

The Breakfast Club

Constitutional Minute for 6 Jun 2023

Right #18 The Right to a Local Trial

“In all criminal prosecutions, the accused shall enjoy the right to ... trial, by an impartial jury **of the State and district wherein the crime shall have been committed**”ⁱ

Recall recently I pointed out that your right to a jury trial was already covered in Article 3, Section 2 of the basic Constitution:

“The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and **such Trial shall be held in the State where the said Crimes shall have been committed**; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Notice that the Amendment is a bit more specific: the trial must be held in the State **and the District** where the crime was committed. Article 3 also allows Congress to set the venue for crimes committed on the high seas or outside the U.S. but still subject to U.S. law (like crimes under the horrible [Lacey Act](#)).ⁱⁱ

Some state constitutions address the right to a change of venue, but in most states, the issue is left to statutes or court rules.

Having a local trial obviously benefits both sides; the prosecution has better access to the evidence and prosecution witnesses; the defense has better access to exculpatory evidence and defense witnesses.

You may recall that one of Jefferson’s complaints in the Declaration of Independence was that the King was moving trials to Nova Scotia or even London; New England juries were frequently utilizing jury nullification. Such remote trials didn’t make it easy for either side to have witnesses appear, but the government, with better access to funding, retained a distinct advantage.

If the state cannot provide a jury with the required impartiality, the defendant can waive his right to a local trial and ask for a continuance or request a change of venue.

The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.ⁱⁱⁱ (Emphasis added)

To obtain a change of venue, you typically have to show a reasonable probability that you can't receive a fair trial for one of several reasons. The most frequently used is adverse pretrial publicity, but there are other reasons as well, such as evidence that the judge has shown prejudice against the accused, or, in capital cases, a jury pool that's predisposed for or against the death penalty.

The success of a motion for venue change will usually depend on what prospective jurors say during *voir dire* (questioning during jury selection). The defense team typically must show a likelihood that the publicity has biased the entire jury pool.

The judge will assess the nature and extent of any pretrial news coverage, the size and characteristics of the community, the status of both the defendant and the victim(s) in the community.

[This Wikipedia page](#) contains a list of notable change of venue trials.

The trial of 1995 Oklahoma City bomber Timothy McVeigh was transferred from Oklahoma to the U.S. District Court in Denver, Colorado.

The Rodney King trial, which I've previously mentioned, was moved from Los Angeles, to Simi Valley, CA, a predominately white community in Ventura County.

Closer to home, the 2002 cases of Beltway snipers Lee Boyd Malvo and John Allen Muhammad, were moved from northern Virginia where the shootings took place to Chesapeake and Virginia Beach, respectively.

In *Ferens v. John Deere Co.*, 494 U.S. 516 (1990), the high court held that when a trial is moved to a different jurisdiction the law of the originating/transferring court still applies. This obviously has greater importance if a trial is moved to another state (if it is a state trial).

Virginia Code § 19.2-251. When and how venue may be changed, states that:

“Whenever the mayor of any city, or the sheriff of any county, shall call on the Governor for military force to protect the accused from violence, the judge of the circuit court of the city or county having jurisdiction of the offense shall, upon a petition signed and sworn to by the accused, whether he be present or not, at once order the venue to be changed to the circuit court of a city or county sufficiently remote from the place where the offense was committed to insure the safe and impartial trial of the accused.”

What sort of trial would require military force to keep the peace? Perhaps a “Timothy McVeigh-sort of crime?”

For further reading:

[Change of Venue](#); A Survey of Law Textbook, By John R. Berger

[Prejudice and Change of Venue](#), by Arthur D. Austin, Dickinson Law Review - Volume 68, Issue 4, 1963-1964

Next week: Right #19: The right to be Informed of the charges against you.

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ⁱ The Virginia Bill of Rights quaintly calls this “of his vicinage”

ⁱⁱ https://en.wikipedia.org/wiki/Lacey_Act_of_1900

ⁱⁱⁱ Federal Rules of Criminal Procedure, Rule 21a