

TABLE OF AUTHORITIES

CASES

<u>United States v. Bakker</u> , 925 F.2d 728 (4th Cir.1991).....	9, 12
<u>United States v. Bonanno</u> , 177 F.Supp. 106 (S.D.N.Y.1959), rev'd on other grounds, 285 F.2d 408 (2d Cir.1960).....	9, 11
<u>United States v. Cohn</u> , 230 F. Supp. 589, 590-91 (S.D.N.Y.1964).....	9, 12
<u>Coleman v. Kemp</u> , 778 F.2d 1487 (11th Cir.1985), cert. denied, 476 U.S. 1164, 106 S. Ct. 2289 (1986).....	9, 10, 11, 16
<u>United States v. Delaney</u> , 199 F.2d 107, 114 (1st Cir.1952).....	7, 11
<u>United States v. Engleman</u> , 489 F. Supp. 48, 49 (D.Mo.1980).....	7, 10, 13
<u>United States v. Florio</u> , 13 F.R.D. 296 (S.D.N.Y.1952).....	7, 11
<u>Groppi v. Wisconsin</u> , 400 U.S. 505, 508 n. 6, 91 S. Ct. 490, 492 n. 6 (1971).....	6
<u>United States v. Gullion</u> , 575 F.2d 26, 30 (5th Cir.1978).....	7
<u>United States v. Haldeman</u> , 559 F.2d 31, 62-3 (D.C.Cir.1977), cert. denied, 431 U.S. 933, 97 S. Ct. 2641 (1977).....	9, 12
<u>United States v. Hoffa</u> , 205 F. Supp. 710, 722 (D.Fla.1962), cert. denied, 371 U.S. 892, 83 S. Ct. 168 (1962).....	15
<u>United States v. Holder</u> , 399 F. Supp. 220, 227-28 (D.S. Dakota 1975).....	15
<u>Irvin v. Dowd</u> , 366 U.S. 717, 81 S. Ct. 1639 (1961).....	4, 5, 11, 12, 14
<u>Isaacs v. Kemp</u> , 788 F.2d 1482 (11th Cir.1985).....	9, 10
<u>United States v. Maldonado-Rivera</u> , 922 F.2d 934, 967 (2d Cir.1990), cert. denied, 501 U.S. 1233, 111 S. Ct. 2858 (1991).....	10
<u>Marshall v. United States</u> , 360 U.S. 310, 79 S. Ct. 1171 (1959).....	7, 8, 10
<u>Pamplin v. Mason</u> , 364 F.2d 1, 5 (5th Cir.1966).....	6, 7
<u>United States v. Moody</u> , 762 F. Supp. 1485 (N.D.Ga.1991), aff'd, 977 F.2d 1425 (11th Cir.1992), and cert. denied, 113 S. Ct.1948 (1993).....	7, 10, 11

In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625 (1955).....5

Murphy v. Florida, 421 U.S. 794, 797, 804, 95 S. Ct. 2031, 2035, 2038 (1975).....7, 8

Patton v. Yount, 467 U.S. 1025, 104 S. Ct. 2885 (1984).....9

United States v. Pedraza, 27 F.3d 1515 (10th Cir.), cert. denied, 115 S.Ct. 347 (1994).....11

Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417 (1963).....9, 10

United States v. Rossiter, 25 F.R.D. 258, 259-60 (D. Puerto Rico 1960).....15

Sheppard v. Maxwell, 384 U.S. 333, 349, 86 S. Ct. 1507, 1517 (1966).....5, 6, 10

United States v. Tokars, 839 F. Supp. 1578, 1582 (N.D.Ga.1993).....7, 13

RULES

Rule 21(a), Federal Rules of Criminal Procedure.....7, 8, 9

TREATISES

Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342 (2000).....4, 5, 9

I.

THE LEGAL STANDARD

“England, from whom the Western World has largely taken its concepts of individual liberty and of the dignity and worth of every man, has bequeathed to us safeguards for their preservation, the most priceless of which is that of trial by jury. This right has become as much American as it was once the most English. In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. Irvin v. Dowd, 366 U.S. 717, at 722, 81 S. Ct. 1639, at 1642 (1961).

Rule 21(a) of the Federal Rules of Criminal Procedure provides that if there exists so great a prejudice against the defendant in the district where the prosecution is pending such that a fair and impartial trial cannot be obtained in any place fixed by law within the district, the Court shall transfer the case to another district. See Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342, at 377 (2000). It is the defendant’s burden in requesting a change of venue to demonstrate that there is a “reasonable likelihood of prejudice.” See Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342, at, 378, 379 (2000). The Court has broad discretion in a determination of a defendant’s change of venue motion and such is due to be granted only in exceptional cases. See Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342, at 379 (2000).

These principles suggest that in high-profile cases, such as the instant case, that there is a concern in the law that a trial, due to certain types and quantum of publicity, can prejudice the defendant’s basic constitutional right to be presumed innocent. See Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342, at 380 (2000). In addition, the law anticipates that in such high profile

cases that jurors may feel compelled by public pressure to return a particular verdict. See *Irvin v. Dowd*, 366 U.S. 717, at 730, 81 S. Ct. 1639, at 1645 (1961).

Further, while a defendant's constitutional rights to an impartial jury are to be, by law, balanced by concerns of a non-constitutional nature i.e., potential inconvenience to the Government and its witnesses, the law's ultimate concern is that a defendant not be tried in a hostile atmosphere, by a potentially hostile jury, where there is a reasonable likelihood that the guilt and punishment of the defendant has been predetermined. See Charles Alan Wright, Federal Practice and Procedure: 3d Criminal, Sec. 342, at 382 (2000). See also, *Sheppard v. Maxwell*, 384 U.S. 333, 86 S. Ct. 1507 (1966)

Therefore, the law recognizes that "[a] fair trial in a fair forum is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 625 (1955). The Supreme Court of the United States in *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 1642 (1961) in recognizing the possibility and effect of impartiality wrote:

In the ultimate analysis only the jury can strip a man of his liberty or his *life*. [...] [A] juror must be as indifferent as he stands unsworn. His verdict must be based upon the evidence developed at the trial. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. [...] The theory of the law is that a juror who has formed an opinion cannot be impartial. (emphasis added)

The Supreme Court of the United States articulated the same principle a few years later in even stronger language in the case of *Sheppard v. Maxwell*, 384 U.S. 333, 349, 86 S. Ct. 1507, 1517 (1966), stating:

[T]he Court has ... pointed out that legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper. And the Court has insisted that no one be punished for a crime without a charge

fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.

a. The Due Process Standard

The Supreme Court articulated a restrictive due process standard for state actions in *Sheppard v. Maxwell*, 384 U.S. 333, 85 S. Ct. 1507 (1966). In *Sheppard*, the Court granted habeas relief to a state prisoner, basing its finding of presumed prejudice on two factors. First, the Court found that "for months the virulent publicity about *Sheppard* and the murder had made the case notorious." *Sheppard*, 384 U.S. at 354, 86 S. Ct. at 1518. Second, the Court found that the trial judge had allowed the proceedings themselves to become a media circus in which both the jurors and witnesses were constantly exposed to press attention.

***Sheppard* defined the constitutional test for transferring venue in cases where prejudice is presumed as the result of pretrial publicity:**

Due process requires that the accused receive a fair trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take *strong measures* to ensure that the balance is never weighed against the accused.

[...] Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.

***Sheppard*, 384 U.S. at 364, 86 S. Ct. 1522 (emphasis added).**

Interpreting *Sheppard* along with other Supreme Court cases on presumed prejudice, the Fifth Circuit restated the test for presumed prejudice in broader terms to encompass the influence of any factor, including pretrial publicity. See *Pamplin v. Mason*, 364 F.2d 1, 5 (5th Cir. 1966), cited with approval in *Groppi v.*

Wisconsin, 400 U.S. 505, 508 n. 6, 91 S. Ct. 490. 492 n. 6 (1971). Writing for the panel in *Mason*, Judge Wisdom wrote:

**The test is no longer whether prejudice found its way into the jury box at trial.... [T]he test is: Where *outside influences affecting the community's climate of opinion as to a defendant are inherently suspect*, the resulting probability of unfairness requires suitable procedural safeguards, such as change of venue, to assure a fair and impartial trial.
Mason, 364 F.2d at 5.(emphasis added).**

Rule 21(a) of the Federal Rules of Criminal Procedure safeguards the right of criminal defendants to a fair trial in a fair forum. The rule provides in relevant part:

**The court, upon motion of the defendant shall transfer the proceeding as to that defendant to another district [...] if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district.
Fed.R.Crim.P. 21(a).**

Despite the clear language of the rule, there is some disagreement among the circuits about the legal standard governing transfer of venue in federal criminal cases. Many federal courts, including the Eleventh Circuit, in accordance with the Supreme Court's decision in *Marshall v. United States*, 360 U.S. 310, 79 S. Ct. 1171 (1959) (per curiam), hold that the standard in federal criminal cases is more protective of defendants than the constitutional due process test. See *United States v. Gullion*, 575 F.2d 26, 30 (5th Cir. 1978); *United States v. Tokars*, 839 F. Supp. 1578, 1582 (N.D.Ga. 1993); *United States v. Moody*, 762 F. Supp. 1485 (N.D.Ga. 1991), *aff'd*, 977 F.2d 1425 (11th Cir. 1992), and cert. denied, 113 S. Ct. 1948 (1993); *Delaney v. United States*, 199 F.2d 107, 113 (1st Cir. 1952); see also *Murphy v. Florida*, 421 U.S. 794, 797, 804, 95 S. Ct. 2031, 2035, 2038 (1975); *United States v.*

Engleman, 489 F. Supp. 48, 49 (D.Mo. 1980) (trial judge has a non-delegable responsibility under Rule 21 to ensure that a defendant receives a fair trial); but cf. United States v. Rewald, 889 F.2d 836, 862 n. 27 (9th Cir. 1989); United States v. Haldeman, 559 F.2d 31, 62-3 (D.C. Cir. 1977), cert. denied, 431 U.S. 933, 97 S. Ct. 2641 (1977).

b. The Supervisory Power Standard

In Marshall, the Supreme Court reversed the defendant's conviction, relying on its "supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts." 360 U.S. at 313, 79 S. Ct. at 1173. The Court did not formulate a particular standard, but noted: "each case must turn on its own special facts." Marshall, 360 U.S. at 313, 79 S. Ct. at 1173. In Murphy v. Florida, 421 U.S. 794, 95 S. Ct. 2031 (1975), the Court made clear that Marshall articulated a standard more protective than due process. The Court denied relief in Murphy, finding no due process violation and expressly declining to apply Marshall outside the realm of a federal criminal case. Concurring in the judgment, Chief Justice Burger wrote that "I would not hesitate to reverse petitioner's conviction in the exercise of our supervisory powers, were this a federal case." Murphy, 421 U.S. at 804, 95 S. Ct. 2038 (Burger, C.J., concurring).

A.

PRETRIAL PUBLICITY

A. Factors Considered.

Courts are to consider these factors in Rule 21(a) cases:

1. Whether the publicity is recent, widespread, and highly damaging to the defendant;

2. Whether the government was responsible for the publication of the objectionable material, or if it emanated from independent sources;

3. Whether a substantially better panel can be sworn at another time or place.

C. Wright, Federal Practice and Procedure: 3d, Criminal Sec. 342 at 380, 382 (2000)(quoting United States v. Bonanno, 177 F. Supp. 106, 122, (S.D.N.Y. 1959), rev'd on other grounds, 285 F.2d 408 (2d Cir. 1960)).

1. Whether the publicity is recent, widespread, and highly damaging to the defendant.

The sheer number of articles published is significant, particularly where the coverage is extensive relative to the size of the community, see Coleman v. Kemp, 778 F.2d 1487 (11th Cir. 1985), cert. denied, 476 U.S. 1164, 106 S. Ct. 2289 (1986); Isaacs v. Kemp, 778 F.2d 1482 (11th Cir. 1985); United States v. Haldeman, 559 F.2d 31, 181 (D.C.Cir. 1976), and where national coverage is found to be less extensive, see. e.g., United States v. Bakker, 925 F.2d 728 (4th Cir. 1991); Haldeman, 559 F.2d at 143-45; United States v. Cohn, 230 F. Supp. 589, 590-91 (S.D.N.Y. 1964).

There is no specific formula dictating how much time must pass between the publicity and the trial to mitigate its prejudicial effects. See Patton v. Yount, 467 U.S. 1025, 1034-35, 104 S. Ct. 2885, 2890-91 (1984). The key question is not whether

potential jurors would remember the crime, but whether the lapse of time between the pretrial coverage and the trial is enough to ensure that "the feelings of revulsion that create prejudice have passed." Yount, 467 U.S. at 1035, 104 S. Ct. at 2891.

Passage of time alone is less important where the media coverage has been pervasive or especially inflammatory.

Qualitative characteristics of pretrial publicity play an especially important role in the case law. The Supreme Court's decision in Rideau v. Louisiana 373 U.S. 723, 83 S. Ct. 1417 (1963), underscores the particularly damaging effect of media reports that the defendant confessed to the crime charged. Similarly, media reports of incriminating information, such as eye-witness accounts, are considered especially prejudicial. See, e.g., Coleman, 778 F.2d at 1509; Isaacs, 778 F.2d at 1484; United States v. Engleman, 489 F. Supp. 48, 50 (E.D.Mo. 1980).

Incriminating statements by prosecutors, law enforcement, or government officials are highly prejudicial. See Coleman, 778 F.2d at 1501; Moody, 762 F. Supp. at 1488-89. Included in the category of prejudicial coverage about the defendants are media reports including false or misleading information about the investigation or prosecution. See, e.g., Sheppard, 384 U.S. at 359, 86 S. Ct. at 1520.

Where media reports present the facts of the crime in a sensational manner, see, e.g., Coleman, 778 F.2d at 1493, 1498, 1500-1501, they contribute significantly to community prejudice even though the reporting is about the victims rather than the defendants. By contrast, media reports that contain factual, dispassionate accounts of the crime and court proceedings generally do not support a finding of presumed

prejudice. See, e.g., *United States v. Maldonado Rivera*, 922 F.2d 934, 967 (2d Cir. 1990), cert. denied, 501 U.S. 1233, 111 S. Ct. 2858 (1991).

Another important qualitative factor in evaluating the prejudicial impact of pretrial publicity is whether the media accounts contain evidence that will be admissible at trial. Examples from the case law include media reports about the defendant's personal life that are not relevant or are otherwise inadmissible at trial. See, e.g., *United States v. Moody*, 762 F. Supp. at 1490-91; see *Marshall*, 360 U.S. at 313, 79 S. Ct. at 1173. In addition, extensive, highly emotional reporting about the victims has also been relied upon to support the presumption of prejudice. *Coleman*, 778 F.2d at 1491, 1500-1501.

2. Whether the government is responsible for the publicity.

Justice Frankfurter wrote in his concurring opinion in *Irvin*, 366 U.S. at 730, 81 S. Ct. at 1645:

Not a Term passes without this Court being importuned to review convictions ... in which substantial claims are made that a jury trial has been distorted because of inflammatory newspaper accounts--too often, as in this case with the prosecutor's collaboration--exerting pressures upon potential jurors before trial and even during the course of trial.

See also *United States v. Pedraza*, 27 F.3d 1515, 1519, 1525 (10th Cir. 1994) (affirming denial of Rule 21(a) motion because voir dire was adequate, but noting criticism of government for holding press conference after the defendant's arrest, particularly because the Customs Service misstated facts to the press), cert. denied, 115 S. Ct. 347 (1994); *United States v. Bonanno*, 177 F. Supp. 106, 122 (S.D.N.Y. 1959); *United States v. Delaney*, 199 F.2d 107, 114 (1st Cir. 1952); *United States v. Moody*, 762 F. Supp. at 1485.

The source of publicity is often related to qualitative aspects of the coverage. Reports that contain incriminating information are most likely to come from government sources unless the evidence is presented in a court pleading or proceeding. Inflammatory calls for vengeance are considered especially prejudicial when made by government or law enforcement officials, as are public announcements by the prosecution, law enforcement, or other public officials of their intention to seek the death penalty. By contrast, where the defendant is the source of much of the coverage, courts have been less sympathetic to arguments for a change of venue based on pretrial publicity. See. e.g. Bakker, 925 F.2d at 733.

3. Whether a better panel can be found in another district.

This factor also overlaps with the other elements of the analysis. Where national media coverage is similar both in extent and quality to local coverage, there may be little advantage to a change of venue. See, e.g., Haldeman, 559 F.2d at 287 n. 43; United States v. Cohn, 230 F. Supp. 589, 590 (S.D.N.Y. 1964). In this case, of course, there is a marked difference between the polling data from the Nashville Division of the Middle District of Tennessee and the polling data from either of the districts polled in the Northern District of Alabama.

B.

**GOVERNMENT INCONVENIENCE AND THE ADMINISTRATION OF
JUSTICE.**

A. Legal Standard.

The administration of justice favors a venue transfer where pretrial publicity has been so pervasive that jurors' assurances of their impartiality cannot be considered reliable. As the Court wrote *Irvin*, 366 U.S. at 728, 81 S. Ct. at 1645:

“No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one’s fellows is often its father.”

See also *Irvin*, 366 U.S. at 729-30, 81 S. Ct. at 1646 (Frankfurter, J., concurring) (“How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding the matter designed to establish the guilt of the accused. A conviction so secured obviously constitutes a denial of due process of law in its most rudimentary conception.”).

Similarly, where pretrial publicity and other prejudicial factors in the district indicate that the process of impaneling a jury will be extremely time-consuming, the administration of justice favors a transfer of venue. In *United States v. Tokars*, 839 F. Supp. 1578, 1584 (N.D.Ga. 1993), the district court granted a change of venue notwithstanding survey evidence that 30 percent of those polled had no opinion about the case. The court explained:

“Of course, the difficult task would be ascertaining which prospective jurors in fact are unbiased. Where the negative publicity has been so intense, the court's task would be made more difficult by prospective jurors' subconscious recollection of news coverage.”

In *Engleman*, 489 F. Supp. at 50-51, the district court relied on similar reasoning:

Effective and economical judicial administration is not well served by calling an inordinate and unwieldy number of veniremen to see if an unbiased jury might be obtained, especially when it is already apparent that a substantial chance of intolerable prejudice exists. ... A change of venue during voir dire would immeasurably increase the burden, expense, and inconvenience on all

parties and the Court, and would result in unacceptable delay. ... If the Court did not grant defendants' separate motions for change of venue, this cause would begin with built-in grounds for reversal.

The district court in Florio, 13 F.R.D. 296, 298 (S.D.N.Y. 1952), was

persuaded by the same considerations:

The instant case would have been in a state of suspension if on the voir dire a jury could not have been obtained (and the volume and nature of the pretrial publicity indicated that such a result was inevitable). A long adjournment would have been the probable result and many months would have elapsed before the defendant would have been brought to justice. Or, perhaps, the case might have proceeded to trial in this District, under the shadow of doubt, and only after appeal would there have been any certainty that the procedures by which it was attempted to punish the defendant for his crime--the commission of which he was later to confess--were to any avail.

This type of uncertainty does not serve the administration of justice. As the Supreme Court wrote in *Irvin v. Dowd*, 366 U.S. at 728, 81 S. Ct. at 1645,

With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion....

B. Analysis.

Inconvenience to the government does not weigh heavily against a venue change in this case as many, if not most, of the government and defense witnesses will come from other states. Much of the government's evidence has already been transported to numerous locations around the country for testing and storage. That evidence can be transported to a new location for trial. Where, as here, the prejudicial pretrial publicity is largely the responsibility of the government, considerations of government inconvenience have less force. The question of venue is one of Mr. Rudolph's constitutional right to a fair trial in a fair forum. However understandable, the desire of the Government or the victims' families to have the

trial in Alabama, do not trump Mr. Rudolph's constitutionally guaranteed right to a fair trial.

The administration of justice is best served by a change of venue. Concerns of a non-constitutional concern such as inconvenience to the government do not compel a contrary result.

VI.

VOIR DIRE AS AN ALTERNATIVE TO CHANGE OF VENUE

The constitutional requirement that a juror be "as indifferent as he stands unsworn," Irvin. 366 U.S. at, 722, 81 S. Ct. at 1624, is not a legal abstraction. Only the indifferent juror can provide the indispensable, bedrock requirement for a fair trial--a verdict based only on the evidence presented in court. Generally, voir dire is the procedure used to identify those jurors whose objective connection to the case, based either on prior experiences, relationships, or associations, warrant excusal for cause based on presumed prejudice. In some cases, however, the circumstances that would generally excuse a juror for cause are so widespread in a community that voir dire is both inadequate and inefficient for ensuring the defendant a fair trial. This is true, for example, where the community has a strong local interest in the trial and/or there is widespread hostility about the charged offense and the defendants. See. e.g., *United States v. Hoffa*, 205 F. Supp. 710, 722 (Duffle. 1962), cert, denied, 371 U.S. 892, 83 S. Ct. 168 (1962); *Florio*, 13 F.R.D. at 298; *United States v. Holder*, 399 F. Supp. 220, 227-28; (D.S. Dakota 1975); *United States v. Rossiter*, 25 F.R.D. 258, 259-60 (D. Puerto Rico 1960). In these cases, a change of venue is a necessary safeguard to protect the defendant's constitutional right to a fair trial by a panel of

indifferent jurors. In these unique circumstances, voir dire is not a reliable safeguard of the defendant's constitutional right to a fair trial. The unique circumstances of this case also make it enormously impractical to wait until voir dire to determine whether it is possible to empanel a fair jury for this trial. A trial of this magnitude and expected duration cannot be moved on short notice. If, as we maintain, a fair panel cannot be selected in the Northern District of Alabama, the attempt to find a suitable panel through voir dire will fail. As a result, there will be substantial delay before trial could begin in a new venue. By that time, Mr. Rudolph will have been in custody--in solitary confinement, for more than a year. Additional delay in the trial would be fundamentally unfair to Mr. Rudolph. See, e.g., United States v. Abrahams, 466 F. Supp. 552, 557 (D.Mass. 1978) (noting unfairness of delaying proceedings to allow effects of prejudicial publicity to subside, if such were possible).

Under the unique circumstances of this case and in light of the evidence justifying a finding of presumed prejudice, the most prudent, rational, and legally sound course of action is to grant a change of venue to a district outside of the state of Alabama.

CONCLUSION

These legal principles make clear that in high-profile cases, pervasive and inflammatory publicity can create an atmosphere of prejudice against an accused such that his fundamental right to be presumed innocent can be substantially jeopardized. It is not enough to hope or speculate that such an atmosphere does not exist. The jury that is ultimately struck in this case will make a determination on

whether to set Mr. Rudolph free, put him in prison until he dies, or to kill him. It is not too much to ask that this jury be free of any “reasonable likelihood” of prejudice. On the contrary, it makes complete sense to make absolute certain that the twelve jurors who will be asked to make these decisions are not making them due to some undetected outside influences, pressures or prejudice, but only from the testimony that is presented from the witness stand. Finally, as the court wrote in Coleman, 778 F.2d at 1538, “[i]f there were no constitutional right to a change of venue in the instant case, then one can conceive of virtually no case in which a change of venue would be a constitutional necessity.”

RESPECTFULLY SUBMITTED:

**RICHARD S. JAFFE,
BILL BOWEN,
JUDY CLARKE**

BY:



**RICHARD S. JAFFE
Attorney for Defendant
2320 Arlington Avenue
Birmingham, AL 35205
(205) 930-9800**

OF COUNSEL:

**WILLIAM M. BOWEN, JR.
White, Arnold, Andrews & Dowd
2025 Third Avenue North, Suite 600
Birmingham, AL 35203
(205) 323-1888**

**JUDY CLARKE
225 Broadway, Ste. 900
San Diego, CA 92101
(619) 544-2720
(205) 930-9800**

**RICHARD S. JAFFE
Jaffe, Strickland & Drennan
2320 Arlington Ave.
Birmingham, AL 35205
(205) 930-9800**

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 13 day of
Febr, 2004, served a copy of the foregoing by United States mail,
postage prepaid and properly addressed, and/or by hand-delivery, to AUSA
Michael Whisonant, United States Attorney's Office, 1801 4th Avenue North,
Birmingham, AL 35203.



RICHARD S. JAFFE