

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1559205-000

Total Deleted Page(s) = 5

Page 243 ~ Duplicate;

Page 244 ~ Duplicate;

Page 245 ~ Duplicate;

Page 246 ~ Duplicate;

Page 247 ~ Duplicate;

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Rehearing Asked in Rees Trial Plea

The Federal Fourth Circuit Court of Appeals was asked yesterday to grant Melvin Davis Rees Jr. a rehearing on an unsuccessful plea that he was not given a fair trial for the slaying of a Louisa county man.

In a decision announced February 1, the circuit court held that Rees was afforded a fair trial when convicted by a Spotsylvania county circuit court in 1961 for the murder of Carroll Vernon Jackson Jr. Rees' counsel had contended that Rees was convicted on the basis of illegally seized evidence and that pre-trial publicity prevented him from obtaining a fair and impartial trial.

Plea Rebuffed

The circuit court, though, re-

buffed these contentions and refused to vacate Rees' death sentence.

"So far as counsel is concerned," Rees' lawyers said in their rehearing petition, "this is the first case in which any court has held that the police may search a person's private property without warrant and without his consent so long as they do not know whose property they are searching."

The lawyers referred to the seizure by FBI agents of an accordion case containing a pistol which they said was used to kill Jackson. The FBI found the case in the home of Rees' parents, which they searched without a warrant but with permission from the parents.

The circuit court had held that the search of Rees' accordion case did not violate his constitutional rights.

"Ignorance" Encouraged

Commenting on this, Rees' lawyers said:

"The decision encourages ignorance rather than investigation by holding that, even in a non-emergency situation where inquiry is as easy as telephoning a number on a baggage tag, the police need make no effort to ascertain the owner. It approves search and seizure based solely on the consent of someone who acknowledges to the police that the property is not his."

Rees' lawyers also contended that the Fourth Circuit Court should have ordered a new

trial in a place other than Spotsylvania county because of the pre-trial publicity.

Trial Site Suggested

They suggested that the alleged prejudicial effects of pre-trial publicity could be reduced by moving the trial from a rural to a metropolitan community.

Rees, a former Hyattsville, Md. musician, has been charged

with kidnapping and murdering in 1959 the Jackson family consisting of Jackson, his wife and two daughters.

He is serving two life terms imposed by a federal district court for the kidnapping of Mrs. Jackson and daughter Susan. Rees has been accused but not tried for the murder of the other daughter, Janet.

The Fourth Circuit Court gave no indication when it would announce a decision on Rees' plea for a rehearing.

(Indicate page, name of newspaper, city and state.)

7

RICHMOND TIMES-DISPATCH
RICHMOND, VA.

Date: 3/3/65

Edition:

Author:

Editor: Virginius Dabney

Title:

Character:

or

Classification:

Submitting Office: Richmond

☐ Being Investigated

SEARCHED INDEXED
SERIALIZED FILED

MAR 3 1965

FBI - RICHMOND

1/2/68

1/2/68

TO: DIRECTOR, FBI (73-47310)

FROM: SAC, MEMPHIS (73-44) (P)

MURDER OF MARTIN LUTHER KING, JR., 4/4/68;
 CIVIL RIGHTS - MEMPHIS, TN;
 RE: AL - CIVIL
 KENNEDY
 (OO: ME)

Re National Order to Bureau, 1/2/68.

On 1/2/68, attorneys for KING filed a petition for rehearing or an appeal from the U. S. District Court for the Eastern District of Virginia at Alexandria, Virginia, before the U. S. Court of Appeals for the Fourth Circuit at Richmond, VA. The court was requested to rehear and reconsider the decision of the court rendered on 1/1/68, on the following grounds:

1. This was the first case in which any court held that police may search a person's private property without warrant or consent so long as the police do not know whose property they are searching. The instant occasion was instigated by JAMES EARL RAY, JR. who argued by the FBI on the theory that it might have been the property of KING. The Agents had reason to believe it was his property and the property was on the premises of KING, JR. while he was in custody.

2. KING was denied a fair trial by the failure of the Circuit Court of Appellate County, Virginia, to charge venue or venue due to pre-trial publicity. The U. S. Court of Appeals admitted that a change of venue or venue is

1 - Bureau (Enc. 2)
 1 - Memphis (73-44) (Info)
 1 - Richmond
 JLB

cc'd
 1/2/68
 JLB

79-44-984

10-11

Florida would have been of no value due to the fact that such-
like publicly available data was not the pre-total publicly available
system in the State of Florida. This is believed by [redacted]
[redacted] to have been an error as pre-total publicly distributed
in the past and a fully total could have been had more readily
in a metropolitan area rather than a rural area.

There is being transmitted herewith to the Bureau
one (1) copy of the petition for mandamus filed by the attorney
of [redacted].

ORIGINAL

In the
UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 9410

Melvin Davis REES, JR.,

Appellant

v.

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

Appellee

On Appeal from the United States District Court
For the Eastern District of Virginia at Alexandria

PETITION FOR REHEARING

Pursuant to rule 19, appellant requests a rehearing and reconsideration by this Court of its decision rendered February 1, 1965. As grounds for this petition, appellant renews all contentions heretofore made in his briefs and further states as follows:

I

The holding that the forcible entry and search of appellant's locked accordion case did not violate his fourth amendment rights is apparently made to rest by the Court upon recitals that the case had "no tag or other indicium attributing its ownership to appellant" and was in fact "marked as the property of another;" and that it was "hidden" or "concealed" in a

79-44-9085

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[Signature]

"remote part of the house, put there by someone without the knowledge of even the owners and occupants of the property" (printed slip sheet opinion, pp. 7-8).

So far as counsel is advised, this is the first case in which any court has held that the police may search a person's private property without warrant and without his consent so long as they do not know whose property they are searching. The decision encourages ignorance rather than investigation by holding that, even in a non-emergency situation where inquiry is as easy as telephoning a number on a baggage tag, the police need make no effort to ascertain the owner. It approves a search and seizure based solely on the consent of someone who acknowledges to the police that the property is not his (App. C, pp. 60, 282).

Moreover, the Court introduces this novel constitutional concept in a case where it does not even fit the facts, for it is clear from the record that both the police and the consenting party, far from being totally ignorant of the ownership of the property in question, had every reason to believe that it was the property of appellant. The police admitted that they were interested in the accordion case "on the theory that it might be Mr. Rees Jr. 's" (App. C, p. 56). The case was found in an area of the house used for family storage (App. C, p. 197), where other family belongings were placed (Va. Tr. 131), including appellant's belongings (Md. Tr. 1057). The access door which made the storage area usable had been cut by appellant's father, not by appellant (App. C, p. 196). Appellant had his parents' permission to store his belongings in their house (App. C, p. 198), and he stored his belongings there with their knowledge and approval (App. C, p. 149), particularly on the floor of the house where the accordion case was found (App. C, p. 198). When the accordion case was discovered

by the police it was secured by a hasp and padlock which, according to their testimony, looked new (Md. Tr. 1013). The tag with an unfamiliar name on it not only did not negate appellant's ownership, as stated by this Court (slip sheet, p. 8), but in fact tended to indicate that the case had been placed there by appellant for, as his father testified, "there were many instances where he had various musical instruments in the house that he either borrowed or had on loan from somebody" (Tr. 74).

However, the basic fallacy in the approach of the Court to the search and seizure of the accordion case is that it views a personal constitutional right from a standpoint other than that of the person whose right is in question. See Stoner v. California, 376 U.S. 483, 489 (1964):

"It is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk's nor the hotel's. It was a right, therefore, which only the petitioner could waive by word or deed, either directly or through an agent." /* (Emphasis added.)

It is simply not relevant that, so far as the police and appellant's parents knew, the accordion case could somehow have been secreted in the house by a person other than appellant or it could have been abandoned property (though both of these possibilities seem remote). The fact is that the property belonged to appellant, it was placed by him where he had a right to place it, and his desire for privacy was clearly indicated by the use of a closed container and a padlock to which he never relinquished the key. If

* / "Nor is there any substance to the claim that the search was reasonable because the police, relying upon the night clerk's expressions of consent, had a reasonable basis for the belief that the clerk had authority to consent to the search. Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority.'" Id. at 488.

there was a waiver by appellant of his fourth amendment rights, it is apparent neither from the record nor from the opinion of this Court.

II

In rejecting appellant's contention that he was deprived of his constitutional right to a "fair trial" by being denied a change of venue or venire, this Court stated in its written opinion (slip sheet, p. 9):

"A change of venue or venire in Virginia would have been of no aid whatsoever. Obviously, the same broadcasts and telecasts heard and seen in the county of trial would extend over the State generally. Press stories had nearly the same circulation everywhere in Virginia as they did in Spotsylvania County."

Appellant submits that the fact assumed by the Court--equivalent publicity and prejudice in all other parts of the state--is untrue and is unsupported by any evidence whatsoever in the record. It is contrary to reason based on ordinary human experience, and is contrary to an exactly opposite conclusion reached by the Court of Appeals for another Circuit, sitting en banc in a similar case, United States ex rel. Bloeth v. Denno, 313 F.2d 364, 373 (2d Cir.), cert. denied, 372 U.S. 978 (1963):

"Either a metropolitan county or a rural county at some distance, without the intense local interest and intense local press coverage would undoubtedly provide a much higher percentage of talesmen uncontaminated by improper publicity."

At the plenary habeas corpus hearing in the instant case, appellant introduced evidence of extensive prejudicial pre-trial publicity (Pl. Ex. 1-6). All of that evidence related to Spotsylvania County and its immediate environs (App. C, pp. 152-58). If appellee had wished to contend that there was equivalent prejudicial publicity in the more distant parts of the state, there was full

opportunity to introduce evidence of that fact at the hearing. No such evidence was ever introduced and no such contention was ever made.

Moreover, the evidence in the record compels the inference that publicity decreased in intensity as the distance from Spotsylvania County became greater. For instance, compare the quantity of prejudicial publicity in the Fredericksburg newspaper (Pl. Ex. 1; App. C, pp. 26-27) with the considerably lesser quantity in newspapers published only fifty miles away (Pl. Ex. 2 and 3). There are several Virginia counties in the southwestern part of the state which are located as far from Spotsylvania County as 300 miles--farther away than New York City.

Moreover, as the Second Circuit recognized in the Bloeth case, the prejudicial effects of pre-trial publicity can also be reduced by a change of venue from a rural to a metropolitan county. There are a number of metropolitan counties in Virginia, including several which are part of the Washington, D. C., metropolitan area of over two million persons. The fact that in appellant's earlier trial in Baltimore the jury spared his life notwithstanding intensive pretrial publicity given to inadmissible information supports an inference that the prejudicial effects of such publicity could have been reduced by trial in a metropolitan area. Of course, the prejudice would be even further reduced by a retrial at the present date by reason of the intervening passage of time.

It has always been and is still appellant's contention that he is entitled under the United States Constitution to a "fair trial" and that, if the state cannot provide him with such a trial under existing laws and existing practices of the news media as to the pre-trial dissemination of incriminating inadmissible information, then it cannot constitutionally deprive him of his

life. However, if the standard is to be made not "fair trial" but the "best trial obtainable," it is clear that appellant did not even have that.

Respectfully submitted,

C. A. Dukes

Charles A. Dukes, Jr.

Green, Babcock and Dukes
Maryland Building
Hyattsville, Maryland, 20781

S. White Rhyne, Jr.

S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D. C., 20005

Counsel for Appellant

CERTIFICATE OF GOOD FAITH

We hereby certify that the foregoing petition for rehearing is filed in good faith and not for delay.

C. A. Dukes

Charles A. Dukes, Jr.

S. White Rhyne, Jr.

S. White Rhyne, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 1965, I served a copy of the foregoing petition on appellee by mailing it, postage prepaid, addressed to his counsel of record, Reno S. Harp, III, Esq., Assistant Attorney General, Supreme Court-State Library Building, Richmond, Virginia, 23219.

S. White Rhyne, Jr.

S. White Rhyne, Jr.

3/30/65

AIRTEL

TO: DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - P -

MELVIN DAVID REES, JR., aka;
CARROLL VERNON JACKSON, JR.
ET AL - MURKINS
KIDNAPING

Re Richmond airtel to the Director, 3/3/65.

On 3/25/65, the U. S. Court of Appeals for the Fourth Circuit, Richmond, Va., refused to rehear and reconsider the decision rendered 2/1/65.

The decision of the U. S. Court of Appeals affirmed the order of the USDC for the EDVA at Alexandria, Va., denying the writ of habeas corpus filed on behalf of REES.

The attorneys for REES have 90 days from 3/25/65 in which to file a writ of certiorari before the U. S. Supreme Court and the attorneys for REES have advised the local newspapers the case would be appealed.

The Bureau will be kept advised.

3 - Bureau
1 - Baltimore (79-55)(Info)
1 - Richmond
WLG/vlr
(5)

79-44-9086

JB
PB

F. B. I.
I don't know just
any thing.
But the outfit would
see where
^{Paul} ^{Howard} ²
Paul Howard a Grey
Hound Bus Driver
was at or the
side of the Graham
Family Saloon

Paul Howard had
said he was
going to kill a
Devil Ride on his
Bus due to just be
had with a
passenger.

79-44-9087

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Signature (WB)

Howard is the
Hound Bus Driver
of Manassas
Manassas

Howland is J. J. J.
Hound Bear Dried
of Minnesota
Minnesota,



Chief Brown
~~Mr. Brown~~
F.B.I.



Re: [illegible] Mr.

Date 4/21/65

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile 79-27510	Status of Case P	Submitting Office Richmond	File # 79-44-1B3
		Office of Origin Richmond	File # 79-44

Title and Character of Case
**UNSUB;
CARROLL VERNON JACKSON, JR., ET AL - VICTIMS
KIDNAPING**

Date Property Acquired 5/26/59	Source From Which Property Acquired Received via registered mail from FBI Laboratory, transmitted by Bulet dated 5/25/59
--	--

Location of Property or Bulky Exhibit Closet, CCO, Richmond,	Reason for Retention of Property and Efforts Made to Dispose of Same Case on appeal - evidence
--	--

Description of Property or Exhibit and Identity of Agent Submitting Same
SA U. LEROY SWEENEY

Items are glass microscope slides containing hairs and fibers, which were obtained from specimens Q134 through Q242 which were items obtained through Dr. GEOFFREY T. MANN, Chief Medical Examiner, Commonwealth of Virginia. The items from which the slide specimens were obtained are described in full in FBI Laboratory Report dated 4/17/59 (79-44-1431)

Richmond 79-44 - 1B3

79-44-9088

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4-22-65 *AJO*

Date 4/21/65

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile 79-27510	Status of Case P	Submitting Office Richmond	File # 79-44-1B11
		Office of Origin Richmond	File # 79-44

Title and Character of Case

UNSUB;
CARROLL VERNON JACKSON, JR., ET AL - VICTIMS
KIDNAPING

Date Property Acquired 8/12/59	Source From Which Property Acquired From 1957 Plymouth, D.C. License PR 461, SN 14287969
-----------------------------------	--

Location of Property or Bulky Exhibit Closet, 660, Richmond, Va. Division	Reason for Retention of Property and Efforts Made to Dispose of Same Evidence - case on appeal
---	---

Description of Property or Exhibit and Identity of Agent Submitting Same
SAs JACK H. WEBBECK and
PHILIP H. MORRIS

1 - Fingerprint lift (1)

2 - Jumper wire (1)

(above evidence transferred from 26-17182 - 1B1)
(See SA WALTERS memo 6-3-60 in 26-17182)

Richmond 79-44 - 1B11

79-44-9089

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4-22-65

Handwritten signature/initials

4/21/65

Date

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile 79-27510	Status of Case P	Submitting Office Richmond	File # 79-44 -1E3
		Office of Origin Richmond	File # 79-44

Title and Character of Case

UNSUB; CARROLL VERNON JACKSON, JR., -
ET AL - VICTIMS;
KIDNAPING

Date Property Acquired 3/27/59	Source From Which Property Acquired From site of recovery of bodies of CARROLL and JANET JACKSON
-----------------------------------	--

Location of Property or Bulky Exhibit Closet - CCO Richmond, Va. Div.	Reason for Retention of Property and Efforts Made to Dispose of Same Evidentiary - Case on Appeal
---	--

Description of Property or Exhibit and Identity of Agent Submitting Same SA JOHN W. DUELL

Sell specimens from site of recovery of above two bodies.

Richmond 79-44 - 1B8

79-44-9090

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

Jan 4-22-65

DIRECTOR, FBI (79-27510)

5/20/65

SAC, RICHMOND (79-44) - P -

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.
ET AL - VICTIMS
KIDNAPING

Re Richmond airtel to the Bureau 3/30/65.

MAURICE S. DEAN, Clerk, U. S. Court of Appeals,
Fourth Circuit, Richmond, Va., advised that although the
attorneys for REES have made public statements that they
would file a Writ of Certiorari before the U. S. Supreme
Court appealing the decision of the U. S. Court of Appeals,
Fourth Circuit, this writ has not been filed to date.

2 - Bureau
1 - Richmond

WLS/cw
(3)

79-44-9091

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No.

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

APPENDICES B AND C
TO PETITION FOR WRIT OF CERTIORARI
(OPINIONS OF THE COURTS BELOW)

Charles A. Dukes, Jr.

Green, Babcock and Dukes
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S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20005

Counsel for Petitioner

79-44-9092

SEARCHED	INDEXED
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JUN 25 1965	
FBI - RICHMOND	

Sceney

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MELVIN DAVIS REES, JR.,	:	
Plaintiff	:	
v.	:	Civil Action No. 2970-M
C. C. PEYTON, etc.,	:	
Defendant	:	

MEMORANDUM OPINION

Melvin Davis Rees, Jr., now confined in the Virginia State Penitentiary pursuant to a judgment and sentence of execution of the Circuit Court of Spotsylvania County, Virginia, seeks his release via a writ of habeas corpus on the ground that said judgment and sentence are illegal and in derogation of his civil rights, privileges and immunities secured by the Constitution ^{1/} of the United States. He grounds his claim upon the refusal of the Circuit Court of Spotsylvania County to order his transfer from the State Penitentiary at Richmond to the City Jail in Fredericksburg so that he could be near his court-appointed counsel; upon the refusal of the Circuit Court to grant him a change of venue or venire; and upon the admission in evidence, over his objection, of the .38 caliber pistol which was taken by unlawful search and seizure.

Rees raised the same federal constitutional questions herein asserted during his trial in Spotsylvania County and in his appeal to the Supreme Court of Appeals of Virginia. That Court affirmed the Circuit Court, and the Supreme Court of the United States denied certiorari. ^{2/}

He prays for a plenary hearing, with leave to supplement the State record with additional evidence relative to his constitutional claims; and says, as a habeas corpus applicant he is entitled to a determination of these federal constitutional questions by this Court independent of the conclusion reached by the State court. ^{3/}

^{1/} Fourth and Fourteenth Amendments.

^{2/} 372 U.S. 964 (1963).

^{3/} Townsend v. Sain, 372 U.S. 293, 318 (1963); Brown v. Allen, 344 U.S. 443, 506 (1953).

The defendant Cunningham joins Rees in his request for a plenary hearing. He admits this Court has jurisdiction to hear and determine this matter ^{4/} and prays that the complaint be dismissed.

The request for a plenary hearing was granted, and the transcript of the evidence in the Baltimore hearing ^{5/} and the complete record in the Spotsylvania County trial ^{6/} were made a part of the record in this proceeding. In addition, Rees presented numerous exhibits and several witnesses who were not presented before or heard by the State court.

Refusal of State Court to
Transfer Prisoner to Fredericksburg Jail

Rees, previous to his trial in Spotsylvania County for the murder of Carroll Vernon Jackson, Jr., had been convicted in the United States District Court for Maryland of kidnapping Mrs. Mildred Jackson and her infant daughter Susan. He had been sentenced to life imprisonment and was then in federal custody. By arrangement of comity between Virginia and the United States, the United States Marshal for this District produced Rees before the Circuit Court of Spotsylvania County for trial. This procedure was based upon sound precedent. ^{7/}

"The trial court is given all the jurisdiction needed to try and hear him by the consent of the United States, which only insists on his being kept safely from escape or from danger under the eye and control of its officer. This arrangement of comity between the two governments works in no way to the prejudice of the prisoner or of either sovereignty." Ponzi v. Fessenden, 258 U.S. 254 (1922).

The United States Marshal for this District was charged with the duty of protecting Rees and with preventing self-inflicted harm or escape during his trial in Spotsylvania County, Virginia. In discharging that duty he determined that it was necessary to use the facilities of the Virginia State Penitentiary. ^{8/} (The Fredericksburg City Jail was not approved as a federal prison.)

^{4/} 28 U.S.C. §§ 2241 and 2254.

^{5/} United States v. Rees, 193 F. Supp. 849.

^{6/} Rees v. Commonwealth, 203 Va. 850, 127 S.E.2d 406.

^{7/} Chapman v. Scott, 10 F.2d 690 (2nd Cir. 1926); Wilkinson v. Youell, 180 Va. 321, 23 S.E.2d 356.

^{8/} The Richmond penitentiary is a little more than fifty miles from the Fredericksburg City Jail.

The State trial judge made certain that Rees could confer privately with his counsel both during the preparation of the case and during the course of the trial. He arranged for private conferences in Richmond if such should be necessary. Before trial the defendant was brought to the Spotsylvania Courthouse six times so that he might confer privately with his counsel for as long as desired. On a number of occasions the State judge recessed the trial in order that counsel might confer privately with the defendant. The United States Marshal offered to and did bring Rees to the Spotsylvania Courthouse as early in the morning as counsel requested, and kept him there after court in the afternoon as long as counsel wished to confer with him.

Defense counsel were furnished a copy of the transcript of the Baltimore hearing in which most of the witnesses had testified. Further, they were given a list of all of the witnesses the Commonwealth intended to call during the trial, and were given the opportunity of interviewing each of them privately.

At no time before or during the trial did counsel for the defendant ever state or infer that they were in any manner handicapped in their defense of Rees as a result of his being confined in the State Penitentiary each night.

One of them now, however, says he was handicapped in defending Rees as a result of the Richmond confinement, and cites an occasion late one Friday afternoon when the Commonwealth called a witness (unknown to the defense). This witness testified he saw Rees in Orange County (near the scene of the crime) on the day of the crime. It was vital to combat this damaging testimony, says defense counsel, and had the defendant been in the Fredericksburg City Jail instead of at Richmond, he could have conferred with him at any time during the night in order to establish that Rees was not in Orange County on the night in question. Instead he had to relay questions to Rees by telephone through the Marshal.

This inconvenience, standing alone, is not enough to prejudice the defendant in his right to a fair trial, especially so when the record discloses that Rees was available on the Friday in question at the Spotsylvania Courthouse for private conference with his counsel as long as either desired. The record also discloses that Rees was present in the Spotsylvania Courthouse all day the following Monday for further consultations, if that were so desired. (This testimony was not presented to the jury until Tuesday morning.)

Rees has no constitutional right, while a federal prisoner, to designate the place of his incarceration. That responsibility rests with the Attorney General of the United States acting through the Bureau of Prisons. 18 U.S.C.

§ 4082. Keeping him in the State Penitentiary at night in no way prejudiced his right to a fair trial, and the Court so finds.

Refusal of the State Court to
Grant a Change of Venue or Venire

"The law [Virginia] presumes that a defendant can get a fair and impartial trial in the county in which the offense was committed. Hence, in order to overcome this presumption the burden is upon the one requesting a change of venue to show clearly that there is such a widespread feeling of prejudice on the part of the citizens of the county as will be reasonably certain to prevent a fair and impartial trial." *Farrow v. Commonwealth*, 197 Va. 353, 89 S.E.2d 312 (1955).

The State trial judge found: ^{9/}

"There was no evidence introduced of mass prejudice against the defendant, of mob action, or threat of such action. There was no evidence of inflammatory newspaper editorials or interviews, of provocative radio or television commentaries. There was no evidence that it was the predominant belief in the county that the defendant was guilty. There was no evidence that it was the predominant belief among the people of the county that the defendant could not receive a fair and an impartial trial.

* * * *

"Interest, agitation, and apprehension concerning the case had diminished over the intervening years. Moreover, the Jackson family were not residents of Spotsylvania County. They lived in Louisa County and there was no evidence to indicate they were closely related or well known in Spotsylvania County. Nor was the defendant known in Spotsylvania County.

"Throughout the trial there was no indication of any hostility, prejudice, bias or mob action against the defendant. Often the small courtroom was not filled. The majority of these spectators were women and they appeared to be present out of curiosity. There were no demonstrations of any kind against the defendant -- either inside or outside the courtroom."

No evidence to the contrary was offered in this proceeding.

Seventy-five jurors were drawn and summoned. Several presented evidence of ill health and they were excused. A number of farmers qualified upon

^{9/} *Rees v. Commonwealth*, 127 S.E.2d 406, 413.

their voir dire examination but upon suggestion of defense counsel were excused. At the end of the first day the panel was exhausted, but nineteen veniremen had qualified under the examination of the court and the searching examination of defense counsel. Twenty-five additional jurors were summoned for attendance the next day and from these the panel of twenty was completed and four alternates were selected, all of whom were qualified jurors. All prospective jurors who had visited the scene and objected to the death penalty, or who had a fixed opinion as to the guilt or innocence of the defendant, were excused from jury service in this case.

The State judge concluded the jury as selected was free from exception and denied the defendant's motion for change of venue or venire. This Court, upon examination of the transcript of the examination of the jurors on their voir dire, reaches the same conclusion.

Without objecting to the inquiries which the State court made on voir dire, and without asserting bias, prejudice or misconduct on the part of the jury as selected, the defendant now says the repeated newspaper articles and radio and television broadcasts making reference to certain prejudicial evidence not admitted during his trial created such an external influence upon the jury as to deny Rees a fair trial.

To substantiate this contention the defendant introduced in evidence photostatic copies of all of the newspaper articles published by the Washington Post, the Richmond Times-Dispatch and the Fredericksburg Free Lance-Star touching on this subject, and all of the "news scripts" broadcast by Radio Station WRVA and Television Stations WRC, WTOP and WTVR. He subpoenaed all of the members of the jury and attempted to ask each of them whether they had read or heard of any of these newspaper articles or broadcasts, and, if so, which ones and what parts thereof they now remembered.

The purpose of these questions was to show by inference that the jury had previously heard or read about this prejudicial evidence; hence they were unable to render a free and unbiased judgment.

An examination of these newspaper articles and radio and television transcripts clearly shows that considerable news coverage was given to Rees' Baltimore trial, especially so in the Washington and Richmond newspapers -- that Rees was convicted of kidnapping -- that Rees had made a handwritten account of the last hours of Mrs. Jackson and her daughter -- that numerous articles, including newspaper pictures of the Jackson family, were found during the search of Rees' parents' home in Hyattsville, Maryland. There was no

newspaper or television station located in Spotsylvania County. This pre-trial publicity originated in Washington, D.C., and in Richmond and Fredericksburg, Virginia.

It is no doubt true, however, that some or all of the jurors who sat in judgment of Rees read or heard some of this pre-trial publicity, but that is not the determinative question.

"The theory of the law is that a juror who has formed an opinion cannot be impartial. Reynolds v. United States, 98 U.S. 145, 155.

* * * *

"It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Spies v. Illinois, 123 U.S. 131; Holt v. United States, 218 U.S. 245; Reynolds v. United States, supra." Irvin v. Dowd, 366 U.S. 717, 722, 723 (1961).

And the defendant cannot, after the verdict, show an alleged external influence upon the jury by subjecting the individual jurors to a post-conviction examination.

".... 'the testimony of jurors should not be received to show matters which essentially inhere in the verdict itself.' Hyde v. U.S., 225 U.S. 347, 348,; Rakes v. U.S., 169 F.2d 739, 745." Hawkins v. United States, 244 F.2d 854, 856 (4th Cir. 1957).

The cases cited by the defendant in support of his right to question the jury in re this pre-trial publicity, with the exception of one, refer to events occurring during the trial.

In Mattox v. United States, 146 U.S. 140 (1892), the prejudicial publicity relied upon was a newspaper article injurious to the defendant, read to the jury during its deliberations. Near v. Cunningham, 313 F.2d 929 (4th Cir. 1963), refers to specific misconduct of a juror and the comingling of the jury with the

spectators on the courthouse law during trial recesses. *Marshall v. United States*, 360 U.S. 310 (1959), refers to a prejudicial newspaper article gotten to the jury during the trial. *Holmes v. United States*, 284 F.2d 716 (4th Cir. 1960), refers to prejudicial information gotten before the jury through an improper statement made by a court official during the progress of the trial.

The facts in *Rideau v. Louisiana*, 373 U.S. 723 (1963), are readily distinguishable from the facts here. There:

".... the people of Calcasieu Parish saw and heard, not once but three times, a 'trial' of Rideau in a jail, presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute. ... 'Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death.'"

In *Thompson v. Commonwealth*, 193 Va. 704, 70 S.E.2d 284 (1952), a prospective juror, while being examined on his voir dire, disclosed that he had known the defendant for twenty-five years or more, and that several years prior to the date of the trial the defendant had stolen his automobile and seriously damaged it. He was convicted for the theft but had not paid for the damage to the automobile. The juror was then accepted and later excused for cause. In the interim he was allowed to go into the jury room where he discussed the car theft and conviction with the fifteen jurors who had been selected to sit on the trial jury.

The "external influence" here claimed was at best remote. There was no direct evidence of prejudice. The defendant seeks to establish by inference that which he could not do by direction. Rees was entitled to a fair trial by a panel of impartial jurors. That he had, and the Court so finds.

Admission in Evidence of Pistol
Obtained by Unlawful Search and Seizure

The defendant claims the .38 caliber pistol introduced in evidence over his objection was obtained by unlawful search and seizure in contravention of the Fourth Amendment of the Constitution of the United States.

This revolver was first introduced in Rees' trial in the United States District Court for Maryland on the charge of kidnapping Mrs. Jackson and her daughter Susan. A motion there was made for release of property and to suppress evidence. Chief Judge Roszel C. Thomsen of that Court made extensive findings of fact and concluded the search was not unreasonable and the agents (Federal Bureau

of Investigation) were entitled to seize the revolver. His findings of fact and conclusions of law are reported in *United States v. Rees*, 193 F.Supp. 849. They are incorporated herein by reference.

Judge John D. Butzner, Jr., then the presiding State court judge, carefully reviewed this question in considering the defendant's motion to exclude evidence which was obtained by agents of the Federal Bureau of Investigation in a search of his parents' home. Judge Butzner found: ^{10/}

"'.... the home which the agents search was the home of Mr. and Mrs. Melvin Davis Rees, Sr., and not the home of the defendant.

"'The Court further finds that the consent to the search was freely and intelligently given by both Mr. and Mrs. Melvin Davis Rees, Sr. There was no actual or implied coercion. The agents practiced neither trickery nor fraud.

"'The accordian case which was found in the attic was in the possession of Mr. Melvin Davis Rees, Sr. The Court finds that he did not claim either the case or the gun were his son's. His consent to have it opened was freely given. He consented to the removal of the case and its contents after he had an opportunity to inspect them.

"'The Court finds that the search was not exploratory. The search was not broader than the consent which authorized it. The agents were looking for specific objects connected with the Jackson crime including the gun they found in the case.' "

Judge Butzner's more detailed findings and conclusions of law are reported in *Rees v. Commonwealth*, 127 S.E.2d 406. They are incorporated herein by reference.

This Court, in addition to reviewing the transcripts of the evidence taken in the Baltimore and Spotsylvania trials, heard the testimony of Mr. and Mrs. Melvin D. Rees, Sr., F.B.I. Agents Francis X. Jahn and Bert C. Mereness, Ora T. Ordwein and Ethel Sullivan. The latter two were neighbors of the senior Reeses and were not called as witnesses in either of the two previous hearings.

Mrs. Ordwein, in describing Mr. Rees, Sr., when he first met the F.B.I. agents at her home on January 24, 1960, said:

"[When] I came back in [the room] Mr. Rees was standing, supported on either side by his elbows, by both of the FBI men, one on one side and one on the other, and he was as white as a sheet." (Tr. 35)

^{10/} *Rees v. Commonwealth*, 127 S.E.2d 406, 416.

She was not in the Rees home while the F.B.I. agents were there on January 24th. She knew nothing about the consent or search and seizure.

Mrs. Sullivan was called to corroborate Mrs. Ordwein and only knew what Mrs. Ordwein had told her.

The testimony of Mr. and Mrs. Rees, Sr. and the F.B.I. agents is not materially different from that given in the Baltimore and Spotsylvania hearings.

This Court now finds that the search of the Melvin Davis Rees, Sr. home in Hyattsville, Maryland, on January 24, 1960, was made by agents of the Federal Bureau of Investigation with the express consent of Mr. and Mrs. Melvin Davis Rees, Sr., voluntarily given. The agents were looking for specific objects connected with the Jackson crime, including the .38 caliber pistol they found in the accordion case. This case was found in the third floor crawl space of the Rees home. Mr. Rees, Sr. freely gave his consent to have it opened and consented to the removal of the case and its contents after he had an opportunity to inspect them. He at no time claimed either the case or the gun were his son's.

The home searched was not the home of Melvin Davis Rees, Jr. It was the home of his parents. He was welcome to come and go at will. He stored various articles in his father's house but did not tell, and his parents did not know, that he had placed the locked accordion case in the third floor crawl space. Melvin Davis Rees, Jr. admitted ownership of the case and its contents.

The .38 caliber pistol, being an instrumentality of the crime under investigation, was legally seized. It was properly admitted in evidence during the Spotsylvania County trial.

The numerous authorities cited by the defendant in support of his various motions have all been examined by the Court. Many of them are discussed in Judge Thomsen's and Judge Butzner's opinions. Further comment by this Court would be repetitious. Suffice it to say, they are not sufficient to warrant the relief the defendant seeks.

This Court is satisfied Melvin Davis Rees, Jr. received a fair and impartial trial in Spotsylvania County, Virginia, and that none of his constitutional rights was violated. His prayer for a writ of habeas corpus will be DENIED and his complaint dismissed.

Counsel for the defendant should prepare an appropriate order, submit it to counsel for the plaintiff for approval as to form, and it will be entered accordingly.

Let copies of this memorandum opinion be forwarded to the petitioner and his counsel, and to C. C. Peyton, Superintendent of the Virginia State Penitentiary, and the Attorney General of Virginia.

s/ Oren R. Lewis
United States District Judge

January 10, 1964

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9410

Melvin Davis Rees, Jr.,

Appellant,

versus

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

Appellee.

Appeal from the United States District Court for the Eastern District of
Virginia, at Alexandria. Oren R. Lewis, District Judge.

(Argued October 5, 1964. Decided February 1, 1965)

Before Sobeloff, Chief Judge, and Haynsworth, Boreman, Bryan and Bell,
Circuit Judges, sitting en banc.

S. White Rhyne, Jr. (Charles A. Dukes, Jr.; Green, Babcock and Dukes; and
Mullin and Connor on brief) for Appellant, and Reno S. Harp, III, Assistant
Attorney General of Virginia (Robert Y. Button, Attorney General of Virginia,
on brief) for Appellee.

Albert V. Bryan, Circuit Judge:

By habeas corpus in the District Court Melvin Davis Rees, Jr. seasonably
but unsuccessfully attacked, as unconstitutional, his trial, conviction and sen-
tence of death in a Virginia court for the murder of Carroll Vernon Jackson, Jr.
On his appeal we find no entrenchment upon his rights in the criminal trial. Nor
do we see error in the conduct of the habeas corpus hearing. Discharge of the
writ will be affirmed.

The incursions upon his fundamental privileges by the State, as charged
by Rees, are (1) the admission in evidence of a pistol seized in an illegal search,
(2) refusal of a change of venue or venire, and (3) imprisonment during trial in
Richmond, 50 miles away, rather than in the jail of Fredericksburg, about 6 miles

from the place of trial. Errors pointed at the District Court, beside the failure to declare the conviction a nullity, are its rulings at the hearing precluding interrogation of the trial jurors as to their impression by or indifference to publicity during the trial relating to the crime. Prior to the Virginia trial, appellant Rees had been convicted in the Federal District Court of Maryland for kidnapping and sentenced to life imprisonment, and no appeal taken. See *United States v. Rees*, 193 F. Supp. 849 (1961).

A compendium of the facts will suffice to frame the legal issues now before us.* Carroll Vernon Jackson, Jr., the victim of the murder, with his wife, Mildred, and their two infant children, Susan and baby Janet, left his mother-in-law's home in Louisa County, Virginia during the late evening of January 11, 1959 driving to their own house in the same county, only a few miles distant. Next morning the car was found at a point midway to their destination, on the side of the highway and unoccupied. About two months later, March 4, the bodies of Carroll Jackson and the baby were found in adjoining Spotsylvania County. The infant had expired from head blows. Her father, severely, beaten in like manner, had also been fatally shot through the head. The wound, in the opinion of the Medical Examiner of Virginia, came from a .38 caliber bullet. Near his body were his broken eyeglasses and a pair of plastic gun grips.

Afterwards, on March 21, 1959, the bodies of Mildred Jackson and her other daughter, Susan, were found buried in Maryland. Both had been cruelly clubbed about the head and apparently died from aspiration of blood.

Rees was arrested in West Memphis, Arkansas on June 24, 1960 by agents of the Federal Bureau of Investigation for unlawful flight to avoid prosecution for another murder in Maryland. His movements on the day of the Jackson tragedy had placed him in Spotsylvania County.

Upon notification of Rees' apprehension, FBI agents were sent to the home of his parents in Hyattsville, Maryland, not far from where the bodies of the wife and daughter had been unearthed. Rees was known to sleep at the house on occasion. The agents' purpose was to inform the parents of the arrest before news reporters reached them; to locate the Jackson murder pistol, to which it was believed the plastic grips belonged and with which it was thought the fatal blows had been dealt Carroll Vernon Jackson and his daughter; to obtain additional specified

*In addition to the opinion (unreported) of District Judge Oren R. Lewis below, a careful narrative of the evidence is given by Chief Judge Roszel C. Thomsen in *United States v. Rees*, 193 F. Supp. 849 (D. Md. 1961), and also is to be found in *Rees v. Commonwealth*, 203 Va. 850, 127 S.E.2d 406 (1962), refusing to review the conviction and adopting the opinion of Circuit Judge, now Federal District Judge, John D. Butzner, Jr., who presided at the trial.

evidence connected with the Jackson and other homicides of which Rees was suspected; and to check his activities from time to time in the vicinity where his parents lived.

The revolver was found in their residence. The search there and the seizure of the pistol, resulting in its introduction in evidence, admittedly the decisive proof against Rees, constitute the primary and principal violation of constitutional immunities now pleaded by Rees.

I. The Fourth Amendment, applied to State prosecutions by the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961), was not transgressed. The search and seizure were not unreasonable, but in every sense reasonable and authorized in law. This conclusion rests on the facts; they demonstrate its soundness. Cf. *Ker v. California*, 374 U.S. 23, 33 (1913); *United States v. Rabinowitz*, 339 U.S. 56, 63 (1950). This becomes manifest in continuation of the factual recital to include what occurred after the FBI agents arrived at the home of the Reeses.

Both of the parents consented to the search of the premises by the agents, the husband signing a formal authorization and the wife giving oral approval. But appellant Rees contends that this permission was vitiated through coercion of his parents. The first factor of the asserted duress is the timing of the visit on June 24, 1960, the very day of the arrest: that the agents should be the ones to carry the news to the parents and rely upon the mental shock to weaken their resistance to a search.

The agents reached the home about 3:30 o'clock in the afternoon. Finding no one there, they waited in a neighboring home. The father returning at four o'clock was invited by the neighbor into her house. She introduced him to the agents and left the room. They had already informed her of the arrest. When she entered the room again, she says, the senior Rees was shaken with emotion and was standing between the two agents for support. There is a difference of recollection here; the agents say they did not tell the father of his son's trouble until they were in his home.

The agents and the senior Rees left the house through the back door, to avoid the reporters who had gathered nearby, and went to the Rees home. Whether they then or had previously told him of what had happened, they here stated they wished to search his property and to ask him about the whereabouts of his son on certain days. In this he was requested to sign a form, prepared at the time, stating his consent to the search. He preferred to consult his wife before making

a decision. She came shortly. In the interval there is no indication of the agents' pressing their desire to search.

Upon hearing the distressing report, the wife readily acquiesced in the agents' proposal, observing that there was nothing to conceal. The father expressed the thought of consulting an attorney about the consent. The agents agreed that it was his right but said that as he felt his son could not have committed murder, there would be nothing found to incriminate him. Before it was signed both of the Reeses were fully aware of the contents of the paper. It read in this way:

"I, Melvin Davis Rees, Sr., having been informed of my Constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant, and of my right to refuse to consent to such a search, hereby authorize James W. Sibert and Thomas J. Fynee, Jr., Special Agents of the F.B.I., U.S. Department of Justice, to conduct a complete search in my residence located at 3908 Madison Street, Hyattsville, Maryland. These agents are authorized by me to take from my residence any letters, papers, materials, or other property which they may desire. This written permission is being given by me to the above named Special Agents, voluntarily and without threats or promises of any kind."

During the search pursuant to this permission the agents went into the attic. There they saw in the rear of a closet a removable section leading to a crawl space. In this area was found what is now designated as an accordion case. Its discovery was reported to the father and it was produced before him.

The case was locked with a padlock and hasp. A tag was attached bearing the name, address and telephone number of one Dennis J. Werber. When questioned about it, the father had no knowledge of its existence or ownership. Nor could he identify it as anything belonging to his son. He assented to its forcible opening. In it was found the pistol. The other contents were certain obscene drawings, including newspaper pictures of the Jacksons, and an account in the younger Rees' own handwriting of his killing of Mildred Jackson and daughter Susan, with the molestation of the former. Receipting for all the articles and with the Reeses' consent, the agents took the pistol and the papers to the FBI office. The revolver proved to be the gun which matched the plastic grips. Blood stains were revealed on the butt. Upon objection none of the papers was admitted in evidence.

The circumstances of the agents' entry and search, we think, are a complete refutation of appellant's charges of psychological compulsion of either of his parents. Both the State and the Federal court have found that consent was

understandingly and voluntarily accorded. Any question of a search warrant was thus waived, as is permissible. *Zap v. United States*, 328 U.S. 624, 628 (1946), vacated on another ground in 330 U.S. 800 (1946). This finding is deeply anchored in the evidence. The elder Reeses were in exclusive possession of the house, with every right to authorize even its rummage. The testimony showed the house was not the home of the appellant, that he was merely an occasional visitor there, with no particular space assigned him for any purpose. Consequently, his concurrence in the search was unnecessary. These circumstances divorce this case from the category of *Johnson v. United States*, 333 U.S. 10 (1948); *Amos v. United States*, 255 U.S. 313 (1921); and like precedents cited by appellant as illegalizing the search for want of consent.

Likewise, the facts themselves render impregnable the District Court's approval of the State court's sanction of the opening of the accordion case. No tag or other indicium attributing its ownership to appellant Rees was apparent. It was hidden in a remote part of the house, put there by someone without the knowledge of even the owners and occupants of the property. True, it was locked and the appellant, it now turns out, had the key. But the case itself negated any ownership of the younger Rees. It was marked as the property of another, Werber--not only by name but address and telephone number--with whom the senior Reeses were unacquainted. It could well have been abandoned personalty which, of course, was seizable. *Abel v. United States*, 362 U.S. 217, 241 (1960). Appellant's parents had joined in the wish of the agents to force the lock of the case. Certainly they were warranted in ascertaining the subject-matter of an unrecognizable case found secreted in their home. These facts quite plainly exclude this situation from that in each of the contra precedents urged by the appellant: *Holzhey v. United States*, 223 F.2d 823 (5 Cir. 1955) and *United States v. Blok*, 188 F.2d 1019 (D.C. Cir. 1951).

Once the case was legally opened, as we think it was, the pistol could be seized; it was suspect as an instrument of the crime. This was not a general hunt for evidence of any kind; it was a search for specific articles. *Abel v. United States*, 362 U.S. 217, 239 (1959); *Harris v. United States*, 331 U.S. 145, 154 (1947). To our mind, the entire search and seizure were altogether without legal infirmity. *Roberts v. United States*, 332 F.2d 892 (8 Cir. 1964). For this view, we also adopt the reasons noted by Judge Lewis in the hearing below as well as those given by Judge Thomsen and Judge Butzner in their respective determinations at trial to admit the pistol. *United States v. Rees*, supra, 193 F. Supp. 849 and *Rees v. Commonwealth*, supra, 203 Va. 850, 127 S.E.2d 406.

II. Nor do we perceive fault in the denial of the venue or venire change moved at the criminal trial. Without doubt, there was publicity aplenty about the crime. It was, admittedly, disseminated throughout the county of trial by press, television and broadcast. But discriminate consideration will prove that it was not allowed to rob Rees of a fair trial.

The Jacksons disappeared, to repeat, 'on the night of January 11, 1959, their bodies discovered in March. The pistol and the indecent written material were not found in the accordion case until June 1960. The prosecution on the Federal indictment took place at Baltimore, Maryland in March 1961, more than two years after the crime. The notoriety of which Rees complains first emanated from that trial. So far as humanly possible, it was restrained by the District Judge there. Nevertheless, the testimony was propagated through all the news media. The trial in Virginia was not begun until September 1961. Here again, the trial judge confined the potentially injurious publicity as far as it was at all possible. Rees' written description of his Maryland crime--labelled "Death Diary" in the news--was never divulged in either trial.

A change of venue or venire in Virginia would have been of no aid whatsoever. Obviously, the same broadcasts and telecasts heard and seen in the county of trial would extend over the State generally. Press stories had nearly the same circulation everywhere in Virginia as they did in Spotsylvania County. Alert to protect the accused against the prejudice of an affected jury, the trial judge subjected the veniremen to a rigorous and scrupulously searching voir dire. Counsel participated in the prying. In its aim we think the court succeeded.

The finding of the criminal court that no veniremen were accepted who had a fixed opinion in the case is confirmed in our review of their inquisition. Of course, the exploration developed that they had heard and read of the crime. Scarcely any person in Virginia of jury fitness and stature could reasonably have been expected to be unaware of it. With patience and determination the trial judge ascertained from each juror whether his was a mind open to an appreciation and appraisal of the testimony only as it came from the stand, and to base decision exclusively on the evidence adduced at trial. No more can be demanded by an accused. It was put with clarity in *Irvin v. Dowd*, 366 U.S. 717 (1961) at page 722 by Justice Clark:

"It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors

will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. . . ."

While that decision declared the publicity destructive of due process, the present circumstances are not within its condemnation.

The Virginia trial was more than 2 1/2 years beyond the day of the crime, and not until 15 months after the arrest. Attendance at the trial was sparse, the State circuit judge noted. His findings, adopted by the court below, also noted: "There was no evidence introduced of mass prejudice against the defendant, of mob action, or threat of such action. There was no evidence of inflammatory newspaper editorials or interviews, or provocative radio or television commentaries. There was no evidence that it was the predominant belief in the county that the defendant was guilty . . . Interest, agitation and apprehension concerning the case had diminished over the intervening years."

The defendant's insulation from unfairness in trial resulting from the wide pervasion of news of so startling crimes was, we conclude, constitutionally adequate.

III. Furthermore, no prejudice whatsoever was inflicted upon Rees through his incarceration during trial in Richmond instead of in a county or city jail closer to the trial courtroom. The accused was under two life sentences passed by the Federal court in Baltimore, he was in the custody of the Attorney General of the United States, although made available to the State for trial, and the Federal marshal considered only the Richmond penitentiary to afford the necessary security against escape. It was an approved institution for Federal prisoners. No deputy marshal was available at a nearer point for surveillance of Rees. The Circuit Judge particularly saw to it that Rees was made readily and conveniently accessible to his counsel at the trial courthouse, and elsewhere, at all reasonable times.

IV. Post-trial examination of the jurors was sought and refused in the habeas corpus hearing. Acknowledging the impropriety of post-trial plumbing of a juror's conscience and disavowing any intention to re-canvas the impartiality of the jurors, Rees asserts that he had the right to question them as to their knowledge before trial "of incriminating information" not admitted in evidence. The distinction is not sound. The "information" was that which was conveyed in

the news. The judgment a juror expresses in the verdict is not subject to subsequent public sounding. *Mattox v. United States*, 146 U.S. 140, 148 (1892); *Rakes v. United States*, 169 F.2d 739, 745 (4 Cir. 1948), cert. denied, 335 U.S. 826. The District Judge punctiliously preserved the sanctity of this principle, one so vital to our trial procedures.

Of course, a juror may after verdict be queried as to information, whether documentary or oral in nature, introduced into the jury room but not put before them at trial. Similarly, the intrusion of a stranger, or the misconduct of a juror, during deliberations is open to such inquiry. Cf. *Mattox v. United States*, *supra*, but that is not the nature of the present complaint.

Particular exception is taken by the appellant to the Court's rejection of proffered testimony of a juror's neighbor to a conversation in the presence of the juror before he was summoned for jury service. The subject of the conversation was a repetition of a report that Rees, before the Jackson murder, had once forced the car of one June Tuozzo off the road and abducted and assaulted her. Upon refusal of the District Court to permit the examination of the witness in this respect, Rees requested to call the juror. This, too, was refused.

While we think the statement of the neighbor was admissible, its exclusion was not substantial error. The juror had been questioned extensively on voir dire, as already mentioned, and had vouched his ability to decide objectively. Just how long prior to his acceptance as a juror was the alleged discussion is not clear. Nothing indicates, however, that the juror concealed any such discussion from the Court. If actually he had overheard the reiteration of the accusation, he may simply have not recalled it at the time he was examined.

Furthermore, the Tuozzo event was public knowledge. Indeed, it is one of the items of publicity mentioned by Rees in asking for a venue or venire change. In the Maryland trial the incident was permitted in evidence. *United States v. Rees*, *supra*, 193 F. Supp. 849, 856. The Virginia trial court rejected it. *Rees v. Commonwealth*, *supra*, 203 Va. 850, 127 S.E.2d 406, 419. Our judgment is that in this the petitioner shows no prejudicial error at the habeas corpus hearing.

The order of the District Court is affirmed.

Affirmed.

JUDGMENT

Filed and Entered, February 1, 1965

UNITED STATES COURT OF APPEALS

for the
Fourth Circuit

No. 9410

Melvin Davis Rees, Jr.,

Appellant,

vs.

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

Appellee.

Appeal from the United States District Court for the --- Eastern ---
District of --- Virginia

This cause came on to be heard on the record from the United States
District Court for the --- Eastern -- District of --- Virginia ---
-----, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this
Court that the ^{order} judgment of the said District Court appealed from, in this cause,
be, and the same is hereby, affirmed with costs.

February 1st, 1965

s/ Albert V. Bryan
United States Circuit Judge

FILED
Feb 1 - 1965
Maurice S. Dean
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9410

Melvin Davis Rees, Jr.,

Appellant,

v.

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

Appellee.

ORDER DENYING REHEARING

Upon consideration of the petition for rehearing filed herein on March 2, 1965 by the appellant, Melvin Davis Rees, Jr., the court is of the opinion that it raises no question warranting a rehearing, and accordingly it is

ORDERED that the said petition be, and it is hereby, denied.

s/ Clement F. Haynsworth, Jr.
Chief Judge

FILED
MAR 25 1965
MAURICE S. DEAN
CLERK

s/ Simon E. Sobeloff
United States Circuit Judge

s/ Herbert S. Boreman
United States Circuit Judge

s/ Albert V. Bryan
United States Circuit Judge

s/ J. Spencer Bell
United States Circuit Judge

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No.

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT, WITH APPENDIX A

Charles A. Dukes, Jr.

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79-44-9093

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 22 1965	
FBI - RICHMOND	

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CITATIONS TO THE RECORD

The certified transcript of record is on file in this Court. Citations to various parts thereof are made in this petition as follows:

- Ct. App. R. Clerk's file in the United States Court of Appeals for the Fourth Circuit. This is certified by the clerk of that court as volume VII of the record.
- Ex. Petitioner's exhibits in the habeas corpus proceeding in the United States District Court for the Eastern District of Virginia. Exhibits 1-3 and 4-8 are wrapped in two packages separately certified as part of the record without volume numbers.
- Md. Tr. Transcript of proceedings and trial in petitioner's prosecution for kidnapping in the United States District Court for the District of Maryland, introduced in evidence in the habeas corpus proceeding (Tr. 3-4). This is certified as volume IV of the record.
- R. Clerk's file in the habeas corpus proceeding, certified as volume I of the record.
- Tr. Transcript of hearing on November 7, 1963, in the habeas corpus proceeding, certified as part of volume II of the record.
- Va. R. Clerk's file in petitioner's prosecution for murder in the Circuit Court of Spotsylvania County, Virginia, introduced in evidence in the habeas corpus proceeding (Tr. 190-91). It is certified as part of volume VI of the record.
- Va. Tr. Transcript of proceedings and trial in the state court murder prosecution, introduced in evidence in the habeas corpus proceeding (Tr. 190-91). Pages 1-650 are certified as volume V of the record and pages 651-1056 are certified as part of volume VI of the record.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1965

Misc. No.

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case.

OPINIONS BELOW

The opinion of the District Court (R. 148), reproduced in appendix B to this petition, is reported at 225 F. Supp. 507 (E.D. Va. 1964). The opinion of the Court of Appeals (Ct. App. R. 27), reproduced in appendix C to this petition, is reported at 341 F.2d 859 (4th Cir. 1965). Both appendices B and C are separately filed as permitted by rule 23(i) of this Court.

This case is a federal habeas corpus attack on the constitutionality of petitioner's state court conviction of murder and sentence to death. The state trial court, the Circuit Court of Spotsylvania County, Virginia, wrote an opinion which was not reported but which is set forth in full in the affirming opinion of the Supreme Court of Appeals of Virginia, reported at 203 Va. 850, 127 S.E.2d 406 (1962). Collateral cases of relevance to this proceeding are reported at 193 F. Supp. 849, 861 and 864 (D. Md. 1961).

JURISDICTION

The judgment of the Court of Appeals was entered on February 1, 1965 (Ct. App. R. 41). App. C at C-9. A timely petition for rehearing was filed (Ct. App. R. 43), and was denied on March 25, 1965 (Ct. App. R. 50). App. C at C-10. This petition for writ of certiorari is filed within ninety days after denial of the petition for rehearing, as required by 28 U.S.C. §2101(c) (1958). Heflin v. United States, 358 U.S. 415, 418 n. 7 (1959); Department of Banking v. Pink, 317 U.S. 264, 266 (1942). The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1) (1958).

QUESTIONS PRESENTED

The questions presented for review are:

1. Whether petitioner, on trial for his life, could receive a fair trial in a rural county of 13,800 persons which had been saturated with pre-trial press, radio and television references to highly incriminating evidence not admitted at trial, including a first-person account, said to be in petitioner's own handwriting, purporting to detail the commission of the very crime with which he was charged--where this document had been obtained in violation of petitioner's constitutional rights and hence was not admissible in evidence against him, but was referred to in the county in at least 120 separate pre-trial news reports, some containing substantial quotations from the account and one characterizing it as a "Death Diary" in a front page newspaper headline three days before trial; and where at trial the prospective jurors repeatedly admitted on voir dire that they had seen and heard the pre-trial publicity about the case and at least two of those who were actually selected to sit on petitioner's jury testified on voir dire that they had already formed opinions as to guilt based on pre-trial press, radio and television reports.

2. Whether petitioner's right to be secure in his personal effects against unreasonable searches and seizures was violated by the forcible entry by federal agents of a locked case belonging to him and stored by him on another's premises and the seizure therefrom by the agents of petitioner's property--where petitioner had retained the key to the lock and had done nothing to indicate a waiver of his right of privacy as to the contents of the case; and where the agents, acting without a search warrant, relied solely on the purported waiver of the owner of the premises where the case was

stored, in full knowledge that he was not the owner of the case and had not been given a key to the lock by the owner.

3. Whether "consent" by petitioner's father to a search of his home by federal agents, in the course of which the agents discovered and seized property belonging to petitioner, was vitiated by "implied coercion"-- where the request for permission to search was deliberately timed by the federal agents to coincide with the emotional impact of first disclosure to petitioner's parents of their son's arrest on charges of murder; where petitioner's father turned "white as a sheet" when first confronted by the agents and had to be physically supported by them; where his mind blanked out concerning the events immediately surrounding such confrontation; where he delayed over an hour in giving consent, during which time the agents exerted verbal persuasion, including persuasion that there was no need to seek the advice of counsel; and where petitioner's father consented to the search under the erroneous impression that the agents could and would get a search warrant if he did not consent.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions which this case involves are:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV.

"No State shall ... deprive any person of life ... without due process of law...." U.S. Const. amend. XIV.

STATEMENT OF THE CASE

This petition seeks review of an en banc decision of the United States Court of Appeals for the Fourth Circuit. That decision affirmed a decision of the United States District Court for the Eastern District of Virginia, which had denied petitioner's application for a writ of habeas corpus to prevent his death by electrocution pursuant to a state court judgment. The jurisdiction of the District Court was based on the federal habeas corpus statute, 28 U.S.C. §§ 2241 (c)(3) and 2254 (1958). See App. B at B-2. The judgment of execution which was attacked in the habeas corpus action was imposed by the Circuit Court of Spotsylvania County, Virginia, which has deferred setting a new execution date pending the final outcome of the present proceedings in this Court. The Court of Appeals has also stayed issuance to the District Court of its certified judgment in lieu of mandate, pending proceedings in this Court. (Ct. App. R. 55).

The facts material to a consideration of the questions presented are as follows:

A. Storage by Petitioner of a Locked Case in His Parents' House

Petitioner was a musician who traveled with orchestras and lived at various places of temporary employment (Md. Tr. 1048). While traveling, he used his parents' house in Hyattsville, Maryland (R. 72), for the storage of personal belongings (Va. Tr. 150). He did this with their permission (R. 72) under an informal arrangement whereby he had a key to the house (Tr. 76) and was at liberty to come and go as he wished (Tr. 73). Most of his belongings were stored, with their knowledge, in a large third floor or "attic" room which was reached by climbing a pull-down staircase (Tr. 73; Va. Tr. 97-98).

In March, 1960 (Md. Tr. 1082), petitioner placed personal belongings (Md. Tr. 1085), including a pistol and a mass of papers of an obscene nature (Va. Tr. 155), in an empty accordion case. He secured the case with a hasp and padlock (Va. Tr. 151). The case bore a tag on which was written the name, address and telephone number in Washington, D.C., of one Dennis J. Werber (Va. Tr. 67, 148), the person from whom petitioner had bought the case (Va. Tr. 827-29). Petitioner placed his locked case in a "crawl space" area behind a closet in the attic (Va. Tr. 151), which was reached by removing a section of the rear wall of the closet which his father had cut out years before to furnish additional room for family storage (Tr. 71-72). Petitioner did not mention the case or its contents to his parents (R. 72). He did not give them a key to the lock (Tr. 76-77), but kept the key with him (Va. Tr. 151) and left for a job in West Memphis, Arkansas (Md. Tr. 1083).

B. Police Search of the House

In June, 1960, approximately three months later, the Federal Bureau of Investigation arrested petitioner in Arkansas (Va. Tr. 781). They suspected him of several crimes (Va. Tr. 60), including the abduction-murder of the four-member Carroll Vernon Jackson family of Virginia, which had occurred early the previous year (Va. Tr. 74). The arrest, however, was in connection with a murder other than the Jackson crime (Md. Tr. 935).

Two F.B.I. agents were standing by in Hyattsville, Maryland, awaiting word of petitioner's arrest, and went immediately upon notification to the house of petitioner's parents (Va. Tr. 74). They were looking for "evidence of crime"

(Va. Tr. 74). The agents knew that petitioner had frequented the house some months before (Tr. 217-18), but they had no knowledge or information as to anything in the house (Tr. 217, 231) and hence lacked probable cause for issuance of a search warrant. Their intention was to overcome this constitutional barrier to search of the house by obtaining the consent of petitioner's parents (Tr. 211-12, 219). They deliberately timed their request to petitioner's parents for a waiver of their constitutional rights to coincide with the first disclosure to the parents that their son had been arrested and was being held on charges of murder (Tr. 211-12).

Upon arrival at the house about 3:30 p.m., the agents found no one at home and they waited in the living room of a next-door neighbor (Tr. 220-21). A newspaper reporter who had already learned of the arrest was on the front street also awaiting the return of petitioner's parents (Tr. 211-13, 224).

Petitioner's father was the first to arrive home, about 4:00 p.m. (Va. Tr. 59). He was asked by the next-door neighbor to come into her house and he there met the F.B.I. agents (Tr. 34, 196). The neighbor stepped out of the room for a moment and, when she returned, petitioner's father was being "supported on either side by his elbows, by both the F.B.I. men, one on one side and one on the other, and he was as white as a sheet" (Tr. 35). This testimony by the neighbor is quoted in the written opinion of the District Court (R. 163). App. B at B-8.

The F.B.I. agents conducted petitioner's father from the neighbor's house by a rear door and walked with him around the back of his own house in order to enter (Tr. 58). They admitted that the reason they did this was that "we wanted to avoid contact with anyone else at that time" (Tr. 224; see also Tr. 209). Petitioner's father had no subsequent recollection of being in the neighbor's house or of walking around the back of his own house (Tr. 62-64). He testified in a court proceeding less than eight months after the search that upon arrival home he had met the agents coming from his neighbor's house and had gone with them directly into his own house (Md. Tr. 1099-1100). This is what he told petitioner's counsel in Spotsylvania County when they interviewed him while preparing for trial (Tr. 90-91). His testimony at the state trial was also consistent with this version of events (Va. Tr. 127-28, 139). Not until the next-door neighbor was interviewed for the first time, several weeks before the habeas corpus hearing (Tr. 38-39), did it become clear that petitioner's father had actually suffered an amnesic lapse as to the events which occurred at the time of his initial confrontation by the F.B.I. agents.

The federal agents interrogated petitioner's father in the living room of his own house, asking him numerous questions about petitioner and his activities (Tr. 64-65, 225). During the course of this conversation, they produced a paper authorizing them to search the house and asked that petitioner's father sign (Tr. 64). He deferred signing, saying he would prefer to wait for his wife to return home and discuss the matter with her (Tr. 232). When consent was not immediately forthcoming, the agents did not leave so as to allow petitioner's father to think the matter over away from their influence. Instead, they stayed and continued to question him about his son (Tr. 232), the very subject which was obviously responsible for his emotional upset.

When petitioner's mother arrived home about 5:00 p.m. (Va. Tr. 70), she was told of her son's arrest and suspected involvement in murder (Md. Tr. 939-40). In the words of the F.B.I. agents, she was "visibly affected" (Md. Tr. 940) and took the news with "apparent shock" (Tr. 215). After discussing with petitioner's mother "a number of questions about the welfare of her son" (Md. Tr. 940), the agents again asked for written permission to search the house (Tr. 232).

At this point, however, petitioner's father raised the question of whether he ought to sign without first consulting an attorney (Tr. 232-33). According to the F.B.I. agent's testimony (Md. Tr. 964), the conversation went as follows: Petitioner's father said, "Well, I don't know. Maybe I should talk to an attorney about this." The agent told him that of course he could do this, but suggested that if he was sure there was nothing in the house which would connect his son with a murder he had no need for legal counsel. In his own words, the F.B.I. agent stated, "If that is what you want to do, you do it. I would like to point out to you, however, that you and your wife have both told me that your son could not possibly be guilty of any murder, that there is nothing here that could connect him with a murder. In such case there would be nothing for us to find, and we would so report it" (Md. Tr. 964-65).

After this subtle persuasion, and about an hour after the first request that he grant permission to search (Tr. 231-33), petitioner's father signed the consent form (Tr. 69). When he did so, however, he was under a misapprehension as to his legal rights, thinking that if he did not consent the F.B.I. could get a search warrant and make the search anyway (Va. Tr. 140; Tr. 66). The agents admitted that they never told petitioner's father that the requirement of probable cause prevented them from making the search unless he gave his consent (Tr. 234-35), and the consent form

merely advised the father of his right not to have his house searched "without a search warrant" (Md. Tr. 942). App. C at C-4.

When the consent form had been signed, nine additional agents were called in to assist in the search (Va. Tr. 63-64). The search lasted several hours (Tr. 226) and petitioner's father and mother were separately interrogated on different floors of the house while it was in progress (Va. Tr. 76).

C. Search of the Locked Case

During the course of the search, the agents found petitioner's padlocked accordion case in the attic storage area (Va. Tr. 99). They asked petitioner's father if he knew anything about the case (Va. Tr. 67). He disclaimed any knowledge of the case, its contents, or of Dennis J. Werber, the person whose name appeared on it (Va. Tr. 117-18). He made it clear to the agents that he himself did not own the case (Tr. 237). Nevertheless, according to the testimony of the F.B.I. agents, he gave them permission to break the lock and open the case (Va. Tr. 68). One of the agents testified that they were interested in the case because "we wanted to know whether there was evidence in there" (Va. Tr. 77), and the other agent admitted that they were "interested in this case on the theory that it might be Mr. Rees, Jr's" (Va. Tr. 95).

Without attempting to contact petitioner (Md. Tr. 980) or to call the telephone number which appeared on the case (Va. Tr. 77), the F.B.I. agents broke open the accordion case with a screwdriver and a pair of pliers (Va. Tr. 68, 118). The agents at once observed that the appearance of the interior of the case was that of "some type of musical case" (Va. Tr. 81). They also observed the pistol and the mass of obscene papers which petitioner had placed in the case (Va. Tr. 68). The pistol became the "principal evidence" upon which petitioner was later convicted of murder (Va. R. 315). Rees v. Commonwealth, 203 Va. 850, 872, 127 S.E.2d 406, 421 (1962). The papers were found to contain a handwritten document which purported to be a first-person account of the killing of Carroll Vernon Jackson and the other members of his family (Va. Tr. 155). These articles were seized by the agents with the permission of petitioner's father who, however, denied any knowledge of them (Va. Tr. 68-69). The agents subsequently contacted Dennis J. Werber (Va. Tr. 77) and verified that the case belonged to petitioner (Va. Tr. 828-29).

Petitioner's father, who had held the same job for almost forty years (Tr. 59-60) and who had worked regularly up to the date of the search (Tr. 77), was unable to go back to work for nine months because of emotional disturbance and arthritis complications (Tr. 77).

D. Maryland Federal Proceedings

On the day after the search, an F.B.I. agent appeared before a United States Commissioner in Maryland, the state where the bodies of Mrs. Jackson and one of the Jackson children had been found, and obtained a warrant for petitioner's arrest on charges of kidnapping. In establishing probable cause for issuance of the warrant, the agent informed the Commissioner of the discovery of the handwritten account (Ex. 3, p. 1, col. 7).

Though no court determination of the admissibility of the handwritten account against petitioner at trial had yet been made, the Commissioner made a statement about the document to the press the following day, a Sunday (Ex. 2, p. 2). On Monday, it was widely publicized in newspapers and on radio and television (Ex. 1, p. 2, col. 5; Ex. 3, p. 1, cols. 5-8; Ex. 4, pp. 14, 15, 16; Ex. 6, pp. 1, 3). Two days later, the news media began to publish and broadcast actual quotations from the account (e.g., Ex. 1, p. 4, cols. 6-8), said to have been released by the Baltimore police (Ex. 4, pp. 37, 38; Ex. 6, pp. 5, 113). The publicity given to this document continued up to the date of petitioner's trial in Spotsylvania County, Virginia, notwithstanding determinations by both a federal and a state court that it had been obtained in violation of his constitutional rights and hence was inadmissible in evidence.

Petitioner was transported from Arkansas to Maryland and prosecuted in the United States District Court for the District of Maryland for the kidnapping of Mrs. Jackson and one Jackson child. United States v. Rees, 193 F. Supp. 849 (D. Md. 1961). The handwritten document was excluded from evidence in the trial. Id. at 855. Petitioner was convicted, but without a jury recommendation of the death penalty, and he received two sentences of life imprisonment which he is now serving. United States v. Rees, 194 F. Supp. 864, 866 (D. Md. 1961). The judgment in that case was not appealed.

Extensive coverage of the Maryland trial was provided in the newspapers and on radio and television (Ex. 1-6; Va. R. 41). In March, 1961, several weeks after the verdict, a Baltimore television station actually broadcast a program in which nine of the jurors who had convicted petitioner reenacted their deliberations for the viewing audience. See United States v. Rees, 193 F. Supp. 861 (D. Md. 1961). Pictures from

the telecast and quotations from the dialogue of the jurors were carried in newspapers circulating in Spotsylvania County, Virginia (Ex. 1, p. 37, cols. 5-6, p. 37a, cols. 1-3; Ex. 2, p. 26, col. 1, p. 26a, cols. 5-6).

E. Virginia State Proceedings

In June, 1961, petitioner was indicted in Spotsylvania County for the murder of Carroll Vernon Jackson (Va. R. 24). The county, having a population of 13,800 persons (Ex. 7, p. 16), was principally served by three daily newspapers, the Fredericksburg Free-Lance Star, the Washington Post and the Richmond Times-Dispatch (R. 48-49, 75-76), each of which had a substantial circulation in the county (R. 85-87). The county was also served by several radio and television stations (R. 90, 91).

Public interest in the court proceedings ran high. Appearances of petitioner at the courthouse occasioned overflow crowds of spectators. Areas adjacent to windows had to be roped off and lunch counters were set up to feed those who gathered on the courthouse lawn (Va. R. 38-39). The District Court recognized that it was the "largest murder trial in that county in the current era, and it received all the publicity, newspapers, television people could possibly give it" (Tr. 151-52). Before the trial began, the Fredericksburg paper had already printed eighty pictures concerning the case (Va. R. 41).

By the start of trial, news media serving Spotsylvania County had made at least 120 separate references to the inadmissible handwritten account of the Jackson deaths which had been found in petitioner's accordion case. App. A, infra at A-1. Substantial verbatim excerpts from the account had been published in all three daily newspapers serving Spotsylvania County (Ex. 1, p. 4, cols. 6-8, p. 13a, col. 2; Ex. 2, p. 5, cols. 1-8; Ex. 3, p. 3a, col. 8) and broadcast on the radio (Ex. 4, pp. 37, 45a). The document was variously described by the news media as a "lurid written account" (Ex. 4, p. 38; Ex. 6, p. 113), a "detailed diary" (Ex. 6, p. 111) and "an obscene account of the slayings" (Ex. 3, p. 6, col. 3). Three days before selection of the jury, at a time when it was known that the court had excluded the document from evidence, a front page newspaper headline referred to it as a "Death Diary" (Ex. 2, p. 39, cols. 1-3). At least 23 references were made to the document by the news media in the ten days immediately preceding the start of trial (Ex. 1, p. 71, col. 3; p. 73, col. 7; p. 74, col. 1; p. 74a, col. 3; p. 75, cols. 1-3; Ex. 2, p. 39, cols. 1-3; Ex. 3, p. 42, cols. 1-3; Ex. 5, pp. 279, 281, 282, 283, 284, 285, 286, 287, 288; Ex. 6, pp. 43, 44, 105, 107, 108a, 109a, 141).

The account was regularly identified in the news media as being in the handwriting of petitioner (e.g., Ex. 2, p. 2, cols. 1-8; Ex. 3, p. 6, col. 3), though proof of this fact was never subjected to judicial scrutiny nor tested by adversary cross-examination in a court of law. Although the document was actually undated, it was frequently reported to have been dated before the finding of the Jackson bodies (Ex. 1, p. 2, col. 5; Ex. 2, p. 2, col. 8, p. 10, col. 5; Ex. 3, p. 1, cols. 5-8, p. 2a, col. 8; Ex. 4, pp. 14, 15, 16; Ex. 6, p. 1), thereby tending to attribute to petitioner an additionally incriminating prior knowledge that Mrs. Jackson and one child were killed at a place different from Mr. Jackson and the other child.

More than 400 pre-trial references were made in news media serving Spotsylvania County to the fact that petitioner had already been convicted in Maryland of kidnapping two members of the Jackson family. See App. A, infra at A-3. Frequent reference was also made to accusations by several persons that petitioner, or someone resembling petitioner, had stopped their cars while they were driving at night in lonely rural areas by forcing them off the road--the apparent means by which the Jackson crime had been perpetrated (Va. Tr. 409-11). App. A, infra at A-4. At various times, petitioner was reported in the news media as being suspected of up to nine murders, and evidence such as tire track comparisons tending to involve him in these other crimes was reported to the public from police sources. App. A, infra at A-5. None of this information was admitted in evidence against petitioner at his trial in Spotsylvania County.

Prior to and during the trial, petitioner moved to exclude from evidence the contents of the accordion case on grounds that they had been unlawfully obtained (Va. R. 51). The court granted the motion as to the handwritten account, resting its decision on the self-incrimination provisions of both the federal and Virginia constitutions, but denied the motion as to the pistol (Va. R. 88, 308). Rees v. Commonwealth, 203 Va. 850, 867, 127 S.E.2d 406, 418 (1962).

Prior to and during trial, petitioner also moved for a change of venue, as permitted by 4 Va. Code §§ 19.1-212, 19.1-224 (1960), alleging prejudice from pre-trial publicity (Va. R. 38, 93). The court denied the motion (Va. Tr. 55, Va. R. 93). In selecting a jury, the court refused to exclude from service persons who had knowledge of the case from newspapers, radio and television, even though they admitted having formed an opinion as to guilt, so long as they testified that their opinion was not "fixed" and that they could decide the case on the evidence adduced in court (e.g., see Va. Tr. 179-82, 201-04). Twenty-nine prospective jurors

conceded that their opinions were "fixed" and were accordingly disqualified (Va. Tr. 178, 184, 205, 208-09, 229, 237, 246, 251, 294, 311-13, 331-32, 337-38, 354). Although petitioner exercised all his peremptory challenges (Va. Tr. 332), 4 Va. Code § 19.1-208 (1960), there remained on the jury which decided his fate at least two persons who admitted before trial having already formed opinions as to guilt on the basis of press, radio and television reports (Va. R. 97, Va. Tr. 180-81, 201-04).

At the conclusion of the trial, petitioner's motion for a directed verdict was denied (Va. Tr. 1004-06). The jury, which had the duty of determining both the question of guilt or innocence and, if guilty, the penalty, 4 Va. Code § 19.1-291 (1960), returned a verdict of guilty with the death penalty (Va. R. 127) after deliberating less than an hour (Va. Tr. 1045, 1047, 1049-50). The court sentenced petitioner to death (Va. R. 200) and a writ of error was denied by the Supreme Court of Appeals of Virginia. Rees v. Commonwealth, 203 Va. 850, 127 S.E.2d 406 (1962). Petitioner sought a writ of certiorari in this Court but, after specially requesting that the Commonwealth of Virginia file a response to the petition (letter of February 18, 1963, No. 720, October Term, 1962), this Court denied certiorari. Rees v. Virginia, 372 U.S. 964 (1963).

F. Habeas Corpus Proceeding

Petitioner thereupon initiated the instant habeas corpus attack on his conviction in the United States District Court for the Eastern District of Virginia, alleging that the conviction was invalid on each of the federal constitutional grounds asserted in this petition for certiorari (R. 6) and seeking to enjoin his execution (R. 12). The District Court held an evidentiary hearing. In connection with his contention that he was prejudiced by publicity given to evidence not admitted at trial, petitioner subpoenaed to appear at his habeas corpus hearing the jurors who had convicted him in the state court proceeding and sought to question them to show the extent of their knowledge from pre-trial publicity of the handwritten account and other highly prejudicial evidence (Tr. 163-86, 302-03). The court refused to allow this inquiry (Tr. 177-78, 184-86) and was subsequently upheld by the Court of Appeals (Ct. App. R. 38). App. C at C-7.

Plaintiff also sought to question a neighbor of one of the jurors to show that the juror had discussed with this neighbor before trial accusations by a woman who was not permitted to testify at trial to the effect that ^{PETITIONER} plaintiff had stopped a car in which she was riding at night in a lonely rural area by forcing it off the road, and had then assaulted her (Tr. 155-59, 302-03). The court refused to allow this

inquiry (Tr. 158-59). The Court of Appeals subsequently recognized that this ruling was error but said that the error was not prejudicial because the accusations were "public knowledge" (Ct. App. R. 39). App. C at C-8.

The District Court denied petitioner's application for a writ of habeas corpus (R. 167). Petitioner appealed to the United States Court of Appeals for the Fourth Circuit, again raising all the federal constitutional questions raised in this petition for certiorari (R. 173, 183). The Court of Appeals affirmed the denial of habeas corpus by the District Court (Ct. App. R. 41). App. C at C-9.

REASONS FOR GRANTING THE WRIT

I. THIS CASE FOCUSES SHARPLY ON AN IMPORTANT ASPECT OF THE NATIONALLY RECOGNIZED PROBLEM OF PRE-TRIAL PUBLICITY AND ITS EFFECT ON FAIR TRIAL: THE PREJUDICE TO ACCUSED PERSONS FROM PUBLICATION OF INCRIMINATING INADMISSIBLE EVIDENCE

This Court is fully aware, without extended comment, of the current concern throughout the country about the effect of pre-trial publicity on the right of persons accused of crime to a fair trial. The problems caused by such publicity have recently drawn special attention from the President's Commission on the Assassination of President Kennedy, the Attorney General of the United States, the American Bar Association, the American Society of Newspaper Editors, the National Association of Broadcasters, and various state and local bar groups, state and local prosecutors' offices, organizations of representatives of news media, and writers and commentators from all over the nation.

This capital case presents the Court with a compelling occasion to speak definitively on what is, perhaps, the most important aspect of the problem. That is the prejudice to accused persons from press, radio and TV dissemination of inadmissible evidence before trial. This is an appropriate case for review because the facts show that the publicity was highly intensive and the evidence publicized was highly incriminating. The case is appropriate also because the accused did everything in his power to prevent or reduce the prejudice by moving for a change of venue or venire and by exhausting his peremptory challenges in the selection of a jury. Finally, the case is appropriate because there has been fully developed in the record the actual prejudicial publicity, as well as evidence of its dissemination in the county of trial and even evidence that it produced pre-trial opinions as to guilt among members of the jury which convicted petitioner and recommended his execution.

A. The Publicity Was Voluminous

Petitioner was tried for his life in a rural Virginia county of 13,800 persons (Ex. 7, p. 16). The District Court recognized that it was the "largest murder trial in that county in the current era, and it received all the publicity, newspapers, television people could possibly give it" (Tr. 151-52). The Court of Appeals said: "Without doubt, there was publicity aplenty...." (Ct. App. R. 34). App. C at C-6.

Petitioner has recaptured and reproduced in photostatic form a large part of that portion of the pre-trial newspaper accounts and radio and television broadcasts which referred to inadmissible evidence. These photostats fill six volumes, every page of which refers to incriminating evidence not admitted at trial (Ex. 1-6). More than 750 prejudicial references in this publicity to incriminating inadmissible information are separately cited in a six-page appendix at the end of this petition. App. A, infra.

The first section of that appendix lists no less than 120 pre-trial references to the handwritten account of the Jackson murders which was found in petitioner's accordion case. This document was never admitted in evidence against petitioner in any court proceeding. Its use in court would have violated his rights under both the fourth and fourteenth amendments to the United States Constitution. Rees v. Commonwealth, 203 Va. 850, 866, 127 S.E.2d 406, 417 (1962); United States v. Rees, 193 F. Supp. 849, 855 (D. Md. 1961). The highest court of Virginia held that its use would have violated his rights under the constitution of that state. Rees v. Commonwealth, id. at 867, 127 S.E.2d at 417-18. Yet it was so widely publicized in the county in which he was to stand trial that it is inconceivable that any person in that county qualified for jury service could have been unaware of it. The document was mentioned by the news media on at least 23 separate occasions within the ten days immediately preceding the trial. See p.9 supra.

B. The Prejudice Was Extreme

It is difficult to imagine how anything could be more incriminating than the constant pre-trial reference by news media to a document alleged to be a first-person account in petitioner's own handwriting of the commission of the very crime with which he was charged. Substantial portions of this account were quoted in the newspapers (Ex. 1, p. 4, col. 7, p. 13a, col. 2; Ex. 2, p. 5, col. 1, p. 6, col. 5; Ex. 3, p. 3a, col. 8) and broadcast verbatim on the radio (Ex. 4, pp. 37, 45a). News media declared that it "set forth in detail the last hours of the Jackson

family" (Ex. 3, p. 11, cols. 5-6), "included a disclosure of detail of the Jackson murders" (Ex. 4, p. 74a), "told of the last horror-filled hours of Mrs. Mildred Hill Jackson" (Ex. 3, p. 10a, col. 4) and "contained a description of a perverted sex act Mrs. Jackson was allegedly forced to perform" (Ex. 1, p. 21, col. 1). Three days before trial it was headlined in a front page newspaper article as a "Death Diary" (Ex. 2, p. 39, cols. 1-3). How any juror who had been exposed to such publicity could ignore it in reaching his verdict is beyond the realm of human comprehension.

The Attorney General of the United States has recently stated, in a speech introducing a statement of policy concerning the release of information relating to criminal proceedings by personnel of the Department of Justice: "The single most damaging aspect of pre-trial publicity is the publication of defendants' confessions or admissions." Speech to American Society of Newspaper Editors, Washington, D. C., Apr. 16, 1965. Yet in petitioner's case this type of evidence was not only published but repeatedly published, characterized and quoted. Moreover, it apparently first reached the news media in a press statement by a federal official (Ex. 2, p. 2, cols. 1-8), thus making this not only a constitutional case but a proper case for the exercise by this Court of its supervisory authority, as urged by the *amicus curiae*.

The prejudicial effect of publicity given to prior criminal convictions is also clear, particularly where they are similar in nature to the crime charged (See e.g., Va. Tr. 30, 246). Yet petitioner was tried for murder in a county which had been saturated with at least 400 pre-trial references to the fact that he had already been convicted of the kidnap-murders of the wife and child of his alleged victim. App. A, infra at A-3. Though this fact was inadmissible in evidence against petitioner at his trial, the District Court at his habeas corpus hearing recognized that it would be "utterly amazing" to believe that "anybody in Spotsylvania County" had not read about the prior conviction, saying, "It is just inconceivable to me that the people of that county are so illiterate they did not know that to be a fact" (Tr. 113). He even made a specific finding that the prior conviction was "common knowledge" in the county (Tr. 153).

The publicity about the prior proceeding was not confined to the mere fact of petitioner's conviction. The news media in Spotsylvania County actually publicized the deliberations of the federal jury which convicted petitioner in the earlier case, as reenacted by the jurors themselves on a Baltimore television program. (See, e.g., Ex. 2, p. 26, col. 1, p. 26a, cols. 2-6). These news accounts brought to the people of the county the prejudicial information that the

jurors in the first trial had reached a unanimous verdict of guilty within the first 20 or 25 minutes of their deliberations, and that all but three had actually been in favor of the death penalty but had eventually yielded to the wishes of the minority in sparing petitioner's life (Ex. 1, p. 37a, cols. 2-3). Verbatim quotations from the jurors' discussion about imposition of the death penalty were reported in newspapers circulating in Spotsylvania County (Ex. 1, p. 37a, cols. 1-3; Ex. 2, p. 26, col. 1), but were heavily weighted in favor of death since the juror who had led the fight against it and a second member of the minority had not appeared on the TV program (Ex. 1, p. 37a, col. 3).

The people of Spotsylvania County were also informed by the news media, time and again, that petitioner was suspected of up to nine other murders. App. A, infra at A-5. Wide publicity was given to statements of a woman who claimed that petitioner had abducted her, forced her to undress, and made a perverted sexual assault on her. App. A, infra at A-4. Petitioner was able to offer, at his habeas corpus hearing, evidence that one of the jurors who decided his case had actually discussed these accusations with a neighbor in advance of trial (Tr. 158-59, 301-03). The Court of Appeals held it was error for the District Court to have excluded this evidence, but said the error was not prejudicial for the remarkable reason that the accusations were "public knowledge" in the county (Ct. App. R. 39). App. C at C-8. The accusations of this woman were not admitted in evidence against petitioner at his trial.

Thus publicized, the various items of incriminating information were even more damaging to petitioner than if they had been admitted in evidence at trial, for he had not even the opportunity to attack them by cross-examination and rebuttal.

The jury in this case was asked to decide two questions--whether petitioner was guilty or innocent and, if guilty, whether he would live or die. Petitioner was entitled to have both questions decided free from the extraneous influence of prejudicial pre-trial publicity. Considering the nature of the information publicized, the greater prejudice may well have been on the second question, the determination of whether or not to take his life.

C. The Record Is Complete

Petitioner has no way of knowing why this Court specially requested the Commonwealth of Virginia to file a response to his petition for certiorari to review the state court conviction and then, after the response was filed, denied

review. Letter of Feb. 8, 1963, No. 720, Oct. Term, 1962. However, the response of the Commonwealth in that case claimed that the record was deficient in that the publicity had merely been cited but not reproduced and offered in evidence. Br., pp. 2, 19. If that is the reason certiorari was then denied, the defect has now been corrected.

The record is now complete with photostatic reproductions not only of the many newspaper articles but of hundreds of scripts of radio and television news broadcasts which made reference to incriminating inadmissible evidence. These reproductions are conveniently bound in six volumes (Ex. 1-6) and are cited with pertinent quotes in appendix A to this petition. The exhibits include material from all three of the daily newspapers circulating in Spotsylvania County (R. 48-49, ¶¶ 2, 4, 6; R. 75-76, ¶¶ 2, 4, 6), from three television stations providing service to all or large parts of the county (R. 91), and from the radio station with the greatest coverage of the county (R. 90). Not included is material from the two local radio stations broadcasting nearest the scene of the trial, which undoubtedly produced considerable additional publicity but did not retain their news scripts (Tr. 105). The record contains circulation figures in the county of trial for the newspapers (R. 136) and engineering reports showing the broadcast coverage of the radio and television stations in the county of trial (R. 87-88, ¶¶ 21, 22; R. 90, 91). It even shows the number and percentage of homes in the county with radios and television sets (Ex. 8, p. 104).

It is not open to question on this record whether the jurors were actually reached by the publicity. The prospective jurors were examined on voir dire in panels of ten, and repeatedly there were acknowledgments from them, either singly or by group, that they had seen and heard the pre-trial newspaper, radio and television reports of the case (Va. Tr. 178, 180-81, 183, 193, 204, 207-08, 224, 228, 237, 246, 253, 276, 293, 310, 325, 337-38, 352). On no occasion did even a single venireman profess to have no knowledge about the case. This is hardly surprising, not only because of the voluminous publicity and the intense interest in the trial throughout the county, but also because the veniremen had been selected and their names published in the newspaper ten days before trial (Ex. 1, p. 70), thus assuring their active interest in the proceedings if such interest were possibly theretofore lacking. It was during these ten days that the court rendered its decision excluding from evidence the handwritten account of the crime (Va. Tr. 154, 156) and the news media nevertheless exhaustively publicized the fact that such an account had

been excluded, with such colorful characterizations as "Death Diary." See p. 9 supra.

Though the transcript of voir dire does not always make clear the names of all veniremen acknowledging by group that they had seen and heard pre-trial publicity about the case (see, e.g., Va. Tr. 183, 276), it is indisputably clear that at least four of them were persons ultimately selected to sit on petitioner's jury (Va. R. 97; Va. Tr. 178, 180-81, 201-04, 325). Two of these jurors expressly admitted having already formed opinions as to petitioner's guilt based on the pre-trial publicity (Va. Tr. 180-81, 201-04).

The record shows that the jury panel was selected only after petitioner had exhausted his peremptory challenges (Va. Tr. 332). 4 Va. Code § 19.1-208 (1960). It also shows that petitioner tried, unsuccessfully, both before and during trial, to avoid or reduce the prejudice from pre-trial publicity by motions for change of venue or venire (Va. R. 38, 93; Va. Tr. 55).

D. The Decision of the Court of Appeals Is in Conflict with
An En Banc Decision of Another Circuit Court and with
Applicable Decisions of This Court

In holding that petitioner's requests for a change of venue or venire were properly denied, the Court of Appeals said:

"A change of venue or venire would have been of no aid whatsoever. Obviously, the same broadcasts and telecasts heard and seen in the county of trial would extend over the State generally. Press stories had nearly the same circulation everywhere in Virginia as they did in Spotsylvania County" (Ct. App. R. 34). App. C at C-6.

This language of the Court of Appeals distorts the constitutional requirement of "fair trial" into one of the "best trial obtainable." Petitioner is not entitled merely to the best trial obtainable. He is entitled to a fair trial. If Virginia cannot provide him with such a trial under its existing laws and the practices which it permits of news media as to the pre-trial dissemination of incriminating inadmissible information, then it cannot constitutionally deprive him of his life.

United States ex rel. Bloeth v. Denno

Moreover, the fact is that petitioner did not even have the best trial obtainable. The conclusion of the Fourth Circuit that a change of venue to

another part of the state would have been of "no aid whatsoever" is unsupported by any evidence whatever in the record; and it is in conflict with an exactly opposite conclusion by another Court of Appeals, sitting en banc in a similar case. See United States ex rel. Bloeth v. Denno, 313 F.2d 364, 373 (2d Cir.), cert. denied, 372 U.S. 978 (1963):

"Either a metropolitan county or a rural county at some distance, without the intense local interest and intense local press coverage would undoubtedly provide a much higher percentage of talesmen uncontaminated by improper publicity."

There are several Virginia counties in the southwestern part of the state which are located as far away from Spotsylvania County as 300 miles--farther than New York City. There is simply not a shred of evidence in the record to support the unwarranted assumption by the Court of Appeals that there was just as much publicity throughout Virginia as in Spotsylvania County. All of the evidence in the record relates to Spotsylvania County and its immediate environs (R. 85-91). In fact, the record indicates that publicity decreased in intensity as the distance from Spotsylvania County became greater. Compare the quantity of prejudicial publicity in the Fredericksburg newspaper (Ex. 1; Va. R. 41-42) with the considerably lesser quantity in newspapers published only fifty miles away (Exs. 2 and 3).

Furthermore, as the Second Circuit recognized in the Bloeth case, the prejudicial effects of pre-trial publicity could have been reduced by a change of venue from a rural to a metropolitan county. In a metropolitan jurisdiction, a notorious trial must at least compete for public attention with a number of other matters of community interest; and the jurors are subject to less pressure to return a verdict consistent with community opinion, which is not based on evidence admitted in court but on all information generally available to the people of the community through the news media.

There are a number of metropolitan jurisdictions in Virginia, including several which are part of the Washington, D.C., urban area of over two million persons. The fact that in petitioner's earlier trial in Baltimore the jury spared his life notwithstanding intensive pre-trial publicity given to inadmissible information indicates that the prejudicial effects of such publicity could have been reduced by trial in a metropolitan area. The prejudice would, of course, be even further reduced by re-trial at the present date by reason of the intervening passage of time.

Irvin v. Dowd

The decision of the Fourth Circuit in this case is in conflict, not only with the en banc decision of the Second Circuit in Bloeth, but also with recent decisions of this Court dealing with pre-trial publicity. In Irvin v. Dowd, 366 U.S. 717 (1961), this Court set aside a state court conviction for murder because of extraordinary pre-trial publicity. The only reference by the Court of Appeals to that case is to a certain dictum to the effect that a juror need not be totally ignorant of the facts and issues involved in a case (Ct. App. R. 36). App. C at C-6. Much more pertinent is the language of this Court which immediately preceded that dictum: "The theory of the law is that a juror who has formed an opinion cannot be impartial." Id. at 722.

The facts in Irvin are in many respects strikingly similar to those in the instant case. The accused was tried in a small community in which there was intense local interest and had been voluminous pre-trial publicity. The publicity included extensive reference to evidence which was not admitted at trial, including information that the accused had confessed to the murder with which he was charged, that he was suspected of other murders, that he had a record of previous convictions and that he had committed other crimes which were similar in modus operandi to the crime charged. A large number of prospective jurors was excused because they admitted that their opinions as to guilt were fixed. The accused exhausted his peremptory challenges but there remained on the panel which convicted him jurors who entertained opinions as to guilt which they testified they could put aside. Each of these facts has a close parallel in the facts of the instant case.

It is true that in Irvin there was the added element of open hostility toward the accused by the people of the county. There was also hostility toward petitioner in the instant case. See, e.g., the editorial which appeared after he was spared the death penalty in Maryland entitled "Try Him in Virginia!" (Ex. 3, p. 15). However, the principal prejudice reflected in this case and the principal focus of this petition for certiorari is the intensely incriminating nature of the evidence not admitted at trial and the exhaustiveness with which it was publicized again and again before trial.

Rideau v. Louisiana

The case of Rideau v. Louisiana, 373 U.S. 723 (1963), makes clear that the constitutional requirement of due process is violated by pre-trial publicity of a highly incriminating nature even where there is no showing of

general bitterness or hostility toward the accused. The decision of the Court of Appeals in the instant case is in direct conflict with the Rideau decision, which was urged upon it in petitioner's briefs but was not even cited in the court's opinion.

In Rideau, this Court set aside a state murder conviction in Louisiana because a confession of the accused was televised in the parish of trial soon after the arrest. In reaching this result, the Court nowhere mentioned any evidence of community bitterness or hostility toward the accused. Undoubtedly there was such bitterness, for the accused, like the petitioner in this case, was charged with a brutal and hideous crime. See State v. Rideau, 242 La. 431, 439, 137 So.2d 283, 286 (1962). However, the decision turned solely on the fact that the accused was tried before a jury which had been exposed before trial to publicity of a highly incriminating nature. That is also the touchstone of this case.

The prejudice in the instant case was actually far more extreme than in Rideau. There was no showing in Rideau that the fact of the accused's confession was inadmissible in evidence. In this case, the "confession" which was publicized was inadmissible. In Rideau, the confession was televised on three occasions. In this case, the people of the county of trial were informed on at least 120 occasions, in the newspapers and on radio as well as on television, that petitioner had set down the details of the very crime with which he was charged in a first-person account in his own handwriting.

The decision of the Court of Appeals in the instant case is in effect a holding that no matter how prejudicial and pervasive the pre-trial publicity, a defendant's right to "fair trial" is satisfied if the jurors testify that they can put aside opinions already formed and decide the case solely on evidence presented in court (Ct. App. R. 36). App. C at C-6. However, in both Irvin and Rideau this Court voided the state court convictions notwithstanding similar assurances by the jurors. See Irvin v. Dowd, 366 U.S. 717, 724 (1961); Rideau v. Louisiana, No. 630, Oct. 1962 Term, R. 366. It is totally unrealistic to assume that jurors can accurately assess their own ability to avoid the subconscious influence of information as incriminating as that disclosed by the record in this case. Especially is this so since, at the time they are asked to make this assessment, they are unlikely to be aware of how much of the incriminating information already known to them they will be asked to ignore. Especially is it so when, as in this case, they are called upon at trial to make a decision as unguided by legal criteria and as susceptible to emotional influence as the determination of whether or not the death penalty shall be imposed. For petitioner in this case, and surely for others in future cases, the principles of

Irvin and Rideau will be meaningless if this Court refuses review and allows the decision of the Fourth Circuit to stand.

II. IN REFUSING TO APPLY THE FOURTH AMENDMENT GUARANTEE TO PERSONAL EFFECTS SECURED BY THE OWNER IN A CLOSED AND LOCKED CONTAINER, AND IN PERMITTING ONE NOT THE OWNER TO WAIVE THE OWNER'S FOURTH AMENDMENT RIGHT WITHOUT AUTHORITY FROM THE OWNER, THE COURT OF APPEALS RULED ON A CONSTITUTIONAL QUESTION OF WIDE APPLICABILITY IN A WAY WHICH CONFLICTS WITH RULINGS OF OTHER CIRCUITS AND WITH A RECENT DECISION OF THIS COURT

At stake in this case is a principle of wide applicability--the right of a person to secure his belongings against governmental search elsewhere than on his own person or premises. The facts show that the police searched a closed container belonging to petitioner which he had attempted to make secure and had placed on the premises of another, where he had been given the right to place it. It is undisputed that the police had neither petitioner's permission to make the search nor a warrant issued upon probable cause. Their forcible entry of the container must be justified, if it is justifiable at all, on the basis of the consent of the person having possession, though he disclaimed ownership either of the container or its contents.

Similar questions of search and seizure may arise frequently--for example, wherever suitcases are deposited with hotels or airlines or placed in someone else's car, where boxes are stored in warehouses, briefcases left in checkrooms, and packages sent by express. The same principles apply wherever personal property is kept in desks or lockers at places of employment, or where, as here, it is placed in trunks and other containers and stored in the cellars and attics of relatives.

A. The Decision Conflicts with Decisions of Other Circuits

Petitioner has developed the history of the enactment of the fourth amendment at considerable length in his briefs in the lower courts (e.g., see R. 56-60). He has demonstrated that the amendment was born primarily of reaction against searches for uncustomed goods in commerce, and that it was enacted to curtail not only unreasonable searches of dwellings but also the breaking open of boxes, chests and trunks, wherever they might be found.

One of the earliest cases interpreting the fourth amendment in this Court applied its protection to letters and sealed packages in the mails, where the owner had evidenced his clear intent not to allow opening and inspection by the use of first class postage. Ex parte Jackson, 96 U.S. 727, 733 (1877). See also Oliver v. United States, 239 F.2d 818 (8th Cir. 1957).

Several federal circuits have recognized that in other situations also the fourth amendment protects from warrantless searches one who has evidenced a clear intent to make his property secure other than on his own person or premises. See Holzhey v. United States, 223 F.2d 823 (5th Cir. 1955) (locked cabinet); Sartain v. United States, 303 F.2d 859 (9th Cir.), cert. denied, 371 U.S. 894 (1962) (locked briefcase); United States v. Blok, 88 App. D.C. 326, 188 F.2d 1019 (1951) (desk drawer). These cases in the Fifth, Ninth and District of Columbia Circuits have developed a body of law with which the instant case from the Fourth Circuit is squarely in conflict.

It is impossible to make a meaningful distinction between the instant case and Holzhey v. United States. In the Holzhey case, F.B.I. agents, suspecting a woman of theft, called on her son-in-law and daughter and obtained their written permission to search their residence. In the downstairs garage, they found a locked cabinet which the daughter said she knew nothing about. The agents broke the lock and seized from the cabinet evidence which was later admitted at the trial of the accused, who owned and had locked the cabinet. The Court of Appeals held that the search of the locked cabinet was prohibited by the fourth amendment and the evidence seized therefrom should not have been admitted.

The rule developed in Holzhey and the other two cases cited is that the person in possession of a secured container is competent to consent to search of the container only if he has been authorized to do so by the owner. Where the container has been secured by a lock, the ordinary means of granting authority to enter is by delivery of a key.

The rule is best illustrated by comparing Holzhey with Sartain v. United States, 303 F.2d 859 (9th Cir.), cert. denied, 371 U.S. 894 (1962), in which the Ninth Circuit upheld the search of a locked briefcase. The briefcase had been delivered by the accused to a friend, accompanied by a key to the lock. After the arrest of the accused, the friend sent the briefcase to the police with the request that they open it. The police had to cut the briefcase to open it since the key had somehow become misplaced, but in holding the search constitutional the court emphasized the delivery of the key to the friend as a surrender by the accused of his right of privacy:

"Here we have a situation where a defendant delivers his briefcase and the means of access to it to another, thereby voluntarily surrendering to a large degree his right of privacy." Id. at 862-63. (Emphasis added.)

In fact, the Sartain court expressly distinguished Holzhey on the ground that there the person who consented to the search had not been given a key:

"In Holzhey, unlike the instant case, the defendant had never given the means of access to her possessions to another...."
Id. at 863.

These two cases from the Fifth and Ninth Circuits hold unequivocally that where personal property has been secured in a container placed in the custody of another, a search of the container may constitutionally be based upon the consent of the person in possession only if he has been given authority to enter the container by the owner, as by delivery of a key.

This was even the law in the Fourth Circuit until the instant case. In United States v. Eldridge, 302 F.2d 463 (4th Cir. 1962), that court upheld the legality of a police search of the locked trunk of a car which the accused had loaned to a friend. The search was made without the permission of the accused but with the permission of his friend, who allowed access to the trunk by use of a key which the accused had given him with the car. The court made its decision turn on the fact that in permitting the police to search the trunk of the car the friend was not acting "inconsistent with its entrustment to him." Id. at 466. Placing emphasis on the delivery of the key, the opinion said:

"He reserved no exclusive right of privacy in respect to the trunk when he delivered the key. In responding as he did to the police, Nethercott [the friend] did not exceed the authority Eldridge had seemingly given him." Ibid.

One other Circuit has applied the fourth amendment to property secured other than on one's own person or premises. In United States v. Blok, 88 App. D.C. 326, 188 F.2d 1019 (1951), the District of Columbia Circuit held unconstitutional a police search of the desk of the accused at work notwithstanding the consent to search of her official superior who was in charge of the office. It is noteworthy that in Blok the desk was not even locked, but the right of privacy of the accused as to its contents was nonetheless recognized.

In summary: the history of the fourth amendment, the Jackson case in this Court and the various cases cited in the federal circuits all make clear the applicability of the fourth amendment to property which one has secured other than on his own person or premises. Prior to the instant case in the Fourth Circuit, three other federal circuits had dealt with the constitutionality of such searches where the police relied on permission to search given by the person in whose possession the secured property was placed. All three adhered to the principle that the search was valid only if the owner had authorized the person in possession to enter. Where the property was secured in a container under lock and key, this was held to require delivery of the key. The instant case from the Fourth Circuit stands alone in upholding such a search in the absence of any act by the owner authorizing entry.

B. The Decision Conflicts with Stoner v. California

In Stoner v. California, 376 U.S. 483 (1964), this Court emphasized that fourth amendment rights are personal and not subject to waiver by another unless authority is given. The decision held that the search of a petitioner's hotel room could not be based on the consent of a night clerk who was in charge of the premises when the police arrived:

"It is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk's nor the hotel's. It was a right, therefore, which only the petitioner could waive by word or deed, either directly or through an agent." Id. at 489. (Emphasis added.)

This Court thus enunciated the very same principle which has been developed in cases relating to property secured in closed containers by the lower federal courts. It pointed out that unless the petitioner by some word or deed empowered the person from whom the police obtained consent to waive his fourth amendment rights, there could be no valid waiver.

Moreover, this Court made clear in Stoner that there must be actual and not merely apparent authority. It is not enough that the police may have a reasonable basis for belief that the person from whom they obtain consent has authority:

"Nor is there any substance to the claim that the search was reasonable because the police, relying upon the night clerk's expressions of consent, had a reasonable basis for the belief that the clerk had authority to consent to the search. Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority.'" Id. at 488.

Petitioner did absolutely nothing in the instant case to authorize his father to waive his fourth amendment rights as to the contents of the accordion case. In fact, everything he did was completely inconsistent with an intent to surrender in any degree his right of privacy. He put a hasp and padlock on the case (Va. Tr. 151) and stored it in an area of his parents' house to which access was difficult and infrequent (Va. Tr. 66-67, 131). He kept a key to the padlock with him (Va. Tr. 151) and did not leave a key with the case (Va. Tr. 110) or with his parents (Tr. 76-77). He did not give his parents permission to enter the case (Tr. 77) nor did he even mention the case to them (Tr. 72). This was entirely consistent with the understanding between him and his parents, under which he had permission to use their house (R. 72), including this particular area in the house (Tr. 73), for the storage of personal belongings without informing them of each individual item so stored (Tr. 76). If the

absence of authority is not abundantly clear from the manner in which the petitioner stored the case, the very nature of the contents of the case (Va. Tr. 155) must negate any willingness on petitioner's part that his parents have access.

The basic fallacy in the approach of the court below to the search of the accordion case is that it views the search from the standpoint of the police rather than from the standpoint of petitioner, the person whose constitutional right was at stake. This is contrary to the command of Stoner, which looks not to appearances of authority but to actual authority stemming from the one whose right is claimed to have been waived. There can be no doubt that petitioner never gave any such authority, yet his fourth amendment right was held by the court below to have been effectively waived.

C. Police Reliance on a Waiver by Petitioner's Father
Was Unreasonable

Even if the search be viewed from the standpoint of the police, however, it is clear that they acted unreasonably. They were at the house of petitioner's parents as a result of petitioner's arrest (Va. Tr. 74), because they knew that petitioner "had lived there from time to time" (Md. Tr. 968), and because they were "trying to locate and look for items on the theory that there might be something there belonging to Melvin Davis Rees, Jr." (Va. Tr. 119). The case was found by ransacking the attic, which contained numerous family articles, some of which bore petitioner's name and were found in the same general area of the house before they came upon the accordion case (Md. Tr. 1005, 1020).

Even though the police admitted that they "were interested in this case on the theory that it might be Mr. Rees, Jr.'s" (Va. Tr. 95), and petitioner was in their custody (Tr. 210) and therefore readily accessible, they made no effort to contact him (Md. Tr. 980). Even though the accordion case was tagged with the name, address and telephone number of Dennis J. Werber (Va. Tr. 67), the police made no effort to contact Mr. Werber (Va. Tr. 77). Had they done so, of course, they would quickly have verified that the case was petitioner's (Va. Tr. 827-29).

Instead, the police proceeded to break open the case in sole reliance on the consent of the one person to whom they knew it did not belong, petitioner's father (Va. Tr. 117-18). It strains belief to seek to attempt to justify this action, as did the court below, on the ground that the case was evidently put in the attic by "someone" without the knowledge of the occupants of the house (Ct. App. R. 33), and that it "could well have been abandoned personalty" (Ct. App. R. 34).

The difficulty of access to the attic storage area (Va. Tr. 97-99) made it perfectly obvious that it was not deposited there by a stranger. The police knew before they broke into the case that petitioner's father had lived in the house at least fifteen years (Va. Tr. 67), so the new and shiny appearance of the brass hardware on the hasp (Md. Tr. 1013) made it equally obvious that the case had not been left there by a previous occupant. Indeed, the only reasonable belief was that the case had been put there by a member of the household, and petitioner was the member of the household who was the object of the search.

The seizure was even more clearly invalid than the search. As soon as the case was opened, any doubt as to its ownership was removed. The agent in charge, who was well aware that petitioner was a musician (Va. Tr. 93; Md. Tr. 978-79), testified: "When it was opened I observed it had a red plush lining, top and bottom, and I felt around to see if there were pockets to contain toilet articles, and such. I found none, and I then concluded it was some type of musical case" (Va. Tr. 81). Nevertheless, without then seeking either a warrant or the consent of petitioner, the agent proceeded to seize the pistol which was in the case on the basis of the consent of petitioner's father, to whom he gave a receipt (Va. Tr. 69), though petitioner's father acknowledged that the pistol was not his (Md. Tr. 952; Va. Tr. 68).

III. IN HOLDING UNDER THE FACTS IN THIS CASE THAT THE CONSENT OF PETITIONER'S FATHER TO SEARCH OF THE HOUSE WAS NOT THE PRODUCT OF "IMPLIED COERCION," THE COURT OF APPEALS MATERIALLY DEPARTED FROM THE LEGAL STANDARD ESTABLISHED BY THIS COURT AND BY THE COURTS OF APPEALS OF OTHER CIRCUITS

Regardless of the resolution of the constitutional question presented at the hasp of petitioner's locked accordion case, a separate constitutional question was presented at the threshold of his parents' house. That is the issue of "implied coercion." Petitioner's father was not competent to waive the constitutional right against government search of the accordion case, because the right was not his. He was competent to waive the right against search of the house, but the waiver he gave was constitutionally ineffective. That is so because of the psychological coercion which was implicit in the circumstances. Although the coercion operated against petitioner's father and not against petitioner, the standing of petitioner to raise the question of constitutionality of the search of the house is clear since it was his property that was ultimately seized, United States v. Jeffers, 342 U.S. 48, 54 (1951), and it was he against whom the search was directed. Jones v. United States, 362 U.S. 257, 261 (1960).

This court has held that it will "indulge every presumption against waiver of fundamental constitutional rights." Emspak v. United States, 349 U.S. 190, 198 (1955). Where the fundamental constitutional right against official entry of a private home without a warrant is involved, this has resulted in minimal legal requirements to constitute "coercion."

The leading case is Amos v. United States, 255 U.S. 313, 315 (1921), in which federal officers went to the home of a suspect "and, not finding him there, but finding a woman who said she was his wife, told her that they were revenue officers and had come to search the premises 'for violations of the revenue law'; that thereupon the woman opened the door and the witnesses entered." Notwithstanding the relatively mild conduct of the searching officers, it was held that no valid waiver of the constitutional protection against search and seizure had taken place. This Court considered it "perfectly clear that under the implied coercion here presented, no such waiver was intended or effected." Id. at 317.

In Johnson v. United States, 333 U.S. 10, 12 (1948), police officers knocked on the door of a hotel room occupied by the accused. When the accused asked who was there, one of the officers said: "Lieutenant Belland. I want to talk to you a little bit." The accused then "stepped back acquiescently and admitted us." The Court found implied coercion.

Following the lead of Amos and Johnson in this Court, numerous cases in the lower federal courts have held "consents" to police search to have been vitiated by implied coercion where the police pressure was purely psychological and not physical. See, e.g., Pekar v. United States, 315 F.2d 319 (5th Cir. 1963); Channel v. United States, 285 F.2d 217 (9th Cir. 1960); United States v. Roberts, 179 F. Supp. 478 (D.D.C. 1959); Higgins v. United States, 93 App. D.C. 340, 209 F.2d 819 (1954).

There is good reason, of course, for the minimal standards for implied coercion. The ordinary way for the police to gain entrance to a private home to look for evidence of crime is by obtaining a search warrant, based upon a showing before an independent judicial officer of probable cause. Where the police seek to circumvent this constitutional requirement and rely on the consent of the householder, it must be absolutely clear that the consent is freely, intelligently and deliberately given, under no compulsion whatever, either directly from the officers themselves or indirectly from the force of circumstances.

In the instant case, the circumstances which bore down on petitioner's father make it perfectly clear that he did not exercise, and was unable to exercise, the calm, dispassionate and deliberate judgment which the law requires for an

effective waiver of constitutional rights. The following basic facts are either uncontradicted on the record or supported by evidentiary findings in the memorandum opinion of the District Court:

1. The police deliberately timed their request for consent to search to coincide with first revelation to petitioner's parents of their son's arrest for murder (Tr. 211-12). It is obvious that there was nothing to have barred their seeking permission on any prior or subsequent day, under calmer and less emotional circumstances. They purposely chose the point of maximum emotional impact.

2. There was in fact a severe emotional impact. According to a neighbor, whose testimony was not questioned by the District Court (Tr. 38) and was even quoted by that court in its memorandum opinion (R.163), petitioner's father was so shaken by the news of his son's arrest that he had to be "supported on either side by his elbows, by both the F.B.I. men, one on one side and one on the other, and he was as white as a sheet." App. B at B-8.

3. Petitioner's father actually had an amnesic lapse concerning his initial confrontation by the police in the neighbor's house (Tr. 63-64). Though it is now clear that he was in the neighbor's house (Tr. 182-83), he did not recall this at all and consequently petitioner's counsel was unaware through two capital trials of the extent of the emotional impact of the first confrontation, until the neighbor was interviewed shortly before the habeas corpus hearing (Tr. 39). See p.5 supra.

4. The police conducted petitioner's father from the neighbor's house to his own house by a rear door (Tr. 58) because, in their own words, "we wanted to avoid contact with anyone else at that time" (Tr. 224; see also Tr. 209).

5. When the police presented petitioner's father in his own house with a written form for consent to search and asked that he sign, he deferred action for approximately an hour (Tr. 231-32).

6. When consent was not immediately forthcoming, the police did not leave so petitioner's father could reflect on their request free from the influence of their presence. Instead, they stayed and while they stayed they maintained the emotional upheaval by interrogating him in detail about his son (Tr. 232).

7. When petitioner's mother appeared and was told of her son's arrest, according to police testimony she was "visibly affected" (Md. Tr. 940) and took the news with "apparent shock" (Tr. 215). In this emotion-charged atmosphere, the police renewed their request for a waiver of constitutional rights.

8. Before signing the consent form, according to the testimony of the police themselves, petitioner's father raised the question of whether he ought to do so without consulting an attorney (Tr. 232-33). At this critical point, the police subtly and skillfully persuaded him not to contact an attorney by suggesting that if he had nothing in the house which would connect his son with a murder he had no need for legal counsel (Md. Tr. 964-65; Tr. 233).

9. As a matter of fact, both of petitioner's parents were under a misapprehension as to their constitutional rights which an attorney's advice could have corrected. Both believed that if they did not consent to the search the police would merely get a search warrant and make the search anyway (Tr. 96, 98; Va. Tr. 140). They were unaware of the requirement of probable cause. Moreover, the police had no probable cause (Tr. 217) and hence were completely dependent upon the consent of petitioner's parents. They admitted that they never told petitioner's parents this (Tr. 234-35). Even the consent form which they prepared informed petitioner's father only of his right not to have a search made "without a search warrant" (Md. Tr. 942). App. C at C-4. Petitioner's father knew when he signed the form that he could defer the search, but he did not know he could prevent it. He waived a right he never knew he had. His understanding was best summed up in the following words (Tr. 66):

"I didn't know, being unfamiliar with these matters -- I didn't know what they could do, but in my own mind I felt that the F.B.I. could do almost anything they wanted to do, and Mr. Jahn gave me to believe that it was just a routine matter, and I felt if I didn't sign that they could get a warrant anyway."

This typical layman's reaction to police authority is, of course, the very reason for the minimal requirements for implied coercion. The holding of the Court of Appeals that the startling and oppressive circumstances under which the "consent" was obtained in this case did not amount to "implied coercion" undermines the protection which the decisions of this Court and the lower federal courts have heretofore afforded against police circumvention of the fourth amendment guarantee.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

PRE-TRIAL NEWS REFERENCES IN SPOTSYLVANIA COUNTY TO FIRST PERSON HANDWRITTEN ACCOUNT OF JACKSON MURDERS FOUND IN PETITIONER'S ACCORDION CASE

Exhibit 1. P. 2, col. 5 ("U.S. Commissioner H. Allen Mergzer said Rees was linked with the Jackson murders by a picture and note [T]he note, allegedly written by Rees, contained a description of the final journey of Mrs. Jackson and Susan"); p. 3a, col. 4 ("The writing was reported by a U.S. commissioner to have been found in a search of Rees's home. Its contents have been called obscene and depraved"); p. 4, cols. 6-8 ("Handwritten Note Describes Attack on Jackson Family," "Writing Seen Similar to That of Davis Rees"--headlines on front page lead story containing quotations from written account); p. 5, cols. 1-2; p. 6a, col. 2 ("contains an obscene account of the family's abduction and of sexual perversion on Mrs. Jackson before she was killed"); p. 7a, col. 4; p. 8a, col. 4; p. 9, col. 1; p. 10a, cols. 4-5; p. 13a, col. 2 (quotations from the account); p. 15, col. 2; p. 16, cols. 3-4, 8; p. 16a, col. 8; p. 18, cols. 6, 8; p. 19, col. 7; p. 21, col. 1 ("contained a description of a perverted sex act Mrs. Jackson was allegedly forced to perform"); p. 22a, col. 3; p. 23, col. 5 ("an account of the family slayings which prosecutors were prepared to show was in Rees's handwriting"); p. 24a, col. 8; p. 36a, cols. 4-5; p. 64, cols. 1-3; p. 64a, col. 5; p. 67, col. 8; p. 67a, col. 5; p. 68, cols. 1-3; p. 69, col. 6; p. 69a, col. 5; p. 70, col. 5; p. 71, col. 3; p. 73, col. 7; p. 74, col. 1 ("Rees Papers Are Excluded from Trial"--headline on front page story four days before selection of jury referring to "personal papers seized from the Hyattsville home of Melvin Davis Rees Jr., including a handwritten account of the Jackson slayings"); p. 74a, col. 3; p. 75, cols. 1-3 ("an account in Rees' handwriting"--front page story three days before jury selection).

Exhibit 2: P. 2, cols. 1-8 ("Rees Wrote Jackson Killing Account Found in Home, Authorities Disclose: Dated Prior To Finding of 2 Bodies"--front page lead headline on story attributing information to press statement by U.S. Commissioner); p. 3, cols. 1-5 ("FBI Claims Rees Wrote Account of Murders"); p. 4, col. 2; p. 5, cols. 1-8 ("Rees Indicted, Note Is Divulged"--headline on front page lead story containing detailed quotations from account); p. 6, cols. 3, 6 ("authorities said the handwriting has been identified as matching the suspect's"); p. 7, col. 1; p. 8, cols. 3-4; p. 10, col. 5 ("handwritten account purporting to describe the final journey of Mrs. Jackson and Susan"); p. 12, col.

3; p. 14, col. 3; p. 15, cols. 2-3; p. 17, cols. 1-2; p. 36, col. 1; p. 37, col. 1; p. 39, cols. 1-3 ("Virginia Court Bars 'Death Diary' From Rees Trial in Jackson Slaying"--headline on front page story three days before selection of jury).

Exhibit 3: P. 1, cols. 5-8 ("Rees Note on Slayings Discovered, FBI Says"--front page lead headline on story attributing information to press statement by U.S. Commissioner, reported to have "said the account was dated two months before the bodies of the victims were found"); p. 1a, cols. 1-2 ("FBI Says It Found Rees Note Telling of Jackson Slayings"); p. 2a, cols. 7-8; p. 3a, col. 8 (detailed quotations from the account); p. 4, col. 8; p. 5, col. 1; p. 6, col. 3 ("an obscene account of the slayings, in Rees' handwriting"); p. 6a, col. 3; p. 7, col. 3; p. 9, col. 1; p. 9a, col. 1; p. 10, cols. 2-3; p. 10a, col. 2 ("it told of the last horror-filled hours of Mrs. Mildred Hill Jackson, 27, and her daughter, Susan Ann, 5"); p. 11, cols. 5-6 ("set forth in detail the last hours of the Jackson family"); p. 42, cols. 1-3 ("The state had hoped to use the account to help establish a sexual motive for the kidnapping of the four-member Louisa county family"--newspaper story three days before jury selection).

Exhibit 4: Pp. 12 ("The top news story in Virginia today is the solving of the Carroll Vernon Jackson murder The F.B.I. says they have a handwritten account of the last hours of the lives of the four members of the Jackson family, written, according to the F.B.I., by Rees"); 14 ("A U.S. Commissioner ... said the account was dated two months before the bodies of Mrs. Carroll Vernon Jackson and one of her daughters were found said the diary was in the handwriting of Rees"); 15, 16, 23a, 25, 28, 29, 37 ("Police sources today reported contents of a diary-type account of the 1959 murder," followed by detailed quotations from the account); 38 ("Baltimore police have released portions of a lurid written account ... which they say is in the handwriting of Melvin Davis Rees Junior"), 45, 45a (detailed quotations from the account), 74a ("Rees' writings ... which included a disclosure of detail of the Jackson murders"), 82, 83, 84, 85, 90, 91, 92, 93, 94, 95, 96, 97.

Exhibit 5: Pp. 274, 278, 279, 281 ("The prosecution has said the papers purport to be a handwritten account of the final hours of Jackson"--radio broadcast four days before jury selection); 282, 283, 284, 285, 286 ("ruled today a purported handwritten account of the final hours of a Virginia family of four could not be used as evidence in the murder trial next week of jazz musician Melvin Davis Rees"), 287, 288.

Exhibit 6: Pp. 1, 2, 3, 4, 5 ("Today, Baltimore authorities disclosed the contents of a diary"), 41, 43, 44 ("a so-called death diary belonging to Hyattsville musician Melvin Rees, Junior ... which allegedly contains the gory details of the murders"--telecast three days before jury selection), 51, 54, 58a, 59, 59a, 60, 105, 107 ("may not introduce personal papers, purportedly including a handwritten account of the last hours of the four members of the Jackson family"--telecast four days before jury selection), 108a, 109a, 111 ("a detailed diary which allegedly describes the kidnapping and murder"), 113 ("Baltimore police have released portions of a lurid written account of the kidnapping and slaying"), 140, 141.

PRE-TRIAL NEWS REFERENCES IN SPOTSYLVANIA COUNTY TO
PETITIONER'S PRIOR CRIMINAL CONVICTION

Exhibit 1: P. 25, cols. 1-8; p. 25a, cols. 4-5; p. 26, col. 7; p. 27, col. 7; p. 28, col. 7; p. 29, col. 8; p. 29a, col. 8; p. 30a, col. 3; p. 31, col. 8; p. 32, cols. 4, 5; p. 33, col. 7; p. 34, col. 3; p. 35, col. 3; p. 36, col. 8; p. 37, col. 5; p. 37a, cols. 1-3; p. 38, col. 4; p. 38a, col. 3; p. 39, cols. 7, 8; p. 40, cols. 1, 2; p. 41, col. 5; p. 42, col. 2; p. 42a, col. 5; p. 43, col. 1; p. 44, col. 4; p. 45, col. 2; p. 46, col. 1; p. 46a, col. 2; p. 47, col. 3; p. 47a, col. 6; p. 48, col. 1; p. 49, cols. 5, 6; p. 50, cols. 1, 2; p. 51, col. 8; p. 51a, col. 3; p. 52, col. 6; p. 53, cols. 7, 8; p. 54, col. 4; p. 55, col. 4; p. 56, col. 4; p. 57, col. 6; p. 58, col. 6; p. 59, col. 4; p. 59a, col. 4; p. 60, col. 8; p. 61, col. 4; p. 62a, col. 3; p. 63, col. 3; p. 64, col. 2; p. 65, col. 1; p. 66, col. 1; p. 67, col. 8; p. 68, col. 3; p. 69a, col. 5; p. 70, col. 5; p. 71, col. 3; p. 72, col. 2; p. 74, col. 1; p. 75, cols. 1, 3.

Exhibit 2: P. 19, cols. 1-8; p. 20, cols. 6, 7; p. 21, col. 2; p. 22, col. 3; p. 23, col. 1; p. 24, col. 5; p. 25, cols. 7, 8; p. 26, col. 1; p. 26a, col. 5; p. 27, cols. 1, 2; p. 28, cols. 1, 2; p. 29, col. 2; p. 30, col. 1; p. 31, col. 6; p. 32, col. 4; p. 33, cols. 4, 5; p. 34, col. 1; p. 35, col. 5; p. 36, col. 1; p. 37, col. 1; p. 38, col. 4; p. 39, col. 3.

Exhibit 3: P. 14, cols. 5-8; p. 15, cols. 1-2; p. 16, cols. 1-3; p. 17, cols. 6, 8; p. 18a, col. 2; p. 19, cols. 6, 7; p. 20, col. 7; p. 20a, col. 8; p. 21, cols. 6, 7; p. 22, cols. 1, 2, 8; p. 23, col. 1; p. 24, cols. 1, 2; p. 25, cols. 5, 6; p. 26, col. 4; p. 26a, col. 4; p. 27, cols. 7, 8; p. 28, cols. 7, 8; p. 29, col. 2; p. 30, col. 4; p. 31, cols. 7, 8; p. 32, cols. 5-6; p. 33, cols. 1, 2; p. 34, col. 1; p. 35, col. 7; p. 36, col. 2; p. 36a, col. 2; p. 37, col. 3; p. 38, col. 3; p. 39, col. 5; p. 40, col. 2; p. 40a, col. 5; p. 41, cols. 2, 3; p. 42, col. 2; p. 43, col. 7.

Exhibit 4: Pp. 117, 117a, 118, 119, 120, 121, 122, 123, 124, 125, 125a, 126.

Exhibit 5: Pp. 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 165a, 166, 167, 168, 169, 170, 171, 172, 173, 174, 176, 177, 178, 179, 180, 181, 182, 183, 184, 184a, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206a, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 275, 276, 278, 279, 280, 281, 285, 286, 287, 288, 289.

Exhibit 6: Pp. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 42, 45, 62a, 63, 63a, 64a, 65, 66a, 67, 68, 69, 70, 71, 71a, 72, 73, 74, 75, 76, 76a, 77, 78, 79a, 80a, 81a, 82a, 83, 84a, 86, 87, 88, 89, 90, 91, 93, 93a, 94, 96, 97a, 98, 99a, 100, 101, 102, 103, 104a, 105, 106, 107, 108, 109, 110a, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 134, 135, 136, 137.

PRE-TRIAL NEWS REFERENCES IN SPOTSYLVANIA COUNTY TO
ACCUSATIONS OF PAST CRIMINAL CONDUCT BY PETITIONER
SIMILAR IN METHOD TO THE APPARENT MANNER BY WHICH
THE JACKSON FAMILY WAS ABDUCTED

Exhibit 1: P. 11, col. 2; p. 14, cols. 6, 7; p. 15, col. 2; p. 15a, cols. 5, 6; p. 20, cols. 1-2; p. 20a, col. 4 ("Md. Woman Names Rees in '58 Attack"); p. 21, cols. 1, 2; p. 23, col. 8; p. 24, col. 8; p. 25a, cols. 4, 5; p. 26, col. 8; p. 26a, col. 2; p. 27, col. 8; p. 35a, col. 1; p. 36a, col. 5; p. 37a, col. 2; p. 71, col. 2; p. 71a, col. 5; p. 75, col. 3.

Exhibit 2: P. 3, col. 4; p. 6, col. 3; p. 7, col. 2; p. 16, col. 1 ("Mother of 2 Describes Terror Ride"); p. 16a, cols. 2, 3; p. 17, cols. 1, 2; p. 18a, col. 4; p. 19, col. 1; p. 21, col. 2; p. 25, col. 7.

Exhibit 3: P. 8, cols. 6, 7; p. 8a, cols. 1-3; p. 11, col. 3; p. 11a, cols. 3-4. ("Woman Relates Ordeal, Names Rees"---headline on article describing "terror-filled two hours at the mercy of a sex fiend"); p. 12, cols. 5, 6; p. 13a, col. 4; p. 17, col. 6; p. 28, col. 8; p. 21a, col. 3; p. 22, col. 8.

Exhibit 4: Pp. 88, 89, 100a ("damaging evidence against accused kidnap-slayer

Melvin Davis Rees"), 101 ("identified him as the man who forced her to disrobe, then molested her"), 102, 103, 104, 105, 106, 107a, 111, 123a.

Exhibit 5: Pp. 140, 164.

Exhibit 6: Pp. 58, 61a ("Identified Rees as the man who forced her to disrobe and then kissed and molested her"), 117.

PRE-TRIAL NEWS REFERENCES IN SPOTSYLVANIA COUNTY TO
INFORMATION OR SUSPICION THAT PETITIONER HAD COMMITTED
MURDERS OTHER THAN THE MURDERS OF THE JACKSON FAMILY

Exhibit 1: P. 1, col. 2; p. 1a, col. 5; p. 2, cols. 1, 4; p. 2a, col. 3; p. 3, cols. 7, 8; p. 4, cols. 6, 8; p. 5, cols. 1, 2; p. 6, col. 5 ("In addition, Baltimore police announced they will question him about the 1954 slaying of Carolyn Waslewski, 14"); p. 6a, col. 2 ("Rees will also be questioned about six other unsolved Maryland murders in the past five years, about several rape cases in Maryland, and a series of knife attacks on women in Baltimore in 1956"); p. 7a, col. 4; p. 8, col. 1; p. 9, col. 1; p. 16a, col. 8; p. 29, col. 8; p. 30, col. 6; p. 51a, col. 3; p. 68, col. 2; p. 68a, col. 1; p. 71, col. 3.

Exhibit 2: P. 1, col. 1; p. 1a, cols. 5-6; p. 2, col. 8; p. 3, cols. 1 ("Maryland and Prince Georges County authorities, meanwhile, said they wanted to question Rees about ... shooting of Nancy Marie Shomette, 16, and Michael Ann Ryan, 14 ... slaying of Mary Elizabeth Fellers, 18, of Beltsville, and Shelby Jean Venable, 16, of North Laurel), 3, 4; p. 4, cols. 2-4; p. 6, cols. 2, 3 ("The F.B.I. said that Rees would be questioned in the murders of three socially prominent Chicago women"); 4, 8; p. 7, cols. 1-2; p. 9, cols. 2, 4 ("tires on the green 1947 DeSoto registered in the name of Rees' former wife Elaine match in brand and size the tire tracks at the scene of the Harold slaying"); p. 9a, cols. 4, 5; p. 10, cols. 4, 5; p. 37, col. 1.

Exhibit 3: P. 1, cols. 7, 8; p. 2, col. 5; p. 2a, cols. 6, 8; p. 3, col. 1 ("also is under investigation in six other unsolved slayings in the Washington-Baltimore area"), p. 3a, col. 8; p. 9a, col. 1; p. 12, col. 6; p. 15, col. 1.

Exhibit 4: Pp. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12a, 13, 13a, 14, 15, 16, 17, 18, 20, 21, 22 (unsolved Matthew murder in Portsmouth, Va., in 1953), 23, 23a, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 39, 41, 42, 43, 44, 45a, 46, 48, 50, 51, 52, 53, 54 ("Maryland police building their case against Rees in the Harold slaying said they have received a favorable preliminary report on a tire track comparison"), 55, 56 ("five victims ... maybe more died at his hands"),

57, 58a, 59, 60, 61, 62, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74a ("also interested in the man in connection with at least eight other Virginia killings dating as far back as 1951 It is said that Rees' writings . . . which include a disclosure of detail of the Jackson murders . . . include accounts of other murders including some of those in Virginia"), 75 ("reported evidence linking Rees with other slayings in this state"), 76, 77, 78, 79, 80, 81, 84, 86, 87, 91, 92, 97, 98, 99, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116.

Exhibit 5: Pp. 194, 195, 196, 197.

Exhibit 6: Pp. 2, 3, 4, 5, 6, 7, 8, 46, 47a, 48, 49, 50, 51, 52, 53 ("All told, Rees is being questioned in connection with nine killings"), 55a, 56, 112, 114, 115, 116, 119 ("is a prime suspect in the murder of a Maryland housewife").

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. Misc.

MELVIN DAVIS REES, Jr., Petitioner

v.

G. C. PEYTON, Superintendent of
The Virginia State Penitentiary

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

BRIEF AMICUS CURIAE FOR THE AMERICAN CIVIL LIBERTIES UNION
AND THE NATIONAL CAPITAL AREA CIVIL LIBERTIES UNION
IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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77-44-9094

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CITATIONS

Cases:

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<u>Elkins v. United States</u> , 364 U.S. 206 (1960)	6
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<u>Stoner v. California</u> , 376 U.S. 483 (1964)	2, 8
<u>Thiel v. Southern Pacific Co.</u> , 328 U.S. 217 (1945)	6
<u>Wise v. Henkel</u> , 220 U.S. 556 (1911)	6

Miscellaneous:

Address by Attorney General Nicholas deB. Katzenbach
to the American Society of Newspaper Editors,
"Free Press and Fair Trial" April 16, 1965

7

Remarks of Frank Stanton, Pres., CBS, Inc., Conference of
New York State Trial Judges, Crotonville, N.Y., June 24, 1964

8

Report of the President's Commission on the Assassination of
President John F. Kennedy (U.S. Government Printing Office,
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6

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. Misc.

MELVIN DAVIS REES, JR., Petitioner

v.

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

ON PETITION FOR A WRIT OF CERTIORARI TO
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BRIEF AMICUS CURIAE FOR THE AMERICAN CIVIL LIBERTIES UNION
AND THE NATIONAL CAPITAL AREA CIVIL LIBERTIES UNION
IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Citation to Opinions Below

The United States District Court for the Eastern District of Virginia issued its order denying Petitioner's request for a writ of habeas corpus on January 16, 1964. The opinion of the District Court is reported at 225 F. Supp. 507 (E.D. Va. 1964). The judgment of the United States Court of Appeals for the Fourth Circuit was entered in the above entitled case on February 1, 1965. The opinion of the Court of Appeals is reported at 341 F.2d 859 (4th Cir. 1965).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Petitioner amicus curiae has obtained the consent of the parties in the above entitled case to file this brief in support of the Petition for Writ of Certiorari. The letters of consent of the parties are submitted to the Court herewith.

Questions Presented

Petitioner amicus curiae fully supports Petitioner Melvin Davis Rees, Jr. in each of the three questions stated in his Petition for Writ of Certiorari. However, Petitioner amicus curiae wishes to emphasize the following aspects of the issues raised by Petitioner Melvin Davis Rees, Jr.:

(1) Whether this Court should exercise its supervisory authority over the administration of criminal justice in the federal courts to prevent persons within its control from making prejudicial pretrial statements which deprive the accused of his constitutional right to a fair trial?

(2) Whether the lower court acted contrary to this Court's decision in Stoner v. California by holding that the Fourth Amendment's protection may be waived by someone other than the owner of the property that is searched and seized?

STATEMENT OF THE CASE

While Petitioner amicus curiae approves of the Statement of Petitioner Melvin Davis Rees, Jr. in his Petition for Writ of Certiorari filed with this Court on June 23, 1965, it wishes to stress several points fundamental to the Court's consideration of this case.

I. Essential Facts Regarding Pretrial Publicity

The essential facts regarding the pretrial publicity issue are as follows:

(1) The United States Commissioner who signed the warrant for the arrest of Petitioner Melvin Davis Rees, Jr. also issued a pretrial statement to the press in which he revealed the following information:

- (a) The FBI had found a handwritten note in Rees' home in Hyattsville, Maryland, describing the abduction and murder of the Jackson family.
- (b) The FBI had asserted that the note was in Rees' handwriting.
- (c) The note itself was attached to a newspaper photograph of the Jackson family and was allegedly written prior to the discovery of the bodies of Mrs. Jackson and one of her daughters.

(d) The FBI had asserted that the note described how Mrs. Jackson and her daughter were driven to Maryland, where their bodies were later found, and contained other statements which were corroborated only after the discovery of the bodies.

(2) The existence and contents of Rees' alleged written admission of the murders of the Jackson family and the fact that a United States Commissioner had divulged the information were then broadcast by radio and television and reported by newspaper in Spotsylvania County, Virginia, where Rees was subsequently tried and convicted for the murder of Mr. Jackson.

(3) All of the news media attributed the information about the handwritten account to a statement by the United States Commissioner. Moreover, the news media emphasized that the note had been found in Rees' home; that the FBI believed the note to be in Rees' handwriting; that the note's description of the death of the Jacksons was corroborated by later investigation.

The Washington Post, 1/ had a full front page headline stating, "Rees Wrote Jackson Killing Account Found in Home, Authorities Disclose," with the sub-heading, "Dated Prior to Finding of 2 Bodies." (Plaintiff's Exhibit #2, p.2, on file with the Clerk of this Court). The story was as follows:

A handwritten account purporting to describe the final journey of Mrs. Carroll V. Jackson and her daughter, Susan, 6 - dated some two months before the discovery of their bodies - was found by the FBI in the Hyattsville home of Melvin D. Rees, Jr., United States Commissioner, H. Allen Mezger disclosed last night.

Mezger said the FBI asserted before him in Baltimore that the account was in Rees' handwriting. . . .

Mezger said the FBI alleged they found a picture of the Jackson family. . . . during a five hour search of Rees' home. . . .

Together with their picture, he said was a handwritten resume of the kidnapping and killing. . . .

The account contained statements which were supported after the discovery March 21, 1959, of the bodies of Mildred Jackson and Susan, Mezger said the FBI told him.

1/ The circulation figures in Spotsylvania County for this paper, the Fredericksburg Free Lance-Star and the Richmond Times-Dispatch are at R. 136.

The Fredericksburg Free Lance-Star also reported the United States Commissioner's Statement under the headline, "Handwritten Note Describes Attack on Jackson Family" with the sub-heading, "Writing Seen As Similar To That of Davis Rees." (Plaintiff's Exhibit #1, pp. 2,4 on file with the Clerk of this Court). The Richmond Times-Dispatch headlined the United States Commissioner's statement as "Rees Note on Slayings Discovered, FBI Says" (Plaintiff's Exhibit #3, pp. 1; 2a, on file with the Clerk of this Court). Each of these newspapers had a substantial circulation in Spotsylvania County.

Radio Station WRVA, which provided broadcast service to substantially all of Spotsylvania County, ^{2/} began its news broadcast of the United States Commissioner's statement with the announcement that, "The top news story in Virginia today is the solving of the Carroll Vernon Jackson Murder." (Plaintiff's Exhibit #4, p. 12, on file with the Clerk of this Court). The 10:05 AM news broadcast for June 27, 1960 stated,

A U.S. Commissioner says Federal authorities implicated jazz musician David (sic) Rees in the murder of the Jackson family on the basis of a detailed diary. Commissioner H. Allen Mezger of Baltimore said the account was dated two months before the bodies of Mrs. Carroll Vernon Jackson and one of her daughters were found in Maryland. Mezger said the diary was in the handwriting of Rees. . . . (Plaintiff's Exhibit #4, supra, at p. 14).

This story was repeated by WRVA two more times on June 27. (Plaintiff's Exhibit #4, supra, at p. 15). Television station WRC-TV, which served a substantial portion of Spotsylvania County, ^{3/} carried news broadcasts from 6:55 A.M. to 6:30 P.M., reporting that a United States Commissioner had said that a handwritten account of the Jackson murders had been found in Rees' home in Hyattsville, Maryland, and that the FBI believed that it was in Rees' handwriting. (Plaintiff's Exhibit #6, pp. 1-4, on file with the Clerk of this Court).

(4) The handwritten account of the Jackson murders, allegedly written by Rees, was excluded from evidence by both the Virginia and Maryland trial courts. (Md. Tr. pp. 1199-1202; Va. Tr. p. 864). As the Virginia trial court noted, this handwritten account could not have been lawfully obtained, for the self-incrimination

^{2/} See radio coverage map at R. 90.

^{3/} See television coverage map at R. 91.

clause of the Virginia Constitution and §19.1-84 of the Code of Virginia prohibit the granting of search warrants to obtain papers of an evidentiary nature. Rees v. Commonwealth, 203 Va. 850, 127 S.E. 2nd 406, 418(1962).

(5) Prior to Rees' trial in a Virginia state court for the murder of Mr. Jackson, nine members of the Federal jury that had convicted Rees for the kidnapping of Mrs. Jackson and one of her daughters appeared on television station WBAL and reenacted their deliberations that led to Rees' conviction in the United States District Court for the District of Maryland. Detailed accounts of what these Federal jurors said during their reenactment were reported in newspapers which were widely read in Spotsylvania County where Rees was subsequently tried and convicted for the murder of Mr. Jackson. ^{4/}

II. Essential Facts Regarding the Unlawful Search and Seizure

The essential facts regarding the illegal search and seizure issue are as follows:

(1) The locked accordion case which the FBI seized and searched belonged to Petitioner Melvin Davis Rees, Jr. (Va. Tr. 148-149).

(2) Petitioner Melvin Davis Rees, Jr. had placed personal property in his accordion case, locked it, kept the key and stored the case in the attic of his parents' home. (Md. Tr. 1082; Va. Tr. 151).

(3) The FBI knew that the younger Rees was under arrest in Memphis, Tennessee but made no effort to obtain his consent before opening his accordion case. (Va. Tr. 779-780).

(4) Instead, the FBI relied upon the consent of Mr. Rees, Sr., whom they knew did not own the accordion case, to break the lock and seize his son's property contained inside. (Md. Tr. 950; Va. Tr. 67-68).

^{4/} See Rees' petition, pp. 14,15, for a discussion of newspaper articles about the television program on which the Federal jurors reenacted their deliberations.

REASONS FOR GRANTING THE WRIT

I. There Is Imperative Need for the Exercise of This Court's Supervisory Power to Prevent Persons Within the Court's Control From Making Prejudicial Pretrial Statements That Destroy the Right to a Fair Trial.

This Court has not considered the problem of pretrial publicity and its effect on the accused's right to a fair trial since the issuance of the Warren Commission Report on the Assassination of President Kennedy. ^{5/} The issue can be expected to arise with increased frequency throughout the judicial system. The recent one hundred page decision of the Sixth Circuit in Sheppard v. Maxwell, No. 16077, 6th Cir., May 5, 1965, and the New Jersey Supreme Court's decision in New Jersey v. Van Duyn, 43 N.J. 369, 204 A. 2d 841 (1964), indicate that Irvin v. Dowd, 366 U.S. 717 (1961) and Rideau v. Louisiana, 373 U.S. 723 (1963), have not resolved the issue of pretrial publicity. It is therefore imperative that this Court provide guidance to the federal and state courts, the bar associations, judicial groups and the news media in their search to achieve a proper balance between publicity and the accused's right to a fair trial.

These reasons aside, the prejudicial pretrial statements made in this case require the Court to exercise its supervisory authority over the administration of criminal justice in the Federal courts to prevent such statements from being made by persons within its control. This Court has not hesitated in the past to promulgate rules or issue decisions in the exercise of this authority. See, e.g., Elkins v. United States, 346 U.S. 206, 216 (1960); Marshall v. United States, 360 U.S. 310, 313 (1959); Thiel v. Southern Pacific Co., 328 U.S. 217, 225 (1945); McNabb v. United States, 318 U.S. 332, 340-341 (1943). In Wise v. Henkel, 220 U.S. 556 (1911), this Court referred to the "inherent authority" of a federal court "to consider and decide questions arising before it concerning an alleged unreasonable exertion of authority in connection with the execution of the process of the court." (at page 558) In that case it was held that a United States attorney, as an officer of the court, is subject to the inherent authority of

^{5/} Report of the President's Commission on the Assassination of President John F. Kennedy, p. 27, Recommendation 12, (U.S. Government Printing Office, Washington, 1964). See also the discussion of news coverage at pp. 238-240, including the observation that judicial exclusion of inadmissible evidence would be "meaningless if jurors were already familiar with the same facts from previous newspaper or television reports." Id. at 238.

the court in his conduct of a criminal case. Similarly, in Berger v. United States, 295 U.S. 78 (1935), this Court carefully explicated the limitations on trial conduct by the Federal prosecutor, and reversed the conviction because of the prejudicial nature of comments by the Government's representative.

In the present case, a United States Commissioner issued a statement which revealed that a handwritten account of the Jackson murders had been found in Rees' home and that the FBI believed the handwriting to be Rees', and alleged that later police investigation corroborated facts in the account that could only have been known by the murderer at the time it was written. In short, the United States Commissioner told the press that the FBI had a written admission by Rees of the Jackson murders. This statement was widely reported in the newspapers and broadcast over radio and television, in the very county Rees was subsequently tried and convicted for the murder of Mr. Jackson. Furthermore, the Federal jury's reenactment of its deliberations which led to their convicting Rees of kidnapping Mrs. Jackson and her daughter, was also widely publicized in this county. Besides serving to emphasize a prior conviction for a closely related crime, this publicity could only have resulted in a general feeling that if Rees was guilty of kidnapping the wife, then he must be guilty of killing the husband.

It is generally agreed that the most prejudicial pretrial statement is one which reveals the existence of a confession or important admission by the accused. Attorney General Katzenbach, in announcing the Justice Department's guidelines concerning pretrial publicity, stated that "[t]he single most damaging aspect of pretrial publicity is the publication of defendants' confessions or admissions" and included it in the category of "information so plainly prejudicial that not even the needs of a free press should override it." (Address by Attorney General Nicholas deB. Katzenbach to the American Society of Newspaper Editors, "Free Press and Fair Trial" April 16, 1965). The New Jersey Supreme Court in New Jersey v. Van Duyne, 204 A. 2d at 852, and the Sixth Circuit in Sheppard v. Maxwell, slip sheet opinion at pp. 12-13, 17, recognized the extremely prejudicial effect of pretrial statements dealing with the accused's alleged admission or confession.

Frank Stanton, President of CBS, has condemned pretrial publicized confessions as something "to be eliminated in a just society." (Remarks of Frank Stanton, Pres., CBS, Inc., Conference of New York State Trial Judges, Crotonville, N.Y., June 24, 1964). It is farcical to exclude evidence in court that is well known to the jury through prejudicial news reports originated by officers of the court.

Both Attorney General Katzenbach and the New Jersey Supreme Court have concluded that the way to prevent this type of highly prejudicial information from being publicized prior to trial is to effectively eliminate the source of such statements by forbidding those persons within their control from informing the press that the accused has confessed or admitted the crime. The New Jersey Supreme Court has also prohibited attorneys from revealing an accused's prior convictions or criminal record.

Accordingly, it is submitted that this Court should hold (a) that United States Commissioners and other persons within its control may not issue pretrial statements revealing the existence or contents of admissions or confessions, and (b) that a Federal jury may not ~~conduct~~^{retract} its deliberations while a trial for a closely related crime is pending in another court.

II. The Decision of the Lower Court, Upholding the Admissibility into Evidence of the Illegally Seized Pistol, Is Directly Contrary to This Court's Decision in Stoner v. California.

In Stoner v. California, 376 U.S. 483 (1964), this Court held that the constitutional protection against unreasonable searches and seizures was a personal one belonging to the one whose property was involved, and only that person could waive his constitutional right, "by word or deed, either directly or through an agent." Id. at 489.

The Court below ignored the Stoner decision and justified the search of Petitioner Rees' accordion case on the grounds (a) that his father had consented to have the lock broken and the case opened, and (b) that certain facts indicated that the case might have been abandoned property, Rees v. Peyton, 341 F. 2d at 862-863. Neither of these contentions is tenable. Both the consent and the abandonment notion are irrelevant under the principle established in Stoner.

It is uncontested that the accordion case in fact belonged to Petitioner Melvin Davis Rees, Jr., that he had placed it in the attic of his parents' home, and that he had locked the case and kept the key. Furthermore, it is clear that he never consented to have his accordion case searched, nor had he in any way given his father authority to waive his Fourth Amendment rights. In fact, it is obvious that he had done everything in his power to maintain his right to privacy. Therefore, the instant case is squarely within the principle established by this Court in Stoner, and the search of the younger Rees' accordion case and the seizure of his pistol violated the Fourth Amendment.

CONCLUSION

For the reasons hereinbefore set forth, the Petition for the Writ of Certiorari should be granted.

Respectfully submitted,

MONROE H. FREEDMAN
1101 Vermont Ave., N.W.
Washington, D.C. 20005

Attorney for the Amici Curiae

6/25/75

MEMO

TO : DIRECTOR, FBI (75-27510)

FROM : SAC, MEMPHIS (75-44) - P -

MURDER OF MARTIN LUTHER KING, JR., aka;
 CIVIL RIGHTS LEADER, 4/4/68
 RE: AL - MURKIN
 (OO: MEMPHIS)

Re Memphis airtel to the Bureau 5/20/75.

On 6/25/75, JAMES J. HARRIS, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Va., made available the documents which were filed on behalf of HARRIS before the U. S. Supreme Court.

A Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, with Appendix A, was filed before the U. S. Supreme Court on 6/23/75. A copy of this document is being transmitted herewith to the Bureau. Attorneys for HARRIS are CHARLES J. DILLON, JR., Green, Belmont and Johnson, Maryland Building, Spotsylvania County, Virginia; and J. WALTER HARRIS, JR., Dillie and Connor, 515 Southern Building, Washington, D. C. This Petition sets forth the following:

HARRIS seeks a review of a decision of the U. S. Court of Appeals, Fourth Circuit, affirming the decision of the U. S. District Court, DVA, which opinion denied HARRIS' application for a writ of Habeas Corpus to prevent a sentence of death by electrocution imposed upon him by the Circuit Court of Spotsylvania County, Virginia, for the murder of MARTIN LUTHER KING, JR. The Petition presented the following questions:

1 - Bureau (Encls. 3)
 2 - Memphis (75-55)(220)
 3 - SPS (75-100)
 4 - [unclear]
 5 - [unclear]

CCO
 4/25
 RB
 [Signature]

75-44-9095

11-75-44

1. That REES received a fair trial in a court properly instructed with pre-trial press, radio, and television references to highly incriminating evidence not admitted at the trial, including an account by REES setting forth details as to how he committed the crime; REES is a man who traveled throughout the United States and left belongings at the home of his parents in Hyattsville, Maryland. A suitcase and suitcase papers, including a written account of the murder of the [REDACTED] family, were seized by the FBI from a locked suitcase case in the home of the parents of REES. A U. S. Commissioner made the account of how REES committed the crime available to the press, radio, and television, and this account received wide publicity, the same testimony being characterized as a "death blow." The Circuit Court of Springfield County refused to change venue or venue in the trial of REES.

2. The rights of REES to secure his personal effects against unreasonable searches and seizures were violated when FBI Agents broke into and opened his locked accordion case on the premises of his father, knowing his father did not have a key to the case, violating the rights guaranteed REES under the 4th Amendment. The FBI Agents knew REES stored his belongings at the home of his father; had reason to know the accordion case belonged to REES; and knew the father of REES did not have permission to open the case. The argument in this writ relied heavily on the case *ROSENBERG versus the United States*, 223 F. 2d. In this case, FBI Agents searched the premises of the defendant's daughter and opened a locked cabinet belonging to the defendant. The Court of Appeals, Fifth Circuit, held the search violated the 4th Amendment. The writ also relied on the case *STEVEN versus California*, 376 U.S. 453, which held only the owner of property could waive his constitutional rights by words or deeds, either directly or through an agent.

3. There was implied coercion by FBI Agents on the father of REES, deliberately timed by FBI Agents to coincide with the impact of disclosing to the father of REES the arrest of REES for murder, and the Agents used verbal persuasion for one hour before the father gave his consent to

ME 73-44

search. The Agents also subtly persuaded him not to contact an attorney. REES' parents believed if they did not give consent, a search warrant could be obtained, but there was not probable cause to obtain a search warrant.

Appendices B & C to Petition for Writ of Certiorari was filed with U. S. Supreme Court. A copy of this document is being transmitted to the Bureau herewith.

Brief Amicus Curiae for the American Civil Liberties Union and the National Capital Area Civil Liberties Union in support of the Petition for a Writ of Certiorari was filed before the U. S. Supreme Court on 6/23/65 by MELVIN L. WOLF, American Civil Liberties Union, 156 Fifth Avenue, New York, N.Y.; and MONROE H. FREEDMAN, National Capital Areas Civil Liberties Union, 1101 Vermont Ave., N.W., WDC. This Brief set forth the following reason for granting the Writ:

- I. There Is Imperative Need for the Exercise of This Court's Supervisory Powers to Prevent Persons Within the Court's Control From Making Prejudicial Pretrial Statements That Destroy the Right to a Fair Trial.
- II. The Decision of the Lower Court, Upholding the Admissibility into Evidence of the Illegally Seized Pistol, Is Directly Contrary to This Court's Decision in Stoner v. California.

A written admission by REES to the murder of the JACKSON family was seized by the FBI and given wide publicity by the news media. This written admission was made available to the news media by U. S. Commissioner H. ALLEN WELSHER and published in the "Washington Post." Prior to the trial in Virginia, nine members of the Federal Grand Jury that convicted REES for the kidnapping of MILDRED JACKSON appeared on

MM 79-44

television to re-enact their deliberations. The FBI, who had REES in custody, made no effort to obtain his consent to search and seize his locked accordion case located at the home of his parents, but obtained the consent of his parents, whom the FBI knew did not have authority to consent to breaking the lock thereon and seizing items therein.

WFO should make arrangements to obtain all additional documents filed in this case before the Supreme Court of the United States and the opinions of that court. These documents and opinions will be available through SENATOR S. HARP, III; however, it may be days, or even weeks before the documents or opinions could be obtained from him since he is absent from his office most of the time.

8/18/65

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING

6/25/65. Re Richmond airtel to the Bureau, copy to LFO,

2 - WFO
1 - Richmond

(3)

79-44-9092

DIRECTOR, FBI (78-27010)

8/12/68

SAC, WFO (78-102) (P)

WELVIN DAVIS HARRIS, JR., aka;
CARROLL VERNON JACKSON, JR.
ET AL - VICTIMS
KIDNAPING
(OO:ME)

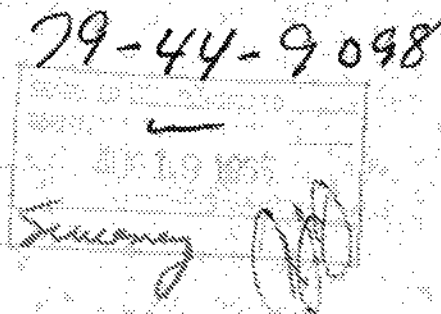
Re Richmond airtel to Bureau dated 8/25/68.

The docket in the Clerk's Office, United States Supreme Court (USSC), discloses the Petition for a Writ of Certiorari filed in this case is entitled "WELVIN DAVIS HARRIS, JR. Vs. C.C. MITCHELL, Superintendent of the Virginia State Penitentiary," Case No. 221 Miscellaneous.

During interview with MICHAEL BOHAE, Deputy Clerk, USSC, on 8/13/68, he mentioned this case was distributed to the Court Justices on 8/3/68; that as the Court is presently in recess, no decision will be rendered until after the Court reconvenes in October, 1968. He pointed out that no response has as yet been filed by the Attorney General for the State of Virginia, and it is entirely possible the Court will request a response. Mr. BOHAE mentioned, also, on a confidential basis, that the attorneys for subject HARRIS had informed the Court by letter dated around the first part of August, 1968, that HARRIS has now expressed a desire to die and asked that his case in the Supreme Court be withdrawn from consideration; that HARRIS no longer desired to avoid execution under the sentence imposed by the Virginia State Court. However, the attorneys have informed the Court that HARRIS is or may be mentally incompetent and requested the Court to continue to give consideration to the case as filed. As this case is now in the hands of the Court Justices, the letter

- 2 - Bureau
- 1 - Baltimore (78-55) (Info)
- 2 - Richmond (78-44)
- 1 - WFO

ACT:mie
(6)



WFO 79-162

referred to can not be made available for examination until a decision is rendered.

RODAK stated further, that on one occasion recently, S. WHITE RHYNE, JR., one of REES' attorneys, informed one of the Assistant Clerks in the USSC that while he did not believe REES should go free, he felt a life sentence would be adequate. RHYNE asked the Assistant Clerk, name not disclosed by DEAN, not to give the aforementioned letter or his comments any publicity.

The above is being submitted as a matter of information. WFO will follow and report decision of the Supreme Court in this case.

MULLIN AND CONNOR

ATTORNEYS AT LAW

2000 EIGHTH STREET, N.W.

WASHINGTON, D.C.

EUGENE F. MULLIN, JR.

J. PARKER CONNOR

S. WHITE RHYNE, JR.

August 3, 1965

Reno S. Harp, III, Esq.
Assistant Attorney General of Virginia
Supreme Court-State Library Building
Richmond, Virginia 23219

Re: Rees v. Peyton

Dear Reno:

The enclosed letter to the Clerk of the Supreme Court is self-explanatory. I would like to have Mr. Rees, Jr., examined by a psychiatrist of my choice with such psychological testing as he may deem necessary. Assuming that Mr. Rees, Jr., will consent to such testing and examination, would you be agreeable to my making the necessary arrangements through Mr. Peyton? I would have no objection to your also having Mr. Rees, Jr., examined by a state psychiatrist if you so desire and if he will consent.

May I hear from you with regard to your views on this matter?

Sincerely,

White

S. White Rhyme, Jr.

SWR/rmb

cc: Hon. John F. Davis, Clerk
Mr. Melvin Davis Rees, Jr.
Charles A. Duke, Jr., Esq.

79-44-9099

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AUG 11 1965	
FBI - RICHMOND	

[Signature]

August 17, 1965

C. White Rhyme, Jr., Esq.
Mullin and Connor
Attorneys at Law
515 Southern Building
Washington 5, D. C.

Re: Ross v. Peyton

Dear White:

This will confirm our telephone conversation relative to your letter of April 3, 1965, and an enclosure which was received during my absence from the office on vacation.

As I explained to you over the telephone, it is perfectly agreeable with me to have Mr. Ross examined by a psychiatrist of your choice with the understanding that the selection will be approved by me prior to such examination.

I understand that you will advise me of the name of the psychiatrist prior to such examination.

I have made no decision as to whether or not we will have your client examined by a psychiatrist of our choosing. It is my understanding that you will furnish me with copies of the reports mentioned in your letter to Mr. Davis, and of any reports made by your psychiatrist.

With best wishes, I am

Sincerely yours,

Sam S. Harp, III
Assistant Attorney General

cc:

Mr. John F. Davis, Clerk
Mr. Melvin Davis Ross, Jr.
Charles A. Duke, Jr., Esq.

cc:

C. C. Peyton
C. M. Lindsey

77-419100

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AUG 19 1965	
FBI - WASH. FIELD	

Signature: [Handwritten Signature]

August 17, 1965

Hon. John F. Davis, Clerk
United States Supreme Court
Washington, D. C.

My dear Mr. Davis:

I am enclosing a copy of a letter to the petitioner's
counsel in connection with the captioned matter.

Sincerely yours,

Reno S. Harp, III
Assistant Attorney General

RSR/dr



August 17, 1965

Captain C. M. Lindsey
Virginia State Police
P. O. Box 1299
Richmond, Virginia

Re: *Rees v. Peyton*

Dear Captain Lindsey:

I am enclosing a copy of the correspondence furnished in connection with the captioned matter. I will keep you advised as to the status of this situation.

With best wishes, I am

Sincerely yours,

Reno S. Harp, III
Assistant Attorney General

RSH/dr

9102

SEARCHED	INDEXED
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AUG 18 1965	
FBI - RICHMOND	

[Handwritten signature]

August 17, 1965

Hon. C. C. Peyton, Superintendent
of the Virginia State Penitentiary
500 Spring Street
Richmond, Virginia

Re: Rees v. Peyton

Dear Mr. Peyton:

I am enclosing a copy of correspondence furnished in connection with the captioned matter. I will keep you advised as to the status of this situation.

With best wishes, I am,

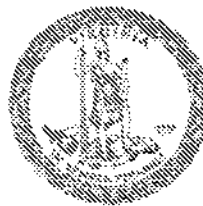
Sincerely yours,

Reno S. Harp, III
Assistant Attorney General

RSH/dr

9103

Commonwealth of Virginia



ROBERT V. BUTTON
ATTORNEY GENERAL
KENNETH C. PATTY
FIRST ASSISTANT

OFFICE OF THE ATTORNEY GENERAL
RICHMOND

D. GARDNER TYLER
ROBERT O. MILLER, III
RENO S. HARRIS, III
HAROLD RAY JOHNSON
ROBERT HARRIS PARKER
CAROL V. KELLY
WILLIAM A. BARNES, JR.
A. B. WOODROOF
PAUL D. STOTT
CURTIS R. MANN
RICHARD N. HARRIS
W. LUKS WITT
WILLIAM B. ROICE

August 19, 1965

Special Agent in Charge
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

Attention: Agent Sweeney

Re: Melvin D. Rees v. C. C. Peyton

Dear Mr. Sweeney:

I am enclosing copies of certain correspondence
for your file.

Sincerely,

Reino S. Harris, III
Assistant Attorney General

RSH/dr

acknowledged
8/20/65
RSH

79-44-9104
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FBI - RICHMOND
J. M. Sweeney
attached

COMMONWEALTH OF VIRGINIA



COL. C. W. WOODSON, JR.
SUPERINTENDENT

MAJOR H. W. BURGESS
EXECUTIVE OFFICER

MAJOR J. S. PEARSON
FIELD SUPERVISOR

CAPT. M. S. URICK
PERSONNEL AND TRAINING

TELEPHONE BRIDGE 2-1431
TWX 232-7025

DEPARTMENT OF STATE POLICE
RICHMOND, VIRGINIA, 23210

CAPT. R. B. KING
SAFETY OFFICER

CAPT. C. M. LINDSEY
INVESTIGATIONS AND RECORDS

CAPT. A. HOLCOMB
PROPERTY AND FINANCE

CAPT. J. T. MARSHALL
COMMUNICATIONS OFFICER

P. O. BOX 1299

August 18, 1965

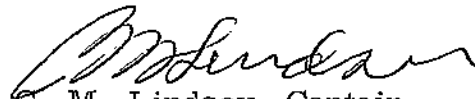
Mr. R. D. Roggie, ASAC
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

Re: Melvin Davis Rees, Jr.

Dear Mr. Roggie:

Enclosed is a copy of the correspondence which was the subject of our telephone conversation of this past Monday.

Yours very truly,


C. M. Lindsey, Captain
Investigation and Records

CML:ep1

Encl.

"MAKE COURTESY YOUR CODE OF THE ROAD"

79-44-9105

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Sweeney

MULLIN AND CONNOR
ATTORNEYS AT LAW
615 SOUTHERN BUILDING
WASHINGTON 5, D.C.

EUGENE F. MULLIN, JR.
J. PARKER CONNOR
S. WHITE RHYNE, JR.

TELEPHONE
STERLING 3-2455

August 3, 1965

Hon. John F. Davis, Clerk
Supreme Court of the United States
First Street and Maryland Avenue, N.W.
Washington, D.C.

Re: Ray v. Ray
Misc. No. 311

Dear Sir:

My appearance has been entered as counsel for Melvin Davis Ross, Jr., petitioner in the above-captioned capital case. The petition for writ of certiorari and motion for leave to proceed in forma pauperis were filed by me on June 23, 1965, on behalf of the petitioner and with his authority and approval. The petitioner is under a sentence of death imposed by the Circuit Court of Spotsylvania County, Virginia, which has agreed not to fix a date for the carrying out of the sentence pending final disposition of the proceedings in this Court.

On July 20, 1965, without forewarning, I received from the petitioner a handwritten letter of instructions, as follows:

"7-18-65

"Dear Mr. Rhyno,

"It is my mature & considered decision to withdraw from before the U.S. Supreme Ct., as well as from all further consideration, the petition you recently filed, & that Mr. Crismond, the clerk of Spotsylvania county ct. be notified that all legal proceedings have been abandoned.

"I would express my appreciation to you & gratitude.

"In Dostoyevski's novel 'The Bros. Karamazov' Father Zossimas elder Brother lay dying, sick & hard-capped in many ways but there was joy in his heart & to those that attended him he asked how it was that we could

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[Signature]

Hon. John W. Davis, Clerk

2.

August 3, 1965

go on holding grudges against one another & always trying to out do one another when we could be entering the Garden in a Spirit of Love & Friendliness & brotherhood to live a new & happy life in the Name of Jesus Christ.

"Sincerely & Cordially,
"M. D. Rees"

Following receipt of this letter, I talked at considerable length with the petitioner on Death Row in the Virginia State Penitentiary. I also informed petitioner's spiritual advisor and petitioner's father of the substance of his instructions to me and they have each talked with petitioner in person. Petitioner indicates no disposition to alter the decision as expressed in his letter, although this decision is contrary to the advice of his counsel and contrary to the advice of his spiritual advisor and his father.

I have given thoughtful consideration to my obligation in this matter and have concluded that, notwithstanding petitioner's instructions, I cannot and will not dismiss the petition for writ of certiorari at the present time. The basis for my decision not to carry out petitioner's instructions is my strong doubt as to his mental competency to make this most serious election.

In December, 1960, in connection with previous charges of kidnapping for which he was subsequently convicted and is now serving two life sentences, petitioner was administered a number of psychological tests. A Psychological Evaluation Report interpreting these tests, signed by L. H. Ainsworth, Ph. D., Certified Psychologist of the State of Maryland, stated among its conclusions that "the diagnostic impression is Personality Pattern: Disturbance, Schizoid personality with prominent paranoid trends." The report at other points stated that petitioner's "judgment is relatively poor with respect both to grasp of conventional ideas and to independent action," and that at times his "distinction between fact and fantasy is poorly maintained and unrealistic ideas and actions are likely to be numerous." However, the accompanying psychiatric report by Manfred S. Guttmacher, M.D., stated that there was "no evidence at this time [December 1960, of a psychosis" and that petitioner's "contact with reality is certainly not so tenuous that he would be unable to assist his counsel in adequate defending himself against criminal charges."

At various times during the year 1963, while incarcerated in the Virginia State Penitentiary, petitioner gave indications of mental disability. On one occasion, in a complete departure from his normal quiet disposition and good behavior, he began shouting and screaming at the top of his voice through the bars of his cell. Shortly after that, on the occasion of a visit from counsel, petitioner complained that he was being drugged. He delivered into counsel's possession samples of aspirin, coffee and tobacco which he said had produced a toxic effect and asked that they be subjected to chemical analysis. By arrangement with the respondent Superintendent of the Virginia State Penitentiary and the Virginia Attorney General's Office, counsel delivered the samples of material to an independent laboratory for chemical analysis. They were reported as being without harmful or toxic content.

From time to time, petitioner made a number of other complaints to counsel which were of such a bizarre and unrealistic nature as to give strong indication of mental disorder. Sometimes, these complaints were characterized by attributing immense importance to small, seemingly meaningless occurrences, often finding in them a symbolism upon which irrational conclusions were based. Counsel's observation in this latter regard was consistent with the earlier observation of the clinical psychologist Ainsworth, who stated in his report: "Arbitrary relationships between ideas or events, based on emotional symbolic meanings rather than logical coherence, are the chief result of his integrative efforts with the implication that paranoid ideas of reference are likely to be present."

During the years 1964 and 1965, these complaints ceased. However, increasingly during the two and a half years that present counsel has represented petitioner, his attitude has been characterized by a seeming detachment from the reality of his situation and a striking lack of interest in the legal efforts being made to save his life.

Following receipt of petitioner's letter of instructions to dismiss the petition for certiorari, counsel spent approximately an hour and a half discussing the matter with him at the Virginia State Penitentiary. During this conference, petitioner was verbose and discursive. His explanation of his decision to terminate legal proceedings was marked by numerous attenuated analogies based on occurrences in the Bible, in secular literature, in current world events, and in his personal experiences. He indicated a total absence of concern about whether he lived or died. His mood, for the most part serious, at one point alternated almost instantaneously between laughter and convulsive sobbing.

Hon. John F. Davis, Clerk

4.

August 3, 1965

For the reasons stated, and because the decision which the petitioner has made is inconsistent with the strong instinct of self-preservation normally present in sane persons, I have serious doubts as to his mental competency. I feel that I have an obligation to inform the Court of petitioner's instructions, but that I have also an obligation not to carry out those instructions without some assurance, based on competent psychiatric advice, that petitioner's decision to terminate legal proceedings is not the product of mental disability. I have discussed the matter with Charles A. Dukes, Jr., Esq., co-counsel for petitioner, and he concurs in this course of action. I am taking steps to have petitioner examined by one or more qualified psychiatrists and will advise the Court of the results of these efforts.

I would appreciate it if you would make the contents of this letter known to the Court.

Respectfully,

SWR/rmb

S. White Rnyne, Jr.

cc: Mr. Melvin Davis Rees, Jr.
Charles A. Dukes, Jr., Esq.
Reno S. Harp, III, Esq., Assistant
Attorney General of Virginia

Post Office Box 2218
Richmond, Virginia 23217
August 20, 1965

Mr. Reno S. Harp, III
Assistant Attorney General
Office of the Attorney General
Richmond, Virginia

Re: Melvin D. Rees

Dear Mr. Harp:

Receipt is acknowledged of your letter
of August 19, 1965 together with the enclosures.

Your cooperation in forwarding this
material to this office is very much appreciated.

Sincerely yours,

THOMAS E. BISHOP
Special Agent in Charge

1 - Addressee
① - Richmond (79-44)
/GTC
(2)

79-44-9107

[Handwritten signature]

UNITED STATES GOVERNMENT

Memorandum

Sweeney

TO : SAC 79-44

DATE: 9/4/65

FROM : SA R. E. TROW

SUBJECT: MELVIN D. REES

On this date the writer received a tel-cal from Supv. H. G. Gallagher of the Bureau informing re article which had appeared in the Washington Newspapers whereby the subject had indicated that he wanted his attorney to stop all efforts on his behalf. Mr. Gallagher wanted to caution and alert this office as to the possible motives behind this action and to be alert to possible legal moves for which this was building a foundation.

Mr. Gallagher was advised that this office was also aware of the news articles as it had appeared in the 9/4/65 issue of the Richmond-Times Dispatch.

79-44-9408

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JM

9/7/65

A I R T E L

REGULAR MAIL

TO: DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - P -
SUBJECT: MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING
(OO: RH)

Re Richmond airtel to the Bureau, dated 6/25/65,
and WFO letter to the Bureau, dated 8/18/65.

There is being transmitted herewith to the Bureau
a copy of a letter dated 8/3/65, directed to the Supreme
Court of the United States, Washington, D. C., by S. WHITE
RHYNE, JR., attorney for REES.

The letter sets forth a letter from REES to RHYNE
requesting that the petition for a Writ of Certiorari, filed
on 6/23/65, before the Supreme Court of the U. S. be dismissed.
RHYNE advised the court appears of the opinion REES was
mentally unbalanced; that he would not have the petition dis-
missed at this time; and that he would have a psychiatrist
examine REES as to his mental condition and advise the court.

RENO S. HARP, III, Assistant Commonwealth of Virginia
Attorney General, advised that he has informed RHYNE he would
agree to REES being examined by a psychiatrist and that a
reputable psychiatrist would be chosen by him, HARP. HARP
stated RHYNE agreed to a mental examination by a psychiatrist
chosen by HARP but that he desired to interview the psychiatrist
prior to officially agreeing to an examination by the psychiatrist.

3 - Bureau (Encl. 1)
1 - Baltimore (79-55)
2 - WFO (79-162)
2 - Richmond

ULS:ddm

(8)

79-44-9109

HARP stated that Dr. FINLEY GAYLE is one of the most noted and reputable psychiatrists in Richmond and has been chosen by him and that RHYNE is to interview Dr. GAYLE within the next several days to determine if he would be satisfactory.

HARP stated that he has been in contact with prison authorities and that the prison authorities believe REES is malingering and that REES is now making an attempt to be adjudged insane so that he can serve a life sentence and not be put to death. HARP advised that he is of the opinion REES cannot feign insanity so that Dr. GAYLE will not doubt-subject. *ARREST SAME*

The Richmond Office will maintain contact with RENO S. HARP, III; however, Mr. HARP does not usually receive information in this case until after documents have been filed before the Supreme Court of the U. S. by the attorneys for REES.

WFO should maintain contact with the Clerk of the Supreme Court of the U. S., for the results of any psychiatric examination of REES or related material which will be sent to the Clerk of that court by the attorneys for REES.

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No. 321

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

SUPPLEMENT TO PETITION FOR
WRIT OF CERTIORARI

This supplemental statement in support of the petition for a writ of certiorari is filed pursuant to rule 24(4). Petitioner respectfully urges the Court to compare the decisions below with Siegfried v. City of Charlottesville, 206 Va. 271, 142 S.E.2d 556 (1965), decided by the Supreme Court of Appeals of Virginia in June of this year and not reported until after the filing of the petition for certiorari in this case.

The Siegfried case, read with the decisions of the state and federal courts in the instant case, creates for Virginia a double standard of "fair trial" whereby property rights are afforded more protection than personal rights. Siegfried held that in a civil case, with a person's land at stake, there could be no fair trial where the jurors were exposed to pre-trial news accounts of inadmissible evidence. In the instant case, the courts refused to apply this selfsame standard in a criminal trial with a person's life at stake. This double standard deprives petitioner of his federal constitutional rights to due process and the equal protection of the laws.

In the Siegfried case, the City of Charlottesville was seeking to purchase certain land for the construction of a highway. One of the parcels of land be-

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longed to a Florida woman, who rejected an offer of \$12,717 made by the city and asked for \$400,000. The city thereupon brought a condemnation action, in which the woman as defendant had the right to have just compensation determined by five "commissioners" chosen on voir dire from a panel of ten disinterested freeholders.

On the day before trial, the local newspaper ran an article in which it published the information that the city had offered \$12,717, that 24 other parcels had been purchased without condemnation proceedings, that in the one previous condemnation proceeding there had been an award of \$20,000, that the defendant was asking \$400,000, and that she was represented by the same lawyer who represented the only other holdout landowner. None of this information was admissible at trial. As the Supreme Court of Appeals said, "the article contained inadmissible or prejudicial information which placed her in an unfavorable position before the commissioners. The trial judge stated that he was 'shocked' when he saw the article in the newspaper 'just the day before we went to trial.'" Id. at 278, 142 S.E.2d at 561.

The trial judge asked the freeholders on voir dire whether they had read the newspaper article and all replied that they had. He then asked whether any freeholder would be biased or prejudiced against either the city or the defendant by the article and none replied that they would. After selection of the five commissioners, the judge asked whether they could give a fair and unbiased award to the defendant based on their view of the land, the evidence which they would hear and the instructions which he would give. All said that they could. The judge further instructed them "to completely disregard any facts or figures contained in the article and to try the case solely on the evidence presented at the trial, the view of the premises and the instructions." All five commissioners once again stated that they could do this and would give the parties a fair trial. Id. at 275, 142 S.E.2d at 559. The commissioners made an award of \$14,750, which the trial judge permitted to stand, and the landowner appealed.

The Supreme Court of Appeals of Virginia reversed the decision, holding that "the mental processes of at least one of the commissioners could have been subtly influenced by the article during the trial of the case, and we cannot say with reasonable certainty whether or not the award was affected." Id. at 278, 142 S.E.2d at 561.

Considered with this case, the upholding of petitioner's conviction by that same court, as well as by the federal circuit court, is nothing short of

incredible. The cases hold that a defendant in a common condemnation suit cannot receive a fair trial if the jurors have been exposed to a single pre-trial press reference to inadmissible evidence such as a settlement offer. Yet, they hold that a defendant in a capital criminal case can receive a fair trial where the jury has been exposed to hundreds of pre-trial references to inadmissible evidence--including a paper, obtained in violation of his rights under both the federal and state constitutions, containing an account said to be in his own handwriting detailing the commission of the very crime with which he is charged.

The cases establish in Virginia a higher standard for the protection of property rights than for the protection of personal rights. They show more concern over the influence of pre-trial publication of inadmissible evidence in the taking of a person's land than in the taking of petitioner's life. They furnish an additional and compelling reason for review by this Court.

Respectfully submitted,

Charles A. Dukes, Jr.

Green, Babcock and Dukes
Maryland Building
Hyattsville, Maryland, 20781

S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20005

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 1965, I deposited copies of the foregoing supplement to petition for writ of certiorari in a United States mail box, first class postage prepaid, addressed to Reno S. Harp, III, Esq., Assistant Attorney General, Supreme Court-State Library Building, Richmond,

Virginia, 23219; Melvin L. Wulf, Esq., American Civil Liberties Union, 156 Fifth Avenue, New York, New York, 10010; Monroe H. Freedman, Esq., National Capital Area Civil Liberties Union, 1101 Vermont Avenue, Nw., Washington, D.C., 20005; and Melvin Davis Rees, Jr., Virginia State Penitentiary, 500 Spring Street, Richmond, Virginia, 23219.

S. White Rhyne, Jr.

29 September 1965

Mr. S. White Rhyme, Jr.,
Attorney at Law
Mullin and Connor
515 Southern Building
Washington 5, D.C.

Re: Mr. Malvin Davis Rees, Jr.

Dear Mr. Rhyme:

I have enclosed the report of the examination of Malvin Davis Rees, which I undertook per your request.

As you see, it is my opinion that Mr. Rees is at the present time psychotic, suffering from a schizophrenic disorder of a mixed type with conspicuous paranoid characteristics, and severe disorganization of thought processes. This man is not competent to assist in his defense because he is under the influence of a delusional system which influences his judgement, and also because the disorganization of his thought and his preoccupation with psychotic matters prevents his giving sufficient attention to his defense.

I am, however, appreciative of the fact that, though the authorities at the penitentiary were most courteous and helpful in setting up a situation where I could examine Mr. Rees comfortably, nevertheless an adequate psychiatric examination for a disorder of this sort really requires a period of observation in a hospital, where the patient's behavior can be observed by qualified personnel over a fairly prolonged period of time (actual objective evidence of hallucinatory activity, for example, sometimes occurs only at night and occasionally.) The personnel in such a setup also have opportunity to observe how the patient goes about doing many of the simple tasks of everyday maintenance of himself; how much does he move about, what does he do all day, etc., in the performance of which clear objective evidence can be gathered as to what can be going on with the patient.

It is also important to observe a patient of this sort over a fairly lengthy period because of the obvious question of malingering. Mr. Rees is a highly intelligent man, well educated, who has had one course in psychology, has read some psychiatry,

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[Handwritten signature]

DR. OSCAR LEGAULT

Mr. S. White Rhyno, Jr.

Re: Mr. Melvin Davis Rees, Jr.

9/29/65 Page 2

and therefore could be expected to give a fairly sophisticated performance if he chose to malingering. The exposure of this would require his stay in a hospital.

If the patient is hospitalized, psychological testing can also be carried out. I doubt very much that, at the present time in the jail, Mr. Rees would cooperate. It was difficult getting him merely to talk to me. Psychological tests would furnish a further check on malingering.

I will now reemphasize, however, that I do not think he is malingering. His behavior throughout the interview, from the time that I saw him right to the end, was consistently and undeviatingly characteristic of a psychotic state, and that is my conclusion from this examination.

Yours truly,

Oscar Legault, M.D.

DL:vg

Enclosure: (1) Notes on the Examination of Melvin Davis Rees

cc: Mr. Reno S. Harp,
Assistant Attorney General of Virginia

Oscar Legault, M.D.

NOTES ON THE EXAMINATION OF MELVIN DAVIS REES
AT THE RICHMOND PENITENTIARY, SEPTEMBER 26, 1965

On arrival at the penitentiary, I discovered that Lieutenant Mitchell had thoughtfully arranged for me to see Rees alone in a room in the penitentiary hospital, with the door closed and under conditions assuring complete privacy. However, while I was waiting in this room for Lieutenant Mitchell to bring Rees, I was informed by telephone that Rees declined to come to see me. I therefore went to Death Row, and engaged in conversation with him, while he still was in his cell.

It was immediately apparent from his behavior and facial expression that he regarded me with extreme suspicion. He stated that he did not wish to have any sort of psychiatric examination or interview. He apparently did not know that I had been sent by Mr. Rhyme, or, at least, appeared surprised when I told him that I had been sent. He then, however, gave an exclamation of recognition, asked my name, which I told him, and which he seemed to recognize, then stated that he had not been told that I was going to arrive at a specific time, and immediately reverted to regarding me with suspicion.

I stated that I could understand his desire not to have an examination...did he, however, mind talking to me? I asked him what the harm might be of engaging in any sort of conversation with me. He finally said he was willing to do that. I then asked him why we had to continue talking in a public place...would he not prefer to have a conversation with me where we could be

Oscar Leebault, M.D.

Notes on Ross, 9/26/65, Page 2

were private? If there were any questions I asked him which he did not wish to answer, he certainly could decline. I again reassured him of the absence of danger in his talking to me. He at last allowed himself to be persuaded, and the scene of the conversation then shifted to the room which Lieutenant Mitchell had provided.

As soon as we got to the room, he again became suspicious, asked to see the papers which I was carrying, which included correspondence from Mr. Rhyne; he then wanted to see some identification, which I showed him, identifying myself as a physician. After he had looked at these, he stood up, thanked me for having come, then stated that he wished to leave, and headed for the door. As he got to it, I remarked that I wished he would stay and talk some more, whereupon he turned around and came back and sat down. On the second occasion that he attempted to leave, which was shortly after beginning the interview, I told him that I had seen sufficient in his behavior to entertain a serious doubt as to his competency, and that I would so inform Mr. Rhyne. If he wished to persuade me differently, which I understood from his statements, then he would have to stay and tell me. On this basis, we continued to talk.

The outstanding thing noticeable in the conversation which followed, and which was noticed immediately on seeing him in his cell on Death Row, were the external evidences of serious mental disturbance. He smiles and laughs very inappropriately; his facial expressions are stiff and manneristic; he also has a

manneristic, stereotyped behavior with his tongue, which he shakes rapidly back and forth inside his mouth, his mouth partly opened, while he blocks in the middle of a sentence. His manneristic gestures are quick and fleeting.

The salient characteristic to be observed in the content of what was told in the interview is its extreme disorganization, with the presence of a great deal of blocking while he is talking about the emotionally loaded subject of his religious conversion experience. As far as the disorganization of his thought is concerned, it is characterized by extreme verbosity, with a considerable attempt to use fancy, complicated, involved, grandiloquent sentences which contain very little in the way of actual objective statements. Sentences do not follow logically, one upon the other; the thread of thought is often lost, though he frequently returns to it after a considerable amount of meandering. Words are occasionally used in a distorted and abstruse way, referring to private philosophical ruminations which are hinted at, but not clearly expounded. The following is one such statement: "The world of reality and psychiatry operates from auto-masochistic considerations, but I am interested in the things of the spirit." There are others in the letter he sent Mr. Rhyne. It is difficult to get him to answer.

As to the actual content of what he tried to impart to me, essentially it is that he has experienced a religious conversion which he describes in terms that he has borrowed from Herbert Marcuse, smatterings of psychology that he has picked up in

various places, the gist of which has to do with the problem of God's relationship to evil, and the salvation of the world. He has been saved by his recognition of God's forgiveness, and the world has been saved. All this is expounded in a most circumstantial manner; it is by no means stated as clearly as above. When I did attempt to state some clear thought of this sort to him, he immediately hedged on it, and proceeded to modify it, and rambled off into some other discursive, ill-connected sequence of thoughts, having little to do with what I asked him.

Frequently, looks of exaltation or beatific smiles of inner ecstatic satisfaction accompanied his statements. Occasionally, he appeared tolerant, experiencing a bemused sympathy at my difficulty in understanding the gyrations of his thought.

He states that he has both seen and heard God, but these may not be descriptions of hallucinatory experiences. He did not, while he was in my presence, give the external manifestations of hallucinating. However, he states that he has heard God talk to him, then qualifies it by saying that God talks through everyone, and God is visible throughout the whole world. However, these may be attempts to fight off the total fragmentation of his psyche by denying hallucinatory experiences, as in the following paragraph, where he does the same thing with respect to ideas of reference.

In this regard, I referred to the information with which I was furnished by Mr. Rhyne concerning the prisoner's feeling that the guards were communicating with him by "talismanic objects",

Notes on Ross, 9/26/65, Pa 5

observing his thoughts, that he was being spied on, that his food was being poisoned, etc. I asked him about the "talismanic objects", particularly the guard placing his hat on the table, and stated that I understood he had told Mr. Rhyne that he had been trying to feign a psychosis by misinterpreting this and other actions. I asked him if that were true. He blocked for approximately thirty seconds, then shook his head manneristically, and said: "You can disregard that safely." I then asked him if that meant that it was true that he had malingered. He continued to be evasive, but it was my impression, from the manner in which he was talking, that at the time the events had occurred, he had in fact misconstrued them and experienced the ideas of reference, though subsequently he decided either that the particular actions had not been meant the way he had interpreted them, or that they had been meant but that he disregarded them. That was his meaning of the term "disregard". However, it is very difficult to make out clearly what he means here, because he is extremely evasive and will not talk about the matter very willingly, and when I asked him about these ideas of reference, he immediately got up and said he wished to terminate the interview.

My impression of the dynamics of this case is that during the period when the prisoner was complaining to the attorney about the numerous ideas of reference and hallucinatory experiences, he was undergoing a rapid psychotic breakdown which was checked by the shifting of the psychosis into the different level of religious conversion. The fundamental problem which the patient wrestles with is the problem of evil, which, in his thinking, is

described as the problem of aggression (hence the use of the word "sado-masochistic" in the quote above; it is a private meaning that has to do with the whole problem of hostility). In the opening phase of the psychosis, his hostilities were projected in hallucinatory experiences and ideas of reference. The world persecutes him and is evil. In the second phase, hostility becomes self-directed in his suicidal gesture of withdrawing his active participation in his case, and the ideas of reference then cease. The locus of operation of the psychosis becomes confined to the one topic of the religious conversion; a saving is thus effected in his mental economy, which saves him from totally disintegrating and shattering his ego into a whole series of hallucinatory experiences.

On matters not having to do with this subject, he seemed to converse fairly readily with little blocking, more appropriate affect, though not totally so, and with a fair amount of spontaneity.

I informed him at the conclusion of the examination that I would inform Mr. Rhyme that, in my opinion, he was not competent, stating that he was so preoccupied with spiritual matters that he had no time to pay attention to the world of reality, and thus could not appropriately assist his counsel in his defense, which was one of the requirements for competency. He immediately stated that he had dismissed Mr. Rhyme, and I then informed him that he couldn't dismiss Mr. Rhyme, unless it was established that he was

Dean Legault, M.D.

Notes on Rees, 9/26/65, Page 7

competent to do so. He couldn't see the merit of the argument at all, and seemed to become increasingly distressed at the thought that I was going to do this. He said at one point that he wasn't going to let me leave the examining room unless he convinced me otherwise, but I blandly told him that I had to catch a plane, and he apologized and said that he would nevertheless insist on dismissing Mr. Rhyme. I said I would communicate that to Mr. Rhyme, and also communicate his statement that he felt he was competent and his disagreement with my finding. The interview was then terminated.

10/1/65

AIRTEL

REGULAR MAIL

TO: DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - P -

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING
(OO:RICHMOND)

Reference is made to Richmond airtel to the Bureau dated 9/7/65.

RENO S. HARP, III, Assistant Commonwealth of Virginia Attorney General, Richmond, Va., advised that MELVIN DAVIS REES, JR., was given a psychiatric examination on 9/26/65 by Dr. OSCAR LEGAULT, a psychiatrist from Washington, D.C.

HARP advised Dr. LEGAULT has a good reputation and is considered a qualified psychiatrist by the legal profession.

HARP advised that the parents of REES did not agree to a psychiatric examination of REES by Dr. FINLEY GAYLE, a Richmond psychiatrist, as they did not desire a psychiatrist from the State of Va. to examine REES and were of the opinion that a Va. psychiatrist would not make a fair examination.

HARP stated that by letter dated 9/29/65, addressed to S. WHITE RHYNE, JR., the attorney for REES, Dr. LEGAULT set forth a psychiatric opinion that REES was insane.

3 - Bureau (Encl. 3)
1 - Baltimore (Info) (79-55)
2 - WFO (79-162)
2 - Richmond
JLS/vlr
(5)

79-44-9112

Dr. LEGAULT, in his letter, was of the opinion that REES at the present time is psychotic, suffering from a schizophrenic disorder of a mixed type with conspicuous paranoid characteristics and severe disorganization of thought processes.

Dr. LEGAULT was of the opinion REES was not competent to assist in his defense because he is under the influence of a delusional system which influences his judgment and also because the disorganization of his thoughts and preoccupation with psychotic matters prevents him from giving sufficient attention to his defense.

Dr. LEGAULT in his letter stated that REES was a highly intelligent man, well educated, who has had one course in psychology, has read some psychiatry, and, therefore, could be expected to give a fairly sophisticated performance if he chose to malingering.

Dr. LEGAULT suggested that REES should receive a psychiatric examination for a disorder in a hospital where qualified personnel could observe him over a long period of time.

On 9/27/65, the attorneys for REES filed a "Supplement to Petition for Writ of Certiorari" before the Supreme Court of the United States. This supplement cited the case "Siegfried v. City of Charlottesville, 206 Va. 271, 142 S.E. 2d 956 (1965)".

This case pertained to the condemnation of land and held that there could be no fair trial where the jurors were exposed to pre-trial accounts of inadmissible evidence. The attorneys for REES suggested to the Court that the same standards should be applied in a criminal case where a person's life is at stake.

HARP stated that he anticipated on making a formal request to the Attorney General of the U. S. that the Bureau of Prisons name the Marion State Hospital at Marion, Va., as a place of incarceration for REES so that a psychiatric examination may be carried on over an extended period of time.

ME 73-44

MEW advised that the attorneys for MEW have suggested that MEW should be incarcerated at St. Elizabeth's Hospital, Washington, D.C., for further psychiatric examination but that he was opposing MEW being examined at St. Elizabeth's Hospital.

MEW advised that approximately a week ago, MEW wrote a letter the Supreme Court of the United States, advising the Court that he no longer desired to be represented by J. WALTER WELLS, JR., and requested that the Court appoint him an attorney as that he could be assisted.

Captain C. R. LINDLEY, St. State Police, Richmond, Va., advised that he has in his possession a number of books which formerly belonged to MEW; that one book is a psychology book and that numerous notations have been placed in the book by underlining important parts of the book pertaining to mental disturbances; that these notations in the book are pertaining to the mental reactions of mentally disturbed persons.

One copy of the "Applicant to Petition for Writ of Habeas Corpus", as well as a copy of Dr. GEORGE LINDLEY's letter to Dr. J. WALTER WELLS, JR., and a copy of Dr. LINDLEY's notes on the examination of MEW at the Richmond Penitentiary, 3/26/55, are being enclosed for the Bureau.

The Bureau will be kept advised of developments of the case as they are issued by the Attorney General's Office in Richmond.

The Washington Field Office should maintain contact with the Clerk of the Supreme Court of the United States to obtain copies of all documents filed in this case.

MULLIN AND CONNOR
ATTORNEYS AT LAW
615 SOUTHERN BUILDING
WASHINGTON 5, D.C.

EUGENE F. MULLIN, JR.
J. PARKER CONNOR
S. WHITE RHYNE, JR.

TELEPHONE
STERLING 3-2455

September 30, 1965

Hon. John F. Davis, Clerk
Supreme Court of the United States
First Street and Maryland Avenue, No.
Washington, D.C.

Re: Rees v. Poyton
Misc. No. 321

Dear Sir:

Enclosed herewith are copies of a letter from Oscar Le Gaulk, M.D., and the report of his psychiatric examination of the petitioner. Dr. Le Gaulk's conclusion, as stated in his letter, is that the petitioner "is at the present time psychotic, suffering from a schizophrenic disorder of a mixed type with conspicuous paranoid characteristics, and severe disorganization of thought processes." He states that petitioner "is not competent to assist in his defense because he is under the influence of a delusional system which influences his judgment, and also because the disorganization of his thought and his preoccupation with psychotic matters prevents his giving sufficient attention to his defense." He further states that petitioner's behavior was "consistently and undeviatingly characteristic of a psychotic state."

Dr. Le Gaulk is a Diplomate of the American Board of Psychiatry and Neurology, of the Washington School of Psychiatry and of the Washington Psychoanalytic Institute. He is a member of the American Psychoanalytic Association, a Fellow of the American Psychiatric Association, a consultant at Saint Elizabeth's Hospital, a Training and Supervising Analyst of the Washington Psychoanalytic Institute, and President-Elect of the Washington Psychoanalytic Society. He is also a member of the editorial staff of the magazine, Psychiatry, and is the author of published papers in the field.

On the basis of Dr. Le Gaulk's report and conclusions, I consider myself free of any obligation to comply with petitioner's instructions to dismiss the

79-44-9113

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SERIALIZED	FILED
OCT 6 1965	
FBI-RICHMOND	

Hon. John F. Davis, Clerk

2.

September 30, 1965

petition for certiorari or withdraw from the case. /1 I do feel obligated to seek to obtain for petitioner the medical treatment which he obviously needs, and in the meantime to continue to exert my best efforts in his behalf in the pending action. It is my intention, after further study of the applicable authorities, to file a motion suggesting the appropriate means of dealing with this case in the light of these new developments. /2

I would greatly appreciate it if you would bring the matters set forth in this letter to the attention of the Court.

Sincerely,

SVK/rmb

S. Walter Payne, Jr.

cc: Mr. Melvin Davis Rees, Jr.
Charles A. Oakes, Jr., Esq.
Reno S. Harp, III, Esq., Assistant
Attorney General of Virginia

/1 See my letters to you dated August 3, 1963, and September 24, 1963.

/2 Three possibilities which initially present themselves are:

a. The Court may simply proceed to grant certiorari and decide the case with me continuing in my capacity as petitioner's counsel.

b. The Court may appoint me or a member of petitioner's family as guardian ad litem to prosecute the action on petitioner's behalf. See Laro v. Strauss, 167 F.2d 219, 220 (5th Cir. 1948), stating that "even in the absence of an allegation of insanity or of a commitment, where a person is incompetent courts generally have inherent power to protect the interests of the incompetent by appointing a guardian ad litem to represent the incompetent in proceedings." See also 28 U.S.C. 12242, permitting a federal habeas corpus action to be prosecuted by "the person for whose relief it is intended or by someone acting in his behalf." (emphasis added.)

c. The Court may grant an indefinite stay of proceedings until the petitioner shall regain his sanity. See United States v. Washington, 6 U.S.C. M.A. 114, 19 C.M.R. 240 (1955) (stay requested by accused's counsel).

10-3-65

~~SECRET~~

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO: RM)

Re Richmond airtel to Bureau, 10-1-65.

WENDY S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Virginia, advised that S. WHITE RHYNE, JR., Attorney for REES, visited REES within the past few days to advise him that he had been declared insane by the examining psychiatrist, Dr. OSCAR LEGASIS, and that RHYNE has been using his influence with the U.S. Attorney General's Office to have REES transferred to the Federal Penitentiary at Atlanta, Georgia. HARP stated that RHYNE is of the opinion that if he can have REES transferred to Atlanta to serve his life sentence which he received in the U.S. District Court in Baltimore, Maryland, REES will never be returned to Virginia to be executed.

HARP advised that he received a telephone call on 10-1-65 from the U.S. Attorney General's Office advising him that REES would be transferred to Atlanta unless he, HARP, was able to stop transfer. HARP stated he is now trying to stop this transfer of REES to Atlanta and is requesting that REES be transferred to the Southwestern State Hospital, also

3 - Bureau
1 - Baltimore (79-55) (Info)
2 - WFO (79-162)
2 - Richmond
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(3)

[Handwritten signatures and initials are present over the distribution list and in the bottom right corner.]

79-44-9114

RH 79-44

known as the Marion State Hospital, Marion, Virginia, for a complete psychiatric examination, as he is certain that REES is malingering insanity.

10/6/65

A I R T E L

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, Jr., aka;
CARROLL VERNON JACKSON, Jr.;
ET AL - VICTIMS
KIDNAPING

(OO: RM)

Re Richmond airtel to Bureau, 10/5/65.

RENO S. HARP, III, Assistant AG, Commonwealth of Virginia, Richmond, Va., advised that S. WHITE RHYNE, Jr., Attorney for REES, visited REES within the past few days to advise him that he had been declared insane by the examining psychiatrist, Dr. OSCAR LEGAULT, and that RHYNE has been using his influence with the U. S. Attorney General's Office to have REES transferred to the Federal Penitentiary at Atlanta, Ga. HARP stated that RHYNE is of the opinion that if he can have REES transferred to Atlanta to serve his life sentence which he received in the U. S. District Court in Baltimore, Maryland, REES will never be returned to Virginia to be executed.

HARP advised that he received a telephone call on 10/4/65 from the U.S. Attorney General's Office advising him that REES would be transferred to Atlanta unless he, HARP, was able to stop transfer. HARP stated he is now trying to stop this transfer of REES to Atlanta and is requesting that REES be transferred to the Southwestern State Hospital, also known as the Marion State Hospital, Marion, Va., for a complete psychiatric examination, as he is certain that REES is malingering insanity.

3 - Bureau
1 - Baltimore (79-55)(Info)
2 - WFO (79-162)
2 - Richmond
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(8)

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FILED

Handwritten signatures and initials:
Sweeney
J.D.

79-44-945

RH 79-44

RENO S. HARP, III made available to the Richmond Office a letter dated 9/30/65, which was directed to JOHN F. DAVIS, Clerk, Supreme Court of the U. S., Washington, D. C., by S. WHITE RHYNE, Jr., Attorney for REES, in which letter RHYNE advised the Supreme Court of the U. S. that the psychiatrist, Dr. OSCAR LEGAULT, had determined that REES was psychotic. The qualifications of Dr. LEGAULT were also set forth in this letter.

RHYNE advised the Supreme Court of the U. S. that he did feel obligated to seek medical treatment for REES and in the meantime, to continue to exert his best effort on the behalf of REES in the pending action before the Supreme Court. Also, that he did not feel obligated to dismiss the petition for certiorari or withdraw from the case. RHYNE set forth in the letter that three possibilities presented themselves:

- 1) The court may proceed to grant certiorari and decide the case with RHYNE continuing as the Attorney for REES.
- 2) The court may appoint a member of REES' family or RHYNE as guardian ad litem to prosecute the action on behalf of REES.
- 3) The court may grant an indefinite stay or proceedings until REES regains his sanity.

The letter set forth that a motion would be filed with the court at a later date.

One copy of the letter dated 9/30/65, addressed to the Supreme Court of the United States by RHYNE is being transmitted herewith to the Bureau.

10/6/65

A I R T E L

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) -P

MELVIN DAVIS REES, Jr., aka;
CARROLL VERNON JACKSON, Jr.;
ET AL - VICTIMS
KIDNAPING

(OO: RH)

Re Richmond airtel to Bureau, 10/5/65.

RENO S. HARP, III, Assistant AG, Commonwealth of Virginia, Richmond, Va., advised that S. WHITE RHYNE, Jr., Attorney for REES, visited REES within the past few days to advise him that he had been declared insane by the examining psychiatrist, Dr. OSCAR LEGAULT, and that RHYNE has been using his influence with the U. S. Attorney General's Office to have REES transferred to the Federal Penitentiary at Atlanta, Ga. HARP stated that RHYNE is of the opinion that if he can have REES transferred to Atlanta to serve his life sentence which he received in the U. S. District Court in Baltimore, Maryland, REES will never be returned to Virginia to be executed.

HARP advised that he received a telephone call on 10/4/65 from the U.S. Attorney General's Office advising him that REES would be transferred to Atlanta unless he, HARP, was able to stop transfer. HARP stated he is now trying to stop this transfer of REES to Atlanta and is requesting that REES be transferred to the Southwestern State Hospital, also known as the Marion State Hospital, Marion, Va., for a complete psychiatric examination, as he is certain that REES is malingering insanity.

3 - Bureau
1 - Baltimore (79-45) (Info)
2 - WFO (79-162)
2 - Richmond
ULS:cbc
(8)

79-44-9115

RH 79-44

RENO S. HARP, III made available to the Richmond Office a letter dated 9/30/65, which was directed to JOHN F. DAVIS, Clerk, Supreme Court of the U. S., Washington, D. C., by S. WHITE RHYNE, Jr., Attorney for REES, in which letter RHYNE advised the Supreme Court of the U. S. that the psychiatrist, Dr. OSCAR LEGAULT, had determined that REES was psychotic. The qualifications of Dr. LEGAULT were also set forth in this letter.

RHYNE advised the Supreme Court of the U. S. that he did feel obligated to seek medical treatment for REES and in the meantime, to continue to exert his best effort on the behalf of REES in the pending action before the Supreme Court. Also, that he did not feel obligated to dismiss the petition for certiorari or withdraw from the case. RHYNE set forth in the letter that three possibilities presented themselves:

- 1) The court may proceed to grant certiorari and decide the case with RHYNE continuing as the Attorney for REES.
- 2) The court may appoint a member of REES' family or RHYNE as guardian ad litem to prosecute the action on behalf of REES.
- 3) The court may grant an indefinite stay or proceedings until REES regains his sanity.

The letter set forth that a motion would be filed with the court at a later date.

One copy of the letter dated 9/30/65, addressed to the Supreme Court of the United States by RHYNE is being transmitted herewith to the Bureau.

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No. 321

RECEIVED

SEP 27 1965

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

SUPPLEMENT TO PETITION FOR
WRIT OF CERTIORARI

This supplemental statement in support of the petition for a writ of certiorari is filed pursuant to rule 24(4). Petitioner respectfully urges the Court to compare the decisions below with Siegfried v. City of Charlottesville, 206 Va. 271, 142 S.E.2d 556 (1965), decided by the Supreme Court of Appeals of Virginia in June of this year and not reported until after the filing of the petition for certiorari in this case.

The Siegfried case, read with the decisions of the state and federal courts in the instant case, creates for Virginia a double standard of "fair trial" whereby property rights are afforded more protection than personal rights. Siegfried held that in a civil case, with a person's land at stake, there could be no fair trial where the jurors were exposed to pre-trial news accounts of inadmissible evidence. In the instant case, the courts refused to apply this selfsame standard in a criminal trial with a person's life at stake. This double standard deprives petitioner of his federal constitutional rights to due process and the equal protection of the laws.

In the Siegfried case, the City of Charlottesville was seeking to purchase certain land for the construction of a highway. One of the parcels of land be-

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[Signature]

longed to a Florida woman, who rejected an offer of \$12,717 made by the city and asked for \$400,000. The city thereupon brought a condemnation action, in which the woman as defendant had the right to have just compensation determined by five "commissioners" chosen on voir dire from a panel of ten disinterested freeholders.

On the day before trial, the local newspaper ran an article in which it published the information that the city had offered \$12,717, that 24 other parcels had been purchased without condemnation proceedings, that in the one previous condemnation proceeding there had been an award of \$20,000, that the defendant was asking \$400,000, and that she was represented by the same lawyer who represented the only other holdout landowner. None of this information was admissible at trial. As the Supreme Court of Appeals said, "the article contained inadmissible or prejudicial information which placed her in an unfavorable position before the commissioners. The trial judge stated that he was 'shocked' when he saw the article in the newspaper 'just the day before we went to trial.'" Id. at 278, 142 S.E.2d at 561.

The trial judge asked the freeholders on voir dire whether they had read the newspaper article and all replied that they had. He then asked whether any freeholder would be biased or prejudiced against either the city or the defendant by the article and none replied that they would. After selection of the five commissioners, the judge asked whether they could give a fair and unbiased award to the defendant based on their view of the land, the evidence which they would hear and the instructions which he would give. All said that they could. The judge further instructed them "to completely disregard any facts or figures contained in the article and to try the case solely on the evidence presented at the trial, the view of the premises and the instructions." All five commissioners once again stated that they could do this and would give the parties a fair trial. Id. at 275, 142 S.E.2d at 559. The commissioners made an award of \$14,750, which the trial judge permitted to stand, and the landowner appealed.

The Supreme Court of Appeals of Virginia reversed the decision, holding that "the mental processes of at least one of the commissioners could have been subtly influenced by the article during the trial of the case, and we cannot say with reasonable certainty whether or not the award was affected." Id. at 278, 142 S.E.2d at 561.

Considered with this case, the upholding of petitioner's conviction by that same court, as well as by the federal circuit court, is nothing short of

incredible. The cases hold that a defendant in a common condemnation suit cannot receive a fair trial if the jurors have been exposed to a single pre-trial press reference to inadmissible evidence such as a settlement offer. Yet, they hold that a defendant in a capital criminal case can receive a fair trial where the jury has been exposed to hundreds of pre-trial references to inadmissible evidence--including a paper, obtained in violation of his rights under both the federal and state constitutions, containing an account said to be in his own handwriting detailing the commission of the very crime with which he is charged.

The cases establish in Virginia a higher standard for the protection of property rights than for the protection of personal rights. They show more concern over the influence of pre-trial publication of inadmissible evidence in the taking of a person's land than in the taking of petitioner's life. They furnish an additional and compelling reason for review by this Court.

Respectfully submitted,

Charles A. Dukes, Jr.

Green, Babcock and Dukes
Maryland Building
Hyattsville, Maryland, 20781

S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20005

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 1965, I deposited copies of the foregoing supplement to petition for writ of certiorari in a United States mail box, first class postage prepaid, addressed to Reno S. Harp, III, Esq., Assistant Attorney General, Supreme Court-State Library Building, Richmond,

Virginia, 23219; Melvin L. Wulf, Esq., American Civil Liberties Union, 156 Fifth Avenue, New York, New York, 10010; Monroe H. Freedman, Esq., National Capital Area Civil Liberties Union, 1101 Vermont Avenue, Nw., Washington, D.C., 20005; and Melvin Davis Rees, Jr., Virginia State Penitentiary, 500 Spring Street, Richmond, Virginia, 23219.

S. White Rhyne, Jr.

10/4/68

AIRTEL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, WFO (79-102) (P)

HELVIN DAVIS REES, JR., aka;

CARROLL VERNER JACKSON, JR.;

ET AL - VICTIMS

KIDNAPING

(OO:WFO)

Re Richmond airtel to Bureau dated 9/7/68.

Enclosed for information of the Bureau and Richmond Office is one photocopy each of a Supplement to Petition For Writ of Habeas Corpus, filed in the U. S. Supreme Court (USSC) 9/27/68 by counsel for HELVIN DAVIS REES, JR. The above was made available by MICHAEL BODAK, Deputy Clerk, USSC, on 10/4/68. BODAK advised that instant case is presently under consideration by the Court.

WFO will continue to follow this matter in the Supreme Court.

3 - Bureau (Enc.-1)

1 - Baltimore (79-55)(Info)

① - Richmond (79-44)(Info-1)

1 - WFO

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AIRTEL

79-44-9117
S. O. G. [Signature]

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

October 12, 1968

C
O
P
Y

S. White Rhyno, Jr., Esq.
Attorney at Law
515 Southern Building
Washington, D. C.

Re: Melvin Davis Ross, Jr. v. Peyton
Misc. No. 321

Dear Sir:

I have reviewed carefully Dr. Ledoux's report based on his brief interview with Melvin Davis Ross, Jr., at the Virginia State Penitentiary on September 26, 1968.

In view of the contents of the same, I feel that he should be examined by Dr. Bialock and Dr. Brick, skilled psychiatrists employed by the Commonwealth of Virginia.

I believe you will find the enclosed correspondence self-explanatory.


S. White Rhyno, Jr.
Assistant Attorney General

RMV/eg

cc: Hon. John F. Davis, Clerk
Supreme Court of the
United States
Washington, D. C.

Honorable C. C. Peyton
Superintendent
Virginia State Penitentiary
Richmond, Virginia

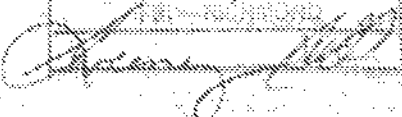
Dr. Joseph R. Bialock
Southwestern State Hospital
Merion, Virginia

Dr. Harry Brick
Virginia State Penitentiary
Richmond, Virginia

cc: Leroy Sweeney, Special Agent
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

79-101-1-100

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COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

October 13, 1966

Dr. Joseph A. Blalock
Superintendent
Southwestern State Hospital
Marion, Virginia

Re: Melvin Davis Ross, Jr. v. Peyton

Dear Dr. Blalock:

I am enclosing a copy of a report made by Dr. Cesar Lafont in connection with Melvin Davis Ross, Jr., who is presently confined in the Virginia State Penitentiary under sentence of death.

In view of the contents of the foregoing report, it is requested that you and Dr. Harry Dietz examine Mr. Ross at the Virginia State Penitentiary to determine whether or not in your opinion he is mentally ill.

I am sure that Dr. Peyton will make available to you such personnel as you need for this evaluation, although you may deem it appropriate to have a number or numbers of your staff examine Mr. Ross also.

After you have had an opportunity to make a thorough evaluation, I would be grateful if you would forward to me a report of your findings in connection with this matter. Please forward a copy of your report to Mr. S. White Rhyno, Jr., Attorney at Law, 515 Southern Building, Washington, D. C.

I have discussed this matter with the Commissioner of the Department of Mental Hygiene and Hospitals, and he has approved this request.

79-446-2-15

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FBI - MEMPHIS	

[Signature]

Dr. Joseph B. Blalock
October 12, 1965
Page 2

If you need further information, please advise.
With best wishes, I am

Sincerely,



J. Lee Henry, III
Assistant Attorney General

RAM/cg

Enclosure

cc: Hon. John F. Davis, Clerk
Supreme Court of the
United States
Washington, D. C.

S. White Rynes, Jr., Esq.
Attorney at Law
515 Southern Building
Washington, D. C.

Dr. Allen H. Davis
Commissioner
Department of Mental Hygiene
and Hospitals
9 N. 12th Street
Richmond, Virginia

Honorable C. C. Peyton
Superintendent
Virginia State Penitentiary
Richmond, Virginia

Mr. Harry Bick
Virginia State Penitentiary
Richmond, Virginia

cc: Leroy Sweeney, Special Agent
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

C
O
P
Y

10/12/65

AIRTEL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) - P -

MELVIN DAVIS REES, JR., aka;
CARROLL VERMIE JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING

(OO:RICHMOND)

Re Richmond airtel to the Director, 10/6/65

REND S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Va., advised that by letter dated 10/13/65, he instructed Dr. JOSEPH E. BLALOCK, Superintendent, Southwestern State Hospital, Marion, Va., together with Dr. HARRY BRICK, psychiatrist, Va. State Penitentiary, Richmond, Va., to make a psychiatric examination of MELVIN DAVIS REES, JR., at the Va. State Penitentiary, Richmond, Va., to determine whether or not in their opinion REES is mentally ill.

HARP stated that Dr. BLALOCK was instructed that if he deemed it appropriate, to have a member or other members of his staff conduct this examination.

HARP stated that he desired that this examination be conducted over a period of time and that the report not be based on a brief interview such as the report Dr. OSCAR LOGANIS, who made a psychiatric examination for the attorneys of REES.

1 - Bureau
1 - Baltimore (79-55)(Info)
1 - WFO (79-104)
1 - Richmond
1 - [unclear]
(6)

[Handwritten signatures and initials]
79-44-9120

ME 73-44

A copy of HARP's letter to Dr. BIALOCKI was transmitted to the Clerk of the Supreme Court of the U. S. Washington, D. C.

The Richmond Office will obtain copies of the psychiatric examination and make them available to the Bureau as soon as the report is available.

10/19/65

A I R T E L

REGULAR MAIL

TO: DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - P -
SUBJECT: MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING
(OO: RM)

Re Richmond airtel to the Bureau, dated 10/15/65.

There is being transmitted herewith one copy of a Motion for Stay of Proceedings or Other Appropriate Relief filed before the Supreme Court of the United States by the attorneys for REES, which Motion was made available by RENO S. REES, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, VA. This Motion set forth that an examining psychiatrist of REES stated that REES was presently psychotic, describing his behavior as "consistently and undeviatingly characteristic of a psychotic state," and "not competent to assist in his defense."

The Motion requested that the court grant a writ of certiorari and thereafter continue the case indefinitely during REES' incompetency. The Motion set forth that if the court felt it necessary to appoint a guardian ad litem, it was suggested that S. WHITE RYAN, JR., principal counselor for REES, or MELVIN DAVIS REES, JR., father, be appointed, but preferably RYAN. Authorities were cited in support of this Motion.

- 1 - Bureau (Encl. 1)
- 1 - Baltimore (79-59)(Info.)
- 1 - WFO (79-162)
- 1 - Richmond

WLS:cam

SEARCHED

SERIALIZED

INDEXED

FILED

79-44-9128

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No. 321

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit

MOTION FOR STAY OF PROCEEDINGS
OR OTHER APPROPRIATE RELIEF

The necessity for this motion arises from the psychiatric report provided to counsel and transmitted to this Court on September 30, 1965, indicating that petitioner is presently insane. The purpose of the motion is to review the applicable facts and authorities and to suggest appropriate procedures for dealing with the special problem created by petitioner's insanity during the pendency of his petition for certiorari.

Facts

Petitioner is under a sentence of death which he has collaterally attacked in a federal habeas corpus action. He has been represented by present counsel since October, 1962. Though he is destitute and has proceeded in forma pauperis at all levels of the federal action, it has been unnecessary for counsel to be appointed by the courts since, with petitioner's consent, present counsel have been retained for him by his parents. The petition for a writ of certiorari

79-44-9121

SEARCHED	INDEXED
SERIALIZED	
OCT 19 1965	
FBI - RICHMOND	

[Signature]

was filed by counsel on June 23, 1965, with petitioner's consent. He executed an affidavit of poverty filed with this Court at that time, in which he stated his belief that he was entitled to the redress sought in the petition.

On July 20, 1965, without forewarning, petitioner instructed counsel to withdraw the petition and abandon all legal proceedings to save his life. By letter dated August 3, 1965, counsel advised this Court of those instructions and further stated that because of serious doubts as to petitioner's competency to make such an election they could not and would not follow the instructions without psychiatric advice.

On September 21, 1965, petitioner further instructed counsel either to withdraw the petition or withdraw from the case. By letter dated September 24, 1965, counsel also advised this Court of those instructions and stated that for the same reason they could not and would not follow the instructions without psychiatric advice.

On September 26, 1965, petitioner was examined by Dr. Oscar Le Gault, a practicing psychiatrist of high reputation. On September 30, 1965, counsel transmitted Dr. Le Gault's report to this Court. Dr. Le Gault stated in his report that petitioner is presently psychotic, describing his behavior as "consistently and undeviatingly characteristic of a psychotic state." He further stated that petitioner is "not competent to assist in his defense," and recommended that he be hospitalized.

Counsel have transmitted a copy of Dr. Le Gault's report to the Federal Bureau of Prisons and have requested that petitioner be afforded hospitalization and psychiatric treatment as a federal prisoner, since he is serving two life sentences imposed by the United States District Court for the District of Maryland prior to imposition of the state death sentence which is now under attack. Informal replies from the Bureau of Prisons indicate that such hospitalization is planned but is being delayed pending any further psychiatric examination desired by the Commonwealth of Virginia. Counsel have already indicated that they have no objection to a state medical examination, and have just recently been advised by the Commonwealth that such an examination will be made.

Authority

In Anderson v. Kentucky, No. 1, October 1965 Term, this Court last year "continued indefinitely" a capital case involving insanity during the pendency of certiorari proceedings. See order reported at 376 U.S. 940 (1964).

In that case, a petition for writ of certiorari was filed by counsel appointed for the petitioner by the Court of Appeals of Kentucky after the petitioner, who had represented himself in the trial court, refused to perfect an appeal to the Court of Appeals. His conviction was affirmed in the Court of Appeals and counsel filed a petition for certiorari in this Court, bringing here the question of whether there had been a constitutionally competent waiver of counsel at the trial level.

Notwithstanding the petitioner's strenuous objection to representation by the petitioning counsel stated in papers which he filed pro se with this Court, notwithstanding considerable evidence of mental derangement from the content of those pro se papers, and notwithstanding a pre-trial psychiatric report quoted in the petition for writ of certiorari in which three doctors had stated that the petitioner "exhibited classical symptoms of psychosis termed 'Schizophrenic disorder, Paranoid type,'" this Court granted the petition for writ of certiorari. Anderson v. Kentucky, 371 U.S. 886 (1962).

Thereafter, however, during the pendency of proceedings on the writ, a further psychiatric examination was made as to the petitioner's competency at that time. The report stated that the petitioner was not competent to act as his own counsel, to discharge his counsel or to advise and assist counsel in the prosecution of his appeal. In a supplemental brief, the state suggested that the Court might wish to continue the case indefinitely pending advice that the petitioner had been restored to competency, and in a reply brief petitioner's counsel agreed to this disposition. The Court thereupon ordered that "by joint agreement of the parties this case is continued indefinitely." Anderson v. Kentucky, 376 U.S. 940 (1964).

In United States v. Washington, 6 U.S.C.M.A. 114, 19 C.M.R. 240 (1955), the United States Court of Military Appeals was faced with a case where during the pendency of appeal information was received that the appellant was psychotic. The appellant had been convicted of murder and sentenced to death in a general court-martial in which the defense of insanity had not been raised, there having been a pre-trial report by a sanity board to the effect that the accused was competent. However, while proceedings in the Court of Military Appeals were pending, the accused was reexamined and reported as psychotic, suffering from a "schizophrenic reaction, paranoid type." Id. at 117-18, 19 C.M.R. at 243-44. His counsel thereupon moved for a stay of proceedings in the appellate court, and the motion was granted in a decision accompanied by widely divergent opinions filed by the three appellate judges.

Judge Paul W. Brosman wrote the principal opinion, in which he concluded that the court had jurisdiction to decide the case, relying on numerous state death cases in which appellate proceedings had continued to conclusion notwithstanding intervening insanity of the accused. However, in only one such case, Johnson v. State, 97 Ark. 131, 133 S.W. 596 (1911), did the problem appear to have been faced squarely, and even there the treatment was cursory. Judge Latimer joined Judge Brosman in concluding that the court had jurisdiction to continue appellate proceedings, and hence that holding represents the law of the case. However, the action of the court was to stay proceedings until the accused should regain his sanity since Chief Judge Quinn found no jurisdiction and Judge Brosman, though finding jurisdiction, felt that the court in its discretion should decline to complete review. Judge Latimer, noting substantial common law authority to the effect that insanity of an accused suspends all proceedings, whether of trial, sentence or execution, found this authority inconclusive as to appellate review which, as we now know it, did not exist at common law.

Policy arguments in the Washington case in favor of completing appellate review were that such review is limited to contents of the record, which are beyond the accused's control once the trial court proceedings have terminated, and hence his ability to act in his own behalf and communicate with his counsel during appellate review is unnecessary; that the interests of the accused are adequately protected if he is represented by competent counsel during appellate review and his inability to participate in the selection or rejection of his counsel is no more detrimental to him than the same inability of the indigent accused for whom counsel is selected by the court; that an indefinite continuance of an accused's uncertainty concerning his case might well hinder his return to reason; that if the conviction is in fact invalid the accused, as well as his family, have a right to have that invalidity determined notwithstanding his intervening insanity; and that if appellate review is completed and the accused's conviction is affirmed, he would in no way suffer because the law prohibits execution of an insane person and federal legislation provides that a mentally disordered prisoner will be transferred to a place where appropriate psychiatric treatment is available. To these considerations can be added the interest of the legal community and the public in having erroneous law which may serve as a precedent in future cases corrected.

Policy arguments in the Washington case in favor of freezing appellate proceedings were that the accused has a right not to have action taken to af-

firm a judgment forfeiting his life while he is in such a mental condition that he does not know what is being done to him and cannot assist in protecting the most valuable possession he enjoys; that it is possible that, if he were competent during the time of appeal, he could still produce facts which might challenge any affirmance; that in any event he should be able to determine who shall be his counsel, with the same ability as is possessed by even the indigent accused to seek to obtain other legal assistance if he is dissatisfied with counsel assigned by the court; that he should be able during his appeal to confer with counsel and to assist counsel in the preparation of argument on the case; and that counsel are hindered if they must make decisions as to tactical matters without the benefit of consultation with a client who is mentally capable of making intelligent decisions.

To these considerations, in a state death case, must be added the vagaries of state procedures for determining competency for execution if appellate review should be completed and result in an affirmance of conviction. See Solesbee v. Balcom, 339 U.S. 9 (1950) (determination by governor) and Caritativo v. California, 357 U.S. 549 (1958) (determination by prison warden), both holding that it is constitutionally permissible for the determination to be made ex parte by a state administrative official. See also Snider v. Cunningham (unreported), decided by the Supreme Court of Appeals of Virginia on April 19, 1963, cert. denied, 375 U.S. 889 (1963), refusing a Virginia state prisoner under death sentence the right to a sanity hearing with the privilege of cross-examination, notwithstanding the determination of his competency to be executed was based on a 2-1 report of a commission of three psychiatrists. The difficulties in preventing execution of the insane are, of course, even further increased where (as in the instant case) the accused, by reason of his insanity, is unwilling to initiate or cooperate in efforts to save his life.

The Anderson case in this Court and the Washington case in the Court of Military Appeals represent the closest cases known to counsel on the issue of insanity during the pendency of a petition for writ of certiorari. Both resulted in a freezing of appellate processes by reason of the insanity. Both, of course, were proceedings for review of criminal actions, whereas the instant case is a proceeding for review of a habeas corpus collateral attack--procedurally a civil action although the issue, like that on a direct appeal, is the validity of a criminal conviction and sentence of death.

In other civil cases some courts, applying the familiar law of agency that insanity of a principal terminates the authority of his agent, Mechem,

Agency § 277 (4th ed. 1952), have held that insanity of a party to the action nullifies any authority he may have given to an attorney to represent him. See, e.g., McLean v. Burkinshaw, 71 App. D.C. 107, 107 F.2d 665 (1939), cert. denied, 309 U.S. 670 (1940); Sullivan v. Dunne, 198 Cal. 183, 244 Pac. 343 (1926). However, since habeas corpus is the traditional method by which persons confined in mental institutions test the legality of their detention, there are numerous cases in which trial and appellate courts have accepted the representation of such persons by counsel notwithstanding psychiatric evidence of incompetency. See, e.g., Lynch v. Overholser, 369 U.S. 705, 721 (1962); Miller v. Cameron, 118 App. D.C. 323, 335 F.2d 986 (1964).

The ordinary civil proceeding does not stop because of the insanity of one of the parties. The traditional means of protecting the incompetent is by appointment of a guardian ad litem. Such appointment is usually governed by statute. See, e.g., Barr v. One Ford Truck, 188 S.C. 181, 184, 198 S.E. 389, 390 (1938). However, it has been held that courts have "inherent jurisdiction" to make such appointments. Borough of East Paterson v. Karkus, 136 N.J. Eq. 286, 289, 41 A.2d 332, 335 (1945). "Even in the absence of an inquisition of insanity or of a commitment, where a person is incompetent courts generally have inherent power to protect the interests of the incompetent by appointing a guardian ad litem to represent the incompetent in proceedings." Zaro v. Strauss, 167 F.2d 218, 220 (5th Cir. 1948). See also 44 C.J.S. Insane Persons § 143(a) (1945).

In the case of federal habeas corpus, the governing statute specifically permits the action to be prosecuted either by the person for whose relief it is intended "or by someone acting in his behalf." 28 U.S.C. § 2242 (1964). See United States ex rel. Bryant v. Houston, 273 Fed. 915, 916 (2d Cir. 1921), noting that the practice of "next friend" applications is "ancient and fully accepted" and citing "mental incapacity" as an illustration of a proper use of the procedure.

Conclusion

It would appear that this Court may properly proceed to grant a writ of certiorari in the instant case notwithstanding the incompetency of the petitioner, since from all indications the writ of certiorari in Anderson v. Kentucky was granted at a time when the petitioner in that case was also incompetent. Counsel strongly urge, of course, that the writ be granted--for the reasons already stated in the petition and supplemental petition for certiorari.

On the other hand, it is doubtful whether this Court may properly proceed to deny the petition for writ of certiorari during the incompetency of the petitioner, since such action would be an affirmative step to petitioner's detriment at a time when he is not in a mental condition to understand the significance of what is being done and to speak in opposition (e.g., by participating in a petition for rehearing). Counsel urge that this is not a proper case for denial of certiorari for the reasons stated in their petitions, but if this Court is inclined to deny certiorari then counsel further urge the Court to consider carefully the arguments of the Court of Military Appeals in United States v. Washington against such a disposition of the case during petitioner's incompetency.

If certiorari is granted, this Court will have to decide whether then to freeze the case indefinitely during petitioner's incompetency, as was done in Anderson v. Kentucky and United States v. Washington, or to proceed to conclusion. Counsel feel that an indefinite stay would be in petitioner's best interest, provided it were accompanied by a stay of execution of the Virginia court judgment in order to maintain the status quo. It may well be that if petitioner were able intelligently to make the election he would feel that it was in his best interest to proceed to the conclusion of the case, with the expectation that the decision below would be reversed and the specter of a death sentence would be removed. However, counsel feel unable to urge this course of action absent petitioner's knowledgeable advice, which he is of course unable to give.

A grant of certiorari with a stay of proceedings would follow established precedent. Anderson v. Kentucky, 376 U.S. 940 (1964); United States v. Washington, 6 U.S.C.M.A. 114, 19 C.M.R. 240 (1935). It would remove any chance of prejudice to petitioner by reason of his insanity, a disability over which he has no control. It would indicate the desire of at least four members of this Court to inquire into the correctness of the decisions below, and would thereby serve notice that the constitutionality of criminal trials in locales saturated with pre-trial publicity about incriminating inadmissible information, the constitutionality of police searches of secured personal belongings without the consent of the owner, etc., are still open questions and the decisions below are of doubtful precedent value. A grant of certiorari with a stay of proceedings would also leave it open at any time to the Commonwealth of Virginia to move to vacate the stay and proceed to decision, upon a showing that petitioner is now sane or should become so in the future.

If this Court should grant certiorari without an indefinite continuance of proceedings, unless otherwise ordered counsel will continue to represent petitioner and will take all steps necessary adequately and fully to present to the Court the legal arguments on his behalf. If the Court should feel it necessary to appoint a guardian ad litem, counsel suggest that either S. White Rhyne, Jr., principal counsel for petitioner and a member of the bar of this Court, or Melvin Davis Rees, Sr., petitioner's father, be so appointed. Petitioner's father has indicated his willingness to serve if the preference of this Court is to appoint a member of the family, but has expressed his own preference that the aforesaid counsel be appointed in his stead.

Wherefore, counsel request that this Court grant the writ of certiorari and thereafter continue the case indefinitely during petitioner's incompetency, with a stay of execution of the state court judgment during the continuance; or, if the writ of certiorari is granted without such a continuance and this Court appoints a guardian ad litem to prosecute the case on behalf of petitioner, that S. White Rhyne, Jr. (or, alternatively, Melvin Davis Rees, Sr.), be appointed as such guardian ad litem.

Respectfully submitted,

Charles A. Dukes, Jr.

Green, Babcock and Dukes
Maryland Building
Hyattsville, Maryland, 20871

S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20005

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 1965, I deposited copies of the foregoing motion in a United States mail box, first class postage prepaid, addressed to Reno S. Harp, III, Esq., Assistant Attorney General, Supreme Court-State Library Building, Richmond, Virginia, 23219; Melvin L. Wulf, Esq., American

Civil Liberties Union, 156 Fifth Avenue, New York, New York, 10010;
Monroe H. Freedman, Esq., National Capital Area Civil Liberties Union,
1101 Vermont Avenue, Nw., Washington, D.C., 20005; and Melvin Davis
Rees, Jr., Virginia State Penitentiary, 500 Spring Street, Richmond,
Virginia, 23219.

S. White Rhyne, Jr.

10/10/65

AIRTEL

TO: DIRECTOR, FBI (75-27516)

FROM: SAC, WFO (75-102)(P)

MELVIN DAVIS REES, Jr., aka;
CARROLL VERNON JACKSON, Jr.;
ET AL - VICTIMS
KIDNAPING
(OO:RM)

Re: Airtel to Bureau dated 10/8/65.

The docket in the U. S. Supreme Court (DMSO) disclosed the last entry in the "MELVIN DAVIS REES, JR." case (321 Miscellaneous) was made on 10/14/65. This docket entry shows a Motion for Stay of Proceedings or other appropriate relief was filed by counsel for REES.

This case continues under consideration by the Court.

WFO will report decision of the Supreme Court in this matter.

- 3 - Bureau
- 1 - Baltimore (75-55)(Info)
- 1 - Richmond (75-44)
- 1 - WFO

RCV:yel
(6)

AIRTEL

79-44-9123

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 14 1965	
FBI - BALTIMORE	

Shv

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

November 4, 1963

C
O
P
Y

S. White Rhyno, Jr., Esquire
Attorney at Law
315 Southern Building
Washington, D. C.

✓ 79-442
Re: Melvin Davis Rees, Jr. v. Peyton

Dear White:

This is to advise you that Doctors Elsieck and
Briest will commence the examination of your client within
the next 10 to 14 days.

With best wishes, I am

Sincerely,



Ross M. Hays, Jr.
Assistant Attorney General

RMH/ep

cc: Hon. C. C. Peyton
Superintendent
Virginia State Penitentiary
500 Spring Street
Richmond, Virginia

cc: Leroy Sweeney, Special Agent
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

79-442 - 9/24

SEARCHED	INDEXED
SERIALIZED	FILED
NOV 15 1963	
FBI - RICHMOND	

Sweeney

Date 10/1/65

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile 79-27510	Status of Case - P -	Submitting Office RICHMOND	File # 79-44
		Office of Origin RICHMOND	File # 79-44

Title and Character of Case

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING

Date Property Acquired 5/26/59	Source From Which Property Acquired Received via registered mail from FBI Laboratory transmitted by Bulet dated 5/25/59
-----------------------------------	---

Location of Property or Bulky Exhibit Bulky exhibit room	Reason for Retention of Property and Efforts Made to Dispose of Same Evidence - case on appeal
---	---

Description of Property or Exhibit and Identity of Agent Submitting Same SA U. LEROY SWEENEY

Items are glass microscope slides containing hairs and fibers which were obtained from specimens Q134 through Q242, which were items obtained through Dr. GEOFFREY T. MANN, Chief Medical Examiner, Commonwealth of Virginia. The items from which the slide specimens were obtained are described in full in FBI Laboratory Report dated 4/17/59 (79-44-1431).

79-44 - 1B3

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

10/1/65

79-44-9125

10/1/65

Date 10/1/65

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile 79-27510	Status of Case -P-	Submitting Office RICHMOND	File # 79-44
		Office of Origin RICHMOND	File # 79-44

Title and Character of Case

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING

Date Property Acquired 3/27/59	Source From Which Property Acquired From site of recovery of bodies of CARROLL and JANET JACKSON.
-----------------------------------	---

Location of Property or Bulky Exhibit Bulky exhibit room	Reason for Retention of Property and Efforts Made to Dispose of Same Evidence - case on appeal
---	---

Description of Property or Exhibit and Identity of Agent Submitting Same SA JOHN W. ELWELL

Soil specimens from site of recovery of above two bodies.

79-44 - 1B3

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

10/1/65

79-44-9126

Date 10/1/65

☐ Check, when submitting semiannual inventory, if no previous correspondence with Bureau.

Bufile <u>79-27510</u>	Status of Case <u>-P-</u>	Submitting Office <u>RICHMOND</u>	File # <u>79-44</u>
		Office of Origin <u>RICHMOND</u>	File # <u>79-44</u>

Title and Character of Case

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING

Date Property Acquired <u>8/12/59</u>	Source From Which Property Acquired <u>1957 Plymouth, D.C. License FR 461, SN 14287968</u>
--	---

Location of Property or Bulky Exhibit <u>Bulky exhibit room</u>	Reason for Retention of Property and Efforts Made to Dispose of Same <u>Evidence, case on appeal</u>
--	---

Description of Property or Exhibit and Identity of Agent Submitting Same SAs JACK M. WEDRECK & PHILIP M. MORRIS

- 1) One fingerprint lift
- 2) One jumper wire

79-44 - 1B11

SEMIANNUAL INVENTORY CERTIFICATION TO JUSTIFY RETENTION OF PROPERTY (Initial and date)

10/1/65

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 10 1965	
FBI - RICHMOND	

DIRECTOR, FBI (79-27510)

12/3/65

SAC, RICHMOND (79-44) - P -

RECEIVED
MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING
(OO: RICHMOND)

Re Richmond airtel to the Bureau 10/19/65.

On 11/26/65 RENO S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Virginia, advised that Dr. JOSEPH R. BLAYLOCK, Superintendent, Southwestern State Hospital, Marion, Virginia, and Dr. HARRY BRINK, Psychiatrist, Virginia State Penitentiary, Richmond, Virginia, began a psychiatric examination of MELVIN DAVIS REES, JR., at the Virginia State Penitentiary, Richmond, Virginia, in the last part of November, 1965, to determine whether or not, in their opinions, REES is mentally ill. HARP advised he expects the examination of REES to be over a period of several weeks. The Bureau will be kept advised in this matter.

2-Bureau
1-Richmond
HLS/alh
(3)

ECM
1/2
But

79-44-9128

SEARCHED _____
SERIALIZED ✓
INDEXED _____
FILED ✓

File - Serial Charge Out
FD-5 (Rev. 10-13-89)

Date _____

File 79 44
Class Office of Origin Case No. Last Serial

☐ Pending

☐ Closed

Serial No.

Description of Serial

Date Charged

9129

Missing when
filed
Original

Employee _____

RECHARGE

Date _____

To _____ From _____

Initials of Clerk

Date

Date charged

Employee _____

Location _____

DIRECTOR, FBI (79-27510)

12/22/65

SAC, WFO (79-162) (P)

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.;
ET AL - VICTIMS
KIDNAPING
(OO:RH)

Re WFO airtel to Bureau dated 10/19/65.

The case of MELVIN DAVIS REES, JR., Case #321, Miscellaneous, continues in a pending status in the U. S. Supreme Court (USSC).

The docket in the Clerk's Office, USSC, discloses that on 10/28/65, the petition in this case was redistributed to the Court Justices, as well as the Motion for Stay of Proceedings or other appropriate relief.

The Supreme Court has recessed until 1/17/66.

WFO will report decision of the Supreme Court at such time as it is rendered.

2 - Bureau
1 - Baltimore (79-55) (Info)
1 - Richmond (79-44)
1 - WFO

RCV:abs
(5)

79-44-9130

SEARCHED	INDEXED
SERIALIZED	FILED
DEC 24 1965	
FBI - RICHMOND	

Sweeney

December 29, 1965

Honorable Reno S. Harp, III
Assistant Attorney General of Virginia
Supreme Court-Library Building
Richmond, Virginia

Re: Melvin Davis Rees, Jr.

Dear Mr. Harp:

The two undersigned examined the files of the Virginia State Penitentiary relating to the above named, Melvin Davis Rees, Jr., prior to examining him together on November 15, 1965. He refused to leave his cell for examination in an office. During the period of about one hour of our examination he stood near the cell door and refused to enter into conversation beyond a few words that were noncommittal and evasive, usually making no reply. No overt symptoms of a mental illness were elicited.

It is our opinion that the observation that was possible offered insufficient basis on which to permit us to arrive at a conclusion or to crystallize a specific opinion as to his mental condition. It is felt that an additional period of observation at a hospital for the mentally ill would be advisable. With the limited observation we can only express the impression that he was not psychotic or insane at the time we examined him.

Respectfully,

Joseph R. Blalock
Joseph R. Blalock, M. D.
Superintendent
Southwestern State Hospital
Marion, Virginia

Harry Brick
Harry Brick, M. D.
Neuropsychiatrist
Virginia State Penitentiary
Richmond, Virginia

79-44-9131

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 14 1966	
FBI - RICHMOND	

[Signature]

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

January 12, 1966

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D. C.

Re: Melvin Davis Rees, Jr. v. C. C. Peyton

Dear Mr. Davis:

I am enclosing the original of a report in connection with the mental condition of Melvin Davis Rees, Jr.

It is noted that Doctors Blalock and Brick, both men skilled in the diagnosis of mental illnesses, feel that an additional period of observation in a hospital for the mentally ill would be advisable. If the Court desires, Rees can be transferred either to Central State Hospital at Petersburg, Virginia, or Central State Hospital at Marion, Virginia, for observation. Both of these are State operated institutions, adequately staffed with experts to study this man.

With best wishes, I am

Sincerely,

Reno S. Harp, XII
Assistant Attorney General

RSB/cg

cc: S. White Rhyne, Jr., Esquire
Attorney at Law
515 Southern Building
Washington, D. C.

79-44-9132

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
JAN 14 1966	
FBI - RICHMOND	

[Signature]

1/14/66

AIRTEL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING

(OO: RM)

Reference is made to Richmond letter to the Bureau dated 12/8/65.

By letter dated 12/29/65, Doctors JOSEPH R. BLALOCK, Supt., Southwestern State Hospital, Marion, Va., and HARRY BRICK, Neuropsychiatrist, Virginia State Penitentiary, Richmond, Va., advised the Attorney General for the Commonwealth of Virginia that REES was examined on 11/15/65, that he refused to leave his cell and refused to enter into conversation beyond a few noncommittal and evasive words. The doctors were of the opinion he should be examined at a hospital for the mentally ill and that with the limited observation he was not psychotic or insane.

By letter dated 1/12/66 addressed to the Clerk of the Supreme Court of the United States, there was transmitted the psychiatric report and the court was advised REES could be transferred to the Central State Hospital at Petersburg, Va. or the Central State Hospital at Marion, Va. (The Southwestern State Hospital is located at Marion, Va. and the setting forth of the Central State Hospital at Marion, Va. was a typographical error.)

3-Bureau (Enc. 2)
1-Baltimore (79-55) (Info)
2-WFO (79-162)
1-Richmond
ULS:msd
(7)

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INDEXED _____
FILED _____

Vol 191

Post
grb
79-44-913
Sweeney

BH 79-44

There are being transmitted herewith to the Bureau one copy of the psychiatric report transmitted to the Attorney General of the Commonwealth of Virginia dated 12/29/65, and one copy of the letter from the Attorney General's Office of the Commonwealth of Virginia to the Clerk of the Supreme Court of the United States dated 1/12/66.

The Bureau will be kept advised as to developments in this case.

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

Sweeney

January 14, 1966

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D. C.

Re: Melvin Davis Rees, Jr. v. C. C. Peyton

Dear Mr. Davis:

I note in reexamining my letter to you of January 12, 1966, that there is a typographical error contained therein. The next to the last sentence should have read, "If the Court desires, Rees can be transferred either to Central State Hospital at Petersburg, Virginia, or Southwestern State Hospital at Marion, Virginia, for observation."

I regret this error.

Sincerely yours,

[Signature]
Reno S. Harp, III
Assistant Attorney General

RSH/cg

cc: S. White Rhyne, Jr. Esquire
Attorney at Law
515 Southern Building
Washington, D. C.

bc: Leroy Sweeney, Special Agent
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

79-44-9134

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JAN 15 1966	
FBI - RICHMOND	

[Signature]

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

February 1, 1966

Mr. S. White Rhyne, Jr.
Attorney at Law
515 Southern Building
Washington, D. C.

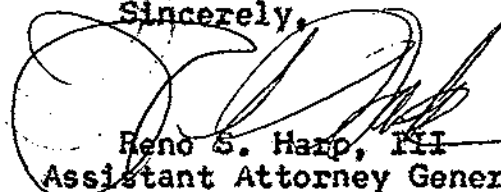
Re: Melvin Davis Rees, Jr. v. C. C. Peyton

Dear White:

I am enclosing a draft of an order, which we discussed by telephone on Thursday, January 27, 1966. I regret the delay, but some of our secretaries have been snowbound.

With best wishes, I am

Sincerely,


Reno S. Harp, III
Assistant Attorney General

RSH/cg

Enclosure

cc: Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D. C.

bc: Leroy Sweeney, Special Agent
Federal Bureau of Investigation
Southern States Building
Richmond, Virginia

76-444-9135

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SERIALIZED	FILED
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RICHMOND	

[Handwritten signature]

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

January 26, 1966

S. White Rhyne, Jr., Esquire
Attorney at Law
515 Southern Building
Washington, D. C.

Re: Melvin Davis Rees v. G. C. Peyton

Dear White:

I regret that my absence from the office in connection with the trial of several habeas corpus matters has prevented me from responding earlier to your letter of January 18, 1966.

I am in full agreement with you that Rees should be transferred to either Southwestern State Hospital or Central State Hospital. Regrettably, under Virginia law, there is no means whereby the Superintendent can release Rees to the authorities at either one of these institutions without an order of a court of competent jurisdiction. We would be in full concurrence with the entry of an order by the Supreme Court of the United States, directing Rees's transfer to either of these two institutions for a thorough examination as to his mental condition. I note that you prefer that he be transferred to Central State Hospital, and we have no objection to your preference.

Of course, the personnel observing Rees, those persons having custodial care of him and the experts engaged in examining him, would be available to Dr. Le Gault for consultation in accordance with their usual working schedule. The institutional charts and his records and reports would also be available to Dr. Le Gault for his perusal. I doubt very seriously, however, that it would be physically possible to make available to Dr. Le Gault each note taken by any individual with reference to Rees as to the same. Information could be obtained by a personal interview with the individual involved. We would of course, expect to have access for our personnel to any reports made by Dr. Le Gault.

I am certain that the attending psychiatrist, psychologist, and others would be agreeable to conferring with Dr. Le Gault relative to their thoughts on his condition, but this

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COMMONWEALTH OF VIRGINIA

OFFICE OF
THE ATTORNEY GENERAL

RICHMOND

is a matter which I think must be left to the discretion of the examining physicians. Whether or not counsel need be present, is a matter which I feel can be left open at this time.

I am aware of your previous comments that the family of the prisoner are of modest circumstances, and I would point out to you that so far as I am advised, the authorities in this Commonwealth have exercised the powers delegated to them by statute in an effort to co-operate with you in every way, in an effort to keep the expenses to be paid by the prisoner's family to the minimum. We will continue, of course, to follow this procedure.

Please advise me of your thoughts in this matter.

Sincerely yours,


Reno S. Harp, III
Assistant Attorney General

RSH/mc

cc: Honorable J. F. Davis, Clerk
Supreme Court of the United States
Washington, D. C.

C
O
P
Y

DIRECTOR, FBI (79-27510)

2/7/66

SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING

(OO: RICHMOND)

Reference is made to Richmond airtel to the Bureau dated 1/14/66.

RENO S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, advised that by letter dated 1/13/66 S. WHITE RHYNE, JR., attorney for REES, advised him that he preferred that REES be taken to Central State Hospital, Petersburg, Virginia, for psychiatric examination as that hospital would be closer to the parents of REES and they could visit him better at that location. HARP stated that RHYNE also desired that Dr. OSCAR LeCAULTE, a psychiatrist in Washington, D.C., have access to all files, records, and be permitted to interview examining psychiatrists at the Central State Hospital.

HARP stated that by letter dated 1/25/66, he agreed to RHYNE's request and by letter dated 2/1/66, he forwarded to S. WHITE RHYNE, JR. and to the Clerk of the Supreme Court of the United States, a draft of an order for REES to be transferred to the Central State Hospital, Petersburg, Va., for psychiatric examination. HARP stated that RHYNE is to prepare the final order for submission to the U. S. Supreme Court.

The Bureau will be kept advised as to developments in this case.

2-Bureau
1-Baltimore (79-55) (Info)
2-WFO (79-162)
1-Richmond
ULS:mbd
(6)

[Handwritten signatures and initials: "Post", "JFO", "Lweeney"]

79-44-9137

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

Sweeney

February 21, 1966

C
O
P
Y
S. White Rhyno, Jr., Esquire
Attorney at Law
518 Southern Building
Washington, D. C.

Re: 79-444 87-8685*
Melvin Davis Rees, Jr. v. C. C. Peyton

Dear White:

I have endorsed the consent order which you forwarded to me on February 16, 1966, and the same is enclosed.

With best wishes, I am

Sincerely yours,

[Signature]
Reno S. Harp, III
Assistant Attorney General

RSH/cg

Enclosure

cc: Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D.C.

Eugene M. Barkin, Esquire
Legal Counsel
United States Department
of Justice
Bureau of Prisons
Washington, D. C. 20537

bc: Leroy Sweeney, Special Agent
Federal Bureau of
Investigation
Southern States Building
Richmond, Virginia

bc: Captain C. M. Lindsey
Virginia State Police
P. O. Box 1299
Richmond, Virginia

79-44-9138

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DIRECTOR, FBI (79-27510)

2/25/66

SAC, WFO (69-162) (P)

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO:RH)

Re WFOlet to Bureau dated 12/22/65, and Richmond letter to Bureau, dated 2/7/66.

On 2/18/66, GENE LYDDANE, Assistant Clerk, United States Supreme Court (USSC), advised there has been ~~an~~ ^{no} entry on the docket in the MELVIN DAVIS REES, JR. case (321 - Miscellaneous), since 10/28/65.

WFO will follow progress of this case in the Supreme Court.

- 2 - Bureau
- 1 - Baltimore (79-55) (Info)
- ① - Richmond (~~79-162~~) 79-44
- 1 - WFO 79-162

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79-44-9139

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No. 321

MELVIN DAVIS REES, JR.

Petitioner

v.

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

Respondent

ANSWER

This answer is filed in response to a motion served upon counsel for the respondent in October of 1965 and at the suggestion of the Clerk of this Court.

PRIOR PROCEEDINGS

Petitioner was charged in two indictments in the United States District Court of Maryland with the kidnapping and murder of Mildred Ann Jackson and the kidnapping and murder of Susan Ann Jackson. He was tried and convicted on both charges and sentenced to serve a term of life imprisonment on each charge. United States v. Rees, 193 F. Supp. 849. He did not appeal the conviction.

Petitioner was tried in Spotsylvania County, Virginia, for the murder of Carroll Vernon Jackson, Jr., and was found guilty of murder in the first degree and sentenced to death in the electric chair. The Supreme Court of Appeals affirmed. Rees v. Commonwealth, 203 Va. 850, 127 S.E. 2d 406.

77-444-9140

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His Federal habeas corpus action was dismissed, Rees v. Peyton, 225 F. Supp. 607, and said dismissal was affirmed, Rees v. Peyton, 341 F. 2d 950.

Thereafter, a petition for a writ of certiorari was filed in this Court.

THE FACTS

Petitioner is represented by counsel employed by his parents. On July 20, 1963, petitioner instructed his attorney to abandon all proceedings to save his life. Counsel for the petitioner refused to follow his client's instructions on the grounds that his client might be mentally incompetent.

On September 24, 1963, petitioner was examined by a psychiatrist employed by his parents. He concluded that the petitioner is a highly intelligent and well educated man who had taken a course in psychology and read some psychiatry and could be expected to give a sophisticated performance, if he chose to be a malingerer. He concluded, however, that although further examination was necessary, he thought petitioner's behavior characteristic of a psychotic state.

Thereafter, on November 12, 1963, petitioner was examined by Dr. Joseph Malach, Superintendent of Southwestern State Hospital in Marion, Virginia, and Dr. Harry Brick, neuropsychiatrist at the Virginia State Penitentiary. These two psychiatrists had reviewed the penitentiary file relative to Rees before interviewing him. He refused to cooperate with them in any way in connection with the interview. They concluded that he exhibited no overt symptoms of mental illness, but they suggested that he be confined in an appropriate mental institution for observation.

It would seem inappropriate to argue the qualifications or lack of qualifications in the field of criminal psychiatry of

the doctors who have examined Rees to date. Likewise, it is submitted that this is not a proper forum to determine whether or not this murderer of an entire family is insane.

CONCLUSIONS

Counsel for the petitioner has presented to this Court the applicable law in connection with this situation. It would seem that the case of Anderson v. Kentucky, 376 U.S. 940 (1964) is inapplicable herein, for the reason that respondent does not join in the motion that this case be continued generally. While it may be true that under certain circumstances cases have been continued indefinitely by appellate courts, it is submitted that this is not appropriate in this situation.

It is submitted that this Court should take action in connection with this matter to bring it to a conclusion. There is no statutory authority in Virginia by which petitioner could be transported from the Virginia State Penitentiary to a State mental institution for observation under the circumstances in this case. A previous order has been submitted to this Court signed by counsel for both parties. This has been done by Federal courts in Virginia. Snider v. Smyth, 263 F. 2d 372; Snider v. Smyth, 187 F. Supp. 299. It has been the respondent's position that this should be entered by this Court. If the Court feels that it cannot enter the order at this time, there are several alternatives which could be employed.

In the first instance, this Court can proceed to act in connection with the petition for certiorari. We would point out that there is an available remedy in Virginia whereby petitioner can test his sanity prior to execution. This was done in the case of Snider v. Cunningham, 204 Va. lxxxiii; cert. denied, 375 U.S. 889. Petitioner states in his motion that Snider was refused

a sanity hearing. Since this case was not reported, it is easily understood why counsel for the petitioner is mistaken in his view of the case. Counsel for Snider agreed to the appointment of a commission of three doctors to examine Snider and who would report to the Court. The Court was to act upon the reports. The Court required counsel for both parties to agree to this procedure, and Snider's lawyer filed a statement agreeing to the same. After the reports were submitted and the petition for relief denied, Snider's attorney filed a motion to set aside the judgment, which was refused. He had previously made no motion for a plenary hearing on the question of sanity. This case is now pending in the District Court in Richmond on remand from the United States Court of Appeals for the Fourth Circuit, which court took some ten months to decide the matter after it was argued.

In the alternative, this Court could continue this case indefinitely. We feel that under no circumstances should this Court take such action, for it is obvious that it would provide an avenue for a sophisticated and educated prisoner to escape the final adjudication of his sentence. This alternative, as suggested by counsel for the petitioner, leads to a denial of the rights of the people of the Commonwealth of Virginia in this matter. It is well settled that delay is an asset to the defense and a hindrance to the prosecution. This case has been long in process and has been delayed for several months because of the present situation.

The third alternative is for the Court to enter the order previously submitted.

We earnestly submit, however, that this Court should act promptly and dispose of this case rather than have it pending on

the docket in a position where the prisoner cannot test his sanity and the people cannot secure a final adjudication of the case.

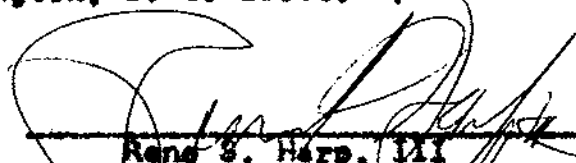
Respectfully submitted,


Rene S. Harp, III
Assistant Attorney General

Rene S. Harp, III
Assistant Attorney General
Supreme Court Building
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I, Rene S. Harp, III, an Assistant Attorney General of Virginia, counsel for the Commonwealth in the captioned matter and a member of the bar of the Supreme Court of the United States, do hereby certify that on this 21st day of March, 1966, I mailed a copy of the foregoing Answer to S. White Rhyne, Jr., Esquire, Attorney at Law, 515 Southern Building, Washington, D. C., counsel for the petitioner herein, and to Monroe H. Freedman, Esquire, counsel for the National Capital Area Civil Liberties Union, at 1101 Vermont Avenue, N.W., Washington, D. C. 20005, by first-class mail.


Rene S. Harp, III
Assistant Attorney General

3/22/66

A I R T E L

TO: DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - P -
SUBJECT: MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO: RICHMOND)

Reference is made to Richmond letter to the
Bureau, 2/1/66.

RENO S. HARP, III, Assistant Attorney General,
Commonwealth of Virginia, advised that on 2/16/66 he
endorsed a consent order prepared by the attorney for
REES for the U. S. Supreme Court to order REES to be
transferred from the Va. State Penitentiary to Central
State Hospital, Petersburg, Va., for psychiatric examination.
However, to date, the U. S. Supreme Court has not issued
the order.

HARP advised that on 3/21/66 he forwarded to the
Clerk of the U. S. Supreme Court, Washington, D.C., an
answer in response to a motion filed in October, 1965,
by the attorneys of REES, which answer contained the
following information:

3 - Bureau (Enc. 1)
1 - Baltimore (79-55) (Info)
2 - WFO (79-162)
1 - Richmond
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(7)

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Vol 192

79-44-9141

Sweeney

REES was charged in two indictments in U. S. District Court in Maryland with the kidnaping and murder of MILDRED ANN JACKSON and SUSAN ANN JACKSON (on or about 1/11/59). REES was tried and convicted on both charges and sentenced to serve a term of life imprisonment on each charge (on 4/6/61). REES was tried in the (Circuit Court) of Spotsylvania County, Va., for the murder of CARROLL VERNON JACKSON, JR., and was found guilty of murder in the first degree and sentenced to death in the electric chair (on 1/4/62).

On (6/23/65) a writ of certiorari was filed in the Supreme Court of the U. S.

On 7/20/65 REES instructed his attorney to abandon all proceedings to save his life. Counsel for REES refused to follow his clients instructions on the grounds that his client might be mentally incompetent.

On 9/26/65 REES was examined by (Dr. OSCAR LeGAULT), a psychiatrist employed by his parents, who was of the opinion that the behavior of REES was characteristic of a psychotic state.

On 11/15/65 REES was examined by Dr. JOSEPH BLALOCK and Dr. HARRY BRICK, neuropsychiatrists for the State of Virginia, who found no overt symptoms of mental illness but they suggested that he be confined in an appropriate mental institution for observation. The answer concluded that one of three courses of action should be followed by the Court.

1. The Court could proceed to act in connection with the petition for certiorari. The case of SNIDER vs. CUNNINGHAM, 375 U.S. 889, was cited as a case in point.

2. The Court could continue this case indefinitely, however, the Commonwealth of Virginia was of the opinion that under no circumstances should such action be taken, as it was obvious that such action would provide an avenue for a sophisticated and educated prisoner to escape final adjudication of his sentence.

RH 79-44

3. The Court could enter an order previously submitted (ordering REES to be transferred from the Virginia State Penitentiary to the Central State Hospital at Petersburg, Va., for a psychiatric examination.)

Being transmitted herewith to the Bureau, is one copy of the answer filed by the Commonwealth of Virginia. The Bureau will be kept advised as to developments in this case.

(Mount Clipping in Space Below)

State Moves For Rees Execution

By Carl Shires

Virginia asked the U. S. Supreme Court today to avoid further delays in the electrocution of Melvin Davis Rees Jr., convicted killer of the Jackson family of Louisa county.

At issue now in the seven-year-old case is the sanity of Rees, itinerant Maryland musician under death sentence for the murder of Carroll Vernon Jackson Jr.

In addition to that sentence, he is under two life sentences for the murder in Maryland of two other members of the Jackson family—the mother and a 5-year-old daughter. He has never been tried on a fourth charge of murder—that one in Spotsylvania county, involving an 18-month-old daughter.

Lawyers retained by the Rees family contend that Rees is insane and that an insane

See STATE, Page 3

(Indicate page, name of newspaper, city and state.)

PAGE 1 & 3

RICHMOND NEWS LEADER
RICHMOND, VA.

Date: 3/22/66

Edition:

Author:

Editor: JAMES K. KILPATRICK

Title:

Character:

or

Classification:

Submitting Office:

79-44-9142

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State Moves for Rees Execution

Continued From First Page

man should not be killed by the state.

They cite the finding of a family-hired psychiatrist who examined Rees and found his behavior characteristic of a psychotic state.

On the strength of that finding, the lawyers last October petitioned the Supreme Court to continue the case indefinitely during Rees' incompetency, with a stay of execution of the death sentence during the continuance.

Reno J. Harp III, an assistant attorney general for Virginia responded to the petition today, with a suggestion that Rees might be a "malingerer."

EDUCATION NOTED

Summing up the findings of the family-hired psychiatrist, Harp said:

"He concluded that the petitioner is a highly intelligent and well educated man who had taken a course in psychology and read some psychiatry and could be expected to give a sophisticated performance, if he chose to be a malingerer . . ."

Harp said Rees had refused

to co-operate later with two state psychiatrists, Dr. Joseph Blalock, superintendent of Southwestern State Hospital, and Dr. Harry Brick, neuropsychiatrist at the State Penitentiary.

"They concluded," Harp told the court, "that he exhibited no overt symptoms of mental illness, but they suggested that he be confined in an appropriate mental institution for observation.

" . . . it is submitted that this is not a proper forum to determine whether or not this murderer of an entire family is insane . . . we would point out that there is an available remedy in Virginia whereby petitioner can test his sanity prior to execution."

'AVENUE OF ESCAPE'

Harp told the court that "under no circumstances" should it continue the case indefinitely, "for it is obvious that it would provide an avenue for a sophisticated and educated prisoner to escape the final adjudication of his sentence. This alternative . . . leads to a denial of the rights of the people of the commonwealth of Virginia in this matter.

"It is well settled that delay is an asset to the defense and a hindrance to the prosecution. This case has been long in process and has been delayed for several months because of the present situation.

" . . . this court should act promptly and dispose of this case rather than have it pending on the docket in a position where the prisoner cannot test

his sanity and the people cannot secure a final adjudication of the case."

GIVE UP, REES SAID

Rees now is 36 years old. Last July, he instructed his counsel to abandon all proceedings to save his life. They refused to follow those instructions.

Jackson, his wife and the two daughters were kidnaped as they drove home on a Sunday night, Jan. 11, 1959. Later, all were found dead—Jackson and the baby at a brush pile near Fredericksburg, Mrs. Jackson and the other daughter in shallow graves near Gambrills, Md.

Rees drew the two life sentences in a Baltimore federal court early in 1961. That fall, he was tried in Spotsylvania for the father's murder.

The case has been involved in a legal labyrinth since the death sentence was ordered by a Spotsylvania jury:

DIRECTOR, FBI (79-27510)

4/21/66

SAC, WFO (79-162) (P)

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL.-VICTIMS
KIDNAPING
(OO:RB)

ReMhairtel to the Bu, dated 3/22/66.

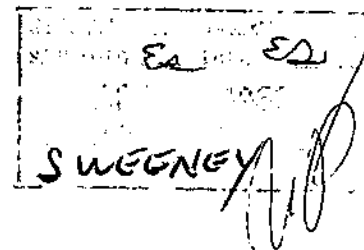
The docket in the Clerk's Office, United States Supreme Court (USSC), disclosed that on 3/22/66, the answer of the Commonwealth of Virginia was filed in the USSC, and on 3/29/66, a reply brief was filed by MELVIN DAVIS REES, JR., through his attorney.

CENE LYDDANE, Assistant Clerk, United States Supreme Court, advised that this case was redistributed to the Court Justices on 3/31/66, and that the case continues under consideration by the Court.

WFO will report decision of the Supreme Court at such time as it is rendered.

2 - Bureau
1 - Baltimore (79-55) (Info)
1 - Richmond (79-44)
1 - WFO

RCV:mdr
(5)



In The
SUPREME COURT OF THE UNITED STATES

October Term, 1965

Misc. No. 321

Melvin Davis REES, Jr.,

Petitioner,

v.

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

Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit

REPLY

This reply is to respondent's answer, filed March 22, 1966, which responded to petitioner's motion for stay of proceedings or other appropriate relief, filed October 14, 1965.

Procedural Background

The petition for writ of certiorari was filed on June 23, 1965. It raised important questions concerning deprivation of petitioner's constitutional rights by illegal search and seizure and by permitting him to be tried for his life in a county which had been saturated with pre-trial publicity about highly incriminating inadmissible evidence.

On July 20, 1965, principal counsel for petitioner received from petitioner a letter which instructed him to withdraw the petition and to abandon all

79-44-9144

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[Signature]

legal proceedings to save petitioner's life. Counsel notified the Court of these instructions but stated that he would not follow them because of serious doubts as to petitioner's mental competency.

Thereafter, counsel had petitioner examined by Dr. Oscar Le Gault, a psychiatrist of outstanding reputation, who wrote a nine-page report which was filed with this Court on September 30, 1965. That report concluded in strong and unequivocal terms that petitioner is psychotic and unable to assist or participate in the legal proceedings. It stated that he is "suffering from a schizophrenic disorder of a mixed-type with conspicuous paranoid characteristics, and severe disorganization of thought processes;" that he "is not competent to assist in his defense because he is under the influence of a delusional system;" and that the "disorganization of his thought and his preoccupation with psychotic matters prevent his giving sufficient attention to his defense."

In light of this report, counsel advised the Court that he considered himself free of any obligation to comply with petitioner's instructions and would continue to appear and exert his best efforts in petitioner's behalf. Counsel also, on October 14, 1965, filed the motion which is presently before the Court. That motion requested that the Court grant the writ of certiorari and thereafter continue the case indefinitely during petitioner's incompetency, with a stay of execution of the state court judgment during the continuance. Alternatively, the motion requested that, if the Court felt it should proceed with the case notwithstanding the strong indication of petitioner's incompetency, it appoint either petitioner's counsel or his father as guardian ad litem to prosecute the case in his stead.

The motion went unanswered for five months. Respondent's answer, filed last week, opposed the indefinite stay of proceedings requested in the motion. It requested that the Court enter an order providing for a period of mental observation of petitioner in a psychiatric hospital, which order counsel for petitioner had already indicated was agreeable to him and, at respondent's request, had lodged with the Clerk in proposed draft form bearing his written consent. Lastly, respondent's answer suggested that, if the Court did not desire to enter the consent order, it should proceed to act on the petition for certiorari. Respondent has never filed a brief in opposition to the petition for certiorari.

The Only Credible Indication of Petitioner's Mental Competency Is Clear and Strong to the Effect That He Is Mentally Incompetent

At about the same time that counsel for petitioner filed the motion which is presently before this Court, counsel for respondent advised the Court that petitioner would be examined by two psychiatrists employed by the Commonwealth of Virginia. The report of that examination was filed with the Court three months later, on January 13, 1966. Unlike the earlier report, in which Dr. Le Gault had clearly stated his conclusion that petitioner was mentally incompetent, Virginia's doctors did not reach a conclusion or state an opinion on mental competency. They stated that there was "insufficient basis on which to permit us to arrive at a conclusion or to crystallize a specific opinion as to his mental condition." However, they further expressed an "impression," whatever that may mean, that he was "not psychotic or insane at the time we examined him."

Copy for State

The "report" was notable for its brevity and complete lack of any factual basis for even the hazy "impression" which it expressed. By contrast to the full and detailed report of Dr. Le Gault, the Virginia report was in the form of a fifteen line letter. It stated that the physicians had examined petitioner on one occasion on November 15, 1965, and indicated that petitioner had been uncooperative in the examination (as he had also, at first, in the examination by Dr. Le Gault, until skillfully persuaded to talk by means which Dr. Le Gault detailed in the two written pages which formed the first two pages of the notes incorporated in his report).

The report of the Virginia psychiatrists stated that during the period of about one hour of their examination petitioner stood near the cell door and refused to enter into conversation beyond "a few words that were noncommittal and evasive." It did not state what those words were. It did not indicate what the doctors said to petitioner during the hour that they confronted him at his cell. It did not indicate the reaction of petitioner to what they said. It did not describe petitioner's appearance, his facial expression or his mannerisms. It merely made the conclusory statement that "no overt symptoms of mental illness were elicited." It was in stark contrast to the report of Dr. Le Gault in which the facts on which he based his conclusions were set forth fully and in detail.

The report of the Virginia psychiatrists stated that they had examined petitioner's files at the Penitentiary but did not state what those files revealed as to petitioner's behavior. Presumably petitioner had been under lengthy ob-

servation by Penitentiary personnel at the direction of the psychiatrists, since it took from October to January to get their report although they actually examined petitioner only once for one hour during that three month period. However, the report made no reference to what the psychiatrists learned from talking to Penitentiary personnel or from examining notes made by them in the Penitentiary files.

In short, the "report" was totally lacking in any factual support for even the quizzical "impression" which it stated. It is therefore entitled to be given no evidentiary value whatever by this Court.

It may be, as stated by respondent on page three of his answer, that this Court is an inappropriate forum for a determination of petitioner's mental competency. Surely, however, this Court would hold erroneous as a matter of law any determination of competency by a lower court which relied on a report such as that submitted by respondent.

It is the position of counsel for petitioner that the only credible evidence of petitioner's mental competency is clear and strong to the effect that he is mentally incompetent, and that this Court is entitled to act on that basis unless and until some contrary evidence is produced.

This Court Should Enter the Consent Order
for Hospitalization and Mental Observation

At the same time, counsel for petitioner have no desire to attempt to introduce any question into petitioner's competency. Respondent has proposed, in the name of the Virginia psychiatrists, that petitioner be hospitalized and subjected to mental observation. Dr. Le Gault also stated in his report that "a period of observation would be worthwhile as a check on his competency."

In this connection it should be noted that the principal emphasis of Dr. Le Gault's report was not, as would appear from page two of respondent's answer, on malingering by petitioner. Dr. Le Gault conceded that possibility, as any physician in candor would have to do, but he followed the reference to malingering with this further language: "I will now reemphasize, however, that I do not think he is malingering. His behavior throughout the interview, from the time ~~he was brought in~~ right to the end, was consistently and undeviatingly characteristic of a psychotic state, and that is my conclusion from this examination." It would be difficult to imagine a more clear and positive conclusion.

In view of Dr. Le Gault's expressed opinion that a period of hospitalization for mental observation would be desirable, counsel for petitioner has signed the consent order proposed by respondent. Counsel submit that entry of this order, which would permit what all physicians think is desirable and what all counsel have agreed to, would be a proper next step for the Court in this case.

While counsel have not discovered any specific authority as to the jurisdiction of this Court to enter such an order in this unusual factual situation, there would seem to be a basis for jurisdiction in the fact that the petition is actually pending in this Court and the state official with custody of petitioner, who will be charged with seeing that the terms of the order are carried out, is a party to the case and has requested and agreed to the order through his counsel, the Attorney General of the Commonwealth. Furthermore, the Attorney General of the United States, under whose jurisdiction petitioner is serving two life sentences on prior federal convictions, has indicated through the Director of the Federal Bureau of Prisons his willingness to have petitioner transferred to the designated state hospital for mental observation. See letter attached as an exhibit to this pleading.

Counsel for petitioner submit that, because of the unusualness of the situation where evidence of mental incompetency appears during the pendency of a petition for certiorari, anything this Court does will be without clear precedent and open to some question. It would appear reasonable, at least as a first step, to do what all interested parties agree should be done -- enter an order providing for a period of observation in a mental hospital.

If Petitioner's Incompetency Is Not Conceded by Respondent
After Mental Observation, Then This Court Could Order
A Hearing on Competency in the District Court

Counsel for petitioner are confident that, after observation of petitioner in a mental institution over a period of time, respondent's physicians will agree with Dr. Le Gault's diagnosis of psychosis. The case would then be exactly like Anderson v. Kentucky, No. 1, October Term 1965, in which, as respondent points out on page three of his answer, both sides conceded incompetency (the state, however, not until the case had been pending in this Court for more than nineteen months).

On the other hand, if respondent's physicians should not agree with Dr. Le Gault, and should submit a report which states their opinion that petitioner

tiorari, all before any state court determination of sanity is made. He should not lose his rights in this Court because at a later time he may also have rights in the state courts, after the time for consideration of the important constitutional questions now before this Court has passed.

Petitioner Should Not Be Prejudiced in
This Court by His Mental Incompetency

Petitioner is also entitled to complete the prosecution of his case in this Court while mentally competent to consult with counsel and to advise counsel as to basic tactical decisions which he considers to be in his best interest.* He should not be prejudiced in the consideration by this Court of the vital questions of whether his constitutional rights were violated, by the occurrence of a psychosis, over which he has no control. The only safe way to assure absence of prejudice, and consequently the only way which counsel for petitioner feel free to urge, is to grant a stay of proceedings until such time as it shall appear that petitioner has been restored to competency.

As already pointed out, however, the Court should not hesitate to grant the writ of certiorari since this is amply justified by the substantial constitutional points raised in the petition and would be without possible detriment to petitioner. Such a grant would indicate the desire of at least four members of this Court to inquire into the correctness of the decisions below, and would thereby serve notice that the constitutionality of criminal trials in locales saturated with pre-trial publicity about incriminating inadmissible information, the constitutionality of police searches of secured personal belongings without the consent of the owner, etc., are still open questions and the decisions below are of doubtful precedential value. A grant of certiorari with a stay of proceedings would leave it open to the Commonwealth of Virginia to move at any time to vacate the stay and proceed to decision, upon a showing that petitioner is sane. Entry of the consent order providing for hospitalization and observation would provide all the opportunity that could be desired to obtain the factual basis for such a showing, and would remove the excuse which presently exists for the fact that no such showing has heretofore been made.

* For instance, note the reference in the second paragraph on page seven of the motion to the inability of counsel to obtain a competent election by petitioner on the basic strategy of whether to urge, on conflicting authority, that this Court proceed to decide the case or freeze all proceedings.

is mentally competent and states the factual basis for that opinion, this Court would then have an issue before it as to petitioner's mental competency which should be resolved before further proceedings on the petition for certiorari.

Such an issue could best be resolved in a trial court after hearing and opportunity for cross-examination of the psychiatrists whose conflicting opinions created the issue. The federal district court in which this habeas corpus action arose would seem to be an appropriate forum for such a hearing.

This procedure might well exhaust the already depleted financial resources at petitioner's disposal, to his serious detriment. It should not be utilized unless and until there is a clear issue as to petitioner's mental competency before this Court resulting from the filing of a psychiatric report by respondent which states an opinion that petitioner is mentally competent and supports that opinion with some factual basis. As of now the only competent indication of petitioner's mental condition is clear and strong to the effect that he is psychotic. Respondent should be given every opportunity through mental examination and observation to obtain contrary evidence, but this Court should not order a District Court hearing on mental competency until he does so.

If and when an order of reference to the District Court is entered, it should state that the purpose of the hearing is to determine petitioner's mental competency for purposes of participation in the pending proceedings in the Supreme Court of the United States, and proceedings in this Court should be stayed pending a finding by the District Court on the issue of mental competency.

As noted, the inquiry in such a hearing would be petitioner's competency for purposes of participating in further proceedings in this Court. The availability at a later time of a Virginia state remedy for determining petitioner's sanity for purposes of execution, referred to by respondent on page three of his answer, does not remove the necessity for determining petitioner's competency before proceedings can go forward in this Court.

The state determination, whether it be of competency for purposes of retrial (in the event petitioner should be successful in this Court), or of sanity for purposes of execution (in the event petitioner should be unsuccessful), and whether it be with or without a hearing, is not made until after this Court has considered and acted on the substantial constitutional points raised in the petition. Petitioner is entitled to have his petition for writ of certiorari considered and acted upon, and his case reviewed in the event of a grant of cer-

Conclusion

For the reasons set forth in the motion and this reply, counsel for petitioner urge that this Court:

1. Enter the consent order requested by respondent to provide for petitioner's temporary hospitalization for mental observation.

2. Grant the petition for writ of certiorari.

3. Stay indefinitely all proceedings in the case, including execution of the state court judgment of death, with leave to respondent at any time to move to vacate the stay upon a showing, through medical opinion supported by a statement of the factual basis for such opinion, that petitioner is mentally competent to assist his counsel in the prosecution of the case in this Court.

4. If and when such a showing should be made by respondent, and only then, remand the case to the United States District Court for the Eastern District of Virginia, Alexandria Division, for a hearing and determination of petitioner's mental competency to assist his counsel in the prosecution of the case in this Court.

Alternatively, if this Court should conclude that proceedings can and should go forward notwithstanding the psychiatric opinion that petitioner is mentally incompetent, then counsel for petitioner request that this Court appoint S. White Rhyne, Jr., petitioner's principal counsel, (or else Melvin Davis Rees, Sr., petitioner's father) as guardian ad litem for petitioner to prosecute the case in his stead.

Respectfully submitted,

Charles A. Dukes, Jr.

Green, Babcock and Dukes
Maryland Building
Hyattsville, Maryland, 20871

S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20005

Counsel for Petitioner

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
WASHINGTON 2537

March 9, 1966

Mr. S. White Rhyne, Jr.
Mullin and Connor
515 Southern Building
Washington 5, D. C.

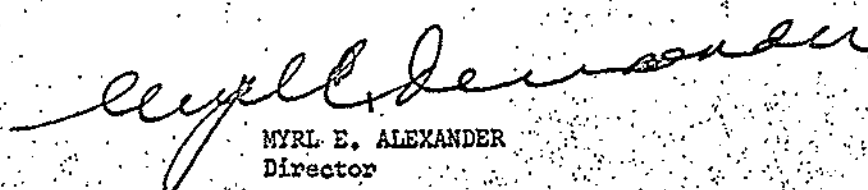
Re: Melvin Davis Rees, Jr.
11407-S

Dear Mr. Rhyne:

Mr. Barkin has referred your letter of March 4, to which you attached copies of your correspondence with Mr. Reno Harp of the Virginia Attorney General's office.

If there is an appropriate court order, directing the transfer of Mr. Rees from the Virginia State Penitentiary to the Central State Hospital, Petersburg, we are prepared to designate that hospital for the concurrent service of the Federal term for such time as is necessary to complete the psychiatric examination. Upon completion of the examination, he will be returned to the penitentiary.

Sincerely,



MYRL E. ALEXANDER
Director

EXHIBIT

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 1966, I deposited copies of the foregoing reply in a United States mail box, first class postage prepaid, addressed to Reno S. Harp, III, Esq., Assistant Attorney General, Supreme Court-State Library Building, Richmond, Virginia, 23219; Melvin L. Wulf, Esq., American Civil Liberties Union, 156 Fifth Avenue, New York, New York, 10010; Monroe H. Freedman, Esq., National Capital Area Civil Liberties Union, 1101 Vermont Avenue, Nw., Washington, D.C., 20005; and Melvin Davis Rees, Jr., Virginia State Penitentiary, 500 Spring Street, Richmond, Virginia, 23219.

S. White Rhyne, Jr.

DIRECTOR, FBI (79-27510)

5/20/66

SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING

(OO: RICHMOND)

Reference is made to Richmond airtel to the Bureau dated 3/22/66.

There is being transmitted herewith to the Bureau one copy of a reply filed by the attorney for REES before the Supreme Court of the United States. This reply set forth the following information:

A petition for a Writ of Certiorari was filed on 6/23/65 and raised the questions of an illegal search and seizure and the fact that REES was tried in a county which had been saturated with pre-trial publicity about highly incriminating inadmissible evidence. On 7/20/65, the principal counsel for REES received a letter from him instructing that all legal proceedings to save his life be abandoned. The attorney for REES had Dr. OSCAR LeGAULT, a Psychiatrist, examine REES, which Psychiatrist concluded that REES was psychotic. Subsequently, the State of Virginia had psychiatrists examine REES, which psychiatrists were of the opinion that REES was not psychotic and that he should have an exhaustive psychiatric examination at an institution suitable for such examinations.

On 10/14/65, the attorney for REES filed a motion before the U. S. Supreme Court requesting that the court grant the Writ of Certiorari and thereafter continue the case indefinitely during a psychiatric examination, that if the

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2-WFO (79-162)
1-Richmond
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court did not desire this course of action, alternatively the court should proceed with the case and appoint the attorney for REES or his father as guardian.

The Director of the Federal Bureau of Prisons expressed his willingness to have REES transferred to a designated state hospital for mental observation. The counsel for REES urged the court to take the following action:

- 1) Enter the consent order to provide temporary hospitalization for REES for mental observation;
- 2) Grant the Writ of Certiorari for REES;
- 3) Stay indefinitely all proceedings in the case with leave for REES at any time to move to vacate the stay upon showing through medical opinion, supported by a statement of factual basis for such an opinion, that REES is mentally competent to assist his attorney in the prosecution of this case;
- 4) If and when such a showing should be made by REES, remand the case to the USDC, EDVA, Alexandria, Va., for a hearing and determination of petitioner's mental competency to assist his counsel in the prosecution of his case. Alternatively, if the court should conclude that proceedings can and should go forward, notwithstanding the psychiatric opinion that REES is mentally incompetent, then it is requested that his counsel or his father be named guardian ad litem for REES to prosecute the case.

SUPREME COURT OF THE UNITED STATES

REES v. PEYTON.

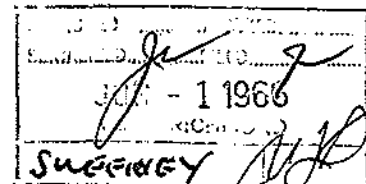
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 321, Misc. Decided May 31, 1966.

PER CURIAM.

Following a related federal conviction and life sentences for kidnapping, *United States v. Rees*, 193 F. Supp. 849, Melvin Davis Rees, Jr., was convicted of murder and sentenced to death by a state court in Virginia, and the judgment was affirmed on appeal in 1962. *Rees v. Commonwealth*, 203 Va. 850, 127 S. E. 2d 406, cert. denied, 372 U. S. 964. Thereafter, a habeas corpus petition was filed in the United States District Court for the Eastern District of Virginia, alleging that the state court conviction had violated federal constitutional rights of Rees. The District Court rejected these claims, 225 F. Supp. 507, and the Court of Appeals for the Fourth Circuit affirmed, 341 F. 2d 859. With Rees' consent, his counsel then filed in this Court on June 23, 1965, the present petition for certiorari to review the Court of Appeals' decision, and the petition is therefore properly before us for disposition.

Nearly one month after this petition had been filed, Rees directed his counsel to withdraw the petition and forgo any further legal proceedings. Counsel advised this Court that he could not conscientiously accede to these instructions without a psychiatric evaluation of Rees because evidence cast doubt on Rees' mental competency. After further letters from Rees to his counsel and to this Court maintaining his position, counsel had Rees examined by a psychiatrist who filed a detailed report concluding that Rees was mentally incompetent. Psychiatrists selected by the State also sought to examine Rees at the state prison, found themselves thwarted by his lack of cooperation, but expressed doubts that he was insane.



Whether or not Rees shall be allowed in these circumstances to withdraw his certiorari petition is a question which it is ultimately the responsibility of this Court to determine, in the resolution of which Rees' mental competence is of prime importance. We have therefore determined that, in aid of the proper exercise of this Court's certiorari jurisdiction, the Federal District Court in which this proceeding commenced should upon due notice to the State and all other interested parties make a judicial determination as to Rees' mental competence and render a report on the matter to us. While other courses have been suggested, cf. *Anderson v. Kentucky*, 376 U. S. 940, we think that all things considered the initial step should be the one just indicated. Until that step has been taken, we do not consider ourselves in a position to determine what disposition should be made of Rees' petition for certiorari.

Accordingly, we shall retain jurisdiction over the cause in this Court and direct the District Court to determine Rees' mental competence in the present posture of things, that is, whether he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises. To that end, it will be appropriate for the District Court to subject Rees to psychiatric and other appropriate medical examinations and, so far as necessary, to temporary federal hospitalization for this purpose. Cf. 18 U. S. C. §§ 4244-4245 (1964 ed.). If the State wishes to obtain additional evidence for the federal inquiry by examining Rees in its own facilities, we do not foreclose such a supplemental course of action. The District Court will hold such hearings as it deems suitable, allowing the State and all other interested parties to participate should they so desire, and will report its findings and conclusions to this Court with all convenient speed.

It is so ordered.

5/31/66

AIRTEL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, WFO (79-162) (P)

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO:RH)

ReRHlet to Bureau dated 5/20/66.

Enclosed for Bureau, Richmond, and Baltimore is one proof copy each of a Per Curiam opinion handed down by the United States Supreme Court (USSC) on 5/31/66 in the MELVIN DAVIS REES case (Number 321 Miscellaneous), in which the Court directed the matter of REES' mental competency be determined in the United States District Court for the Eastern District of Virginia, and to report its findings and conclusions to the USSC with all convenient speed. Thereafter, the USSC will act on REES' petition for certiorari.

WFO will continue to follow the progress of this case in the Supreme Court.

- 2 - Bureau (Enc. 1)
- ① - Richmond (79-44) (Enc. 1)
- 1 - Baltimore (79-55) (Enc. 1) (Info)
- 1 - WFO

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AIRTEL

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COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

June 1, 1966

C
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P
Y

Honorable Cren R. Lewis
United States District Court
Post Office Building
Alexandria, Virginia

Re: Melvin Davis Rees, Jr. v. C. C. Peyton

Dear Judge Lewis:

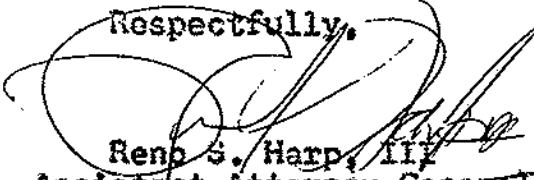
I am receipt of the per curiam opinion of the Supreme Court of the United States in the case of Melvin Davis Rees, Jr. v. C. C. Peyton, No. 321 Misc., October term of 1965, decided on May 31, 1966. In reviewing the opinion, it appears that it will be necessary that a hearing be held in connection with this case. In addition, it is also apparent from a review of the opinion, that this man should be examined.

May I respectfully suggest that he be committed, by order of this Court, to the Central State Hospital located at Petersburg, Virginia, wherein he can be examined by appropriate psychologists, psychiatrists, and such other medical personnel as are available as to his present mental condition and his mental competence, as suggested in the terminal paragraph of the opinion.

I shall be pleased to confer with the Court at such time that is available and open on our docket in connection with this case.

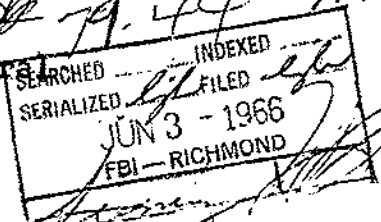
With best wishes, I am

Respectfully,


Rens S. Harp, III
Assistant Attorney General

RSH/mc

cc: S. White Rhyno, Jr., Esq.
515 Southern Building
Washington, D. C. 20005



6/17/66

AIRTEL

TO : DIRECTOR, FBI (79-27510)
FROM: SAC, RICHMOND (79-44) - *PK*
MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO: RICHMOND)

Reference WFO airtel to the Bureau dated 5/31/66.

There is being transmitted herewith to the Bureau one copy of a letter dated 6/10/66 addressed to the U. S. District Court, Alexandria, Virginia, from the attorney for REES, which letter forwarded a Motion For Hospitalization And Mental Examination for REES and a Statement of Authorities In Support of Motion For Hospitalization And Mental Examination. A copy of the Motion and the Statement of Authorities are being transmitted herewith to the Bureau.

The letter set forth that the attorney for REES was willing that the motion be decided without a hearing or after an informal conference with counsel. The letter also set forth that the attorney for REES desired to participate in the evidentiary hearing or other appropriate proceedings in court following the report of mental examination.

The attorney for REES suggested the court designate the Medical Center for Federal Prisoners at Springfield, Missouri, as the Federal hospital where REES should be confined for hospitalization and mental examination and, as an alternative, St. Elizabeth's Hospital in Washington, D. C.

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CCO
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79-44-9149

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The attorney for REES suggested that if the examination were made locally, Dr. OSCAR LE GAULT of Washington, D. C., and possibly one or two State of Virginia psychiatrists, who previously examined REES, make the examination.

The Bureau will be kept advised as to the proceedings in this matter.

MULLIN AND CONNOR
ATTORNEYS AT LAW
515 SOUTHERN BUILDING
WASHINGTON, D. C. 20005

EUGENE F. MULLIN, JR.
J. PARKER CONNOR
S. WHITE RHYNE, JR.

AREA CODE 202
783-2455

June 10, 1966

Mon. Orca R. Lewis
United States District Court
Post Office Building
Alexandria, Virginia

Re: Rees v. Payton
Civil Action No. 2970-M

Dear Judge Lewis:

Enclosed for filing are a motion for hospitalization and mental examination under 18 U. S. C. § 4244 and a statement of authorities in support thereof.

The principal purpose of this motion and memorandum is to put on record for the Court's assistance the suggestions of counsel for plaintiff as to the proper and desirable procedure to follow in carrying out the inquiry into mental competency directed by the Supreme Court. We do not request a formal hearing on the motion unless desired by the Court or the Commonwealth. We are willing that the motion be decided without hearing, or after such informal conference with counsel as the Court may feel desirable.

We do, of course, wish to participate in the evidentiary hearing or other appropriate proceedings in court following the report of mental examination.

Sincerely,

/s/ S. White Rhyme, Jr.

SWR/ew

cc: Reno S. Harp, III, Esq.
John J. Brandt, Esq.
Mr. Melvin Davis Rees, Jr.
Gress, Babcock and Dukes

79-44-9150

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[Signature]

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF COLUMBIA

Alexandria Division

Civil Action No. 77-1000

MELVIN DAVIS REES, JR.

v.

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

MOTION FOR HOSPITALIZATION AND MENTAL
EXAMINATION UNDER 18 U.S.C. § 4244

Counsel for plaintiff move the court that plaintiff be committed to a federal mental hospital pursuant to the provisions of 18 U.S.C. § 4244 and in accordance with the procedures suggested in the accompanying statement of authorities, there to be subjected to psychiatric and other appropriate medical examinations for the purpose of determining his mental competence and for report as to whether he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other

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[Signature]

hand whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity in the premises.

Respectfully submitted,

Joan J. Brandt

Duff and Sienker
2009 Fourteenth Street, N.
Arlington, Va., 22201

S. White Rhyme, Jr.

Mullin and Connor
510 Southern Building
Washington, D.C., 20005

Counsel for Plaintiff

Of counsel:

Green, Babcock and Dukes
Maryland Building
Hyattsville, Md., 20781

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Civil Action No. 2970-A

MELVIN DAVIS REES, JR.

Plaintiff

v.

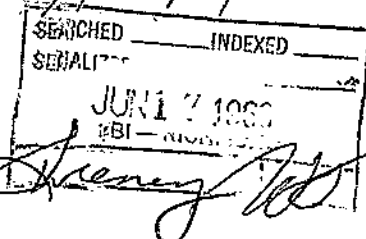
C. C. PEYTON, Superintendent of the
Virginia State Penitentiary

Defendant

STATEMENT OF AUTHORITIES IN SUPPORT OF
MOTION FOR HOSPITALIZATION AND MENTAL
EXAMINATION UNDER 18 U.S.C. § 4244

This memorandum of authorities is filed pursuant to the requirement of the local rules and in support of the motion filed this day under 18 U.S.C. § 4244 for hospitalization and mental examination of the plaintiff.

This court has been assigned by the United States Supreme Court the task of making a judicial determination and report as to the plaintiff's mental competence, i.e., "whether he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." Rees v. Peyton, No. 321 Misc., slip opinion p. 2 (May 31, 1966).



The Supreme Court has indicated that it will be appropriate, "so far as necessary," to subject the plaintiff to temporary federal hospitalization. Slip opinion, p. 2. Two state-employed psychiatrists who examined the plaintiff at his cell at the request of the Commonwealth were unable to form an opinion as to his competence because of his lack of cooperation and stated that they "felt that an additional period of observation at a hospital for the mentally ill would be advisable." Letter dated December 29, 1965, from Drs. Joseph R. Blalock and Harry Brick, transmitted to this court on June 6, 1966. A private psychiatrist who examined plaintiff at the request of his counsel concluded that he was psychotic but also felt that a period of hospitalization would be advisable. Letter dated September 29, 1965, from Dr. Oscar Le Gault. With these recommendations from psychiatrists employed by both sides, plaintiff submits that the necessity and advisability of hospitalization for examination are established beyond question.

The Commonwealth, in a letter to this court dated June 1, 1966, has suggested that the hospitalization be ordered in a state facility, the Central State Hospital at Petersburg, Virginia. Plaintiff's counsel submits that hospitalization in a state facility, at least in the initial instance, would be inconsistent with the language and intent of the Supreme Court's opinion, which referred to "federal hospitalization," cited two sections of the United States Code under which this hospitalization might be accomplished, and mentioned examination by the state in its own facilities only as a "supplemental course of action." Slip opinion, p. 2.

The examination should be made in a federal hospital to be designated by this court. The logical choices would seem to be the Medical Center for Federal Prisoners at Springfield, Mo., the largest and best equipped medical facility in

the country operated by the Bureau of Prisons, which has legal custody (if not physical custody) of plaintiff at the present time; and the St. Elizabeths Hospital in Washington, D.C., operated by the Department of Health, Education and Welfare, with the facilities of which this court is undoubtedly familiar. Of the two hospitals, the preference of plaintiff's counsel based on staff and facilities is for the hospital at Springfield, Missouri. St. Elizabeths, on the other hand, offers the advantage of geographical proximity to the place of hearing. The court may wish to solicit the advice and recommendation of the Bureau of Prisons, plaintiff's legal custodian, in making its election.

The commitment should be made under 18 U.S.C. § 4244, in the present factual situation the more appropriate of the two sections cited by the Supreme Court in its opinion. The alternative section cited by the Supreme Court, 18 U.S.C. § 4245, applies to instances in which a prisoner has already been examined by a three-man medical board in a federal institution, and it provides for a determination of mental competency by the "district court wherein the conviction was had." There has been no board determination in this case, plaintiff is not now imprisoned in a federal institution where such a board can be convened, and this court is not the court of conviction.

The more appropriate statutory vehicle in the present posture of things would seem to be § 4244. While the title of the section refers to mental incompetency "before trial," the text does not so limit the applicability of the section. Indeed, the first sentence specifically extends the period of applicability beyond trial to "the imposition of sentence" and even beyond that to "the expiration of any period of probation." The intent of the section is clearly to provide a vehicle by which at any stage of legal proceedings the competency of a person charged with crime can be determined.

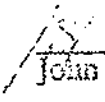
The section permits such examination upon motion in behalf of the accused, and counsel have filed the instant motion to indicate what they consider to be the proper and desirable way for this court to proceed in carrying out the inquiry assigned to it by the Supreme Court. In doing so, of course, counsel have exercised their own best judgment on behalf of the plaintiff, rejecting as attributable to plaintiff's incompetency his own expressed wishes to abandon all legal proceedings and permit the execution of the Virginia judgment. Action under § 42-44 is not dependent, however, on motion by counsel since the section specifically permits action by the court on its own motion.

Section 42-44 requires that the examination be made by at least one qualified psychiatrist, but permits it to be made by more than one. Counsel suggest that the order of commitment specify examination by not less than three psychiatrists in order to assure detailed and careful inquiry and consideration and a full discussion and interchange of ideas to the end that the Supreme Court may have a full and thorough report as to plaintiff's mental competency.

In the event that the examination is made locally, counsel suggest that the court appoint as examining psychiatrist (in addition to such psychiatrist or psychiatrists as the federal hospital shall designate from its staff) Dr. Oscar Le Gault, who has previously examined plaintiff at the request of his counsel, and one of the two state psychiatrists who have previously examined plaintiff at the request of the Commonwealth. This would add to the interchange of ideas among examining physicians the ideas of physicians chosen by both interested parties. It might also make unnecessary a subsequent commitment to a state facility, since the Commonwealth would participate through its state psychiatrist in the federal inquiry.

Dr. Le Gault is well qualified for appointment by the court. He is a Diplomate of the American Board of Psychiatry and Neurology, of the Washington School of Psychiatry and of the Washington Psychoanalytic Institute. He is a member of the American Psychoanalytic Association, a fellow of the American Psychiatric Association, a consultant at St. Elizabeths Hospital, a Training and Supervising Analyst of the Washington Psychoanalytic Institute, and President-Elect of the Washington Psychoanalytic Society. He is also a member of the editorial staff of the magazine, Psychiatry, and is the author of published papers in the field. Although counsel are unfamiliar with the detailed background of the state psychiatrists who examined plaintiff, they feel certain that they are like him well qualified for appointment by the court.

Respectfully submitted,


John J. Brandt

Duff and Slenker
2009 Fourteenth Street, N.
Arlington, Va., 22201


S. White Rhyne, Jr.

Mullin and Connor
515 Southern Building
Washington, D.C., 20003

Counsel for Plaintiff

Of counsel:

Green, Babcock and Dukes
Maryland Building
Hyattsville, Md., 20781

F B I

Date: 7/6/66

Transmit the following in _____
(Type in plaintext or code)Via TELETYPE URGENT
(Priority)

URGENT

7/6/66

INITIALS

TO DIRECTOR, FBI (79-27510) 7/6-22-66 ✓

FROM RICHMOND (79-44) (- P) - 2/2

MELVIN DAVIS REES, JR., AKA; CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS, KIDNAPING, OO, RICHMOND.

RE RICHMOND AIRTEL TO BUREAU, JUNE SEVENTEEN LAST.

HEARING HELD BEFORE JUDGE OREN R. LEWIS, USDC, EDVA,
RICHMOND, VA., JULY SIX INSTANT, BASED ON AN OPINION OF THE
US SUPREME COURT DATED MAY THIRTYONE LAST.REES STOOD BEFORE LEWIS TWENTYFIVE MINUTES TALKING IN
UNINTELLIGENT MANNER; HOWEVER, HE DID SAY HE DESIRED TO
ABANDON HIS APPEAL BEFORE THE US SUPREME COURT AND BE
EXECUTED.JUDGE LEWIS ASKED REES IF HE DESIRED TO DISMISS HIS
ATTORNEY S. WHITE RHYNE, JR., BUT HE DID NOT ANSWER THE
QUESTION.JUDGE LEWIS ON JULY SIX INSTANT SIGNED ORDER THAT REES
BE TRANSPORTED TO THE MEDICAL CENTER FOR FEDERAL PRISONERS
AT SPRINGFIELD, MO, BY THE USM AND THAT HE BE GIVEN APSYCHIATRIC EXAMINATION BY THREE PSYCHIATRISTS AND A REPORT
END PAGE ONE1 - Richmond (79-44)
1 - Baltimore (79-55)

1 - WFO (79-162)

ULS vlr - 3

Approved: *Bohler*

Special Agent in Charge

Sent

M

Per

79-44-9152

F B I

Date:

Transmit the following in _____
(Type in plaintext or code)Via _____
(Priority)

PAGE TWO

RH 79-44

SUBMITTED TO HIM AS WELL AS INTERESTED ATTORNEYS.

OVER THE OBJECTIONS OF THE COMMONWEALTH OF VA., REES IS NOT TO BE RETURNED TO THE VA. STATE PEN. BUT IS TO REMAIN AT THE MEDICAL CENTER UNTIL SUCH TIME AS JUDGE LEWIS ORDERS HIM RETURNED TO HIS COURT.

JUDGE LEWIS POINTED OUT THAT HE DESIRED REES IN FEDERAL CUSTODY AT THE MEDICAL CENTER AFTER THE PSYCHIATRIC EXAMINATION AND REPORT SO THAT THE COURT AS WELL AS INTERESTED ATTORNEYS MAY ASK FOR FURTHER EXAMINATION IF THEY SO DESIRE.

ON JULY SIX INSTANT, REES WAS TRANSPORTED BY PRIVATE PLANE BY THE USM TO SPRINGFIELD, MO, ON INSTRUCTIONS OF JUDGE LEWIS.

COPY OF ORDER BEING TRANSMITTED TO BUREAU BY AIRTEL.

BUREAU WILL BE KEPT ADVISED.

MAIL COPIES TO BALTIMORE AND WFO.

END

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

7/6/66

AIRTEL

REGISTERED MAIL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) - P -

MELVIN DAVID REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING

(OO:RICHMOND)

Reurte 7/6/66.

There is being transmitted herewith one copy of
an order of the USDC for the EDVA filed by Judge OWEN R.
LEWIS, 7/6/66. Contents of this were synopsisized in retel.

3 - Bureau (Encl. 1)

1 - Richmond

WLS/vlr

(4)

79-44-9153

A. W. [unclear]
W. [unclear]

79-44-9154

Sweeney *CP*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MELVIN DAVIS REES, Jr.

-v-

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

Civil Action

No. 2970-M

ORDER

Upon consideration of the per curiam opinion of the Supreme Court of the United States dated May 31, 1966, directing that this court make a judicial determination of the mental competence of Melvin Davis Rees, Jr., and render a report thereon to the Supreme Court, and of a motion filed by counsel for the said Rees for hospitalization and mental examination under 18 U.S.C. § 4244, and the State of Virginia and all other interested parties having been heard in open court this date, including Rees himself:

It is hereby ORDERED, pursuant to the provisions of 18 U.S.C. §§ 4244, 4245 (1964 ed.), as follows:

1. That Melvin Davis Rees, Jr., be, and he hereby is, committed to the Medical Center for Federal Prisoners at Springfield, Missouri, for such reasonable

period as may be necessary for psychiatric and other appropriate medical examinations in order to determine his mental competence in the present posture of things, that is, whether he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.

1. That the Superintendent of the Virginia State Penitentiary do, and he hereby is, directed to permit Ross' transportation by the United States Marshal for the Eastern District of Virginia to the Medical Center at Springfield for the purpose of the medical examination herein ordered.

2. That the United States Marshal for the Eastern District of Virginia do, and he hereby is, directed to transport Ross to the Medical Center at Springfield for the medical examination herein ordered.

4. That Ross be examined as to his mental condition by at least three qualified psychiatrists from the staff of the said Medical Center, with such psychological testing and other auxiliary procedures as they deem appropriate; and, in making such examination, the said psychiatrists shall consider the stipulation filed this day as to the factual and procedural background of this order, and whatever other facts they deem necessary to a full and adequate inquiry and diagnosis.

3. That the examining psychiatrists shall make a written report on their examination and diagnosis to this court, with copies thereof to Ross S. Hays, III, Esquire, Assistant Attorney General of the Commonwealth of Virginia, Supreme Court-State Library Building, Richmond, Virginia, 23219; to S. White Rhys, Jr., Esquire, Mullin and Conner, 313 Southern Building, Washington, D. C., 20003; and to the United States Attorney for the Eastern District of Virginia.

6. That upon conclusion of the examination ordered herein, the Warden and Chief Medical Officer of the Medical Center for Federal Prisoners at Springfield, Missouri, shall forthwith notify this court and counsel as heretofore named, and shall thereafter retain custody of the said Ross at the Medical Center until such time as the court shall otherwise direct.

Let copies of this order be sent by the Clerk to the plaintiff, the defendant, Ross S. Hays, III, Esquire, S. White Rhys, Jr., Esquire, John J. Brant, Esquire, the United States Attorney for the Eastern District of Virginia and the United States Marshal for the Eastern District of Virginia

United States District Judge

July 6, 1946

NAME:

Sam S. Hays, III, Esquire
Assistant Attorney General

S. White Rhyme, Jr., Esquire

John J. Brandt, Esquire

T. P. Bear, Esquire
Assistant United States Attorney

(Mount Clipping in Space Below)

U. S. Judge Orders Rees Psychiatric Test

A federal judge today ordered with the murder of another a complete psychiatric examination for Melvin Davis Rees Jr. at the Medical Center for federal prisoners at Springfield, Mo.

Judge Oren R. Lewis of Alexandria, made the ruling at a hearing in federal District Court here over the protest of Rees, who is facing a death sentence in the January, 1959, murder of three members of the Carroll Jackson family of Louisa county.

Rees, in a rambling and hesitant fashion, said he wished the abandonment of all further legal efforts on his behalf and indicated that he was ready to face the "justice of God."

TWO LIFE SENTENCES

Today's hearing was the result of an order by the United States Supreme Court for a hearing to determine the mental competence of Rees, who earlier had sought a review of his case.

The former Hyattsville, Md., musician also had received two life sentences from a Baltimore federal court for the kidnapping of Mrs. Jackson and a 5-year-old daughter. Still pending is a warrant charging Rees

with the murder of another daughter. In earlier legal efforts, attorneys for Rees had contended that he was insane and should not be executed.

Rees, who spoke for about a half hour at today's hearing, indicated that he fully understood the consequences of abandoning the legal efforts and couched many of his remarks in religious terms.

'... RATIONAL CHOICE'

Today's order by Judge Lewis said the examination of Rees in Springfield, Mo., would be to "determine his mental competence" and "whether he has capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation..."

The mental condition of Rees, Judge Lewis said, would be determined by "at least three qualified psychiatrists" from the staff of the Medical Center in Springfield. The psychiatrists then would submit a written report of their findings.

After the completion of today's hearing Rees, accompanied by a United States marshal, boarded a chartered plane en route to the medical center in Springfield.

During the hearing Rees, dressed in a dark blue suit with a white shirt and no tie, sometimes paused in mid-sentence during his remarks to Judge Lewis.

He became more animated, however, in protesting the judge's decision that he be sent to Springfield. Among those attending today's hearing were the 36-year-old convict's parents.

During the extended litigation in his case Rees has been on Death Row at the Virginia State Penitentiary here.

(Indicate page, name of newspaper, city and state.)

— 23

RICHMOND NEWS LEADER
RICHMOND, VA.

79-444

Date: 7/6/66
Edition: Blue Streak
Author:
Editor: J.J. Kilpatrick
Title:

Character:
or
Classification:
Submitting Office: Richmond

79-44-9153

SEARCHED	INDEXED
SERIALIZED	FILED
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FBI - RICHMOND	

Sweeney

DIRECTOR, FBI (79-27510)

7/28/66

SAC, WFO (79-162)(P*)

MELVIN DAVIS REES, JR., aka;
CARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO:RH)

ReWFOairtel to Bureau, 5/31/66.

On 7/19/66, GENE LYDDANE, Assistant Clerk, United States Supreme Court (USSC), advised that the case of MELVIN DAVIS REES continues in a pending status in the USSC. The Court adjourned on 6/20/66, and instant case has been carried over to the next term of court and reassigned Case # 9 Miscellaneous.

As the Supreme Court does not reconvene until 10/3/66, this case is being carried in a P* status at WFO until 10/66/.

- 2 - Bureau
- 1 - Baltimore (79-55)
- 1 - Richmond (79-44)
- 1 - WFO

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79-44-9156

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FBI - RICHMOND	
Sweeney	

DIRECTOR, FBI (79-27510)

8-31-66

SAC, RICHMOND (79-44) -P-

MELVIN DAVIS REES, JR., aka;
GARROLL VERNON JACKSON, JR.,
ET AL - VICTIMS
KIDNAPING
(OO: RH)

Re Richmond airtel to Bureau dated 7-6-66.

RENO S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Virginia, advised that the Attorney General's Office has received no information concerning the psychiatric examination of REES, who is being examined at the Springfield, Missouri, Medical Center. The Bureau will be kept advised as to the developments in this matter.

Mr. HARP furnished the above information on August 22, 1966.

2-Bureau
①-Richmond
ULS/bag
(3) *WAB*

SEARCHED _____
SERIALIZED *WAB*
INDEXED _____
FILED _____

WAB
79-44-9157

WAB

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR MENTAL PRISONERS
Springfield, Missouri

SPECIAL PROGRESS REPORT

Committed Name REES, Jelvin D.

Reg. No. 7-1066-H

Date

REPORT OF PSYCHIATRIC STAFF EXAMINATION - 9-2-66

Melvin Rees is a 37-year old, white male who was referred to the Medical Center for psychiatric evaluation under Title 18, Section 4244. He has been convicted of murder and the court is now specifically interested in knowing whether he is competent to discontinue all further legal proceedings. Specifically determinations are asked for "as to his mental competence in the present posture of things, that is, whether he has the capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation, or, on the other hand, whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation." He arrived at the Medical Center on 7/6/66. Thus at the dictating of this examination he has been here for approximately two months. While at the Medical Center, he was housed on the acute psychiatric treatment unit because it was felt that he was severely mentally ill throughout his entire stay. His past history, the results of repeated psychiatric evaluations, the results of daily observations on ward rounds, and his institutional adjustment were all reviewed by Dr. Hildreth. It was felt by all of the examining physicians that the diagnosis of schizophrenic reaction, chronic undifferentiated type, correctly described Mr. Rees' thoughts, feelings and behavior.

The Staff first addressed themselves to his capacity to appreciate his position. During the Staffing, Mr. Rees understood where he was and what day it was. He understood in addition that he was being examined by a group of psychiatrists in order to evaluate his competency to withdraw a writ of certiorari. His capacity to appreciate his position ended there. It was obvious that he still considered himself to be one with God, if not God himself. Thus, his delusional system was unchanged from that noted in the psychiatric examinations by Dr. Hildreth, Dr. Buschman and Dr. Wilinsky. Throughout the interview, he was so delusional that he was unable to appreciate even the social amenities of having clothes because he refused them, instead preferring to be absolutely naked. In addition, when everyone else was seated and a seat was offered him, Mr. Rees refused and stood with arms folded throughout the entire interview. Thus, it was apparent that he was unable to appreciate even the most basic social amenities. The pressure of his own thoughts was so strong that he was often unable to answer any of the questions asked of him. Because of the above, it was felt that he does not have the capacity to appreciate his position.

Next, the question of whether he could make a rational choice with respect to continuing or abandoning further litigation was considered. He has been noted to be consistently delusional with respect to his receiving divine revelation and being one with God, perhaps God himself. Because of this, Mr. Rees has repeatedly stated that legal proceedings and judgments by any court of law have no relation to him. He stated,

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SPECIAL PROGRESS REPORT

Committed Name REES, Melvin D.

Reg. No. 0-1066-H

Date

"I have had certain revelations made to me that have informed direction of my thought in the light of which I have reconstructed my view of the world, my place in the world. It has to do with our home, our relationships with others, not only nationally but internationally as well. I dismissed my attorney because I recognized that my advocate was Christ Himself." Thus, any choice that he has made with respect to continuing or abandoning further litigation is based entirely on delusional thinking. In short, we feel that Mr. Rees does not have the capacity to make a rational choice with respect to continuing or abandoning further litigation. It goes without saying that it is felt that he is suffering from a mental disease which substantially affects his capacity in the above premises.

Throughout his two month stay at the Medical Center, Mr. Rees was put on large doses of tranquilizing medications, in the hope that it might reduce his delusional thinking and make his perception of reality more accurate. It was noted to have no effect on his bizarre thought. Therefore it was discontinued. With or without medications, Mr. Rees has remained consistently and very actively mentally ill.

At this juncture, it can be stated that it was felt that Mr. Rees was totally incapable of assisting in a hearing of any type at the present time. He was unable to tolerate wearing clothes and unable to conform to any of the usual social amenities. In addition, he was unable to answer many of the questions asked him, instead rambling off into incoherencies. For example, when he was asked what sort of reasons he had for wanting to withdraw his writ of certiorari, he was silent for a moment and then said, "We live in a new creation, we live in an abundance of God's love, that is the only source of justice."

Based on our current examination, the patient presently requires no medication, and it is likely that none will be necessary during transit, or while in the custody of the court while awaiting hearing.

FOR THE STAFF:

AMCLH:gg
9-2-66

Present: Drs. Alderete
Hildreth
Wilinsky
Buschman

A. McL. Hildreth, M.D.
A. McL. HILDRETH, M. D.
Staff Psychiatrist

Howard C. Wilinsky, M.D.
HOWARD C. WILINSKY, M.D.
Staff Psychiatrist

M. Buschman, M.D.
M. BUSCHMAN, M. D.
Staff Psychiatrist

Joseph F. Alderete, M.D.
JOSEPH F. ALDERETE, M. D.
Chief, Psychiatric Service

CLASSIFICATION STUDY

(Continued)

Committed Name REES, Melvin D., Jr. Register Number 0-1066-H

REPORT OF PSYCHIATRIC EXAMINATION

I. IDENTIFICATION:

Melvin D. Rees is a 37-year old, White male who was referred to the Medical Center for psychiatric evaluation under Title 18, Section 4244. He has been convicted of murder and the court is now specifically interested in knowing whether he is competent to discontinue all further legal proceedings. He arrived here on July 6, 1966.

II. INFORMATION: This was derived from continuous observation of the patient while on his ward of residence; from numerous interviews with the patient daily lasting anywhere from one hour to 15 minutes; the court records, the previous psychiatric evaluation by Manfred Guttmacher, a previous examination by Oscar Le Gault and a brief psychiatric examination by Joseph Blalock and Harry Brick. In addition, there was available the records of his previous hearing on July 6, 1966.

III. HISTORY OF PRESENT ILLNESS: On January 11, 1959, Mr. Rees was driving his automobile in Northern Virginia. He forced the car, driven by Mr. Carol Jackson and containing his wife and two daughters off the road. He then murdered Mr. Jackson and their one-year old daughter in Northern Virginia and transported Mrs. Jackson and their other daughter into Maryland where [REDACTED]

[REDACTED] After this was unsuccessful, he beat Mrs. Jackson to death and murdered their other daughter in a similar manner. For further details, one can consult the central files.

He was arrested in June of 1960 and indicted in the U. S. District Court for the District of Maryland on a charge of kidnapping. In December of 1960, he was evaluated by Manfred Guttmacher and L. H. Ainsworth, who felt him to be competent to stand trial. At that time, it was felt that he was not psychotic. He was tried in February of 1961 and found guilty of kidnapping. At that time, no defense of insanity was raised. In April of 1961, he was sentenced to two consecutive terms of life imprisonment. In June of 1961, he was tried in the circuit court of Virginia for murder and in September of 1961, he was found guilty. Once again, no insanity defense was raised. In January of 1962, a sentence of death was imposed. After this conviction, Mr. Rees' attorneys appealed the case on three main grounds. They maintained that the F. B. I. searched Mr. Rees' parents' home illegally and seized incriminating property of Mr. Rees' illegally because they did not have Mr. Rees' permission to do this. They maintained further that the jury was prejudiced. The third objection to the conviction was that there was prejudice to the defendant in that he was incarcerated at the state Penitentiary at Richmond and not near by his lawyers.

In October of 1962, the Supreme Court of Appeals for Virginia declined to hear his case. In April of 1963, the Supreme Court of the U. S. also declined to review the case. In January of 1964, the U. S. District Court of Virginia for the Eastern District rejected a writ of habeas corpus claiming that Mr. Rees' constitutional rights had been violated (see above). In February of 1965, the U. S. Court of Appeals

b6
b7c

CLASSIFICATION STUDY

(Continued)

Committed Name REES, Melvin D., Jr.

Register Number Q-1066-H

Petition of Certiorari to the U. S. Supreme Court was issued. This is a writ which calls for the Supreme Court to call the court records of a lower court for review. Specifically, Mr. Rees' attorney's were asking the supreme Court to review the February Court of Appeals Decision on the habeus corpus action. In July of 1965, Mr. Rees asked his counsel to abandon all further action. Mr. Rees' counsel then doubted Mr. Rees' mental competence and requested psychiatric evaluation for his competency with respect to this request.

In September of 1965, Mr. Rees was examined by Oscar Le Gault who felt him to be psychotic and suffering from a schizophrenic disorder with conspicuous paranoid characteristics. He felt him to have severe disorganization of his thoughts. Mr. Rees' counsel decided on the basis of this that he could not and would not abandon litigation. In November of 1965, the Commonwealth of Virginia requested Joseph Blalock and Harry Brick. They found him uncooperative and were unable to say a word to him. On the basis of this, they tentatively felt that, "He was not psychotic or insane at the time we examined him." Thus, on the basis of the apparent conflicting psychiatric testimony, the Supreme Court of the U. S. on May 31, 1966 referred the matter to the U. S. District Court of the Eastern District of Virginia for an inquiry and report as to Mr. Rees' mental competence to aid them in exercising certiorari jurisdiction.

A hearing was held on July 6, 1966 and Mr. Rees was committed here to the Medical Center under Title 18, Section 4241. The court was interested specifically if Mr. Rees was capable of making a rational decision, was capable of understanding the nature and consequences of his act, and was capable of understanding the legalities of his act.

In reading over a copy of this hearing, it appears that Mr. Rees was so vague and tangential in his thoughts that he was often quite unintelligible to this reader. The salient points of Mr. Rees' verbalizations seem to be as follows: He expressed the thought that his wishes alone should be sufficient to stop all proceedings and that no question of his competency should be raised. In addition, he intimated that he possessed revelations made known to him through God that render all questions of his competency and that render all litigation meaningless. Thus, it seemed as if, during the hearing, he did not want to end litigation because he felt his position hopeless, but because of certain revelations from God, he felt that further litigation was meaningless.

Mr. Rees was admitted here on July 6, 1966 and was admitted to the acute psychiatric unit because of his peculiar activity. Briefly, it has been as follows: On admission, he was resistant to any human contact, attempting to strike a few of the officers for no apparent reason. His speech was incoherent and he refused to accept any clothes or a mattress. It was noted also that he had marked swelling of both ankles. For reasons that were not apparent, he was unwilling to allow anyone to perform a physical examination on him. In order to evaluate any possible organic disease that might cause his ankle swelling, he was put on tranquilizing medication in the hope that he would eventually allow the physicians at the Medical Center to examine him. To this date, he is

CLASSIFICATION STUDY

(Continued)

Committed Name REES, Melvin D., Jr. Register Number 0-1066-H

still too suspicious to allow this.

For the first week, he consistently refused to wear any clothes and refused to leave his room for any laboratory studies, such as a chest X-ray or the routine blood work. Finally, after his tranquilizing medication was increased and after being here for about two weeks, he began to wear some pajamas. He still refuses to leave his room for meals, preferring to be alone.

IV. PAST HISTORY: His past history has been reviewed quite adequately in the previous reports, thus only a brief review will be given. He has no history of venereal disease or of urinary incontinence as a child. Throughout elementary school and high school, he was noted to be a behavior problem because of truancy and poor marks. At age 15, he quit Hiatsville, Maryland High School where he had lived most of his life and went down to Florida. He worked briefly in a band there and then moved home. In 1946, he joined the Army and was honorably discharged in 1948 after being assigned to the band for most of his stay. In 1949, he re-enlisted into the Air Force and received an honorable discharge in 1943. Once again, he was in the Air Force Band.

While in the Air Force, he received a high school diploma and entered the University of Maryland as a sophomore in September of 1956. He left in May of 1957 without taking his final examinations.

His work history is that primarily as a piano player in numerous bands and as a teacher of music. At the time of his arrest, he was employed in a traveling band and in Memphis.

In 1954, he was married to a girl named Elaine Bachmaninoff and was separated in 1955. At that time, he was teaching music. They were divorced in 1959 and one son was produced from this marriage. In 1958 he entered into a common-law relationship with a girl named Pat Widenhouse. At the time of his crime, he was living with her.

Mr. Rees admits to no abnormal heterosexual and to no homosexual experience prior to 1959.

His family is as follows: His father is reported to be a quiet and abstemious man who used to work for the Bell Telephone Company. His mother is reported to be good-looking but also reserved and quiet. He felt no closeness to either parent. He has two sisters, one named Jean and the other named Joan. Both of them are married and Mr. Rees was never close to either one of them.

V. PHYSICAL EXAMINATION: On the physical examination, it was noted that Mr. Rees had three plus ankle edema and a rather long scar on his right thigh. With time, however, his ankle edema has diminished so that on gross observation, there is no physical abnormality. He is unwilling to allow any physician to perform any physical examination on him, however. Therefore, one can say very little about his physical condition.

CLASSIFICATION STUDY

(Continued)

Committed Name

REES, Melvin D., Jr.

Register Number

0-1066-H

VI. MENTAL STATUS EXAMINATION: On admission, Mr. Rees presented an extremely unusual appearance. He would stand over in the corner of his room, look out of the window, and completely ignore any attempts to communicate with him. As time went on, however, he began to speak with this interviewer. With time, he felt capable of long conversations with the examiner. He was oriented as to time, place, and person. His responses to even these simple questions were quite peculiar, however. For instance, he was asked what year it was. He replied, "Anno Domini?" When this was affirmed, he replied, "Anno Domini, in the year of our Lord, the Son of God, it is nineteen hundred and sixty-six."

When tested by his perception of the similarity between objects, and his proverb interpretation, Mr. Rees showed no impairment of his abstracting ability. An apple and an orange were both, "Fruit." A table and a chair both had "legs"; a statue and a poem are similar in that, "They are artists' interpretations." A tree and a mountain are similar in that they are, "Both represent convexities." Mr. Rees replied to the glass houses proverb by saying, "Threat of boomerang." The cat's away proverb was replied to in the following manner, "Well, it applies to the mice who could feel a good deal more secure in the absence of the cat." The bird in the hand proverb was interpreted as meaning, "One sure thing is better than two possibilities." When confronted with the letter-sidewalk situation, Mr. Rees said, "I probably wouldn't even regard it twice." His response to the theater-fire situation was quite unusual. He said, "Like a cigarette? If it were the panoramic view, I would say that it certainly makes progress, the realistic effect." He then began to laugh inexplicably but would not explain why. He responded to the serial 7's in a rather unusual manner. He stated, "I would rather add 7's to it. It's the one hundred and seventh Psalm, come before the Lord with singing, come forth with song, it is the Lord that made us and not ourselves, we are the sheep of his pasture, which is much better to be added to than subtracted from." After giving this bizarre response, he was quite able to perform simple multiplication problems with ease.

As one can see from the above, his associations were very loosened, often reaching the point of incoherence. He was unable to speak of his own feelings in any particular matter, replying when such questions were asked, in the most vague and incomprehensible manner. For instance he was asked what there was about the clothes that he didn't like. At this Mr. Rees paused, picked at his fingers, stood up, walked around and then sat down. He then stated quite abruptly, "They don't fit for one thing and for another." He then paused and stood up, "You see, when mankind came down from trees, the first thing he did was to manufacture textiles because he was ashamed. You see, he had taken the forbidden fruit." He then began to speak about Job, about the trials and tribulations of Job, and of how he saw God and of how he was restored.

At times, it was possible to speak to Mr. Rees in a coherent manner. Thus, after speaking with him through a number of interviews, it became apparent that he was aware of the facts of his court proceedings. He

CLASSIFICATION STUDY

(Continued)

Committed Name REES, Melvin D., Jr. Register Number 0-1066-H

at ending litigation would result in his sure execution. He was able to relate in considerable detail the litigations that had gone on the the past few years. It took many interviews, however, to disacc. this because he would answer the questions piecemeal, often drifting off into incoherencies and meaningless thoughts.

As far as can be determined, Mr. Rees has many delusions of grandeur. He feels in an exalted state because he feels that he has had certain special revelations from God.

"I have had certain revelations made to me that have informed direction of my thought in the light of which I have reconstructed my view of the world, my place in the world. It has to do with our home, our relationships with others, not only nationally but internationally as well. I dismissed my attorney because I recognized that my advocate was Christ himself. If we violate the law in any way, we are guilty and we must depart from this life into God's garden of spiritual love."

He then began to speak about how he had always pursued truth and how it was difficult for him to pursue truth at this present time. All of this was in the most vague terms. At any rate, he reported that he wanted these wonderful things because he had beheld Christ himself.

He then went on to say in a most vague and peculiar manner that he felt the world to be meaningless and all legal issues meaningless because of this divine revelation that he has received. He then went on to say that the reason that he was dismissing his writ of certiorari was because of the meaninglessness of the world and the litigations. Thus it appears that his action is based upon the supposed revelations from Christ that he has received, on delusional thought, and was not because of any rational assessment of the situation.

Mr. Rees' recent recall was somewhat unusual in that he could remember only five digits forward but was able to remember six digits backward. One can only speculate that at one time he was preoccupied with other things and the other time he was concentrating on trying to remember. His fund of information was adequate in that he was able to name the three largest cities in the U. S., the five most recent presidents, the capitols of West Germany, England and of Japan.

SUMMARY: This is a White male, who, since at least July of 1965 when he asked counsel to abandon all further action, has undergone marked mental deterioration. He has allowed his own fantasies to supersede a rational assessment of reality and thus has developed marked inappropriateness of thought, feeling and behavior.

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

Page

CLASSIFICATION STUDY

Committee Name

Register Number

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[illegible]

As the time expired, the defendant was observed to leave the Island Prison and to go to the building on the highway to assist in its work as usual and to this day.

1. Mr. Robert B. Thompson, Vice President of the company, said that he had not been involved in the company's activities since 1964. He said that he had been involved in the company's activities from 1964 to 1968, but that he had not been involved in the company's activities since 1968. He said that he had been involved in the company's activities from 1964 to 1968, but that he had not been involved in the company's activities since 1968.

19. Poliocephalus californicus: The bird is not as common as the Cassin's, with a reddish line just above the bill and a reddish tint below the eye; also the male has a red line on the lower mandible, the eye yellow and the bill black. The bird is a common one and is often seen in the fields. It is a common one and is often seen in the fields. It is a common one and is often seen in the fields.

[illegible]

CLASSIFICATION STUDY

(Continued)

Committed Name

W. A. Winkler, Jr., et al.

Register Number

7-1046-2

Winkler brought back again the last question of fact, namely his reason for requesting a withdrawal of the writ of certiorari at this time. He then went into a discussion about the religious revolution that had occurred in him and how he had felt about the war and how he was the winner of both. As the patient's doctor explained on this issue, the witness asked him if he was under anything and especially asked to appear to the committee on it in 1950, saying that he seemed to be alive but he learned that he was not at this time at least diagnosed of being sane and that he realized that if dropping the writ of certiorari he was very likely accepting his conviction. He then agreed that, in 1950, this was the way he had come to see the present classification.

He then discussed the origin of the writ of certiorari and it was suggested by the patient that it had been the initiation of his former attorney about the writ and then he said and then he was only a passive spectator in this regard. He then stated that he is happy to be associated with any of his former attorneys, saying that there is no one attacking after all being. He said the other was, he said, "from the fact, the father".

Throughout the interview, he was very self-possessed, demonstrating with the various phrases being examined in very complicated and convoluted ways, all of which were in a seemingly effort to show to follow the meaning of his thoughts.

In summary, he was very intelligent, very often extremely sarcastic in his thinking. He was a master of words, thinking deeply about everything he said. He was a master of his speech, showing logical, very thoughtful ideas; and of his organization of thought. He was a very good speaker, very good at the collection of collections of his own thoughts, particularly.

Most importantly, this speaker is of the strong opinion that the time is sufficient from now on to be a master of his own destiny and that he can control the situation in which he operates and in this case look ahead, to provide the position of his own personal choice with respect to continuing or discontinuing his present writ of certiorari. Certainly, this speaker was not sane or definitely not competent to make out the writ of certiorari at this time.

W. A. Winkler, Jr.
et al.
7-1046-2

W. A. Winkler, Jr.
7-1046-2

1008 101719 101719 101719 (Continued)

C-1059-13

Register Number

Robert David Ross Jr. 0-106642, was recruited by me for approximately July 1944 to August 10, 1945. General files and hospital chart were reviewed, and all papers were reviewed both in regard to his hospital chart and also in connection with his work physician, Dr. Kitchin. Mr. Ross was returned to his room.

10-0-7 STAFFS EXAMINATION: The patient appeared as a tall, heavily dressed, middle-aged individual who refused to step out of his room. He claimed that he could not be disturbed unless the doctor agreed to come into the room. He refused the doctor to sit on his bed. He claimed that he preferred to stand. He asked the doctor how old they looked at his head, forehead, and chest. He was speechless. He constantly checked the traffic in the outside hallway, and claimed that it seemed that every time his door was opened the traffic got increasingly heavy.

His speech was generally slow and deliberate. There were long pauses after his questions and responses.

The interview was generally well directed. Throughout the interview the patient seemed with his back to the wall and generally stayed within the walls of the physical or intellectual corridor. Numerous social graces were observed by softening of the eyebrows, softening of the lips and putting the hands near the mouth. The patients' thought process revealed a great deal of insight. In general conversation, the patient had difficulty addressing himself to the questions asked, however more functionally tangential. He was very intellectual, and at times an accumulation of negativisms on major thinking or ideas frequently. Considerable when the patient was asked to picture his own feelings or his own thoughts. At times the patient would stop, stop, and then for the several seconds, at times he would be in a dependent position. The subject refused to answer any questions with false ideas or abstract freedom. The only questions he answered were to the end specific. At times he gave correct correct responses and at other times he gave highly intellectualized irrelevant responses.

For political reasons, however, and, indeed, to determine his own philosophy and his own opinions, the political party is desirable.

Excerpt of transcript revealed a great deal of delusional material of a paranoid nature as well as feelings of responsibility. The patient speculated himself with God and spoke of himself as God. He claimed what he and God created and he often spoke of having highly religious revelations. The patient apparently refused to elaborate on his pre-occupative experiences and only if one persisted when he seemed to be somewhat guarded by questions of the nature of his interview technique. He stated hallucinatory experiences but stated that he received "revelations" and was "at one with the universe". In short, while discussing his religious ideas, he giggled inappropriately. When asked if he knew the implications of his current legal actions he stated, then pressed on this issue the patient finally stated that

CLASSIFICATION STUDY

(Continued)

6-1066-1

Committed Name

Register Number

He stated that he would be judged by a higher court, thus making any further hearings or comparisons with other courts irrelevant. He stated that he had been convicted of the fact he and God were dead, that he would not return to the state of living. He refused to elaborate on this matter. Throughout the interview the patient indicated that he did not wish to communicate, that he had been through many examinations before, and that he felt the total procedure was to be used to insure the interview with his intellectual. He mentioned several facts which he had read, stated that he spoke in a way which indicated that he could not reverse the interview. He mentioned the physician, and stated to become irritated when the physician spoke pointedly about the manner in which the patient answered several questions. The patient seemed quite surprised and stated that the interviewer should find his totally irrelevant responses to be relevant and in terms of the questions asked.

He is a very intelligent.

HEALTH RECORDS: Schizophrenic reaction, chronic undifferentiated type, sec-222 risk paranoid features.

Howard C. Steiner, M.D.

HOWARD C. STEINER, M.D.
Staff Psychiatrist

6-1066-1
6-1066-1

Classification Form 10-Copy
Rev. January 1935

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

Page _____

CLASSIFICATION STUDY

(Continued)

Committed Name

SMITH, Edwin H., Jr.

Register Number

2-3556-2

ADDITIONAL HISTORY AND PHYSICAL EXAMINATION

1934-35: This 37 year male was sent to MHP for psychiatric evaluation. No notable symptoms, symptoms negative. Moderate use of tobacco; habitual use of alcohol. Denies
diabetes, venereal, tuberculosis, mental illness, venereal diseases, use of narcotics
and criminal history of diabetes, cancer, tuberculosis or mental illness.

PHYSICAL EXAM: This patient is a well developed, well nourished 37 year old white male,
no apparent disability is in ambulation. Height 70", weight 150#, blood pressure 120/80.
Pulse 80, heart normal. Vision 20/20, both eye movements intact. Fundi normal. Hearing
and speech normal. Mouth, pharynx, nose, neck, chest, back, arms, abdomen, no hernia, gonorrhea,
syphilis, gonorrhea and lymph nodes examined with no abnormality noted. Moderate
limitation of right elbow. Skin - eczematous dermatitis.

DIAGNOSIS: 121-290: Schizophrenia-Paranoid.

REMARKS: Psychiatric evaluation

SYMPTOMS: None

DISORDERS: None

REMARKS: Psychiatric

Carl H. Mendenhall M.D.
CARL MENDENHALL, M.D.
SA BUREAU (S)(T) 1935.

6/25/35

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR FEDERAL PRISONERS
Springfield, Missouri

SPECIAL PROGRESS REPORT

Committed Name REES, Jelvin D.

Reg. No. 9-1066-H

Date

REPORT OF PSYCHIATRIC STAFF EXAMINATION - 9-2-66

Melvin Rees is a 37-year old, white male who was referred to the Medical Center for psychiatric evaluation under Title 18, Section 4244. He has been convicted of murder and the court is now specifically interested in knowing whether he is competent to discontinue all further legal proceedings. Specifically determinations are asked for "as to his mental competence in the present posture of things, that is, whether he has the capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation, or, on the other hand, whether he is suffering from a mental disease, disorder or defect which may substantially affect his capacity to appreciate his position and to make a rational choice with respect to continuing or abandoning further litigation." He arrived at the Medical Center on 7/6/66. Thus at the dictating of this examination he has been here for approximately two months. While at the Medical Center, he was housed on the acute psychiatric treatment unit because it was felt that he was severely mentally ill throughout his entire stay. His past history, the results of repeated psychiatric evaluations, the results of daily observations on ward rounds, and his institutional adjustment were all reviewed by Dr. Hildreth. It was felt by all of the examining physicians that the diagnosis of schizophrenic reaction, chronic undifferentiated type, correctly described Mr. Rees' thoughts, feelings and behavior.

The Staff first addressed themselves to his capacity to appreciate his position. During the Staffing, Mr. Rees understood where he was and what day it was. He understood in addition that he was being examined by a group of psychiatrists in order to evaluate his competency to withdraw a writ of certiorari. His capacity to appreciate his position ended there. It was obvious that he still considered himself to be one with God, if not God himself. Thus, his delusional system was unchanged from that noted in the psychiatric examinations by Dr. Hildreth, Dr. Buschman and Dr. Wilinsky. Throughout the interview, he was so delusional that he was unable to appreciate even the social amenities of having clothes because he refused them, instead preferring to be absolutely naked. In addition, when everyone else was seated and a seat was offered him, Mr. Rees refused and stood with arms folded throughout the entire interview. Thus, it was apparent that he was unable to appreciate even the most basic social amenities. The pressure of his own thoughts was so strong that he was often unable to answer any of the questions asked of him. Because of the above, it was felt that he does not have the capacity to appreciate his position.

Next, the question of whether he could make a rational choice with respect to continuing or abandoning further litigation was considered. He has been noted to be consistently delusional with respect to his receiving divine revelation and being one with God, perhaps God himself. Because of this, Mr. Rees has repeatedly stated that legal procedures and judgments by any court of law have no relation to him. He stated,

79-44-9158
Sweeney *[Signature]*

SPECIAL PROGRESS REPORT

Committed Name REES, Melvin D.

Reg. No. O-1066-H

Date

"I have had certain revelations made to me that have informed direction of my thought in the light of which I have reconstructed my view of the world, my place in the world. It has to do with our home, our relationships with others, not only nationally but internationally as well. I dismissed my attorney because I recognized that my advocate was Christ Himself." Thus, any choice that he has made with respect to continuing or abandoning further litigation is based entirely on delusional thinking. In short, we feel that Mr. Rees does not have the capacity to make a rational choice with respect to continuing or abandoning further litigation. It goes without saying that it is felt that he is suffering from a mental disease which substantially affects his capacity in the above premises.

Throughout his two month stay at the Medical Center, Mr. Rees was put on large doses of tranquilizing medications, in the hope that it might reduce his delusional thinking and make his perception of reality more accurate. It was noted to have no effect on his bizarre thought. Therefore it was discontinued. With or without medications, Mr. Rees has remained consistently and very actively mentally ill.

At this juncture, it can be stated that it was felt that Mr. Rees was totally incapable of assisting in a hearing of any type at the present time. He was unable to tolerate wearing clothes and unable to conform to any of the usual social amenities. In addition, he was unable to answer many of the questions asked him, instead rambling off into incoherencies. For example, when he was asked what sort of reasons he had for wanting to withdraw his writ of certiorari, he was silent for a moment and then said, "We live in a new creation, we live in an abundance of God's love, that is the only source of justice."

Based on our current examination, the patient presently requires no medication, and it is likely that none will be necessary during transit, or while in the custody of the court while awaiting hearing.

FOR THE STAFF:

AMELH:gp
9-2-66

Present: Drs. Alderete
Hildreth
Wilinsky
Buschman

A. McL. HILDRETH, M. D.
Staff Psychiatrist

Howard C. Wilinsky, M.D.
HOWARD C. WILINSKY, M.D.
Staff Psychiatrist

M. Buschman, M.D.
H. BUSCHMAN, M. D.
Staff Psychiatrist

Joseph F. Alderete, M.D.
JOSEPH F. ALDERETE, M. D.
Chief, Psychiatric Service

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

Page _____

CLASSIFICATION STUDY

Committed Name	Register Number
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5. *Conclusions*—The results of this study indicate that the use of a
 6. *concurrent* *training* *program* *with* *the* *use* *of* *the* *same* *muscle*
 7. *groups* *as* *the* *main* *training* *program* *can* *improve* *muscle*
 8. *strength* *and* *endurance* *in* *the* *same* *muscle* *groups* *as* *the*
 9. *main* *training* *program* *and* *can* *improve* *muscle* *strength*
 10. *and* *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main*
 11. *training* *program* *and* *can* *improve* *muscle* *strength* *and*
 12. *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main* *training*
 13. *program* *and* *can* *improve* *muscle* *strength* *and* *endurance*
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 17. *can* *improve* *muscle* *strength* *and* *endurance* *in* *the* *same*
 18. *muscle* *groups* *as* *the* *main* *training* *program* *and* *can*
 19. *improve* *muscle* *strength* *and* *endurance* *in* *the* *same* *muscle*
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 32. *can* *improve* *muscle* *strength* *and* *endurance* *in* *the* *same*
 33. *muscle* *groups* *as* *the* *main* *training* *program* *and* *can*
 34. *improve* *muscle* *strength* *and* *endurance* *in* *the* *same* *muscle*
 35. *groups* *as* *the* *main* *training* *program* *and* *can* *improve*
 36. *muscle* *strength* *and* *endurance* *in* *the* *same* *muscle* *groups*
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 38. *strength* *and* *endurance* *in* *the* *same* *muscle* *groups* *as*
 39. *the* *main* *training* *program* *and* *can* *improve* *muscle* *strength*
 40. *and* *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main*
 41. *training* *program* *and* *can* *improve* *muscle* *strength* *and*
 42. *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main* *training*
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 45. *and* *can* *improve* *muscle* *strength* *and* *endurance* *in* *the*
 46. *same* *muscle* *groups* *as* *the* *main* *training* *program* *and*
 47. *can* *improve* *muscle* *strength* *and* *endurance* *in* *the* *same*
 48. *muscle* *groups* *as* *the* *main* *training* *program* *and* *can*
 49. *improve* *muscle* *strength* *and* *endurance* *in* *the* *same* *muscle*
 50. *groups* *as* *the* *main* *training* *program* *and* *can* *improve*
 51. *muscle* *strength* *and* *endurance* *in* *the* *same* *muscle* *groups*
 52. *as* *the* *main* *training* *program* *and* *can* *improve* *muscle*
 53. *strength* *and* *endurance* *in* *the* *same* *muscle* *groups* *as*
 54. *the* *main* *training* *program* *and* *can* *improve* *muscle* *strength*
 55. *and* *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main*
 56. *training* *program* *and* *can* *improve* *muscle* *strength* *and*
 57. *endurance* *in* *the* *same* *muscle* *groups* *as* *the* *main* *training*
 58. *program* *and* *can* *improve* *muscle* *strength* *and* *endurance*
 59. *in* *the* *same* *muscle* *groups* *as* *the* *main* *training* *program*
 60. *and* *can* *improve* *muscle* *strength* *and* *endurance* *in* *the*
 61. *same* *muscle* *groups* *as* *the* *main* *training* *program* *and*
 62. *can* *improve* *muscle* *strength* *and* *endurance* *in</*

[illegible]

ALL FORMS OF THIS FORM: We have carefully checked the above information and believe it to be true and correct. The undersigned hereby certifies that the information furnished is true and correct.

[illegible]

When asked to describe the "bad" and "good" in the world, he replied in a very simple manner. "The bad is the fact that there are so many people who are not as good as they should be. The good is the fact that there are so many people who are as good as they should be."

Page _____

(Guzmán)

Register Number 000000

Most importantly, that piece is of the shoring variety that Mr. Ross is infamous for writing. It is a useful disorientation and reflects that it was written by an author whose attack his country and people were tantamount to. He even takes his position as he takes a political stance with respect to a nation he was touring his peace efforts in northern. Certainly, it is unknown whether Ross is definitely now competent to carry out the job of representing his state of Maryland at this time.

22. *Chrysothrix* No. 10
A. *peruviana* T. S.
A. *is* *peruviana*

2024

SECRET, NOFORN, NOPI, NOC (Continued)

0-306-3

Register Number

Excerpt of the interview revealed a great deal of educational material of a religious nature as well as feelings of superiority. The patient identified himself with God and spoke of himself as "god". He claimed that he and god were equal and he often spoke of other people's religious restrictions. The patient stated that he referred to witnesses as his spiritualistic superiors and only obeyed or rebelled when he seemed to be caught but gained by criticism of their system of liberating techniques. He called fellowworkers "enemies" and stated that he received "revelations" from god and "sat one with the universe". At times while discussing his religious ideas, he giggled inappropriately. When asked if he knew the implications of his current legal actions he replied, "I've pressed on this issue too; patients finally stated that

CLASSIFICATION STUDY

(Continued)

G-1066-71

Committed Name

Register Number

It was revealed that he would be judged by a higher court, thus making
any further by "worthy" courts as concerned with "worthy" courts. Involvement,
in planning that it had been revealed to him that he and Ted were fused, that
he would remain in the state of Florida. He refused to elaborate on this
point, saying that throughout the interview the various indications that he
did not particularly wish to comment, that he had been through very
much in a criminal case before, and that he felt the total procedure was
being used to impress the interview with his intellectual
background. He mentioned several books that he had read, stated that he spoke
English fluently and indicated that he would not reverse the interview
process and further the physician, and stated to have been involved when
the interview was quite pointedly noted the marginal manner in which the
interview covered several questions. The patient seemed quite surprised and
stated that the interview should find his verbally irrelevant responses
in terms of the questions asked.

He was not engaged.

Dr. EDWARD C. WELMSKY: Subacute, recurrent, chronic undifferentiated
type. Associated with paranoid features.

Edward C. Welmsky, M.D.
EDWARD C. WELMSKY, M.D.
Staff Psychologist

RECEIVED
JAN 10 1952

CLASSIFICATION STUDY

(Continued)

Committed Name

MR. MARTIN H. JR.

Register Number

6-10-66-1

ADMISSION HISTORY AND HOSPITAL ADMISSION

History. Age 37 years old present in 1966 for psychiatric evaluation. No medical history. System negative. Moderate use of tobacco. Minimal use of alcohol. No drug use. No history of diabetes, cancer, tuberculosis or other illness.

PHYSICAL EXAM: This patient is a well developed, well nourished 37 year old white male, in good health, is in ambulatory. Height 75", weight 180#. Blood pressure 110/80. Pulse 60. Good vision. Vision 20/20, both eye movements intact. Ears normal. Hearing and speech normal. Mouth, pharynx, nose, throat, chest, heart, abdomen, no hernia. Genitalia, back, neurological and inspection examined with no abnormalities noted. Autistic history of right eye. Skin - extensive dermatitis.

DIAGNOSIS: 112-290: Schizophrenia.

REMARKS: Psychiatric evaluation

CONCLUSION: None

RECOMMENDATION: None

REMARKS: Psychiatric

Carl H. Mentzer MD
CHIEF, PSYCHIATRY, U.S.
AT BUREAU (2/1) 1966.

6/25/66

3/26/66

AIRTEL

TO: DIRECTOR, FBI (79-27510)

FROM: SAC, RICHMOND (79-44) (P)

MELVIN DAVID REES, JR., aka;
CARROLL YOUNG JACKSON, JR.,
et al - VICTIMS
KIDNAPING
(OO: RICHMOND)

Reference is made to Richmond letter to Bureau
3/21/66.

There is being transmitted herewith one copy of a
psychiatric report as prepared by the Psychiatric Staff,
Medical Center for Federal Prisoners, Springfield, Missouri,
dated 3/2/66, pertaining to MELVIN DAVID REES.

The following is a summary of the psychiatric
report:

It was felt by examining psychiatrists that the
diagnosis of schizophrenic reaction, chronic undifferentiated
type, correctly described MELVIN DAVID REES' thoughts,
feelings and behavior. REES understood where he was and
what day it was. He understood, in addition, that he was
being examined by a group of psychiatrists in order to
evaluate his competency to withdraw a writ of certiorari.
His capacity to appreciate his position ended there. REES
considered himself to be one with God, if not God himself,
and he preferred to be naked. REES refused to be seated
when others were seated and when offered a seat. He refused
the most basic social amenities. He was often unable to

- 1 - Bureau (Encl. 1)
- 1 - Baltimore (79-55)(Info.)
- 1 - WFO (79-102)(Info.)
- 1 - Richmond

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J. High
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Sweeney

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answer any questions asked of him. KENNEDY reportedly stated that legal procedures and judgments by any court of law had no relation to him. Any choice that KENNEDY made with respect to continuing or abandoning further litigation is based entirely on delusional thinking. KENNEDY does not have the capacity to make a rational choice with respect to continuing or abandoning further litigation.

KENNEDY was put on a large dose of tranquilizing medications in hopes that it might reduce his delusional thinking and make his perception of reality more accurate. The tranquilizers had no effect on his thoughts. It was felt by the psychiatrists that KENNEDY was totally incapable of assisting in a hearing of any type at this time.

WILCO S. HARP, III, Assistant Attorney General, Commonwealth of Virginia, Richmond, Virginia, advised that on 9/15/66 Judge GEORGE E. LEWIS, U. S. District Court, EDVA, at Alexandria, Va., entered an order that KENNEDY remain at the Medical Center for Federal Prisoners, Springfield, Missouri, and that he could be examined by a personal psychiatrist or a Commonwealth of Virginia psychiatrist at that institution. HARP stated that a sanity hearing concerning KENNEDY is to be held by Judge LEWIS at the U. S. District Court, EDVA, Alexandria, on 10/17/66. HARP advised that he was requesting that any hearings concerning KENNEDY be held at the U. S. District Court for the Eastern District of Virginia at Richmond, Virginia, and that he would make a motion to have KENNEDY returned to the Commonwealth of Virginia to be confined at the Central State Hospital, Petersburg, Va., so that state psychiatrists may examine KENNEDY.

The Bureau will be kept advised as to developments in this case.