charged.

James Ware Pleasants

JAMES WARE PLEASANTS

1/11/76

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 11th day of January, 1976.

My Commission Expires: July 15, 1979.

Susan Whitlock Chick
Notary Public

A Copy-Teste

Glenn P. Cleger
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5 1976
Teste:
Rudolph L. Shaver ~~Dep.~~ Clk.

AFFIDAVIT

Robert C. Bunting, being duly sworn, deposes and says:

I am the business agent for the Structural Ironworkers Local No. 28 with my principal working location at the NOrth Anna Power Station in Louisa County and further I am a resident of the Jackson District of Louisa County.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of said citizens have regularly read the various articles in The Central Virginian and The Richmond News Leader touching on all aspects of the cases now pending against Curtis Darnell Poindexter and have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents, to such an extent that it is my observation that it is now impossible to obtain a fair and impartial trial for both sides in this matter in Louisa County because of the firm polarization of said vast majority of citizens on this issue.

I have observed that the influence of the Poindexter family and the feelings in the community for Judge S. A. Cunningham have and will continue to have the effect of creating strong bias in these cases.

Robert C. Bunting
ROBERT C. BUNTING

1-11-76
DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 11th day of January, 1976.

My Commission Expires: July 15, 1979.

Susan Whitlock Chick
Notary Public

A Copy-Teste

Thomas P. Cyr
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5 1996
Test:
Rudolph L. Hamer Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

B. L. Hill, being duly sworn, deposes and says:

I am a retired person and reside in the Bumpass Community of Louisa County. I am 78 years old and am a life-long resident of Louisa County.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of the citizens have regularly read the various articles in THE CENTRAL VIRGINIAN and THE RICHMOND TIMES DISPATCH and have seen and listened to extensive news coverage on television touching on all aspects of the cases now pending against Curtis Darnell Poindexter and have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents. It is clear that such great discussion and emphasis has taken place and been given to all aspects of these cases that it is now impossible to obtain a fair and impartial trial for both sides in this matter in Louisa County.

I have observed that the influence of the Poindexter family and the feelings in the community for Judge S. A. Cunningham have and will continue to have the effect of creating strong bias in these cases.

B. L. Hill

B. L. HILL

Jan 11 - 1976

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 11th day of January , 1976.

My Commission Expires: July 15, 1979.

Susan McNeal Clark
Notary Public

A Copy-Teste

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

E. A. Terrell, III, being duly sworn, deposes and says:

I am a farm owner and operator with my residence and place of business located in the Fredericks Hall Community of Louisa County.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of the citizens have regularly read the various articles in The Central Virginian, The Richmond Times Dispatch and The Daily Progress and have seen and listened to extensive news coverage on television (Channels 6 and 12) touching on all aspects of the cases now pending against Curtis Darnell Poindexter and have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents. This has occurred to such a great extent that it is now impossible to obtain a fair and impartial trial for both sides in this matter in Louisa County.

I have observed that the influence of the Poindexter family and the feelings in the community for Judge S. A. Cunningham have and will continue to have the effect of creating strong bias in theses cases.

E. A. Terrell III

E. A. TERRELL, III

January 11 1976

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 11th day of January , 1976.

My Commission Expires: July 15, 1979.

Susan Mullock Clark
Notary Public

A Copy-Teste

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

W. D. Guild, being duly sworn, deposes and says:

I am a farm owner and operator and a resident of the Dabney's Community of Louisa County, Virginia.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of said citizens have regularly read the various articles in The Central Virginian, The Richmond Times Dispatch and The Richmond News Leader touching on all aspects of the cases now pending against Curtis Darnell Poindexter and have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents, to such an extent that it is my observation that it is now impossible to obtain a fair and impartial trial for both sides in this matter in Louisa County.

I have observed that the influence of the Poindexter family and the feelings in the community for Judge S. A. Cunningham have and will continue to have the effect of creating strong bias in these cases.

W. D. Guild

W. D. GUILD

1/10/76

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 10th day of January, 1976.

My Commission Expires: July 15, 1979

Susan Whitlock Chick
Notary Public

A Copy-Teste

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Rudolph L. Shaver Jr. Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

E. W. Harlow, being duly sworn, deposes and says:

I am the owner and operator of Harlow's Market located in the Evergreen Community off of U. S. Route 250 in Louisa County, Virginia and further I am a resident of said County of Louisa.

That in the daily operation of my business in said community in Louisa, I regularly encounter a large number of citizens who have discussed the criminal cases now pending against Curtis Darnell Poindexter with me. Also, the citizens of said county that I come in contact with have expressed that they have regularly read the various articles in The Daily Progress, The Central Virginian and The Richmond News Leader concerning all the aspects of this case, including the issue of the defendant's sanity at the time of the alleged offenses.

It is my observation that there has been so much discussion concerning all aspects of this case in the community that it is now impossible to have a fair and impartial trial in Louisa County.

E W Harlow

E. W. HARLOW

Jan. 10-1976

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 10th day of January, 1976.

My Commission Expires: July 15, 1979.

Susan Whitlock Chick
Notary Public

A Copy-Teste

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

F. E. Gallion, Jr., being duly sworn, deposes and says:

I am the owner and operator of Piedmont Service Station located at Boswell's Tavern, Louisa County, Virginia, and I reside in Louisa County near the said Boswell's Tavern.

That in the daily operation of my business at Boswell's Tavern, I regularly encounter a large number of citizens from all parts of Louisa County, both black and white, many of whom I have discussed the criminal cases now pending against Curtis Darnell Poindexter with me. Based upon my daily contacts with a large number of Louisa County citizens, it is my observation that almost all of the County'scitizens in this area have become firmly decided as to the issue of this defendant's guilt or innocence, including the sanity or insanity of said defendant at the time of the commission of acts with which he is charged.

It is my observation that there positively exists such local prejudic in Louisa, County that it is now impossible for a fair and impartial trial to be held in Louisa County.

F. E. Gallion Jr.
F. E. GALLION, JR.

1-10-76
DATE

TAken, sworn and subscribed before me in my County and State aforesaid this 10th day of January, 1976.

Susan Whitlock Crick
Notary Public

My Commission Expires: July 15, 1979.

A Copy-Teste

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

William Jean Jones, being duly sworn, deposes and says:

I am a thirty-five year old black citizen of Louisa County and I reside in the Ellisville Community of said County.

Based upon my daily contact in this community, it is my observation that there exists such local prejudice here that it will be impossible to have a fair trial for Curtis Darnell Poindexter and for the Commonwealth of Virginia. A great number of local citizens have already made up their minds in this matter and not all of these will be honest enough to admit this fact if they are called upon to serve on a jury. My observation goes to the issue of Poindexter's sanity at the time of the alleged offenses and since the first trial and all the news coverage over the way the jury was split and the psychiatric testimony that was given, all of this has and will be taken into account by the substantial number of people who have already made up their minds.

It is my observation that the trial must be moved from Louisa County in order to give justice to both sides.

William Jean Jones
WILLIAM JEAN JONES

1/10/76
DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 10th day of January, 1976.

My Commission Expires: July 15, 1979

Susan Whitlock Chick
NOTARY PUBLIC

A Copy-Teste

Jane K. Cayce
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Judith K. Shawver Dep. Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

Clifton T. Vawter, being duly sworn, deposes and says:

I am the owner and operator of Vawter's Store located 1 1/2 mile west of Louisa, Virginia in Louisa County and further I am a resident of said County of Louisa.

That in the daily operation of my business in the Town of Louisa, I regularly encounter a large number of citizens from all parts of Louisa County, both black and white, many of whom I have discussed the criminal cases now pending against Curtis Darnell Poindexter with me. Based upon my daily contacts with a large number of Louisa County citizens, it is my observation that the vast majority of the County's citizens have become firmly polarized on the issues of this defendant's guilt or innocence, including the sanity or insanity of said defendant at the time of the commission of acts with which he is charged.

It is my observation that there exists such local prejudice in Louisa, County, some favoring the accused and some favoring the Commonwealth, that it is now impossible for a fair and impartial trial to be held in Louisa County.

Clifton T. Vawter

CLIFTON T. VAWTER

DATE 1/10/76

Taken, sworn and subscribed before me in my County and State aforesaid this 10th day of January 1976.

Susan Whitlock Chick

Notary Public

My Commission Expires: July 15, 1979

A Copy-Teste

Dean P. Pleger

Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Rudolph R. Shaver Clk.

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

Elsie A. Vaught, being duly sworn, deposes and says:

I am the owner and proprietor of Alhizer's Appliances and furniture located in the Town of Mineral, Louisa County and I reside west of the corporate limits of the Town of Mineral in Mineral District of Louisa County, Virginia.

That in my daily routine, I regularly encounter a large number of citizens of Louisa County both in my community and from other places within the County and I have observed that the vast majority of said citizens have regularly read the various articles in The Central Virginian, The Richmond Times Dispatch, The Richmond News Leader and The Daily Progress touching on all aspects of the cases now pending against Curtis DArnell Poindexter and have thoroughly discussed all aspects of the cases, including the mental status of the defendant at the time of the alleged incidents, to such an extent that it is my observation that it is now impossible to obtain a fair and impartial trial for both sides in this matter in Louisa County because of the firm polarization of said vast majority of citizens on this issue.

I have observed that the influence of the Poindexter family and the feelings in the community for Judge S. A. Cunningham have and will continue to have the effect of creating strong bias in these cases.

Elsie A. Vaught

ELSIE A. VAUGHT

Jan 11, 1976

DATE

Taken, sworn and subscribed before me in my County and

State aforesaid this 11th day of January, 1976.

My Commission Expires: July 15, 1979.

Susan Wheeler Chick
Notary Public

A Copy-Teste

Leon P. Cline
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:

STATE OF VIRGINIA

COUNTY OF LOUISA, to-wit:

AFFIDAVIT

William N. Vaughan, being duly sworn, deposes and says:

I am the owner and manager of Louisa Laundry and Cleaners located in the Town of Louisa, Virginia and I am a citizen of Louisa County residing near the Town of Louisa Corporate Limits.

That in the daily operation of my business in the Town of Louisa, I regularly encounter a large number of citizens from all parts of Louisa County, both black and white, many of whom have discussed the criminal cases now pending against Curtis Darnell Poindexter with me. Based upon my daily contacts with a large number of Louisa County citizens, it is my observation that the vast majority of the County's citizens have become firmly polarized on the issues of this defendant's guilt or innocence, including the sanity or insanity of said defendant at the time of the commission of acts with which he is charged.

It is my observation that there exists such local prejudice in Louisa County, some favoring the accused and some favoring the Commonwealth, that it is now impossible for a fair and impartial trial to be held in Louisa County.

William N. Vaughan

WILLIAM N. VAUGHAN

1/10/76

DATE

Taken, sworn and subscribed before me in my County and State aforesaid this 10th day of January, 1976.

My Commission Expires July 15, 1979.

Susan Whitlock Chick
Notary Public

A Copy-Teste

Frank P. Cage
Clerk

Filed in the Clerk's Office of the
Circuit Court of Augusta County
March 5, 1976
Teste:
Lindsay L. Shaver Clk.

EXHIBIT "2" (SCRAPBOOK)

DUE TO THE COMPLEXITY OF THIS EXHIBIT, IT CAN NOT BE REASONABLY REPRODUCED. THE ORIGIONAL COPY IS ON FILE WITH THE SUPREME COURT OF VIRGINIA, CLERKS OFFICE.