NY CLS CPL § 230.20

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New York Consolidated Laws Service > Criminal Procedure Law (Pts. ONE — THREE) > Part TWO The Principal Proceedings (Titles H — M) > Title J Prosecution of Indictments in Superior Courts—Plea to Sentence (Arts. 220 — 330) > Article 230 Removal of Action (§§ 230.10 — 230.40)

§ 230.20. Removal of action; removal from county court to supreme court and change of venue; upon motion of party.

1. At any time within the period provided by section 255.20, the appellate division of the department embracing the county, upon motion of either the defendant or the people, may, for good cause shown, order that the indictment and action be removed from the county court to the supreme court at a term held or to be held in the same county.

2. At any time within the period provided by section 255.20, the appellate division of the department embracing the county in which the superior court is located may, upon motion of either the defendant or the people demonstrating reasonable cause to believe that a fair and impartial trial cannot be had in such county, order either:

(a) that the indictment and action be removed from such superior court to a designated superior court of or located in another county; or

(b) that the commissioner of jurors of such county, in consultation with the appropriate administrative judge of the judicial district in which the county is located, expand the pool of jurors to encompass prospective jurors from the jury lists of counties that are within the judicial district in which, and that are geographically contiguous with the county in which, such superior court is located.

In making such determination the appellate division shall consider, among other factors, the hardship on potential jurors and the potential depletion of a county's qualified juror list that may result from an order expanding the jury pool. An order of removal under paragraph (a) herein must, if the defendant is in custody at the time, include a provision for transfer of custody by the sheriff or other appropriate public servant of the county of confinement to the sheriff or other appropriate public servant of the county to

which the action has been removed. If the order is issued upon motion of the people, the appellate division may impose such conditions as it deems equitable and appropriate to insure that the removal does not subject the defendant to an unreasonable burden in making his defense. Any additional cost to the people incurred in complying with the order must be borne by the county from which the action originated.

3. Any motion made pursuant to this section must be based upon papers stating the grounds therefor, and must be made within the period provided by section 255.20 and upon five days notice thereof together with service of the moving papers upon, as the case may be, (a) the district attorney or (b) either the defendant or his counsel. In any case, the motion must be made returnable either during the appellate division term during which such moving papers are served or during the next term thereof.

4. If the appellate division grants the motion and orders a removal of the action, a certified copy of such order must be filed with the clerk of the superior court in which the indictment is pending. Such clerk must thereupon transmit such instrument, together with the pertinent papers and proceedings of the action, including all undertakings for appearances of the defendant and of the witnesses, or a certified copy or copies of the same, to the term of the superior court to which the action has been removed. Such latter court must then proceed to conduct the action to judgment or other final disposition.

History

Add, L 1970, ch 996, § 1; amd, L 1974, ch 763, § 7, eff Sept 1, 1974; L 1985, ch 257, § 1, eff Nov 1, 1985.

Annotations

Commentary

PRACTICE INSIGHTS:

Laying Foundation for Change of Venue Through *Voir Dire*

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INSIGHT

Defense counsel should move for a change of venue pursuant to *CPL § 230.20* when there is a firm belief that there is "reasonable cause to believe that a fair and impartial trial cannot be" held in the county in which the prosecution is pending. This motion is not readily granted. Reasons offer prompting denial of the motion are that this relief removes the prosecution away from the county in which the crime occurred and the county in which there is a significant interest that the case be brought to conclusion. Consequently, defense counsel who considers making this motion must understand the substantial foundation that must be laid in order for the motion to be successful.

ANALYSIS

Counsel should evaluate all potential sources of support for motion.

Pretrial publicity is the centerpiece of any motion for a change of venue. It is pretrial publicity, its frequency, tenor and content, that should be cited as the basis for the claim that a defendant is unable to get a fair and impartial trial in a particular county. In order for a motion for a change of venue to be successful, defense counsel must demonstrate to the Appellate Division that hears the motion that the pretrial publicity was sufficiently pervasive and adverse that the defendant would not be able to have the case tried before a fair jury. It is not enough to show the court that the jury pool is made up of jurors who know about the crime and the case. A defendant is entitled to a fair jury pool, but not one that consists of jurors who are wholly ignorant about the facts of the case.

In order to lay the proper foundation for a viable change of venue motion defense counsel should gather examples of the types of pretrial publicity that will be viewed as significant by the court hearing the motion. Defense counsel should identify media coverage that would influence a prospective juror: stories concerning the crime itself, including photographic or televised images of the crime scene and the victim; articles and broadcasts that depict the defendant's arrest and present details of a confession; and publicized statements from law enforcement and victims or their relatives that prejudice the defendant. This material should be gathered by the defense. Print articles should be copied, televised reports reproduced, or, at a minimum, transcribed, and web page printed out and attached to the motion.

Recognize difficulties in pre-*voir dire* motion.

A pre-*voir dire* motion for a change of venue is a viable option only in those cases where jury selection is about to proceed at a time close to when there has been substantial publicity. To be successful with this type of a motion, a defendant must demonstrate that the publicity created "a deep and abiding resentment" in the county in which the

case is proceeding. *People v Boudin, 90 A.D.2d 253, 457 N.Y.S.2d 302 (2d Dept. 1982)*. Because *voir dire* has not commenced at this point, defense counsel often rely upon a presentation of examples of media coverage as well as the results of polls and other such surveys undertaken to assess the pulse of the community.

Build record for renewal of motion through jury selection.

In the likely event that a pre-*voir dire* motion for a change of venue is denied as premature, the defense counsel should proceed with jury selection to build a record for a subsequent renewal of the motion. In building the record from the *voir dire* process, counsel should work with the trial court to create a preliminary screening questionnaire for prospective jurors. Defense counsel should remember to include pointed questions about whether the jurors were aware of the case from media reports.

For the actual *voir dire*, defense counsel should approach the jury selection process armed with a well designed series of questions that go to the heart of the issue: whether the jury panel was unduly tainted as a consequence of a barrage of publicity such that the jurors could not fairly deliberate on the question of the defendant's guilt.

Clearly these questions are beyond the traditional array of *voir dire* questions that counsel would ask. The lawyer who is developing a record for a change of venue should specifically inquire about what they learned about the case from the media, when they learned about the case and whether those reports influenced the jurors' opinions about the case. As the *voir dire* proceeds, it is likely that the prosecutor will work hard to get jurors to explain their feelings in detail if they initially seem to provide answers that will help the defense in making the change of venue motion. Of course, the trial court will identify those jurors who seem to have been prejudiced by the media, instruct them of their responsibilities and attempt to issue directions designed at eliminating any bias.

Because of the sensitive nature of the questions that are asked during *voir dire* of a highly publicized case, defense counsel should ask the court to allow for individualized questioning of jurors in order to obtain more can did responses.

Making Change of Venue Motion Pre- *Voir Dire*

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INSIGHT

A defendant is entitled to have the trial proceed before a fair and impartial jury. The jury selection process is designed to achieve that result. But in some instances it is not possible for a defense counsel to select jurors from a fair panel. There are a variety of reasons why a defendant cannot get a fair trial in the jurisdiction in which the charges are brought, but generally all reasons are the final product of unduly prejudicial publicity about the case. Counsel must be aware of the availability of the remedy for a change of venue, how the motion for this relief is made and whether it is a worthwhile pursuit.

ANALYSIS

Change of venue motion is made before Appellate Division.

CPL § 230.20 governs change of venue motions. This motion is not commonly made and one facet of it that surprises defense counsel is that the motion is made before the Appellate Division which encompasses the county in which the case is pending and not the trial court. The basis for a successful motion is that the defendant cannot obtain a fair trial in the county in which the case is pending. In ruling on the motion, the appellate court may direct the commissioner of jurors to expand the pool of prospective jurors to include citizens from contiguous counties within the judicial district. Counsel should distinguish between a change of venue motion and a motion for recusal of the trial judge. The motion for a change of venue addresses the jury pool. A motion for the latter is a challenge to the individual jurist presiding in the case.

Defense counsel must consider how to make the appropriate record and, since the motion must be brought in the Appellate Division, should advise the client of the additional filing fees and other associated costs. In terms of making the appropriate record, counsel must keep in mind that because this motion is not made to the trial court, it is not a remedy that can be sought casually or can be presented with an oral application. Instead, counsel needs to examine the content of the motion and determine when those facts are sufficiently ripe.

Change of venue motion can be made pre- *voir dire*.

Timing is critical. While a pre- *voir dire* motion for a change of venue can be brought, it is almost never granted the motion bears a significantly heavy burden. Defense counsel will have to demonstrate to the Appellate Division that the jury pool is so tainted that it would be a fruitless exercise to attempt to conduct a *voir dire* in order to identify fair jurors. The justices of the appellate division who will pass on the motion for the change of venue will not witness first hand the *voir dire* process nor should counsel assume that the Appellate Division is willing to take

judicial notice of pretrial publicity. A motion brought prior to the jury selection process will have to rely upon a collection of information that comes from outside of the courtroom such as records of media reports and opinion polls. Defense counsel should be aware that the cost of collecting this information may be quite significant.

On the other hand, a motion for a change of venue that is made after the *voir dire* process has begun will allow the Appellate Division to decide the application without speculating about the views of the jury panel. Instead, defense counsel will be able to point to specific instances of prejudice. By waiting to make the motion however, counsel also runs the risk that the court may find that there are sufficient jurors who are not prejudiced or whose biases can be effectively cleansed by the instructions of the trial court.

Evaluate whether change of venue motion will benefit defendant.

There is a cost benefit analysis that must enter into any motion for a change of venue and the costs that must be assessed go beyond the cost of preparing the motion itself. Counsel should form an educated opinion whether it is truly helpful to have defendant's case heard by jurors from another county. While those jurors may not have been flooded with publicity about the crime they may also not be able to appreciate particular points about the defendant, the environment where the crime took place and other background matters that are significant to the defense. For example, jurors in a county may not be able to understand the background of a poor urban defendant.

Also, defense counsel who successfully move for a change of venue often have to find ways to compensate for the loss of the comforts of trying a case in a jurisdiction where they are more comfortable. It is not only a matter of trying a case in a foreign environment. If counsel is retained, the defendant should be advised of the extra expenses that will necessarily have to be paid when counsel is unable to utilize their own office and will have other extraordinary expenses that might arise.

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I. In General

1. Generally

A defendant is entitled to the assistance of an attorney at any critical stage of the prosecution, and a court order of removal is sufficiently judicial in nature to permit invocation of that right. *People v Settles, 46 N.Y.2d 154, 412 N.Y.S.2d 874, 385 N.E.2d 612, 1978 N.Y. LEXIS 2388 (N.Y. 1978)*.

Trial of 4 Bronx police officers accused of murdering unarmed suspect would be removed to urban county, rather than suburban or rural county, because change of venue should not afford defendants unfair demographic advantage; court chose Albany County, which was ethnically diverse urban county geographically closest to Bronx County, where incident occurred. *People v Boss, 261 A.D.2d 1, 701 N.Y.S.2d 342, 1999 N.Y. App. Div. LEXIS 13586 (N.Y. App. Div. 1st Dep't 1999)*.

Under *CPL § 230.20*, subd 1 motion to remove trial of securities fraud case due to adverse publicity should have been made to Appellate Division, not to county court. *People v Sommer, 77 Misc. 2d 840, 353 N.Y.S.2d 892, 1974 N.Y. Misc. LEXIS 1251 (N.Y. County Ct. 1974)*.

2. Transfer of custody

Applications by defendants for an order compelling their transfer from the Rockland County Jail to a Westchester County correctional facility would be denied, the court having previously granted their applications to change venue from Orange County to another county to the extent that the venue of the action was removed to Westchester County; the provision of *Criminal Procedure Law § 230.20* providing that when a motion to change venue is granted the order must include a provision for the transfer of custody by the sheriff of the county of confinement to the sheriff of the county to which the action has been removed was not violated where the Westchester County Jail had been certified as unfit or unsafe and the Rockland County Jail had been designated as a substitute facility. *People v Boudin, 100 A.D.2d 266, 474 N.Y.S.2d 70, 1984 N.Y. App. Div. LEXIS 16998 (N.Y. App. Div. 2d Dep't 1984)*.

II. Change of Venue

3. Generally

Statute authorizing state to seek change of venue if a fair trial cannot be had in the county in which the crime was committed does not offend the Sixth Amendment simply because it permits the Appellate Division to transfer criminal case for trial in another county. *People v Goldswer, 39 N.Y.2d 656, 385 N.Y.S.2d 274, 350 N.E.2d 604, 1976 N.Y. LEXIS 2725 (N.Y. 1976)*.

Statute authorizing people to seek change of venue upon demonstrating reasonable cause to believe that a fair and impartial trial cannot be had in the county where the crime was committed does not violate New York constitutional provision that “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever.” *People v Goldswer, 39 N.Y.2d 656, 385 N.Y.S.2d 274, 350 N.E.2d 604, 1976 N.Y. LEXIS 2725 (N.Y. 1976)*.

Trial court did not abuse its discretion in transferring, at behest of prosecution, trial of sheriff, who was charged with misconduct in office, to another county. *People v Goldswer, 39 N.Y.2d 656, 385 N.Y.S.2d 274, 350 N.E.2d 604, 1976 N.Y. LEXIS 2725 (N.Y. 1976)*.

Statute authorizing prosecution to seek change of venue should not be construed in such a way so as to permit the prosecutor to choose, or hope to obtain, a more favorable tribunal; there must be some showing, at least a reasonable basis for belief, that the county in which the indictment is pending is not neutral between the parties because it is charged with emotional atmosphere or some other factor which would preclude a fair and impartial trial and determination on the merits. *People v Goldswer, 39 N.Y.2d 656, 385 N.Y.S.2d 274, 350 N.E.2d 604, 1976 N.Y. LEXIS 2725 (N.Y. 1976)*.

Burden is on People to prove by preponderance of evidence that county where crime is prosecuted is proper venue either because crime was committed there or because one of statutory exceptions is applicable. *People v Ribowsky, 77 N.Y.2d 284, 567 N.Y.S.2d 392, 568 N.E.2d 1197, 1991 N.Y. LEXIS 154 (N.Y. 1991)*.

A motion for change of venue would be denied where defendant did not meet his burden of demonstrating that there was reasonable cause to believe that a fair and impartial trial could not be had in Steuben County. *People v Shedrick, 83 A.D.2d 988, 443 N.Y.S.2d 716, 1981 N.Y. App. Div. LEXIS 15476 (N.Y. App. Div. 4th Dep't 1981)*.

Assault defendant was not denied effective assistance of counsel during plea negotiations, despite attorney's failure to assert defendant's request for change of venue on ground that several other members of defendant's family had been prosecuted before same county judge, where attorney reasonably decided that such request would be fruitless, judge assured defendant that his name played no role in plea negotiations, and defendant received minimum sentence for crime. *People v Ector, 126 A.D.2d 904, 511 N.Y.S.2d 179, 1987 N.Y. App. Div. LEXIS 42013 (N.Y. App. Div. 3d Dep't 1987)*.

Defendant's motion under CLS *CPL § 230.20* to transfer his trial on ground that assigned judge was prejudiced against him would be denied since correct procedure to obtain relief sought would be for defendant to move for trial judge to disqualify himself. *People v Blake, 133 A.D.2d 549, 520 N.Y.S.2d 92, 1987 N.Y. App. Div. LEXIS 50085 (N.Y. App. Div. 4th Dep't 1987)*.

There is no bright-line test which requires change of venue based solely on fact that fixed percentage of veniremen have expressed preconceived opinion about case; rather, what is required is examination of totality of circumstances

to determine whether pretrial publicity has so permeated community as to render it impossible to obtain fair and impartial trial. *People v Ryan, 151 A.D.2d 528, 542 N.Y.S.2d 665, 1989 N.Y. App. Div. LEXIS 7950 (N.Y. App. Div. 2d Dep't 1989)*.

Pretrial publicity, even if pervasive and concentrated, does not necessarily lead to unfair trial, nor is it required that jurors be totally ignorant of facts and issues involved. *People v Parnes, 161 A.D.2d 615, 555 N.Y.S.2d 396, 1990 N.Y. App. Div. LEXIS 6005 (N.Y. App. Div. 2d Dep't 1990)*.

Defendant who never renewed his motion for change of venue, after his initial change of venue motion was denied by Appellate Division, failed to preserve his challenge to trial's venue. *People v Bosket, 216 A.D.2d 791, 629 N.Y.S.2d 296, 1995 N.Y. App. Div. LEXIS 7458 (N.Y. App. Div. 3d Dep't 1995)*.

Defendants' motion for change of venue was not untimely although it was brought more than 45 days after arraignment, where it was relied in large part on recently completed public opinion survey, which was more probative that poll conducted near inception of case. *People v Boss, 261 A.D.2d 1, 701 N.Y.S.2d 342, 1999 N.Y. App. Div. LEXIS 13586 (N.Y. App. Div. 1st Dep't 1999)*.

4. Pre-voir dire

In a first degree murder prosecution, the Appellate Division properly concluded that defendant's motion for a change of venue, grounded on the substantial impact of the presence of several local penal facilities, creating an atmosphere of hatred and fear in the county, and an alleged danger of racism, was premature when raised prior to jury selection, and should have awaited the results of voir dire. *People v Smith, 63 N.Y.2d 41, 479 N.Y.S.2d 706, 468 N.E.2d 879, 1984 N.Y. LEXIS 4533 (N.Y. 1984)*, cert. denied, *469 U.S. 1227, 105 S. Ct. 1226, 84 L. Ed. 2d 364, 1985 U.S. LEXIS 1107 (U.S. 1985)*.

In a murder case in which the death penalty was sought, defendant did not show he was entitled to a pre-voir dire change of venue because it was not shown that the county where defendant was to be tried was deluged by a tidal wave of prejudicial publicity to such an extent that even an attempt to select an unbiased jury would be fruitless, so defendant's motion was properly denied. *People v Cahill, 2 N.Y.3d 14, 777 N.Y.S.2d 332, 809 N.E.2d 561, 2003 N.Y. LEXIS 3978 (N.Y. 2003)*.

A motion for change of venue was granted to defendants, under indictment for various crimes allegedly committed during a riot or "disturbance" at the state correctional facility at Auburn, on the basis that the cumulative effect of their contentions—that they could not receive a fair trial by reason of the size of Cayuga County, the publicity in that county attendant upon the alleged riot and subsequent hearing, and the economic importance of the prison in that community—and all the circumstances in the record required that the venue of these indictments be transferred. *People v Lewis, 37 A.D.2d 761, 322 N.Y.S.2d 833, 1971 N.Y. App. Div. LEXIS 3604 (N.Y. App. Div. 4th Dep't 1971).*

There were adequate grounds for change of venue pursuant to *CPL § 230.20* where facilities of rural courthouse having but one courtroom and limited court-related facilities were obviously inadequate for prompt and orderly disposition of indictment charging numerous violations of Penal Law in relation to prison insurrection in county, and where number of veniremen qualified for service was restricted by residence in county of a large number of people directly or indirectly associated with correctional facility where uprising occurred. *People v Hill, 42 A.D.2d 679, 345 N.Y.S.2d 237, 1973 N.Y. App. Div. LEXIS 4291 (N.Y. App. Div. 4th Dep't 1973).*

Court was unable to conclude that moving papers, including results of telephone interviews conducted at random within county, sufficiently demonstrated that prior to voir dire a fair and impartial trial could not be had in the county with respect to charges against defendant based on the assault of five guards at correctional facility, requiring denial of motion for change of venue. *People v Gray, 51 A.D.2d 889, 380 N.Y.S.2d 403, 1976 N.Y. App. Div. LEXIS 11518 (N.Y. App. Div. 4th Dep't 1976).*

Motions for change of venue were premature where case had not yet progressed to voir dire of potential jurors and it did not appear that fair and impartial trial could not be had in county. *People v De Francesco, 54 A.D.2d 597, 387 N.Y.S.2d 317, 1976 N.Y. App. Div. LEXIS 13974 (N.Y. App. Div. 4th Dep't 1976).*

Application for change of venue was premature where case had not yet progressed to the voir dire of potential jurors. *People v Morin, 56 A.D.2d 715, 392 N.Y.S.2d 731, 1977 N.Y. App. Div. LEXIS 10885 (N.Y. App. Div. 4th Dep't 1977).*

A pre-voir dire challenge of venue was not warranted, notwithstanding allegations that publicity surrounding the case was so localized and incessant in nature and that the atmosphere in the county had become so emotionally charged as to preclude the selection of a fair and impartial jury, since a proper determination of the claim would

have to await the results of voir dire. *People v Boudin, 87 A.D.2d 133, 451 N.Y.S.2d 153, 1982 N.Y. App. Div. LEXIS 16122 (N.Y. App. Div. 2d Dep't 1982)*.

An action under the consolidated indictment against all defendants would be tried in an adjoining county which had a population of nearly identical size, with a markedly similar racial and age composition, and which was not serviced by the same newspaper chain, where the incident on which the charges were based and a strong climate of opinion within the county against defendants had been shown through a private survey of local residents, where one defendant had demonstrated reasonable cause to believe that a fair and impartial trial could not be had in the county in which the crime occurred and where there was no evidence that the case received the same intensive and prominent news coverage in the adjoining county or that there existed a pattern of prejudice against defendants in that county. *People v Boudin, 90 A.D.2d 253, 457 N.Y.S.2d 302, 1982 N.Y. App. Div. LEXIS 18834 (N.Y. App. Div. 2d Dep't 1982)*.

In a highly publicized criminal prosecution, the defendants' pre-voir dire motion to change the site of their trial from a small county to a large, metropolitan community on the ground that intense local publicity and community-wide prejudice made it impossible to select an impartial jury would be denied, but they would be granted leave to renew, if necessary, after the voir dire, where the defendants' prior application for a change of venue from the county in which the alleged crimes were committed to the present county was granted on the same ground as the instant application, the current publicity was not of the same caliber, and there was not the same pattern of deep and bitter prejudice against the defendants; the pre-voir dire shifting of all small county trials of a sensational nature to larger counties is unwarranted. *People v Boudin, 95 A.D.2d 463, 467 N.Y.S.2d 261, 1983 N.Y. App. Div. LEXIS 19641 (N.Y. App. Div. 2d Dep't 1983)*.

Court properly denied defendant's motion for change of venue, despite substantial newspaper coverage of murder in rural area involving death and dismemberment of defendant's boyfriend, since jurors indicated their belief that they could set aside any preconceived notions and render fair decision. *People v Berry, 235 A.D.2d 571, 652 N.Y.S.2d 785, 1997 N.Y. App. Div. LEXIS 17 (N.Y. App. Div. 3d Dep't 1997)*.

Defendant was not entitled to change of venue where his motion was improperly brought before County Court rather than Appellate Division, motion was premature because it was made before jury selection, motion was never renewed after original motion was denied, and extensive pretrial publicity did not make it impossible to select impartial jurors. *People v Brockway, 255 A.D.2d 988, 683 N.Y.S.2d 671, 1998 N.Y. App. Div. LEXIS 12273 (N.Y.*

App. Div. 4th Dep't 1998), app. denied, *93 N.Y.2d 967, 695 N.Y.S.2d 52, 716 N.E.2d 1097, 1999 N.Y. LEXIS 2400 (N.Y. 1999)*.

Defendant's motion for change of venue was premature where, before voir dire, he did not meet his burden of showing reasonable cause to believe that fair and impartial trial could not be had in forum county; if it developed during voir dire that fair and impartial jury could not be drawn, proper application could then be made. *People v Williams, 255 A.D.2d 1014, 679 N.Y.S.2d 924, 1998 N.Y. App. Div. LEXIS 12346 (N.Y. App. Div. 4th Dep't 1998)*.

Police officers accused of murdering Amadou Diallo were granted change of venue prior to trial, on ground that case could not be tried in Bronx County or New York City without atmosphere in which jurors would be under enormous pressure to reach guilty verdict demanded by public opinion; case was deluged by tidal wave of prejudicial publicity, including endless repetition of notion that undisputed facts that 41 shots were fired by police, and that Mr. Diallo was unarmed, were dispositive of all possible factual and legal issues and conclusively established officers' guilt. *People v Boss, 261 A.D.2d 1, 701 N.Y.S.2d 342, 1999 N.Y. App. Div. LEXIS 13586 (N.Y. App. Div. 1st Dep't 1999)*.

Defendant's motion for change of venue was premature where he failed to show reasonable cause to believe that fair and impartial trial could not be had in forum county; if it developed during voir dire that fair and impartial jury could not be drawn, proper motion could then be made. *People v Owens, 286 A.D.2d 1003, 733 N.Y.S.2d 659, 2001 N.Y. App. Div. LEXIS 9090 (N.Y. App. Div. 4th Dep't 2001)*.

Insofar as defendant may have been deemed to have made a pre-voir dire motion to change venue, defendant failed to meet his burden of demonstrating that there was reasonable cause to believe that a fair and impartial trial could not have been had in the county where his trial was conducted. *People v Brown, 49 A.D.3d 1345, 853 N.Y.S.2d 815, 2008 N.Y. App. Div. LEXIS 2613 (N.Y. App. Div. 4th Dep't 2008)*.

5. Post-voir dire

Defendant's motion pursuant to *CPL § 230.20* for a change of venue because of allegedly prejudicial pre-trial publicity which would impair his right to a fair and impartial trial, would be denied where circumstances surrounding the case and results of voir dire through which the jury was selected demonstrated that the defendant could receive a fair trial in that county. The newspapers and magazine articles submitted in support of the motion

were not of such a nature as to render it unlikely that the defendant would be afforded a fair trial where the defendant was not featured prominently as a participant in the crime, some four years had passed since the murder and the extensive voir dire undertaken by the court had apparently been successful in weeding out prospective jurors who are unable to disregard previously formulated opinions. *People v Ryan, 93 A.D.2d 848, 461 N.Y.S.2d 344, 1983 N.Y. App. Div. LEXIS 17709 (N.Y. App. Div. 2d Dep't 1983)*.

Murder defendant was entitled to change of venue where there was "vast" publicity over 9-year period dealing with case—much of it contained in articles in primary local newspaper which included theory of prosecution's case and made specific references to codefendant's confession implicating defendant which was inadmissible in prior trial—and where surveys of prospective jurors as well as voir dire revealed widespread knowledge of case and preconceived opinions; moreover, even People agreed that change of venue was necessary to protect defendant's right to fair trial. *People v Brensic, 136 A.D.2d 169, 526 N.Y.S.2d 968, 1988 N.Y. App. Div. LEXIS 3653 (N.Y. App. Div. 2d Dep't 1988)*.

Defendant was not entitled to change of venue to another county within judicial district on ground that extensive pretrial publicity had made it impossible to receive fair trial since (1) newspaper articles submitted by defendant objectively recounted circumstances surrounding incident, accurately related what transpired at pretrial hearing, and were not of such sensational character as to excite local popular passion and prejudice, (2) extensive voir dire had resulted in seating of 12 jurors and 4 alternates, who promised to be fair and impartial, and (3) defense counsel found it unnecessary to use all his peremptory challenges and declared that he was satisfied with jury. *People v Laezza, 143 A.D.2d 289, 532 N.Y.S.2d 178, 1988 N.Y. App. Div. LEXIS 8957 (N.Y. App. Div. 2d Dep't 1988)*.

Defendant in murder case was not entitled to change of venue on ground that he could not obtain fair and impartial trial in particular county, even though killing of victim (police officer guarding home of witness in drug case) was subject of pervasive and, at times, highly emotional media coverage which served as rallying cry for those who sought reimposition of death penalty, where (1) more than half of jurors summoned and available (and, of course, all seated jurors) indicated that, despite any prior knowledge, they could fairly judge defendant on evidence to be presented, and (2) defendant did not complain that jurors had been exposed to prejudicial material or evidence which would be inadmissible at trial, or that trial judge exhibited any bias toward him. *People v McClary, 150 A.D.2d 631, 541 N.Y.S.2d 503, 1989 N.Y. App. Div. LEXIS 16731 (N.Y. App. Div. 2d Dep't 1989)*.

Request for change of venue was properly denied to inmate on trial for assaulting correction officer, even though some jurors indicated during voir dire that they had read newspaper clipping briefly describing inmate's upcoming trial and referencing what possible punishment might be had if inmate were convicted, where all such jurors expressed ability to fairly judge case based on evidence alone, and only juror who equivocated on subject was excused for cause because he had also heard about incident from his son, a correction officer. *People v Bloomfield, 153 A.D.2d 987, 545 N.Y.S.2d 430, 1989 N.Y. App. Div. LEXIS 11726 (N.Y. App. Div. 3d Dep't)*, app. denied, *74 N.Y.2d 947, 550 N.Y.S.2d 281, 549 N.E.2d 483, 1989 N.Y. LEXIS 4468 (N.Y. 1989).*

Defendant was not deprived of fair trial by denial of his motion to change venue, notwithstanding extensive publicity and audiovisual coverage of proceedings, where extensive publicity was originally generated by defendant himself, publicity was fair and unbiased, and jurors expressed ability to be impartial both during voir dire and after summations. *People v Solomon, 172 A.D.2d 781, 569 N.Y.S.2d 101, 1991 N.Y. App. Div. LEXIS 5395 (N.Y. App. Div. 2d Dep't)*, app. denied, *78 N.Y.2d 975, 574 N.Y.S.2d 954, 580 N.E.2d 426, 1991 N.Y. LEXIS 4590 (N.Y. 1991).*

Motion for change of venue was properly denied, although certain newspaper articles had made reference to defendant's previous conviction, 49 percent of jury panel was excused because they had formed opinion based on pretrial publicity, and 22 percent were excused because of their personal relationships with law enforcement personnel or correction officers, where lengthy and exhaustive jury selection process focused on effects of pretrial publicity, and there was no evidence of bias on part of jurors who were eventually selected and heard case, which went to trial almost 1 ½ years after alleged adverse publicity. *People v Bosket, 216 A.D.2d 791, 629 N.Y.S.2d 296, 1995 N.Y. App. Div. LEXIS 7458 (N.Y. App. Div. 3d Dep't 1995)*.

Defendant's motion for change of venue was premature where he failed to show reasonable cause to believe that fair and impartial trial could not be had in forum county; if it developed during voir dire that fair and impartial jury could not be drawn, proper motion could then be made. *People v Owens, 286 A.D.2d 1003, 733 N.Y.S.2d 659, 2001 N.Y. App. Div. LEXIS 9090 (N.Y. App. Div. 4th Dep't 2001).*

6. On retrial of defendant or after trial of codefendant

Defendant's claim that Appellate Division deprived him of his constitutional right to a fair trial by denying his motion for change of venue was unsupported, where defendant relied primarily on publicity and media exposure that occurred after his motion had been denied, and where defendant did not pursue his application for change of

venue after his initial conviction was reversed and the case was remitted. *People v Pepper, 59 N.Y.2d 353, 465 N.Y.S.2d 850, 452 N.E.2d 1178, 1983 N.Y. LEXIS 3175 (N.Y. 1983)*.

Moving papers, including survey results submitted by district attorney and by defendant, whose survey results showed that one-third of those interviewed had formed opinion as to defendant's guilt or innocence, one-fifth thought that defendant could not receive a fair retrial and one-sixth had no opinion or had not heard of case, were insufficient to demonstrate that fair and impartial trial could not be held in Ontario County, and thus defendant's application for change of venue on ground that he could not receive fair retrial because of newspaper publicity attendant upon first trial was premature. *People v Coleates, 53 A.D.2d 1018, 386 N.Y.S.2d 525, 1976 N.Y. App. Div. LEXIS 15823 (N.Y. App. Div. 4th Dep't 1976)*.

Defendant's motion for change of venue on the retrial of his prosecution for second degree murder would be granted without awaiting the voir dire on the retrial in order to gage the effect of the prejudice, where continued publicity had surrounded the case over a six-year period in a county with relatively small population, and where at the first trial almost of the potential jurors had read about the case and almost half of them had formed an opinion. *People v Sawyer, 94 A.D.2d 978, 464 N.Y.S.2d 104, 1983 N.Y. App. Div. LEXIS 18488 (N.Y. App. Div. 4th Dep't 1983)*.

A motion for change of venue sought by a defendant whose original manslaughter conviction was reversed and whose second trial ended in a mistrial would be granted, where there was reasonable cause to believe that a fair and impartial trial could not be had in the relatively small, rural county: the record demonstrated that there had been intense localized publicity concerning the circumstances of the homicide, defendant's arrest, trial and conviction, and there appeared to be widespread knowledge in the community of defendant's prior conviction and of the subject matter of highly prejudicial testimony which was to be excluded on the new trial. *People v Acomb, 94 A.D.2d 978, 464 N.Y.S.2d 103, 1983 N.Y. App. Div. LEXIS 18487 (N.Y. App. Div. 4th Dep't 1983)*.

In a highly publicized criminal case, the defendants' renewed applications for change of venue pursuant to *CPL § 230.20* would be granted based upon the totality of the circumstances of the case, where the crimes charged were of a sensational nature, the movants' former codefendants had recently been tried for the same crimes in that county, the community was small and homogeneous, there was substantial pretrial publicity including local editorial appeals at the completion of the previous trial and the former codefendants' sentencing advocating reinstatement of the death penalty in similar cases, and 1,172 out of 2,115 persons questioned in an initial screening of potential

veniremen expressed preconceived opinions about the case which they could not set aside; accordingly the venue of the action would be removed to a county with population of sufficient size and heterogeneity to insure the selection of a fair and impartial jury. *People v Boudin, 97 A.D.2d 84, 469 N.Y.S.2d 89, 1983 N.Y. App. Div. LEXIS 20335 (N.Y. App. Div. 2d Dep't 1983)*.

Defendant was not entitled to change of venue for retrial on charge of murder, notwithstanding his contention that extensive publicity which had attended case for over 10 years made it impossible for him to obtain fair trial in county where crime occurred, since over half of jurors questioned expressed ability to fairly judge him based on evidence in case despite any prior knowledge they had of case; change of venue granted to codefendant was distinguishable in that retrial of codefendant occurred at time of greatly increased publicity concerning case, People supported motion for change of venue for codefendant and, at time of codefendant's trial, there was considerable publicity regarding alleged bias of trial judge against police and prosecutor's office. *People v Ryan, 151 A.D.2d 528, 542 N.Y.S.2d 665, 1989 N.Y. App. Div. LEXIS 7950 (N.Y. App. Div. 2d Dep't 1989)*.

7. Venue of grand jury proceedings

Defendant's motion for transfer of venue of a Grand Jury on the ground that his indictment was the result of prejudice on the part of the grand jurors was properly denied where defendant, who was confined at Attica Correctional Facility, was indicted for the murder of a correction officer during the 1971 Attica uprising by a Grand Jury of 23 impaneled in the county in which Attica was located, 11 of whom had friends, relatives or acquaintances who were employed at Attica or by law enforcement agencies or who were directly involved in the Attica events; although an accused individual has a constitutional right to have his case presented before a fair and impartial Grand Jury, all 23 grand jurors specifically stated that they had no bias against prison inmates and could deal fairly and impartially with the evidence presented before them, and, additionally, there is no provision in law for a change of venue at the Grand Jury level. *People v Hill, 67 A.D.2d 427, 415 N.Y.S.2d 541, 1979 N.Y. App. Div. LEXIS 10126 (N.Y. App. Div. 4th Dep't 1979)*, app. dismissed, *50 N.Y.2d 894, 430 N.Y.S.2d 270, 408 N.E.2d 678, 1980 N.Y. LEXIS 2450 (N.Y. 1980)*.

A motion under *CPL § 230.20* to remove Grand Jury proceedings would be denied on the ground that the statute does not authorize the Appellate Division to change venue prior to the handing down of an indictment. *People v Jordan, 104 A.D.2d 507, 478 N.Y.S.2d 736, 1984 N.Y. App. Div. LEXIS 19945 (N.Y. App. Div. 3d Dep't 1984)*.

8. Sufficiency of record

The Appellate Division properly denied defendant's request for a new trial following his conviction for murder, robbery, and burglary, since, though there was extensive pretrial publicity concerning the homicide and defendant's role in it, there was no record from which a reviewing court could determine that defendant's attorney had been unable to select a fair and impartial jury in that the record on appeal did not contain a transcript of the jury selection proceedings, and since defendant had first raised the pretrial publicity issue by way of a pretrial motion in the Appellate Division for a change of venue, so that defendant's proper course of conduct after such motion was denied would have been to attempt to select an impartial jury after making appropriate arrangements for stenographic transcription of the jury selection proceedings. *People v Parker, 60 N.Y.2d 714, 468 N.Y.S.2d 870, 456 N.E.2d 811, 1983 N.Y. LEXIS 3417 (N.Y. 1983)*.

Defendants did not demonstrate reasonable cause to believe that a fair and impartial trial could be had in the existing venue (*CPL § 230.20*), notwithstanding that numerous newspaper articles were presented to support defendants' alleged connections to organized crime, their criminal backgrounds and associations, and that the "gangland" nature of the killing, where no transcript of the jury selection proceedings were submitted with the motion papers; jurors are not required to be totally ignorant of the facts and issues involved in a case, the mere opportunity for prejudice does not raise a presumption that exists, and jurors are subject to disqualification when they cannot render an impartial verdict. *People v Taylor, 97 A.D.2d 983, 468 N.Y.S.2d 777, 1983 N.Y. App. Div. LEXIS 20843 (N.Y. App. Div. 4th Dep't 1983)*.

III. Under Former Crim C § 344

9. In general

The purpose of this section is to provide against trial before a jury, where there is prejudice, insidious in its nature, which pervades community to such extent that prospective jurors are unconsciously affected by its influence. *People v Williams, 173 N.Y.S. 883, 106 Misc. 65, 1919 N.Y. Misc. LEXIS 744 (N.Y. Sup. Ct. 1919)*.

Relief afforded by change of venue is limited to proceedings initiated by indictment. *Application of Knight, 36 N.Y.S.2d 985, 178 Misc. 972, 1942 N.Y. Misc. LEXIS 1938 (N.Y. Sup. Ct. 1942)*.

There is no provision for the transfer of a disorderly conduct charge for prosecution under grand jury indictment. *People v Bretti, 40 Misc. 2d 414, 242 N.Y.S.2d 918, 1963 N.Y. Misc. LEXIS 1649 (N.Y. County Ct. 1963)*.

Where it is physically impossible for one convicted of a crime to assert his constitutional rights in time to get the judgment of conviction vacated before the date set for his execution, a writ of habeas corpus will be granted to the extent of staying the execution pending prompt institution and prosecution of coram nobis proceedings in the courts of this state. *United States ex rel. La Marca v Denno, 159 F. Supp. 486, 1958 U.S. Dist. LEXIS 2654 (D.N.Y. 1958)*.

10. Removal

Where neither defendant nor People exhausted peremptory challenges, error was not shown by denial of removal for prejudice. *People v Bonier, 189 N.Y. 108, 81 N.E. 949, 189 N.Y. (N.Y.S.) 108, 1907 N.Y. LEXIS 921 (N.Y. 1907)*.

No attempt has been made to deprive the supreme court of the power to remove to itself indictments pending in lower court or to change the existing rules on that subject when application for removal is made by the people. This section is simply a regulation of method of removal when application is made by the defendant. It is not an attempt by implication to deprive the supreme court of the well-understood power it has always possessed when application was made by the prosecution. The supreme court, therefore, had jurisdiction, upon the application of the district attorney, without notice to defendant, to remove his indictment for murder in the first degree, found in county court, into supreme court for trial. *People v Farini, 239 N.Y. 411, 146 N.E. 645, 239 N.Y. (N.Y.S.) 411, 1925 N.Y. LEXIS 981 (N.Y. 1925)*.

After transfer of a case to county court, the Supreme Court has jurisdiction of a motion for inspection of the grand jury minutes but has no jurisdiction of a motion to dismiss an indictment. *Schneider v Aulisi, 307 N.Y. 376, 121 N.E.2d 375, 307 N.Y. (N.Y.S.) 376, 1954 N.Y. LEXIS 967 (N.Y. 1954)*.

Acceptance of jury, satisfactory to defendant, established that refusal of removal was not error. *People v Warder, 231 A.D. 215, 247 N.Y.S. 60, 1930 N.Y. App. Div. LEXIS 7039 (N.Y. App. Div. 1930)*.

After reversal of conviction by appellate court, neither defendant's exemplified guilt nor evidence thereof could be considered on his application to remove trial from county to supreme court. *People v Dormann, 44 N.Y.S.2d 266, 180 Misc. 160, 1943 N.Y. Misc. LEXIS 2423 (N.Y. Sup. Ct. 1943)*.

Removal of action from General Sessions to Supreme Court, whose members are experienced in criminal trials, was proper. *People v Fay, 50 N.Y.S.2d 624, 183 Misc. 708, 1944 N.Y. Misc. LEXIS 2393 (N.Y. Sup. Ct. 1944)*.

The Appellate Division was without power to affirm, reverse, or modify Special Term's decision granting motion to remove indictment from General Sessions to Supreme Court. *People v Fay, 50 N.Y.S.2d 624, 183 Misc. 708, 1944 N.Y. Misc. LEXIS 2393 (N.Y. Sup. Ct. 1944)*.

Code of Criminal Procedure expressly authorizes removal from county to supreme court only before trial, and supreme court was without authority to order removal from county to supreme court for a hearing pursuant to the directions of the Court of Appeals to determine motion of defendant to withdraw his plea of guilty on the ground of coercion. *People v Granello, 53 Misc. 2d 357, 278 N.Y.S.2d 730, 1967 N.Y. Misc. LEXIS 1687 (N.Y. Sup. Ct. 1967)*.

Removal of action under sub 1 cannot constitute precedent for future cases, as each case must be decided on its own facts. *People v Fay, 48 N.Y.S.2d 2, 1944 N.Y. Misc. LEXIS 1883 (N.Y. Sup. Ct.)*, app. dismissed, *268 A.D. 135, 50 N.Y.S.2d 1, 1944 N.Y. App. Div. LEXIS 3126 (N.Y. App. Div. 1944)*.

Supreme Court had no jurisdiction to entertain motion to dismiss indictment which was found in county court where there had been no removal. *People v Joseph, 159 N.Y.S.2d 892 (N.Y. Sup. Ct. 1956)*.

11. —How initiated

People's application for removal action to another county was unauthorized. *Murphy v Extraordinary Special & Trial Term of Supreme Court, 294 N.Y. 440, 63 N.E.2d 49, 294 N.Y. (N.Y.S.) 440, 1945 N.Y. LEXIS 768 (N.Y. 1945)*.

There is no provision allowing defendant to move to have indictment sent from the Supreme Court to the Court of General Sessions. Such removal must be by action of court while in session. *People v Hyde, 146 A.D. 633, 131 N.Y.S. 567, 1911 N.Y. App. Div. LEXIS 3332 (N.Y. App. Div. 1911)*.

Defendant's application for removal action is authorized by this section. *People v Hyde, 146 A.D. 633, 131 N.Y.S. 567, 1911 N.Y. App. Div. LEXIS 3332 (N.Y. App. Div. 1911)*.

Application to reargue motion to remove indictment from General Sessions to Supreme Court must be made at Special Term, and with reasonable promptness which is not satisfied by delay of six months. *People v Fay, 50 N.Y.S.2d 624, 183 Misc. 708, 1944 N.Y. Misc. LEXIS 2393 (N.Y. Sup. Ct. 1944)*.

12. —Timeliness of request

Application to reargue motion to remove indictment from General Sessions to Supreme Court must be made at Special Term, and with reasonable promptness which is not satisfied by delay of six months. *People v Fay, 50 N.Y.S.2d 624, 183 Misc. 708, 1944 N.Y. Misc. LEXIS 2393 (N.Y. Sup. Ct. 1944)*.

The fact that the trial court severs proceedings against a particular defendant after examination of jurors for trial is under way is merely an exercise of the court's discretion and does not extend or enlarge the time to apply for removal of the action to a different court. *People v Pugach, 28 Misc. 2d 926, 215 N.Y.S.2d 978, 1961 N.Y. Misc. LEXIS 2965 (N.Y. Sup. Ct. 1961)*.

An application for removal of a criminal action to a different court, under this section, must be made before trial, and, for the purposes of such an application, trial has begun when the jury is called into the box for examination as to qualifications, though the jurors have not yet been sworn. *People v Pugach, 28 Misc. 2d 926, 215 N.Y.S.2d 978, 1961 N.Y. Misc. LEXIS 2965 (N.Y. Sup. Ct. 1961)*.

13. —Waiver

Irregularity of removal from General Sessions to Supreme Court was waived by failure to object to such irregularity. *People v Washor, 196 N.Y. 104, 89 N.E. 441, 196 N.Y. (N.Y.S.) 104, 1909 N.Y. LEXIS 804 (N.Y. 1909)*.

Where defendant pleaded not guilty in county court to first degree robbery and later pleaded guilty in supreme court to second degree robbery under same indictment, he did not waive lack of order of removal. *People ex rel. Saia v Martin, 289 N.Y. 471, 46 N.E.2d 890, 289 N.Y. (N.Y.S.) 471, 1943 N.Y. LEXIS 1147 (N.Y. 1943)*.

14. Grounds for removal

Affidavits on application for removal must show that defendant cannot have fair trial in county of indictment. *People v Nentarz, 235 A.D. 660, 255 N.Y.S. 214, 1932 N.Y. App. Div. LEXIS 8549 (N.Y. App. Div. 1932).*

Probability that no fair and impartial trial can be had in county is ground for removal. *People v Nathan, 249 N.Y.S. 395, 139 Misc. 345, 1931 N.Y. Misc. LEXIS 1836 (N.Y. Sup. Ct. 1931)*.

Where defendant stated he intended to move for removal of action for prejudice, he was not prejudiced by granting of People's application. *People v Page, 48 N.Y.S.2d 342, 182 Misc. 10, 1944 N.Y. Misc. LEXIS 1930 (N.Y. Sup. Ct. 1944)*.

15. —Bias or prejudice of judge

District attorney's speeches, criticizing trial justices, published in newspapers, required removal. *People v Grout, 174 A.D. 608, 161 N.Y.S. 718, 1916 N.Y. App. Div. LEXIS 8299 (N.Y. App. Div. 1916)*, app. dismissed, *222 N.Y. 521, 118 N.E. 1072, 222 N.Y. (N.Y.S.) 521, 1917 N.Y. LEXIS 838 (N.Y. 1917).*

Civil action against justice for false arrest, brought by defendant, was held not to show that justice was biased against defendant. *People v Ullman, 184 A.D. 93, 170 N.Y.S. 105, 1918 N.Y. App. Div. LEXIS 7928 (N.Y. App. Div. 1918)*.

Affidavits, for removal, phrased in identical words and being carbon copies, were insufficient to show bias. *People v Hines, 6 N.Y.S.2d 15, 6 N.Y.S.2d 2, 168 Misc. 453, 1938 N.Y. Misc. LEXIS 1772 (N.Y. Sup. Ct. 1938)*, modified, *284 N.Y. 93, 29 N.E.2d 483, 284 N.Y. (N.Y.S.) 93, 1940 N.Y. LEXIS 865 (N.Y. 1940)*.

Judge's prejudice, expressed on first trial, warranted removal of action from county to supreme court. *People v Dormann, 44 N.Y.S.2d 266, 180 Misc. 160, 1943 N.Y. Misc. LEXIS 2423 (N.Y. Sup. Ct. 1943)*.

Expressed intention of defendant, made in affidavit, to call county judge as material witness, warranted removal of action from county to supreme court. *People v McDermott, 40 N.Y.S.2d 456, 180 Misc. 247, 1943 N.Y. Misc. LEXIS 1680 (N.Y. Sup. Ct. 1943)*.

Unconscious bias, so ingrained as to militate against fairness in trial, is ground for removal. *People v Faricchia, 44 N.Y.S.2d 269, 1943 N.Y. Misc. LEXIS 2424 (N.Y. Sup. Ct. 1943)*.

That biased conduct of trial judge presents considerations of law reviewable on appeal does not preclude their being weighed on application to remove trial from county to supreme court in same county. *People v Faricchia, 44 N.Y.S.2d 269, 1943 N.Y. Misc. LEXIS 2424 (N.Y. Sup. Ct. 1943)*.

Where trial judge, at close of trial, commented disparagingly on veracity of defendant and his witnesses, his conduct may be considered with other matters on application to remove action from county to supreme court for his bias. *People v Faricchia, 44 N.Y.S.2d 269, 1943 N.Y. Misc. LEXIS 2424 (N.Y. Sup. Ct. 1943)*.

Motion to transfer cause to supreme court for bias of county judge who presided at first trial was denied, upon condition that second trial be presided over by another county judge. *People v Rockower, 51 N.Y.S.2d 185, 1944 N.Y. Misc. LEXIS 2481 (N.Y. Sup. Ct. 1944)*, app. dismissed, *78 N.Y.S.2d 767 (N.Y. App. Div. 1948)*.

16. —Delay of trial

An application to remove an indictment from County Court to Supreme Court, because of a failure to obtain a speedy and public trial, was denied as not being the proper remedy. *People v Stewart, 143 N.Y.S.2d 189, 208 Misc. 902, 1955 N.Y. Misc. LEXIS 3634 (N.Y. Sup. Ct. 1955)*.

That trial will be delayed until another term by removal to Supreme Court is a minor consideration, not of itself sufficient to justify refusal to remove case where good cause is shown. *People v Clark, 15 N.Y.S. 79, 1891 N.Y. Misc. LEXIS 3057 (N.Y. Sup. Ct. 1891)*.

17. —Novelty of question involved

Novelty and gravity of the questions of law involved may constitute good cause for removal to the Supreme Court. *People v Clark, 15 N.Y.S. 79, 1891 N.Y. Misc. LEXIS 3057 (N.Y. Sup. Ct. 1891)*.

Where on application for removal on ground of novelty of questions of law involved, district attorney claimed that the questions had already been determined in the Court of Sessions by the judge in his instructions to grand jury with reference to concrete case in question and must stand as the law of the case on trial in Court of Sessions, it was

held that there was good cause for removal as defendants should not be compelled to go to trial in court in which prosecuting officer claims that judgment on questions of law has already virtually been pronounced in advance. *People v Clark, 15 N.Y.S. 79, 1891 N.Y. Misc. LEXIS 3057 (N.Y. Sup. Ct. 1891)*.

18. —Public prejudice

Defendant had right to move for removal of action to another county on ground of local prejudice. *People v McLaughlin, 150 N.Y. 365, 44 N.E. 1017, 150 N.Y. (N.Y.S.) 365, 1896 N.Y. LEXIS 989 (N.Y. 1896)*.

When several defendants who were supervisors are indicted, individually, for bribery and embezzlement of public moneys, and great public feeling adverse to them has been aroused in locality by newspaper articles and popular rumor, proper case is presented for change of place of trial. *People v Jackson, 114 A.D. 697, 100 N.Y.S. 126, 1906 N.Y. App. Div. LEXIS 2168 (N.Y. App. Div. 1906)*.

Where it is alleged that a fair and impartial trial cannot be had in the county whose grand jury found an indictment, a motion to remove the place of trial may now be had not only by the defendant but by the People. But the People have an even heavier burden of proving prejudice than has a defendant whose right to trial by a jury from his vicinage may not be lightly disregarded. Evidence showing local bias, political influence, adverse publicity and intimidation of witnesses held insufficient to compel conclusion that a fair and impartial trial would be denied the People. *People v Grennan, 284 A.D. 657, 134 N.Y.S.2d 676, 1954 N.Y. App. Div. LEXIS 3459 (N.Y. App. Div. 1954)*.

Motion of treasurer of New York City, indicted for bribery and receiving gratuity for official act, to remove trial was denied, where no prejudice was shown. *People v Hyde, 133 N.Y.S. 306, 75 Misc. 407, 1912 N.Y. Misc. LEXIS 682 (N.Y. Sup. Ct.)*, aff'd, *149 A.D. 131, 133 N.Y.S. 780, 1912 N.Y. App. Div. LEXIS 6360 (N.Y. App. Div. 1912)*.

Belief of guilt, coupled with bias existing in community, is ground for removal. *People v Hyde, 133 N.Y.S. 306, 75 Misc. 407, 1912 N.Y. Misc. LEXIS 682 (N.Y. Sup. Ct.)*, aff'd, *149 A.D. 131, 133 N.Y.S. 780, 1912 N.Y. App. Div. LEXIS 6360 (N.Y. App. Div. 1912)*.

Removal should be granted where it appears that on papers and affidavits submitted it is not probable that defendant can obtain fair and impartial trial in county of venue by reason of existence of feeling of bias, passion and religious

prejudice against the defendant. *People v Ryan, 205 N.Y.S. 664, 123 Misc. 450, 1924 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1924)*.

Indictment of employees in treasurer's office of Albany for forgery arising from tax frauds, held to require removal for bias, caused by legislative investigating committee. *People v Nathan, 249 N.Y.S. 395, 139 Misc. 345, 1931 N.Y. Misc. LEXIS 1836 (N.Y. Sup. Ct. 1931)*.

Where mayor and councilmen were indicted for officially diverting tax funds of city and using them solely for city instead of partly for county, removal was granted because of taxpayers' interest. *People v Frankel, 266 N.Y.S. 360, 149 Misc. 195, 1933 N.Y. Misc. LEXIS 1271 (N.Y. Sup. Ct. 1933)*.

19. —Publicity in news media

When several defendants who were supervisors are indicted, individually, for bribery and embezzlement of public moneys, and great public feeling adverse to them has been aroused in locality by newspaper articles and popular rumor, proper case is presented for change of place of trial. *People v Jackson, 114 A.D. 697, 100 N.Y.S. 126, 1906 N.Y. App. Div. LEXIS 2168 (N.Y. App. Div. 1906)*.

District attorney's speeches, criticizing trial justices, published in newspapers, required removal. *People v Grout, 174 A.D. 608, 161 N.Y.S. 718, 1916 N.Y. App. Div. LEXIS 8299 (N.Y. App. Div. 1916)*, app. dismissed, *222 N.Y. 521, 118 N.E. 1072, 222 N.Y. (N.Y.S.) 521, 1917 N.Y. LEXIS 838 (N.Y. 1917)*.

Cessation of comments by newspapers justified denial of transfer, where special jury panel had been ordered. *People v Brindell, 194 A.D. 776, 185 N.Y.S. 533, 1921 N.Y. App. Div. LEXIS 9357 (N.Y. App. Div. 1921)*.

Where it is alleged that a fair and impartial trial cannot be had in the county whose grand jury found an indictment, a motion to remove the place of trial may now be had not only by the defendant but by the People. But the People have an even heavier burden of proving prejudice than has a defendant whose right to trial by a jury from his vicinage may not be lightly disregarded. Evidence showing local bias, political influence, adverse publicity and intimidation of witnesses held insufficient to compel conclusion that a fair and impartial trial would be denied the People. *People v Grennan, 284 A.D. 657, 134 N.Y.S.2d 676, 1954 N.Y. App. Div. LEXIS 3459 (N.Y. App. Div. 1954)*.

On a motion to remove defendant's trial for murder from the county in which he stands indicted on his assertion that he will be unable to receive a fair and impartial trial therein and also in any of some 14 nearby counties by reason of a news telecast in which he was shown re-enacting the alleged crime, there being a population of over one million in such counties and approximately 40,200 homes which normally view such telecasts of the station involved, motion granted on the precise facts notwithstanding the weakness of defendant's application in its failure to be buttressed by supporting affidavits of members of the community. *People v Luedecke, 22 A.D.2d 636, 258 N.Y.S.2d 115, 1965 N.Y. App. Div. LEXIS 4469 (N.Y. App. Div. 4th Dep't 1965)*.

Newspaper articles may suffice to warrant removal, where court is satisfied that they have created atmosphere in county rendering it improbable that defendant can have fair trial. *People v Lucas, 228 N.Y.S. 31, 131 Misc. 664, 1928 N.Y. Misc. LEXIS 780 (N.Y. Sup. Ct. 1928)*.

Removal was granted where newspapers published fully progress of grand jury inquiry regarding tax frauds, as well as proceedings of legislative investigating committee, and the frauds became political issue. Public indignation was aroused and strong probability of bias existed, which was sufficient ground for removal. *People v Nathan, 249 N.Y.S. 395, 139 Misc. 345, 1931 N.Y. Misc. LEXIS 1836 (N.Y. Sup. Ct. 1931)*.

Newspaper articles, majority of which are sympathetic rather than antagonistic to defendant, are insufficient to warrant change of venue. *People v Hines, 6 N.Y.S.2d 15, 6 N.Y.S.2d 2, 168 Misc. 453, 1938 N.Y. Misc. LEXIS 1772 (N.Y. Sup. Ct. 1938)*, modified, *284 N.Y. 93, 29 N.E.2d 483, 284 N.Y. (N.Y.S.) 93, 1940 N.Y. LEXIS 865 (N.Y. 1940)*.

Newspaper reader's statement that "from what I read in the papers, I believe defendant guilty" does not mean that reader could not render fair verdict on evidence. *People v Brooks, 101 N.Y.S.2d 447, 1950 N.Y. Misc. LEXIS 2277 (N.Y. Sup. Ct. 1950)*.

20. —Religious bias

Removal should be granted where it appears that on papers and affidavits submitted it is not probable that defendant can obtain fair and impartial trial in county of venue by reason of existence of feeling of bias, passion and religious prejudice against the defendant. *People v Ryan, 205 N.Y.S. 664, 123 Misc. 450, 1924 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1924)*.

Religious bias against Catholic, charged with murdering member of Ku Klux Klan, was ground for removal. *People v Ryan, 205 N.Y.S. 664, 123 Misc. 450, 1924 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1924)*.

21. —Removal of fellow defendant's case

When place has been changed as to one of defendants engaged in same crime, it is reason for changing it as to others, for where indictment is against several persons and enough is shown to warrant change of place of trial of one, change will be made as to all, although each is entitled to separate trial. *People v Jackson, 114 A.D. 697, 100 N.Y.S. 126, 1906 N.Y. App. Div. LEXIS 2168 (N.Y. App. Div. 1906)*.

Upon the motion of one of two defendants jointly indicted for transfer of the prosecution to another county on the ground that a fair and impartial trial could not be had in county in which the defendants were indicted, the court may transfer the action as to both defendants in the absence of objection by the defendant who took no position on the motion. *People v Kuss, 30 A.D.2d 529, 291 N.Y.S.2d 253, 1968 N.Y. App. Div. LEXIS 4068 (N.Y. App. Div. 2d Dep't 1968)*.

22. —Other grounds

Racial bias against Negro in white community, shown by newspaper attacks, was ground for removal. *People v Lucas, 228 N.Y.S. 31, 131 Misc. 664, 1928 N.Y. Misc. LEXIS 780 (N.Y. Sup. Ct. 1928)*.

High character and political prominence of defendant do not constitute "good cause" to remove action from inferior to higher court. *People v Clark, 15 N.Y.S. 79, 1891 N.Y. Misc. LEXIS 3057 (N.Y. Sup. Ct. 1891)*.

23. Change of venue

Supreme Court has general jurisdiction to entertain motion for change of place of trial on ground that a fair trial cannot be had in county where venue is held. *People v Jackson, 114 A.D. 697, 100 N.Y.S. 126, 1906 N.Y. App. Div. LEXIS 2168 (N.Y. App. Div. 1906)*.

This section limits removal to another county to the ground that a fair trial cannot be had in county or city where indictment is pending. *People v Hyde, 146 A.D. 633, 131 N.Y.S. 567, 1911 N.Y. App. Div. LEXIS 3332 (N.Y. App. Div. 1911)*.

While equality of procedural right to apply for a change of the place of trial of an indictment is accorded to both parties by statute, the people carry a heavier burden of proof to be met in obtaining such a change. *People v Rogers, 34 A.D.2d 598, 308 N.Y.S.2d 274, 1970 N.Y. App. Div. LEXIS 5385 (N.Y. App. Div. 3d Dep't 1970)*.

It is the right of every person accused of crime to have fair and impartial trial, before unbiased court and unprejudiced jury, regardless of any preconceived opinion which may exist as to conclusiveness of evidence against him. *People v Dormann, 44 N.Y.S.2d 266, 180 Misc. 160, 1943 N.Y. Misc. LEXIS 2423 (N.Y. Sup. Ct. 1943)*.

In the absence of any legislative provision or court rule determining appropriate procedure for transfer of proceedings by the County Court to a different court pursuant to Art. VI § 19 of the Constitution, proper practice would require a formal County Court order to effectuate the transfer, and a copy of the clerk's minutes, though certified, would not be adequate. *People v Sanabria, 42 Misc. 2d 552, 248 N.Y.S.2d 431, 1964 N.Y. Misc. LEXIS 1896 (N.Y. Dist. Ct. 1964)*.

24. —How initiated

After transfer of murder indictment from supreme court to county court, motion for transfer to another county is properly made at special term of supreme court. *People v Green, 201 N.Y. 172, 94 N.E. 658, 201 N.Y. (N.Y.S.) 172, 1911 N.Y. LEXIS 1232 (N.Y. 1911)*.

Only the defendant may make application for order directing that indictment be tried before jury drawn from county other than county where indictment was found. *Murphy v Extraordinary Special & Trial Term of Supreme Court, 294 N.Y. 440, 63 N.E.2d 49, 294 N.Y. (N.Y.S.) 440, 1945 N.Y. LEXIS 768 (N.Y. 1945)*.

25. —Discretionary nature

Motion for change of venue is addressed to court's discretion. *People v Hines, 6 N.Y.S.2d 15, 6 N.Y.S.2d 2, 168 Misc. 453, 1938 N.Y. Misc. LEXIS 1772 (N.Y. Sup. Ct. 1938),* modified, *284 N.Y. 93, 29 N.E.2d 483, 284 N.Y. (N.Y.S.) 93, 1940 N.Y. LEXIS 865 (N.Y. 1940)*.

Motion to remove trial to another county is addressed to court's discretion. *People v Marinelli, 37 N.Y.S.2d 321, 1942 N.Y. Misc. LEXIS 2017 (N.Y. Sup. Ct. 1942)*.

26. —Grounds

Transfer of indictment for trial from Supreme to County Court does not deprive defendant of any right to change of venue. *People v Green, 201 N.Y. 172, 94 N.E. 658, 201 N.Y. (N.Y.S.) 172, 1911 N.Y. LEXIS 1232 (N.Y. 1911)*.

Defendant's failure to avail himself of the procedural safeguard of moving for a change of venue or a stay of proceeding pending a determination thereon under this section, and §§ 346 and 347, discredited his claim that certain pre-trial publicity consisting of newspaper and television coverage was so inflammatory as to render a fair trial impossible, and that he was induced thereby to plead guilty and, inasmuch as he did not manifest his apprehension over the pre-trial publicity at the time of his plea and asserted it for the first time more than nine years after his conviction, the defendant was not entitled to a hearing and the denial of his coram nobis application was proper. *People v Ryan, 28 A.D.2d 916, 282 N.Y.S.2d 6, 1967 N.Y. App. Div. LEXIS 3563 (N.Y. App. Div. 2d Dep't 1967)*.

Possibility "of selecting a jury in the county which would be apparently unprejudiced is not the test" of an application for removal to another county, for where there is general sentiment adverse to the party on trial, and a strong probability that bias exists throughout the community, he should not be compelled to take the risk of coming before a jury influenced by adverse sentiments. *People v Diamond, 72 N.Y.S. 179, 36 Misc. 71, 1901 N.Y. Misc. LEXIS 678 (N.Y. Sup. Ct. 1901)*.

Where upon motion to change place of trial the court finds from facts and circumstances that bias and prejudice exist against defendant, his right to have motion granted is absolute. *People v Williams, 173 N.Y.S. 883, 106 Misc. 65, 1919 N.Y. Misc. LEXIS 744 (N.Y. Sup. Ct. 1919)*.

On motion to change place of trial it is not necessary to show conclusively that impartial trial cannot be had in the proper county. Statute authorizes change where there is "reason to believe" that such trial cannot be had. *People v Ryan, 205 N.Y.S. 664, 123 Misc. 450, 1924 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1924)*.

It is unnecessary that experimental trial in proper county should be required in order to determine whether impartial trial is impossible. *People v Ryan, 205 N.Y.S. 664, 123 Misc. 450, 1924 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1924)*.

No sufficient ground is shown for seeking transfer of disorderly conduct and other similar charges from a city court for prosecution under grand jury indictments where the contention is that otherwise defendant will be deprived of his right to representation by counsel of his own choice in the city court because he has selected as counsel a brother, who is likewise a member of the same law firm, with an assistant corporation counsel of the city, who has voluntarily agreed not to defend any action in that court. *People v Bretti, 40 Misc. 2d 414, 242 N.Y.S.2d 918, 1963 N.Y. Misc. LEXIS 1649 (N.Y. County Ct. 1963)*.

27. —Review

When forming part of judgment-roll, order denying or granting change of venue may be considered on appeal. *People v Grout, 166 A.D. 220, 151 N.Y.S. 322, 1915 N.Y. App. Div. LEXIS 6515 (N.Y. App. Div. 1915)*.

An order granting or denying change of venue is not appealable. *People v Brindell, 194 A.D. 776, 185 N.Y.S. 533, 1921 N.Y. App. Div. LEXIS 9357 (N.Y. App. Div. 1921)*.

IV. Under Former Crim C § 346

28. In general

After transfer of murder indictment from supreme to county court, motion for transfer to another county is proper at special term of supreme court for Albany county. *People v Green, 201 N.Y. 172, 94 N.E. 658, 201 N.Y. (N.Y.S.) 172, 1911 N.Y. LEXIS 1232 (N.Y. 1911)*.

After transfer of a case to county court, the Supreme Court has jurisdiction of a motion for inspection of the grand jury minutes but has no jurisdiction of a motion to dismiss an indictment. *Schneider v Aulisi, 307 N.Y. 376, 121 N.E.2d 375, 307 N.Y. (N.Y.S.) 376, 1954 N.Y. LEXIS 967 (N.Y. 1954)*.

Return of indictment to supreme court is unnecessary. *People v Grout, 166 A.D. 220, 151 N.Y.S. 322, 1915 N.Y. App. Div. LEXIS 6515 (N.Y. App. Div. 1915)*.

Motion for change of venue must be made at Special Term. *People ex rel. Newton v Special Term, etc., 193 A.D. 463, 184 N.Y.S. 193, 1920 N.Y. App. Div. LEXIS 5571 (N.Y. App. Div. 1920)*.

Where it is alleged that a fair and impartial trial cannot be had in the county whose grand jury found an indictment, a motion to remove the place of trial may now be had not only by the defendant but by the People. But the People have an even heavier burden of proving prejudice than has a defendant whose right to trial by a jury from his vicinage may not be lightly disregarded. Evidence showing local bias, political influence, adverse publicity and intimidation of witnesses held insufficient to compel conclusion that a fair and impartial trial would be denied the People. *People v Grennan, 284 A.D. 657, 134 N.Y.S.2d 676, 1954 N.Y. App. Div. LEXIS 3459 (N.Y. App. Div. 1954)*.

A motion for change of venue made in behalf of two 16-year-old boys charged with first degree murder should be granted on the basis of a showing that, following their arrest, they were subjected to interviewing by a police lieutenant and various reporters filmed for TV broadcasting, upon direction of a deputy police commissioner, and that the interviews were actually broadcast, as such conduct on the part of the police and reporters would obviously prevent them from obtaining a fair trial in the county where they were arrested. *People v Martin, 19 A.D.2d 804, 243 N.Y.S.2d 343, 1963 N.Y. App. Div. LEXIS 3159 (N.Y. App. Div. 1st Dep't 1963)*.

The publication of testimony produced during a Huntley hearing or the conclusions reached by the judge thereafter, when the defendant requests exclusion of the public at the hearing, creates a reasonable probability of prejudice, and along with the attendant wide publicity by the press of the results of said hearing, justifies the granting of a motion under this section to remove the trial of the indictment to another county. *People v Pratt, 27 A.D.2d 199, 278 N.Y.S.2d 89, 1967 N.Y. App. Div. LEXIS 4623 (N.Y. App. Div. 3d Dep't 1967)*.

All applications made for the removal of an indictment must be made to the Supreme Court. *People ex rel. Wright v Klein, 248 N.Y.S. 478, 139 Misc. 353, 1931 N.Y. Misc. LEXIS 1145 (N.Y. Sup. Ct. 1931)*.

Supreme Court had no jurisdiction to entertain motion to dismiss indictment which was found in county court there had been no removal. *People v Joseph, 159 N.Y.S.2d 892 (N.Y. Sup. Ct. 1956)*.

Where it is physically impossible for one convicted of a crime to assert his constitutional rights in time to get the judgment of conviction vacated before the date set for his execution, a writ of habeas corpus will be issued to the extent of staying the execution pending prompt institution and prosecution of coram nobis proceedings in the courts of this state. *United States ex rel. La Marca v Denno, 159 F. Supp. 486, 1958 U.S. Dist. LEXIS 2654 (D.N.Y. 1958)*.

V. Under Former Crim C § 351

29. In general

Where indictment is transferred by court of its own motion or that of district attorney, from Supreme Court to County Court, it is done under § 22 sub 6, and not this section. *People v Bailey, 164 A.D. 756, 149 N.Y.S. 823, 1914 N.Y. App. Div. LEXIS 7788 (N.Y. App. Div. 1914)*, aff'd, *215 N.Y. 711, 109 N.E. 1086, 215 N.Y. (N.Y.S.) 711, 1915 N.Y. LEXIS 1147 (N.Y. 1915)*.

Removal of indictment from County Court to Supreme Court divested former of jurisdiction of all pending proceedings, including motions to inspect minutes and to dismiss indictment, and Supreme Court ordered that such motions be renewed in Supreme Court. *People v Friss, 29 N.Y.S.2d 603, 1941 N.Y. Misc. LEXIS 2123 (N.Y. County Ct. 1941)*.

VI. Under Former Crim C § 353

30. In general

Where jury was sworn without order being filed and court, on such discovery, discharged jury, though defendant stated he would waive jurisdiction, defendant cannot complain of such discharge. *People v Neff, 122 A.D. 135, 106 N.Y.S. 747, 1907 N.Y. App. Div. LEXIS 2393 (N.Y. App. Div. 1907)*, aff'd, *191 N.Y. 210, 83 N.E. 970, 191 N.Y. (N.Y.S.) 210, 1908 N.Y. LEXIS 1051 (N.Y. 1908)*.

This section does not require that order for change of venue, with pleadings and proceedings should be introduced in evidence or proved in any way as jurisdictional necessity. *People ex rel. Flaherty v Jennings, 230 A.D. 871, 245 N.Y.S. 41, 1930 N.Y. App. Div. LEXIS 10187 (N.Y. App. Div. 1930).*

This section precludes a motion for an order removing a criminal action and its trial from the Court of General Sessions, New York County, to a term of the Supreme Court after a juror has been sworn to try the indictment. *People v Gallo, 14 A.D.2d 857, 221 N.Y.S.2d 280, 1961 N.Y. App. Div. LEXIS 7858 (N.Y. App. Div. 1st Dep't 1961).*

After supreme court transfers indictment to county court for trial, latter has no discretion but must try it, and has no power to remand indictment to supreme court. *People ex rel. Wright v Klein, 248 N.Y.S. 478, 139 Misc. 353, 1931 N.Y. Misc. LEXIS 1145 (N.Y. Sup. Ct. 1931).*

After the jury is sworn, defendant may not remove criminal action from county to supreme court, though counsel reserved right to challenge juror who had been accepted and sworn. *Application of Hanold, 106 N.Y.S.2d 326, 1951 N.Y. Misc. LEXIS 2062 (N.Y. Sup. Ct.)*, app. dismissed, *278 A.D. 1023, 106 N.Y.S.2d 1005, 1951 N.Y. App. Div. LEXIS 5556 (N.Y. App. Div. 1951).*

Research References & Practice Aids

Cross References:

This section referred to in §§ 230.30., 255.10.; CLS Jud § 520.

Federal Aspects:

Motions and Supporting Affidavits, *USCS Federal Rules of Criminal Procedure, Rule 47*.

Jurisprudences:

21 Am Jur 2d, Criminal Law § 310.

5B Am Jur Pl & Pr Forms (Rev ed), Clerks of Court, Form 3.

7D Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 140 et seq.

5 Am Jur Trials 27., Pretrial Procedures and Motions in Criminal Cases.

Law Reviews:

Salken, Down the up staircase: due process and removal from criminal court. (New York). 26 NYL Sch L Rev 643.

Treatises

Matthew Bender's New York Criminal Practice:

New York Criminal Practice § 25.02[2]. Statutory Authority for Removal and Change of Venue.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Criminal Procedure § 3.08. Removing Case to Superior Court.

Annotations:

Pretrial publicity in criminal case as ground for change of venue. *33 ALR3d 17*.

Right of accused in misdemeanor prosecution to change of venue on grounds of inability to secure fair trial and the like. *34 ALR3d 804*.

Change of venue by state in criminal case. *46 ALR3d 295*.

Matthew Bender's New York Checklists:

Checklist for Assessing Whether Court Has Subject Matter Jurisdiction *LexisNexis AnswerGuide New York Criminal Procedure § 3.05*.

Checklist for Moving for Removal or Change of Venue *LexisNexis AnswerGuide New York Criminal Procedure § 13.09*.

Texts:

2 *New York Appellate Practice (Matthew Bender) § 13.07*.

New York Criminal Practice Ch. 25.

Hierarchy Notes:

NY CLS CPL

NY CLS CPL, Pt. TWO, Title J, Art. 230

Forms

Forms

Form 1

Notice of Motion for Change of Venue

[Caption]

PLEASE TAKE NOTICE, that on _____, 20_____, at _____am., or as soon thereafter as the matter can be heard, at Part _____, at the Courthouse located at _____, _____, the defendant will move for removal of this action from _____ County.

Dated: _____

Yours, etc.,

Attorney for Defendant

Office & P.O. Address

Telephone Number

To:

Hon. _____

District Attorney, _____ County

Form 2

Order to Show Cause Why Change of Venue Should Not Be Granted

[Caption]

Upon reading and filing the verified affidavit of Richard Roe, the exhibits annexed thereto and referred to therein; the indictment filed against the defendants herein, in the Court of the County of _____ on _____, 20_____, and on all proceedings heretofore had herein; let the District Attorney of _____ show cause before this Court, at a motion part thereof, to be held at the courthouse on the _____ day of _____, 20_____, in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made removing the trial of the aforesaid indictment, from the _____ Court of _____ County, to the _____ Court of another County, pursuant to Statute and for such other and further relief as may be just and proper.

Pending the determination of this motion, let the trial of the above indictment be stayed.

Sufficient reason appearing therefore, let service of a copy of these papers upon the office of the District Attorney of _____ County on or before the _____ day of _____, 20_____, be deemed good and sufficient service.

Dated: _____

Enter:

_____

Judge

Form 3

Affidavit in Support of Order to Show Cause Why Change of Venue Should Not Be Granted

[Caption]

[Venue]

Richard Roe, being duly sworn, deposes and says:

1. I am the attorney for the defendant John Doe and make this affidavit in support of a motion to remove the action now pending against him in the _____ Court of _____ County to another County.

2. The defendant was indicted for the crime of conspiracy and misappropriation of trust funds. (A copy of the indictment is annexed hereto and marked Exhibit 1).

3. At the time of the arraignment, the defendant pleaded not guilty and was released upon posting bail in the amount of $5,000.00.

4. This application for a change of venue is made upon the ground that the atmosphere in _____ County is so thoroughly charged with prejudice against the defendant engendered by a constant and unremitting barrage of inflammatory news items and special articles appearing in the local daily newspaper, and being broadcast over the major local radio and television stations that it is inconceivable that he could receive a fair trial in _____ County.

5. The aforesaid adverse newspaper and radio publicity arose under the following circumstances: (Detail the pertinent circumstances as exhaustively as possible).

6. No one can possibly read the newspaper accounts or listen to the broadcasts disseminated throughout this County, without being convinced that if the trial is held in _____ County, it may resolve itself into a mere formality and mockery of justice. It is impossible that with so large a circulation as these newspapers have, and so wide a listening audience as these radio and television stations have, that any substantial part of the people of the _____ County could avoid being infected by the propaganda.

7. The combined circulation of the newspapers referred to in _____ County is approximately 222,000. The population of _____ County is approximately 800,000. Therefore it appears that virtually every household in the County has been exposed to the defendant’s activities.

8. Since the indictment herein was handed down defendant has been made the target of the news media’s attempt to secure a conviction. This is well illustrated by Exhibits _____ annexed hereto. These articles have attempted to show the defendant as a black mark on the community and have by innuendo, indirection and other subtle means called for his conviction of the crimes charged.

9. It is my opinion based on all the circumstances of this case that bias exists in the community.

The fact is that the average person, no matter how fair he desires to be, cannot insulate himself against the atmosphere surrounding him.

10. The citizenry of this community are biased and prejudiced against the defendant because of the foregoing and therefore, to make him stand trial in this community would deprive him of life and liberty without due process of law in contravention of the Fifth Amendment of the United States Constitution, and would deprive him of his right to a fair and impartial trial in contravention of the Sixth Amendment of the United States Constitution.

11. This publicity cannot possibly allow me to pick a fair and impartial jury, unless we could somehow find 12 people who did not read a newspaper or listen to the radio.

WHEREFORE, I respectfully request that the Court hear testimony concerning the extent and the nature of publicity and the unfavorable and highly prejudicial statements made by all the media of communication and information regarding the defendant herein.

I further respectfully request that an order be made removing the trial of the above indictment from the _____ Court of _____ County to another County, and for such other and further relief as may be just and proper.

_____

Richard Roe

Jurat.

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