

1 the Court. Mr. Marshal, you may let the Jurors  
2 pass on out of the Courtroom.

3 BY THE MARSHAL:

4 Everyone remain seated please and let the Jury  
5 pass out.

6 (Whereupon jurors finally discharged and excused  
7 from courtroom)

8 BY THE COURT:

9 The Counsel in this case has been given a  
10 press conference and that's just about the best  
11 way I know of to get disbarred in this Court for  
12 a lawyer trying a case in this Court to give a  
13 press conference. That's the slickest, easiest  
14 most involuntary way I know of to get disbarred  
15 here, so I'll just throw that out to you f r  
16 what its worth to you for your future consideration.  
17 I think that's reprehensible. I don't appreciate  
18 it a bit. I have some out of state lawyers  
19 that do that and I'm going to get them straight,  
20 but the idea of a local lawyer calling a press  
21 conference, its utterly reprehensible and I  
22 denounce it.

23 BY MR. ALFORD:

24 May it please the Court, we haven't called a  
25 press conference.

1 BY MR. HENDRICK:

2 May it please the Court, Mr. Pigford nor I  
3 have called a press conference, I didn't even  
4 know about it.

5 BY THE COURT:

6 Yes sir, Counsel knows who I'm talking about and  
7 I'm not going to be as charitable next time either  
8 because we try cases in this courtroom and not in  
9 the newspaper.

10 These defendants will stand forward: Bernard L.  
11 Akin, T<sup>r</sup>avis Barnett, Olen L. Burrage, James T.  
12 Harris, Frank J. Herndon, Lawrence Andrew Rainey,  
13 Herman Tucker, Richard Andrew Willis. Those  
14 defendants whose names I have last called have  
15 been found by this jury to be not guilty and this  
16 Court adjudges those defendants to be not guilty  
17 of the offense charged in this indictment and they  
18 are finally now discharged and you may stand aside.

19 BY THE MARSHAL:

20 You may be seated.

21 BY THE COURT:

22 Defendants, Edgar Ray Killen, Jerry McGrew Sharpe,  
23 Ethel Glenn Barnett. The Jury, by its verdict  
24 in this case have been unable to agree on your  
25 guilty or innocence in this case and as to you

1 three defendants a mistrial is entered in this  
2 case and this case will be continued at another  
3 and later date, and you may be dismissed on the  
4 same bonds which you have. I understand they  
5 are seventy-five hundred bonds, aren't they?  
6 Personal bonds which are all right. You may  
7 be excused

8 (Defendants excused)

9 The defendants, Cecil Ray Price, Jimmy Arledge,  
10 Horace Doyle Barnett, Billy Wayne Posey, Alton  
11 Wayne Roberts, Jimmy Snowden, Sam Holloway Bowers,  
12 Jr. You defendants have been found guilty by  
13 this Jury of the offense charges in this indict-  
14 ment and the Court adjudges you to be guilty of  
15 the offense charged in this indictment, and I  
16 will defer sentence to await receipt of a pre-  
17 sentence report. The Marshal is directed to call  
18 the Probation Officer in Jackson and tell him  
19 that I want him to give me a presentence report  
20 on these defendants not later than Friday of next  
21 week. I want him to lay aside any assignments  
22 which he has and put this assignment ahead of any  
23 assignment which he has and give prime attention  
24 to this work. I don't know where he wants to  
25 interview you defendants over here in Meridian

1 or in Jackson, but he will contact you sometime  
2 today or tomorrow, and I direct you to make your  
3 self available to him presumably here in Meridian,  
4 but if he asks you to come to Jackson about next  
5 Monday morning, I direct you to make yourselves  
6 available to him for a report. Now, I call your  
7 attention to this gentlemen/ This presentence  
8 report is no trick business its something aids  
9 and asists the Court in giving a proper sentence  
10 in all of these criminal cases. I'm not entitled  
11 to a presentence report until there has been a  
12 plea of guilty or a determination of guilt, but  
13 after there has been such a determination of  
14 guilty one way or another the Court is entitled  
15 to that report to make a proper sentence and I  
16 can't make a sentence without it and I don't know  
17 how and I don't want to find out, but this is  
18 real important to you because you don't have  
19 the opportunity of coming back into chambers  
20 and talking to me and although before I sentence  
21 you I will afford you an opportunity to make  
22 any statement you care to make in litigation of  
23 sentence. I regard that as a rather poor time  
24 to be telling me of what is in your heart to  
25 tell me that you wouldn't think of at the time

1 you are under pressure at such a time so I invite  
2 your cooperation with the Probation Officer and  
3 you tell him what you want him to tell me and I  
4 invite your Counsel to talk with him, and advise  
5 me of any mitigating circumstances that you want  
6 me to know about which would aid me in a proper  
7 sentence in this case. Now let's see, Doyle  
8 Barnett, first one, I believe I'll ask Jimmy  
9 Arledge, what is your bond, Mr. Arledge, Jimmy  
10 Arledge?

11 BY THE DEFENDANT ARLEDGE:

12 I don't know sir, same as the others I guess.

13 BY THE COURT:

14 You don't know the amount of your bond is?

15 BY COUNSEL WATKINS:

16 Its five thousand dollars, personal recognizance.

17 BY THE COURT:

18 Each of you have one of these personal bonds do  
19 you?

20 BY THE DEFENDANTS:

21 Yes sir.

22 BY MR. BUCKLEY:

23 Your Honor, I believe they are out under a Bail  
24 Reform Act Bond.

25 BY THE COURT:

1 Yes, that's a personal bond. Personal recognizance.  
2 You understand that the penalty of that bond is  
3 not just five thousand dollars, the penalty of that  
4 bond is that you may be adjudicated guilty of a  
5 felony for not showing up and the penalty is  
6 five years and five thousand dollars and if you  
7 understand that I will excuse all of you on your  
8 bonds except Cecil Ray Price and Alton Wayne  
9 Roberts. You gentlemen may stand aside.

10 (Defendants stepped aside with exception of  
11 defendants Price and Roberts)

12 As to you defendants, Cecil Ray Price and Alton  
13 Wayne Roberts, I am going to deny you any bond  
14 at this time and order you taken into the custody  
15 of the United States Marshal and confined in the  
16 Hinds County Jail. I'll give you a hearing on  
17 your application for a bond next Monday morning  
18 at Jackson, and I want at that time <sup>to</sup> ~~you~~ make an  
19 explanation which will be afforded you at that  
20 time of some very loose talk that you gentlemen  
21 indulged in after I gave my Allen charge, which  
22 you gentlemen seem to recognize as the dynamite  
23 charge and I want to talk to you about that,  
24 because if you think you can intimidate this  
25 Court just ~~are~~ just as badly mistaken as you

1 can possibly be and I'm not going to let any  
2 wild man aloose on any civilized society and I  
3 want you locked up. I don't think you have taken  
4 this thing very seriously and I'm going to give  
5 you an opportunity to begin looking very seriously  
6 on it, so Mr. Marshal, you may take them into  
7 custody and confine them in the Hinds County Jail  
8 and bring them before this Court in Jackson  
9 at 9:00 o'clock next morning morning, and I don't  
10 want any demonstration presented by anybody  
11 present here either.

12 All right, you gentlemen at Counsel table, do  
13 you have anything you want in the record?

14 BY MR. WEIR:

15 Your Honor please, did I understand you said  
16 any motions for a new trial would be taken up  
17 Monday morning, or could be, I mean?

18 BY THE COURT:

19 No, I didn't say, I said I was going to take up  
20 the consideration of these two defendants of whom  
21 I denied bond in Jackson, but I'll take up any  
22 motions, you don't need to file them Monday, I  
23 don't know how many days you have to file them  
24 and we'll take them up in an orderly fashion, and I'll  
25 hear them for you sometimes next week.

2 May we have as long as ten days?

3 BY THE COURT:

4 I think the statute gives you ten days.

5 BY MR. WEIR:

6 That's what I thought.

7 BY THE COURT:

8 You weren't anxious to get your motions passed  
9 on before sentencing were you? Or were you?

10 BY MR. WEIR:

11 We weren't in any rush we just didn't want to  
12 be caught to delay.

13 BY THE COURT:

14 I think the Court, uh, the statutes give you  
15 ten days, and if you want it and need more time,  
16 I'll give you more time.

17 BY MR. BUCKLEY:

18 Your Honor I believe the statute gives five  
19 days instead of ten days.

20 BY THE COURT:

21 Well they are their own lawyers and I'm not  
22 going to tell you how many days you need but  
23 if you need some more time I'll give you some  
24 more time.

25 BY MR. BUCKLEY:



1 Would the Court entertain any other motions  
2 that we might desire to file at that time?

3 BY THE COURT:

4 Yes sir.

5 BY MR. BUCKLEY:

6 What I really wanted to know is we are not  
7 waiving them by not making them now, is what I  
8 want to know.

9 BY THE COURT:

10 Oh no, I understand that.

11 BY THE COURT:

12 As a matter of fact, I'm not sure because I don't  
13 recall whether at the conclusion of the testimony  
14 the other day that your side, the defendants made  
15 any motion for acquittal at that time, I don't  
16 remember whether you did or not, but if you  
17 didn't I now permit you to make such motions  
18 or treated as having been made and stand over-  
19 ruled.

20 BY MR. BUCKLEY:

21 Thank you Your Honor, Mr. Watkins made one and  
22 I was of the impression that was for the benefit  
23 for all of the defendants.

24 BY THE COURT:

25 Well if he made one that's all right.

1 BY MR. BUCKLEY:

2 For the record, Your Honor, we now make that  
3 motion.

4 BY MR. ALFORD:

5 Your Honor please, at the conclusion of the trial  
6 there was a motion made for judgment of acquittal  
7 for defendant E. G. Hop Barnett which you took  
8 under advisement at that time. He was one of  
9 the defendants where there was a mistrial. I  
10 respectfully call that to the Court's attention  
11 at this time.

12 BY THE COURT:

13 Yes, I'll overrule that motion.

14 BY MR. WATKINS:

15 May it please the Court, on behalf of Jimmy  
16 Snowden, Jimmy Arledge, Alton Wayne Roberts,  
17 I respectfully move the Court for the record  
18 to enter a judgment of acquittal in arrest  
19 of the verdict of the Jury notwithstanding the  
20 verdict of the jury, I make this motion for  
21 the record.

22 BY THE COURT:

23 I'll overrule that motion and I very heartily  
24 endorse the verdict of the Jury, particularly  
25 adjudging Mr. Roberts as guilty. It would have

1 been unthinkable to have had a verdict of any  
2 other kind against a man like that who has the  
3 audacity to make the remarks that he made, even  
4 in fun in the hall of this Court over here,  
5 because can't anybody on this earth frighten  
6 this Court, and nobody else need to be frightened  
7 or concerned with any of his bluster or bluff  
8 from anybody like him because we are not going  
9 to have any anarchy down here, not as long as I  
10 sit here. I think that concludes our business,  
11 and the Court will----

12 BY MR. WEIR:

13 Your Honor, one other thing, would we be permitted  
14 to talk with our clients while they are in  
15 custody?

16 BY THE COURT:

17 Which ones?

18 BY MR. WEIR:

19 Well Mr. Price is our client and I didn't want  
20 to do anything in violation of the Court.

21 BY THE COURT:

22 Yes, Certainly, you may access to him.

23 BY MR. WEIR:

24 Thank you.  
25

1 BY THE COURT:

2 As a matter of fact, I would like to have an  
3 explanation and you might be able to help him  
4 get up a pretty good explanation because he's  
5 going to need one. He said, "Judge Cox just  
6 gave that dynamite charge, we've got some  
7 dynamite for him ourselves, haven't we?"

8 That's what I'm talking about.

9 BY MR. WEIR:

10 I wasn't aware of it, Your Honor.

11 BY THE COURT:

12 Yes sir, I'm aware of it and I'm resentful of  
13 it and I'm amazed as to the stupidity of a  
14 person who would have the audacity in a trial  
15 of a serious case like this to make a remark  
16 that actually involved this Court, and I did  
17 exactly what I felt should be done, and I don't  
18 know what I'm going to do with him from here on,  
19 but I think you ought to know what I'm talking  
20 about, so you've got your bill of particulars.

21 MR. WEIR:

22 Thank you, Your Honor, I just didn't want to do  
23 nothing wrong.

24 BY THE COURT:

25 All right, we'll take a recess until Monday  
morning at 9:00 o'clock in Jackson, Mississippi

1 MONDAY, OCTOBER 23, 1967 IN JACKSON, MISSISSIPPI

2 BY THE COURT:

3 All right, call this first case.

4 BY THE CLERK:

5 Criminal Action Number 5291, Eastern Division,  
6 United States of America vs. Cecil Ray Brice, et  
7 al.

8 BY THE MARSHAL

9 Come around.

10 BY MR. HAUBERG:

11 If it please the Court, I understand this hearing  
12 here this morning is to determine the advisability  
13 of release on bond in connection with this case  
14 sentence has not been imposed but a conviction has  
15 been obtained, the Jury having a verdict in open  
16 Court last Friday. We think that under Section  
17 3148 , Title 18 United States Code that the Court  
18 is justly justified in detaining these two indivi-  
19 duals without bail because of certain circumstances  
20 that arose or came about during the deliberation  
21 of the Jury in Meridian, Mississippi and according  
22 to Provisions in Section 3148, if the Court or  
23 the Judge has reason to believe that danger may  
24 be posed to any person or any community there is  
25 a provision that a person who has been convicted

1 of an offense and is either awaiting sentence may  
2 be held without the necessity of bail, and it may  
3 be that Your Honor may want to have some type of  
4 hearing on it.

5 BY THE COURT:

6 You may have Mr. Boerts come around too.

7 (Mr. Roberts brought before the bench)

8 BY THE COURT:

9 Do you gentlemen have anything to say about this  
10 conversation that you had?

11 BY MR. ROBERTS:

12 I do sir. Sir, if I said anything in disregard  
13 to you I didn't mean to say it, I don't think I  
14 did say it. The only thing that I did say sir was  
15 about the dynamite charge, there was discussion  
16 out in the hall about the dynamite charge that  
17 you had put to them and I told them it was called  
18 the Allen charge and they were saying that you  
19 had told the Jury to reach a verdict of guilty  
20 or not guilty, and I told them that they wrong  
21 that you gave them an alternative of guilty or  
22 not guilty and the ones that they could not reach  
23 a decision on that they could come back and leave  
24 the space blank, and that was the only thing that  
25 I said concerning the dynamite charge, sir, that

1 that was the only thing that I said about the  
2 dynamite charge sir.

3 BY THE COURT:

4 I believe I would like to have Mr. Bowers stand  
5 up here too.

6 (Defendant Bowers approached the bench.)

7 BY THE COURT:

8 I really don't care about/whether you said what  
9 I know you did or didn't say because this is just  
10 not a hearing on that matter. You gentlemen have  
11 had a constitutional trial on the matter that  
12 you are charged with and I don't wish to make a  
13 big issue out of that frankly, but I couldn't  
14 overlook the fact that you men were indiscreet  
15 enough to make the remark like in close proximity  
16 to this Court and while the trial was going on  
17 involving you men in a very serious matter and I  
18 couldn't pick that out of context with the fact  
19 that one of the dealers over there had lost a  
20 whole lot of dynamite the first day that this  
21 Court convened in the trial of this case and I  
22 didn't know which one of you might have been keeping  
23 the commissary, and I just wanted to let you men  
24 know that I didn't see that part of the program  
25 of the Klan, the other part of it sounded to me

1 like a religious organization, and I instructed  
2 the Jury that the Klan was not an illegal organi-  
3 zation. You people are not the only ones engaged  
4 in violence, the NAACP was in violence in a matter  
5 down in the Hattiesburg division, I've got that  
6 matter under advisement right now and I don't know  
7 what I'm fixing to do with people that throw  
8 molotov cocktails into an interstate bus, but I  
9 have some very strong convictions and I have some  
10 very strong feelings and I can generate some  
11 pretty strong desires with what to do with folks  
12 like that but not anybody is going to be intimi-  
13 dated with stuff like that, you just make some-  
14 body feel rather harshly with you.

15 BY MR. HAUBERG:

16 Your Honor, I might state this to you that one  
17 rumored information from one of the male relatives  
18 of one of the individuals here this morning was  
19 alleged to have made some statement to a certain  
20 individual to watch or pay particular attention  
21 to these men indicating certain Deputy Marshals,  
22 they wanted to make sure they did recognize them  
23 and some further statements were made that per-  
24 haps some of them ought to go out and kill some-  
25 one.



BY THE COURT:

Yes, I heard about that and its not any use of being secretive about that because I don't wear any hood here or anywhere else and I think we might as well let you know Mr. Roberts, we're talking about your two brothers, and I didn't like the remark that the policeman made and I wanted to catch him wearing a gun out there and I sent out there for him and he was real olympian, he wasn't on the premises, but then your other brother had a remark to make which shouldn't have been made in any proximity to this Court, but anyway, I'm not trying you on that, I detained you because I couldn't in good conscious permit a remark like that to be made and I know the part that Mr. Price played in it, he didn't do most of the talking, you did, Mr. Roberts, but he participated in it and I don't care to go into that but I just wanted you men to see how I regarded such comments and I understand that one of your crowd was foolish enough to visit one of the jury but I guess they wanted him to talk to him or give him some lip like some fellow did me from Lexington and said he owned and operated a motel up there and he was going to give me a good dressing down and

1 of course, nobody but a coward would do a thing  
2 like that and nobody in the world is afraid of  
3 a coward but just don't want to have that kind  
4 of stuff and its simply not going to go on in  
5 this district and I'm going to give you two men  
6 a bond, and I think I ought to give you the same  
7 bond as the others, I don't remember how much  
8 that was but I think it was a five thousand per--  
9 sonal recognize bond is my recollection, and I  
10 see no reason to depart from that except to one  
11 extent and it is to that extent that I invited  
12 Mr. Bowes up here, I want his bond rewritten and  
13 I want all three of you to have the same bond and  
14 I want a provision put in there that if any  
15 explosives are used in any sort of violence in  
16 any of the forty-five counties of the Southern  
17 District of Mississippi I'm going to cancel your  
18 bonds and you are presumed to be innocence when  
19 you are on trial ordinarily and you've had that  
20 presumption but I'm going to turn that around and  
21 presume that you guilty if something happens and  
22 I'm going to let you prove to me beyond a reason-  
23 able doubt or participate in it or have any part  
24 in it, I just don't want anymore of this strong  
25 arm stuff in the Southern District of Mississippi,

1 and I mean for good, not just temporarily be-  
2 cause that's not just law and order and that  
3 should be nobody concept of tenth amendment  
4 rights or states rights and if anybody's got  
5 any such warped or distorted view of what's  
6 state rights means ought to be bored for the  
7 sample because that's not being good citizens  
8 at all, you can have your states rights and your  
9 tenth amendment rights without engaging in violence  
10 and in the night times of all times, so I just  
11 want you to understand that your liberty is going  
12 to be in the sound discretion of the Court under  
13 these bonds and I'm talking about Mr. Bowers and  
14 Mr. Price and Mr. Roberts.

15 BY MR. HAUBERG:

16 Your Honor, that will not be a surety bond?

17 BY THE COURT:

18 Oh no, I don't think we need any sureties.

19 BY MR. HAUBERG:

20 And will any restrictions be placed in connection  
21 with their travel or associations of these  
22 parties during the time they are out on this  
23 bond?

24 BY THE COURT:

25 Well, the Court has that discretion. Frankly,

1 I don't know of any reason to restrict their  
2 travel I don't think they are likely to travel  
3 beyond the state or be beyond the reach of this  
4 Court at the time they are notified, but you will  
5 be expected to give the United States Attorney  
6 your address so when you are reached you will  
7 be available on a few days notice. I want to say  
8 this to you two men who have been here that this  
9 time hasn't been lost, I think you needed a little  
10 time for reflection and for a little introspection  
11 and I couldn't let this opportunity pass to do  
12 what I did in response to what I recognized as  
13 a personal threat to the Court because too much  
14 involved the Court that was said about the Allen  
15 Charge and so forth and I couldn't let an  
16 opportunity to pass to show you how I felt about  
17 that and I wanted to show you not just tell you.  
18 The Clerk tells me they will be getting the  
19 notices out under a new procedure which we  
20 follow, so you may give the addresses which you  
21 may be reached to the Clerk, and I think I  
22 stated it, and if I did, I state it again, that  
23 your bonds will be approved by the United States  
24 Commissioner and I don't want these photographers  
25 to be giving these defendants a hard time, I

think they make a nuisance out of themselves.  
They do with me. That's the reason they got put  
across the street, they bothered me so much  
and they bothered these fellows so much, they've  
got no business to do that, they want a picture  
every minute of the day, they are just not  
satisfied if they are not up in their faces  
annoying the daylights out of you and I don't  
like that a bit in the world and I don't think  
these men are entitled to be subjected to that  
that's not part of the punishment that is cal-  
culated to be imposed and for the time that these  
men have served, that time will be taken into  
account in the sentence which the Court ultimately  
gives. How long will it take you to write up  
your bonds, Mr. Hauberg. Mr. Bowers Bond, Mr.  
Price's bond, and Mr. Robert's bond?

BY MR. HAUBERG:

I believe the Clerk's office or the Commissioner's  
office have the form of bond and the provision  
that the Court has indicated should be inserted  
on the bonds.

BY THE COURT:

Well, I believe I'll let them stay here in the  
courtroom and request the Commissioner to come

1 down here and work that bond out, because I think  
2 if they get out on the streets they'll have a  
3 camera in their faces every step they take.

4 BY MR. HAUBERG:

5 Your Honor, do you want the Marshal to call the  
6 Commissioner and have him come down here?

7 BY THE COURT:

8 Yes sir.

9 BY MR. HAUBERG:

10 I'll ask that he bring sufficient forms down  
11 here with him.

12 BY THE COURT:

13 Yes sir. I think while you men are here you might  
14 make yourselves available to the Probation Officer  
15 because you are going to have to do.

16 BY MR. ROBERTS:

17 Your Honor, he's already talked with Mr. Price  
18 and myself sir.

19 BY THE COURT:

20 Oh, he has?

21 BY MR. ROBERTS:

22 Yes sir.

23 BY THE COURT:

24 Is there anything else, Mr. Hauberg?

25 BY MR. HAUBERG:

1 Your Honor, that's all we have in the way of  
2 criminal work this morning.

3 BY MR. WEIR:

4 Your Honor, you know the other day we were talking  
5 about some additional time to file our motions  
6 for new trials, etc.

7 BY THE COURT:

8 Yes sir.

9 BY MR. WEIR:

10 I have a proposed order here and I wondered if  
11 Your Honor would look at it, I'm satisfied that  
12 there are some changes that Your Honor would make  
13 but I didn't know just exactly how Your Honor would  
14 want it worded.

15 BY THE COURT:

16 Is it your motion?

17 BY MR. WEIR:

18 Well, that's just an order, I didn't know where  
19 it would be necessary or not to have a motion  
20 just Your Honor had mentioned it.

21 BY MR. HAUBERG:

22 If the Court please I think under the revised  
23 rules they have seven days in which to file any  
24 motions for a new trial.  
25

1 BY THE COURT:

2 That would be seven days from last Friday?

3 BY MR. HAUBERG:

4 That's correct, Your Honor.

5 BY MR. WEIR:

6 Your Honor, it seems to say five days that I  
7 found and its no doubt that the rules say seven  
8 but Moore's Criminal----

9 BY THE COURT:

10 I believe we'll follow the rules.

11 BY THE COURT:

12 I---

13 BY MR. ALFORD:

14 Its seven days or such time as the Court may  
15 pick.

16 BY THE COURT:

17 Well, you gentlemen just be in a position to show  
18 me a reason for the fact that you are asking for  
19 more time, because I think a motion ought to  
20 stand on its merit not because you've just asked  
21 for more time. You've got more time fight now  
22 than you're asking for which hasn't even been  
23 consumed.

24 BY MR. WEIR:

25 Your Honor, as you know it was a lengthy trial



1 and of course, this verdict was rendered, I  
2 believe Friday, and then of course we've been  
3 tied up here Saturday and Sunday and today being  
4 Monday and time seems to be fleeting away, we  
5 want to present an intelligent motion Your Honor  
6 and one that will be in keeping with the rules  
7 and the facts in this case and it'll take some  
8 time.

9 BY THE COURT:

10 What is it that would take so long, Mr. Weir?

11 BY MR. WEIR:

12 Well, we want to present everything that we are  
13 entitled to.

14 BY THE COURT:

15 Well, that's a pretty big order, but I was just  
16 wondering what particular you were thinking about  
17 that was going to be so big that you couldn't  
18 do within a reasonable time.

19 BY MR. WEIR:

20 Well, Your Honor please, we would have to review  
21 our trial notes and then there several attorneys  
22 involved in the trial of the case and each one  
23 would have to compile theirs together and  
24 confer you know.

25 BY THE COURT:

1 It wouldn't be the same motion?

2 BY MR. WEIR:

3 It would be pretty much the same motion but that's  
4 the reason we need the extra time to summarize  
5 it up from each attorney's notes all together.

6 BY THE COURT:

7 Well, how much time did you have in mind, Mr. Weir?

8 BY MR. WEIR:

9 Well, I would like to have thirty days if Your  
10 Honor please, we would need that long.

11 BY THE COURT:

12 Well, have you got a session of Court going on  
13 up there?

14 BY MR. WEIR:

15 Yes sir, Your Honor, please it opens againa to  
16 day Circuit Court of Neshoba County.

17 BY THE Court;

18 Circuit Court, how long does it go on?

19 BY MR. WEIR:

20 Judge, its supposed to last two weeks but of  
21 course I imagine it will be pretty short this  
22 time.

23 BY THE COURT:

24 I thought it was going to be pre.  
25

1 BY MR. WEIR: (Interrupting)

2 It probably will Your Honor.

3 BY MR. ALFORD:

4 Judge Barnett advised me last night if the Court<sup>th</sup>  
5 please that he couldn't predimete a session  
6 of Court that he would have to open and then  
7 recess and said he would probably keep it open  
8 probably for two days.

9 BY THE COURT:

10 I see.

11 BY MR. ALFORD:

12 He said he had to open it anyhow.

13 BY THE COURT:

14 That gets around the statute doesn't it?

15 BY MR. ALFORD:

16 Yes sir. And the Court is aware that we haven't  
17 had much time to prepare for Circuit Court trials  
18 up there.

19 BY MR. WEIR:

20 That's the reason we asked him to put the Court  
21 off so we would have time to put on this case.

22 BY THE COURT:

23 I realize its pretty hard on these counties like  
24 that. When does your Chancery Court meet?

25 BY MR. AFLORD:

1 It starts the fourth Monday in November.

2 BY THE COURT:

3 That's the 27th of November.

4 BY MR. ALFORD:

5 Yes sir.

6 BY THE COURT:

7 I tell you what, I'm going to give you until  
8 November the 2nd to file and present motions  
9 because I will be out of the State the following  
10 week for a conference.

11 BY MR. ALFORD:

12 If the Court please, we'll file them in Meridian  
13 but where will you hear them?

14 BY THE COURT:

15 I'll hear them here in Jackson.

16 BY MR. BUCKLEY:

17 Your Honor, is that or could that apply to all  
18 of the defendants?

19 BY THE COURT:

20 Yes sir. In other words the order will state  
21 that all defendants until the 2nd day of November  
22 which in which to file and present all desired  
23 motions and I'll hear them on that which is  
24 on Thursday.

25 BY MR. ALFORD:

1 What time sir?

2 BY THE COURT:

3 Nine o'clock.

4 BY MR. WEIR:

5 And that'll, uh, we'll have until then to file  
6 them but that'll be the hearing date.

7 BY THE COURT:

8 Filed and presented. I think what you had better  
9 do you had better file those motions on or before  
10 the 1st day of November and deliver copies to  
11 the government so that the government will have  
12 your motion at least a day before it is going to  
13 be heard because that might not be quite right.

14 BY MR. ALFORD:

15 Deliver them to Mr. Hauberg for the government?

16 BY THE COURT:

17 That's right, I'll say on or before noon on the  
18 1st day of November.

19 BY MR. WEIR:

20 I imagine this order will have to be rewritten  
21 because on the order there are only two defen-  
22 dants named in the order there.

23 BY THE COURT:

24 Well you can type an order for me or Mr. Hauberg  
25 you may write it up. You understand what my

1 BY MR. HAUBERG:

2 You want it to state that motions to be filed---

3 BY THE COURT:

4 All motions to be filed on or before noon on  
5 November the 1st and to be presented at 9:00  
6 o'clock on the 2nd in Jackson.

7 BY MR. HAUBERG:

8 And as I understand it, all of the defendants  
9 who are involved are to be present in Jackson  
10 for the motions?

11 BY THE COURT:

12 That's right. That is right because I consider  
13 that a very important part of the trial and I  
14 think they are entitled to be present and should  
15 be present. Mr. Hauberg, I would like to ask you  
16 to give attention to the preparation of these  
17 bonds since the Commissioner is out of the building  
18 and I'm asking him to come down here. He might  
19 have some difficulty preparing it out of his office  
20 but I'm asking that you be available.

21 BY MR. HAUBERG:

22 Yes, Your Honor. We don't have the form of the  
23 bond but we will get it from the Clerk's office.

24 BY THE COURT:

25 Just tell him to come down here and he can bring

some bondw with him.

BY MR. HAUBERG:

Yes Your Honor.

BY THE COURT:

Well, if its nothing further, we'll stand in recess.

(Whereupon the Court took a recess on October 23, 1967)

NOVEMBER 2, 1967 IN JACKSON, MISSISSIPPI:

BY THE CLERK:

Criminal Action Number 5291, United States of America vs. Cecil Ray Price, et al.

BY THE COURT:

All right gentlemen. I see we have a number of motions here.

BY MR. HAUBERG:

Your Honor please before we get involved in the motions may I inquire if the defendants are all present here in the court room.

BY THE COURT:

Call the defendants.

BY THE CLERK:

Horace Doyle Barnett

BY THE DEFENDANT:

Here.

1 BY THE CLERK:

2 Jimmy Arledge (Answered present); Jimmy Snowden,  
3 (Answered present); Wayne Roberts, (Answered  
4 present); Sam Holloway Bowes, Jr. (Answered  
5 present); Cecil Ray Price (Answered present);  
6 Billy Wayne Posey (Answered present).

7 BY THE COURT:

8 The defendants may come around and be seated on  
9 that bench inside the bar and the other parties  
10 may be seated back in the audience. I see that  
11 your grounds for each defendant for a new trial  
12 are the same are they not?

13 BY MR. ~~XXXX~~: WATKINS:

14 May it please the Court, I have not had an  
15 opportunity to confer with the attorneys from  
16 Philadelphia as to the assignment of the points  
17 that they have made, but we prefer to rely upon  
18 the motion that we have filed and the points that  
19 we have assigned if the Court please.

20 BY THE COURT:

21 I haven't had a chance to see any of them of  
22 course.

23 BY MR. WATKINS:

24 Your Honor, we have filed on behalf of Jimmy  
25 Snowden, Jimmy Arledge, Wayne Roberts motion for



1 a new trial, motion for stay of judgment pending  
2 appeal; motion for leave to appeal in forma  
3 pauperis, and those last two motions may be filed  
4 too early as far as I know Your Honor, but a  
5 certain date had been set for motion day so  
6 we went ahead and filed them.

7 BY THE COURT:

8 That's all right.

9 BY MR. WATKINS:

10 Your Honor, shall I read the motion for a new  
11 trial?

12 BY THE COURT:

13 I believe I had just rather have you tell me  
14 what your motion is, after I see what the other  
15 defendants have to say. What about your motions?

16 BY MR. ALFORD:

17 Your Honor please our motion for a new trial  
18 or rather a judgment of acquittal or in the  
19 alternative for a new trial for Cecil Ray Price  
20 and Billy Wayne Posey are practically the same,  
21 except there is one change in the wording to  
22 make it applicable to each individual individual  
23 defendant.

24 BY THE COURT:

25 How does your compare with Mr. Watkins' motion?

1 BY MR. ALFORD:

2 I haven't had an opportunity to read his motion  
3 if the Court please.

4 BY THE COURT:

5 Well, let's see here. It looks like the only  
6 thing we need to take up now is the motion for  
7 a new trial, isn't it?

8 BY MR. ALFORD:

9 That's what we filed, if the Court please, if I  
10 understand the rules of criminal procedure we  
11 have then 10 days then to give notice for an  
12 appeal.

13 BY THE COURT:

14 I wouldn't be talking about a motion for a stay  
15 of judgment because there hasn't been a judgment  
16 yet.

17 BY MR. ALFORD:

18 That's our understand as to Price and Posey Your  
19 Honor.

20 BY THE COURT:

21 Of course I can see Mr. Watkins' viewpoint and  
22 I think its all right. It doesn't make any  
23 difference to file it early but it makes a whole  
24 lot of difference to file it too late.

25 Well, who filed the first motion here. There

1 is here for Horace Doyle Barnett.

2 BY MR. COVINGTON:

3 May it please the Court on behalf of my cleint,  
4 Horace Doyle Barnett, I filed on his behalf  
5 motion for a new trial and mine is practically  
6 identical to that of the ones filed by Mr.  
7 Watkins with possibly one or two points that he  
8 might have included in his that I do not have in  
9 mine, and there being no great barrier between  
10 the two, and Mr. Watkins being prepared to argue  
11 the motion which I intended to join in I would  
12 yeild to him.

13 BY THE COURT:

14 I'm going to hear each of you, I'm not going to  
15 cut you off, I'll stay here as long as you need  
16 the time for.

17 BY MR. COVINGTON:

18 Would you like me to read my motion?

19 BY THE COURT:

20 I'll let you tell me about it and if you have  
21 something you would like to say that you don't  
22 have in your motion I'll hear you on that and  
23 you might take the opportunity now to state that.

24 BY MR. COVINGTON:

25 The principal point, if it please the Court with

1 regard to Horace Doyle Barnett in in regard to  
2 the alleged confession that was introduced into  
3 evidence over our objection and that's the main  
4 pint of my motion for a new trial with the  
5 principal point of my client, and of oourse, we  
6 have already argued this particular point during  
7 the trial of the case and we really have nothing  
8 further to add that this was an error and it is  
9 on hat ground that I believe Mr. Barnett would be  
10 entitled to a new trial.

11 BY THE COURT:

12 You think it was an error to enter his own  
13 confession?

14 BY MR. COVINGTON:

15 Yes sir.

16 BY THE COURT:

17 Why?

18 BY MR. COVINGTON:

19 If it please the Court, I believe in this particular  
20 instance that the burden was on the government to  
21 prove that the confession was free and voluntary  
22 given and I don't think they proved that burden  
23 and I don't believe the testimony and evidence  
24 during the trial within the rules laid down in  
25 the guidelines of Miranda I don't believe they

1 met the burden of proof that the confession was  
2 free and voluntarily given or that he had been  
3 advised of all of his rights. Specifically if it  
4 please the Court, I would call the Court's atten-  
5 tion that the testimony during the trial was that  
6 the paragraph at the beginning of the alleged  
7 confession constituted the rights and the warning  
8 that was given to the defendant, Barnett. I feel  
9 that paragraph in comparison with the guidelines  
10 laid down in Miranda does not meet the necessary  
11 requirements specifically the testimony was that  
12 they had informed Mr. Barnett that the evidence  
13 he was giving could be used against him, wherein  
14 Miranda it is not sufficient, not only must they  
15 be warned that it can be used against them but  
16 that it will be used against them and this in  
17 the body of the opinion of Miranda, and further  
18 at no time during the interrogation and the  
19 taking of the statement and I believe the testimony  
20 was it took a number of hours for them to prepare  
21 this statement and at no time subsequent to the  
22 time they originally warned him did they ever  
23 re-warn him nor tell him he could stop at any  
24 time and that he was entitled to an attorney  
25 at that point. I believe if my memory serves me---

1 BY THE COURT:

2 I believe that's just a lot of judicial nonsense  
3 to me.

4 BY MR. COVINGTON:

5 Well another point, if it please the Court, the  
6 situation arose that if he needed an attorney that  
7 after the matter went to Court he would be appointed  
8 that attorney, whereas, Miranda is clear on this  
9 particular point saying that he is entitled to an  
10 attorney at the time the statement is being taken  
11 and I believe the uncontradictory testimony of  
12 the government's witness is that he could have  
13 an attorney if he went to Court if my memory serve  
14 me correctly, and of course, that is jut not within  
15 the guidelines of Miranda, as I understand the  
16 decision. I believe on that basis of the law,  
17 if Your Honor please, the alleged confession was  
18 clearly inadmissible, and as such I believe it  
19 entitles Mr. Barnett to a new trial. I don't  
20 believe there is any question that the statement  
21 was highly prejudicial and it certainly had a  
22 direct bearing on the verdict rendered against  
23 Mr. Barnett.

24 BY THE COURT:

25 I don't know what's become of that presumption

1 everybody is supposed to know the law, that's  
2 what they taught me in law school I think I ought  
3 to ask for a refund, but I know that Miranda  
4 does speak along the lines that you say there.

5 BY MR. COVINGTON:

6 Yes sir.

7 BY THE COURT:

8 But we've talked about this and it seems to me,-  
9 this is the man that his wife was expecting a baby?

10 BY MR. COVINGTON:

11 Yes sir, that is correct.

12 BY THE COURT:

13 I believe the interrogation probably lasted over  
14 a period of two days and wound up in the late  
15 evening of the second day?

16 BY MR. COVINGTON:

17 Yes sir, that's my best memoray, they intereviewed  
18 him two days prior to the actual time this state-  
19 ment was signed.

20 BE THE COURT:

21 Do you think the preface or preamble of the  
22 statement must be looked at and that alone con-  
23 sidered and determining what the F. B. I. said  
24 or did at the time in the way of advising him pf  
25 his rights?

1 BY MR. COVINGTON:

2 Only in this way, Your Honor, Special Wooten  
3 testified that he took the statement and he had  
4 written it out and he had warned him of his rights  
5 as indicated in the preamble to the alleged  
6 confession. I believe the question was put to him  
7 whether he was given an additional warnings other  
8 than that contained in the so-called preamble, and  
9 I am relying on my memory entirely, but I believe  
10 he stated he had not.

11 BY THE COURT:

12 Was the Jury instructed about what evidence they  
13 were to consider about whether or not that state-  
14 ment was freely and voluntary?

15 BY MR. COVINGTON:

16 Yes sir, to my best recollection there was such  
17 an instruction. If they felt that the instruction,  
18 excuse me, the confession was not voluntary given  
19 that they could disregard the evidence; however,  
20 I would like to urge at this point that I don't  
21 believe that the average jurorman being unlearned  
22 in the law could differentiate or distinguish  
23 between what would be voluntary and what would  
24 not be voluntary according to our constitutional  
25 guidelines as set out in Miranda, but we did receive



1 BY MR. COVINGTON:

2 Only in this way, Your Honor, Special Wooten  
3 testified that he took the statement and he had  
4 written it out and he had warned him of his rights  
5 as indicated in the preamble to the alleged  
6 confession. I believe the question was put to him  
7 whether he was given an additional warnings other  
8 than that contained in the so-called preamble, and  
9 I am relying on my memory entirely, but I believe  
10 he stated he had not.

11 BY THE COURT:

12 Was the Jury instructed about what evidence they  
13 were to consider about whether or not that state-  
14 ment was freely and voluntary?

15 BY MR. COVINGTON:

16 Yes sir, to my best recollection there was such  
17 an instruction. If they felt that the instruction,  
18 excuse me, the confession was not voluntary given  
19 that they could disregard the evidence; however,  
20 I would like to urge at this point that I don't  
21 believe that the average juror being unlearned  
22 in the law could differentiate or distinguish  
23 between what would be voluntary and what would  
24 not be voluntary according to our constitutional  
25 guidelines as set out in Miranda, but we did receive

1 that instruction I recall.

2 BY THE COURT:

3 I don't remember, but I remember an instruction  
4 somewhere in that area but I don't remember  
5 exactly what it was.

6 BY MR. COVINGTON:

7 Yes sir, the instruction was subsequently given  
8 and it was along that line, yes sir.

9 That is the main point, Your Honor, that I wanted  
10 to argue in my motion, as I said before, both of  
11 the points that contain here and as I said before  
12 Mr. Watkins will argue those.

13 BY THE COURT:

14 I'll let each one of you argue, I'll listen to you.

15 BY MR. WATKINS:

16 May it please the Court.

17 BY THE COURT:

18 By the way Mr. Watkins I got your brief. The  
19 Clerk is told not to file briefs they are supposed  
20 to be handed to the Court.

21 BY MR. WATKINS:

22 Thank you, Your Honor. On our motion for a new  
23 trial we assigned twelve points which I will not  
24 read by will try and touch on generally on a  
25 very brief argument. Our position is that there

1 is the matter of severance, that the beginning of  
2 the trial before the testimony I realized that  
3 Judge Russell ruled on our motion for a severance  
4 and during the progress of the trial when the  
5 confession was admitted and perhaps at other  
6 times, Your Honor ruled on the matter of severance  
7 but we respectfully submit that the matter of  
8 severance is an important matter in this case.

9 BY THE COURT:

10 How does the decision of this case square with the  
11 Forest case decision of the Fifth Circuit?

12 BY MR. WATKINS:

13 I'm not sure I'm familiar with that decision,  
14 Your Honor.

15 BY THE COURT:

16 That's one that came down about a month ago.

17 BY MR. WATKINS:

18 I'm not familiar with that decision.

19 BY THE COURT:

20 I think that's the style of it, FORES.

21 BY MR. WATKINS:

22 Your Honor, I've read a couple of decisions on  
23 the point of severance one case which touched  
24 pretty closely on the case which I thought involved  
25 here is the Barton case, and the Barton case touches

1 pretty closely on the points here, and the Echols  
2 case touches pretty closely to the points we  
3 have involved here, I'm personally not familiar  
4 with the facts the case Your Honor refers to and  
5 I'm sorry..

6 BY THE COURT:

7 I mentioned it to you over in Meridian, that was  
8 a case where severance was not granted and a  
9 statement was admitted in evidence by one of the  
10 other defendants and I was trying to meet that  
11 decision requiring the confession in this case  
12 to be masked inso far as the statement made any  
13 sort of disclosure as to the other defendants  
14 and that was my effort to meet the requirement  
15 the decision of Fores.

16 BY MR. WATKINS:

17 Your Honor please, we realize that the Court  
18 struck out parts of the confession.

19 BY THE COURT:

20 And that's the reason I struck it out.

21 BY MR. WATKINS:

22 We can appreciate the Court striking out part of  
23 the confession and certainly our problem will be  
24 weakened but we can not see how the striking of  
25 the names of a confession will destroy the contents

1 of the confession will destroy the contents of  
2 that confession regardless of the manner in which  
3 it must be presented to the jury. In 1954 the  
4 Supreme Court in the educational field spoke about  
5 psychological factor in these cases, there refer  
6 to such terms as those qualities which are incapa-  
7 ble of objective measurement. Now, Your Honor,  
8 if there was ever a situation of objective measure-  
9 ment that would be to one effect, a confession  
10 with blocked out names would have against a  
11 co-defendant, and that's the position, Your Honor  
12 that we are trying to take, and in the Echols and  
13 Barton cases the federal court retained the dis-  
14 cretionary rule, Rule 14 of the Criminal Procedure  
15 that they must nevertheless be alert to accord  
16 every defendant a completely fair trial. It  
17 would be impossible to eliminate from the state-  
18 ment the part prejudicial and no such attempt was  
19 made and of course Your Honor did make an attempt  
20 to do that, but Your Honor, if it is impossible to  
21 do it, then your attempts would be fruitless, it  
22 would be impossible to eliminate from the statement  
23 parts prejudicial to Mitchell and no such attempt  
24 was made. The sole alliance for Mitchell was  
25 the Court's instruction several time for Mitchell

1 repeated, not to treat the statement as evidence  
2 against Mitchell, of course Your Honor, told  
3 the jury not to treat it as evidence as against  
4 anyone except him. Considering the substance  
5 in Barnett's statement, <sup>we</sup> would whether it was at  
6 all possible to carry out that instruction, do  
7 so certainly would require twelve minds more  
8 perfectly disciplined than those of the average  
9 human jurors.

10 BY THE COURT:

11 What language is that case from?

12 WATKINS:

13 BY MR. ~~WATKINS~~:

14 Your Honor please, let me see.

15 BY THE COURT:

16 That sounds like the case I'm talking about.

17 BY MR. WATKINS:

18 That's Barton vs. the United States, 236 Federal  
19 Second, 894, I realize that says no attempt was  
20 made to strike those parts and of course my  
21 position that we are trying to take is regardless  
22 of the effort of the Court to strike out those  
23 names, this psychological factor still exists  
24 and it was highly prejudicial. Quoting also  
25 from the Elchols case if an attorney's duty to  
his client to draw the jury's attention to the

1 possible inference of guilt from a co-defendant's  
2 silence, the trial Judge's duty is to order  
3 the defendants to be tried separately, now  
4 Your Honor, we aren't contending here for a  
5 separate trial of each one of these defendants,  
6 I don't wish to advance that posture, but we feel  
7 like that Doyle Barnett's case should have been  
8 severed and all of the other defendants to be  
9 severed from Doyle Barnett, we are not insisting  
10 that each should have an individual trial, that's  
11 not our position at all, but we do feel like that  
12 the trial of conspiracy could have gone on well  
13 enough with seventeen defendants instead of  
14 eighteen defendants, and it was highly prejudicial  
15 to try the rest of them with Doyle Barnett because  
16 of this confession. Now, we pick up another point  
17 in the motion for a new trial having to do with  
18 -----e (Counsel mumbled) declaration, and  
19 that it is only certain times when such declara-  
20 tions can be admitted as evidence and that is after  
21 there has been made a prima facie case of con-  
22 spiracy, and all the testimony may, uh pertaining  
23 to the Klan meetings as to what members said in  
24 the Klan meetings, we feel was improperly admitted  
at that stage of the trial to form any basis for

1 an alleged conspiracy, the only evidence that I  
2 recall in the case that could have formed any  
3 basis for an alleged conspiracy was the testimony  
4 that pertained to the night or the evening of  
5 June 21st, 1964 when it was alleged that certain  
6 parties got together and went to Philadelphia.  
7 Now, if there was any conspiracy established  
8 that's when it was presented in the evidence.  
9 All of this other evidence pertained to prayer  
10 meetings, or Klan meetings, and discussions in  
11 Klan meetings prior to that time we feel like  
12 was not admissible and not only that, the testimony  
13 of one of the government witnesses, Reverend Delmar  
14 Dennis, negated everything concerning any plan  
15 or conspiracy or to intimidate or harm anyone  
16 now what happened at another time is another  
17 thing and to admit any competence evidence per-  
18 taining to an alleged conspiracy, to support the  
19 possible verdict of a jury, and certainly the  
20 verdict of the jury in this case, we contend is  
21 highly prejudicial and presents the defendants  
22 from receiving a fair trial. Your Honor, I can  
23 not be prepared here, having not seen the record  
24  
25



1 and only relying on my recollection, but as we  
2 see the case as a whole nothing occurred but  
3 that a murder case was tried in federal court,  
4 we do not find evidence as charged as a conspiracy  
5 and that is going to the weight and the worth  
6 of the evidence, and we respectfully submit that  
7 testimony concerning Klan meetings where the  
8 government's star witness said there was nothing  
9 about intimidation, nothing about threats,  
10 nothing about a plan in that regard is certainly  
11 not basis for a conspiracy case, and referring  
12 specially as to the confession that Billy Covington  
13 has already referred to, we do respectfully submit  
14 again that the burden is upon the government to  
15 show very clearly that there was a waiver of  
16 the privilege and that could not possibly have  
17 been shown by the the introduction of that con-  
18 fession. The only thing that the witness said  
19 or the only advice that the witness received was  
20 exactly the words used in that confession. I asked  
21 him, if Y<sub>o</sub>ur Honor will recall on cross examination  
22 just to describe in your own words if you will  
23 what speech he used or what expression he used  
24 in showing to you that he made an intelligent  
25 waiver concerning that confession. I don't recall

1 any acceptable answer being given, Your Honor, and  
2 that's as much as important a burden in order for  
3 one of these confessions to be admitted as is the  
4 part of the burden that he was told he didn't have  
5 to make the statement in the first place. The  
6 terms of the statement never did tell him that it  
7 would be used against him, never, as to counsel,  
8 he was never told he could have counsel now. All  
9 that he was told that if he got into the court, that  
10 if it went to Court, he would be appointed a lawyer  
11 if he couldn't hire one. In other words, you are  
12 not in trouble now, this is not the adversary  
13 system that we're talking, that we are supposed to  
14 be confronted with, but if you get into trouble  
15 and get into court counsel will be provided if you  
16 are not able to hire one, and we respectfully submit  
17 that is not the burden requiring to make the case  
18 to make the confession admissible, the language  
19 is exactly is, "if I am required to appear in  
20 court, the Court will appoint one for me." That's  
21 just like promising that if he gets into trouble  
22 we'll take care of it later, but we will not take  
23 up this matter at this time. Your Honor please,  
24 in regard to the Allen charge we respectfully  
25 submit the part of Your Honor's charge to the jury