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The Court: I'm real sorry this happened as I am sure everyone is. What I would like to do is to review my notes. Would you gentleman like for the defendants to go back upstairs?

Mr. Ferguson: We would like to keep them here.

* *

The Court: In all of these cases the Court finds probable cause, bound over to Superior Court. Do you want to be heard on bond?

Mr. Hunoval on behalf of Miss Shepherd:

Judge, she is 34 years old, and has three minor children. She has been living here in Wilmington for somewhere in the neighborhood of two years. Her mother and father have been living here 18 years. They are here in Court. They have brought four or five character witnesses, all of whom believe she has been neither charged nor convicted of any other offense of any description whatsoever in North Carolina or any other state. She doesn't have any money, obviously, I'm appointed to defend her. Her parents don't have any money, but they have been able to raise through borrowing from friends $600 or $700. She has been up in jail for several weeks now and I don't think that all the people who are here on her behalf feel that she will not flee the jurisdiction of the courts and I think a bond of $1,000 or maybe $1500 or maybe even $2,000 would be a lot more realistic that the $10,000 bond she is presently under.

Mr. Ferguson: Your Honor, let me speak in behalf of the four defendants I am representing - Defendants Chavis, Bunting, Vereen and Tindall. I would like to make a few general comments that apply to all the defendants. Perhaps this is by way of refreshing the court on purpose of bail.

All we are concerned about is getting the defendants here for trial. I just want to say to the court as I conceive that, it is quite different from keeping the defendants in jail until trial comes up. I have often said, and I do believe firmly, for a man who has nothing, a bond in the amount of a dime would be excessive in his circumstances. It is necessary, I think, to look at the particular circumstances of the individuals involved in deciding what bail, if anything, should be set. I take the position and the Court may or may not agree with that we should start with the proposition that a person who is charged will show for trial. That is for a person who is charged ordinarily should be released on his own recognizance unless there are some factors that appear in addition to that which would indicate to the Court that the person will not show for trial. In that connection, we take into account defendant's background, circumstances, charges against him, the record of appearances in court for those which were charged or whether or not there had been any previous offenses for those who were not been charged. I would like to ask the Court to start with the proposition that these defendants, all of whom are local except for Chavis, will show for trial and I would urge the court very strenuously to consider cognizance bonds for the defendants. Let me start individually with the four defendants. I'm representing at this time.

For the Defendant Bunting, he is charged with only one offense and that offense is a conspiracy to burn. He is not charged with having done any burning. The charges here grew out of events that happened over a year ago. Bunting has been here in Wilmington since that time. He is 17 years of age and was in attendance at Hoggard High School up until the time he was arrested on these charges. I have talked with him and I have talked with his mother,

who is here, about his likelihood to be here for trial. They both have assured me and will assure the court that he will be here for trial. His family is of very limited financial means and would have difficulty making any money bail, but would make an effort to make bail in a reasonable amount, if the court would see fit to do that. Making bail as presently imposed upon him is a near impossibility. He has no prior record whatsoever. He is a life time resident of the county here and would show for trial. I would ask the court in that instance to very strongly consider a cognizance bond. Of course, if you are not in the mind to do that, to consider some bond he and his mother might make for a person who in fact is an indigent.

* * * * * * * * * * * * *

In reference to Willie Vereen. He lives here in the City of Wilmington, he is a life time resident. I knew him before these cases arose. I represented him before. I recall on the previous charges, if my memory serves me correctly, it was necessary that he appear in court on at least two occasions and perhaps more than that. On each of these occasions, as I recall it, he and his mother appeared and were present for trial every time they had to be present for trial. I believe, he has only one prior offense and that was for a misdemeanor charge. He was employed at the time he was arrested over two weeks ago and would like to continue that employment.

The Court: What did you say his record was?

Mr. Ferguson: One prior offense - a misdemeanor. It was simple assault. Here again, I have talked with him and his parents. They understand the seriousness of the charges. They have assured me and assure the court that they would have him here for trial. Here again, we are dealing with a family of very limited financial means. It would be impossible for them

to make the bond that is imposed upon him. His record of appearances in court, as far as I know, and as far as I have been advised he has always been here any time he was called upon to be here. I can say to the court it is my personal experience with him that he has always taken the court as a serious matter and has appeared all the time and will do so. His parents, his father Willie Vereen sitting on the front row, will be available. Willie Vereen I believe is 18 years of age and attended the public schools here in New Hanover County.

* * * * * * * * * * * * * *

The third defendant is Connie Tindall. He is 22 years of age and resides with his family, his mother and some of his brothers and sisters, here in the City of Wilmington. He was working as a longshoreman at the time he was arrested. He has had one previous conviction, the best I can determine from talking with him. He has had other charges brought against him, but I have not seen the court records on those, but I believe they were - either have been disposed of or shortly will be and one may be pending for a year or more.

The Court: What did you say his prior conviction was?

Mr. Ferguson: As far as I can determine it was one offense - assault. As far as I know, he has a good record of attending court when called upon to do so. He is charged here with two offenses conspiracy to burn - three offenses - burning and assault on emergency personnel. I would ask the court to release him on his cognizance. If the court is not of a mind to do that, then to set some bond that would be within his means. He was working as a longshoreman. I am sure the court is aware of what is involved in getting a legal offense continued. He is a man of very limited means. I

would like the court to consider reducing bond to less that $1, 000 so he would be able to get out of jail.

* *

Fourth Defendant Ben Chavis is familiar to Your Honor. Mr. Chavis has been before you before on other matters. I think Your Honor know that every time he 's been required to be in court in every matter you've been involved in, he has always been there. These offenses have been incurred over a year ago. He has been back and forth to Wilmington several times since then, and comes back in connection with his church here. I know Mr. Chavis and personally have known him some five or six years. I represented him on numerous charges both here, in Raleigh and in Charlotte and in Oxford, his home town. I have never had occasion over some five or six years in representing Mr. Chavis where he has not shown up in court at the time he was required to. I have never known of an occasion when he has indicated he would not show up in court, at the time required. As a matter of fact, on two occasions involving very serious offenses I had occasion to make arrangements on his behalf to have him come in and surrender himself to authorities. One of those situations was a situation here in Wilmington; another was Federal charges pending against him in Raleigh. In both of those instances, once it was known to him warrants were outstanding against him, he made contact and made arrangements to surrender himself and had bond arrangements made so he could appear for trial at the appointed time. He is 24 years of age, resides in Oxford, North Carolina, lives there with his mother, sister. He is on the staff of the North Carolina Virginia Commission for Racial Justice. His work does involve some traveling. His mother and sister are seated here on the front row.. I have discussed

with him and have discussed with his family the seriousness of the charges. I have discussed the importance of appearing at the trial at such time he should be called upon to do so. I have every indication from him that he will show up in court any time he is required to do so. I have assurance from his family and his sister that they will see he does get to court any time he needs to. I believe, Your Honor, and I think we ought to be quite candid that we do have special circumstances here regarding Ben Chavis. A lot of his activities are generally know and he is not held in favor by many people in some political circles and in others he has strong, staunch supporters. There has been a lot of publicity surrounding these charges and other charges that have been brought against him. As it stands now, he is under indictment here on five charges which occurred here in Wilmington. He is charged in Federal Court and he is charged on other charges here. Our Constitution states that a bond shall not be excessive. I think we have to face the fact that the State, by reason of the powers invested in it, the State and Federal Government, by reason of powers invested in it can in certain circumstances bring so many charges that it would be almost impossible for a man to bear the burden of bail that is set in every case. This is the point we have just about reached in Mr. Chavis' case. Already he is under bond totaling $110,000, including his present bond. He has nothing like the means to make that kind of bond. He has been in jail more than two weeks - 17 days on these charges here. If the Court is really facing the situation where the decision has to be made whether this man needs to stay in jail until trial comes up or whether or not some reasonable bond be set so he can be out of jail and have his freedom during that period of time. The bond upon him now on these charges is $75,000. He cannot possibly make that bond

or anywhere near that bond, coupled with the resources he has had to try to pull together to post bond in the other cases pending. I make no qualms at all when I say to this Court that I think Ben Chavis should be considered to be released on his own cognizance. Had he been of a mind not to appear in court on any of these charges, he would have had ample opportunity to flee, but has not chosen to do so. At the time he was arrested on these charges, he was in the City of Wilmington. He does have some connection with the City and has been in and out of the City during the past year. I would ask the court to focus on the defendant as an individual on these charges and consider a cognizance bond. If the court would not be of a mind to do that, I would ask the court to consider a substantial reduction of bond and set it in an amount of no more than $1500, so he could make that bond and be released pending these charges. As another fact, I know it is not one of those generally considered on the question of bail, but Mr. Chavis has a trial coming up in Federal Court probably in the week of April 24. I am representing him on those charges. In order that this man be able to have adequate defense, it is necessary that we converse with him. As Your Honor knows, our offices are located in Charlotte. The facilities here are not ideal in the jail in getting together with the defendant. It is also according that he be able to continue work to be able to provide for his wife and three children. I urge the court very strongly to consider reducing the bond of this defendant.

The Court: Let me ask you a question, please. Is he under two Federal charges for aiding accused felons to escape out of the country to avoid prosecution?

Mr. Ferguson: Yes, sir.

The Court: Did he not a few weeks ago at Queens College in Charlotte make the statement he was going to Africa to start a campaign on behalf of the black people in Africa to liberate them?

Mr. Ferguson: Your Honor, I wanted to check with Mr. Chavis. I have read the account of what he said in the newspaper in Charlotte. I can say from what I read in the paper that is not the statement he made. He did make a statement that I have often made and many people I know have made, that he would like to take a trip to Africa some time in the future. My wife and I have talked quite a bit about that. At some point, we do want to go there. A number of my fellow attorneys I know have talked about that and plan to do so some time in the future. The statement had absolutely no relevance to any of the charges pending against him. It didn't express any intent on his part not to show up for trial at any time.

The Court: Didn't he make the statement in Charlotte that he was going to Africa to start a campaign on behalf of the black people? Not a visit - to start a campaign?

Mr. Ferguson: No, sir, he did not make that statement.

The Court: Well, this is inconsistent with what came out of the other hearing.

Mr. Ferguson: I wasn't present at the other hearing, Your Honor.

The Court: At the other hearing, I think he acknowledged that he did, but his attorney said he was going to wait until some time in the future.

Mr. Ferguson: Your Honor, I think it would be extremely unfortunate to consider that as a factor. I'm saying to the court now, his plans whatever they are to go to Africa, are sometime way in the future. He does not plan to go to Africa any time while these charges are pending against him. He has already made a statement that he plans to do that. It is unfortunate

that whatever statement he made has been misinterpreted.

The Court: Are you basing what you say on what he told you, or did you hear what he said in Charlotte?

Mr. Ferguson: I read the accounts of what he said. I talked with people who were there. My information, all of it, is he did not make the statement that was contributed to him.

The Court: He did not make the statement?

Mr. Ferguson: He did make a statement he was going to Africa, but he did not make the statement that he was going to Africa to start a campaign for the people there any time while these charges were pending against him. I'm just saying to the court that has no bearing on his likelihood not to show up for trial. We are stating to the court now that is not the position he will take. He has had ample opportunity to do that if that is his intention. He has been out of jail even after the last inquiry. He was back in Wilmington following that.

The Court: Just for the record. I keep hearing he has always shown up in the court on time. I have never given this any weight, but on one occasion, he probably will remember when it was, it was a minor citation he had. He was not in court when his name was called. Ordinarily we call them out and issue a capias on them, but I thought he probably would show up. Later, he did - maybe later in the day, I don't recall. But under the law I should have dismissed the case and did dismiss it, but he was not here on time. I just say that for the record.

Mr. Ferguson: I recall the case you are talking about. We appeared before your Honor. He was picked up here in Wilmington for not having his registration card. We appeared in Court that morning. He did have his registra-

tion card at that time and I think the court gave him some time to journey to Oxford to get his registration card and bring it back. He had to come from Oxford at that time and he did show up on the date he was supposed to show.

The Court: Does he also have some cases pending concerning weapons?

Mr. Ferguson: He is charged under under a Federal Bill of Indictment for possessing explosives in violation of the National Fire Arms Act. And those charges grow out of an alleged incident that occurred approximately two years ago.

The Court: Does he have a case pending possession of bombs and dynamite in Oxford?

Mr. Ferguson: Yes, that's the case I am referring to.

The Court: And two cases of aiding and abetting in jumping bond.

Mr. Ferguson: Yes, sir. Those are the same charges he voluntarily turned himself in after I made arrangements.

The Court: Thank you.

* *

Mr. Harmon: If it please the court, I represent three defendants, Carnell Flowers, James McKoy and Marvin Patrick. They are all under 21 years of age and all life long residents of Wilmington. Carnell Flowers is only charged with conspiracy to burn property. He isn't charged with any physical act, other than charged with agreeing to burn personal property. He is 18 years of age. His mother is here and he has five brothers and three sisters. At the time he was arrested he was a student at Hoggard High School. He does not work. He has no funds. You can tell that from the size of the family.

The Court: Did you say he has no record?

Mr. Harmon: He has no record.

Mr. Harmon: James McKoy is charged with two counts of conspiracy. He is 18 years of age. He was working at the American Molasses Plant in Wilmington at the time of his arrest. He does have a record of simple assault about a year and a half ago. His parents are also present in court.

Mr. Harmon: Marvin Patrick is 20 years of age. His mother is present in court. He is charged on five counts. He advises me he has no previous record. He is presently unemployed. He got out of the Army a short time ago. With respect to Marvin Patrick having no record and not being employed, almost any bond would be excessive in this case. But, certainly in respect to these defendants, they are all life long residents of Wilmington and New Hanover County and except for James McKoy, none of them have any previous record and should either be released on their own recognizance or lower the bond.

The Court: Mr. Patrick has four offenses, is that right?

Mr. Harmon: Five. The same number as Mr. Chavis, but he has no previous record.

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Mr. Balance: If it please the Court, starting first with Michael Peterson. He is 17 years of age. He was a student, at the time of this arrest, he was in high school in Norfolk, Virginia. At the time of his arrest, he was living with his parents who reside in Norfolk, Virginia, prior to that time he resided with his grandmother who lives here in the City of Wilmington. His mother is here in court today and she was here all day yesterday. He has no prior record, Your Honor. He has one charge pending against him that

is conspiracy to burn property. He advises me his father is in the Navy and that explain why he lived here once and living in Norfolk today.

Mr. Balance: The second defendant is Jerry Jacobs. He is 19 years of age. At the time of his arrest he was employed with a construction firm here in the city of Wilmington, living with his parents. His mother's name is Margaret Hill, she has remarried. His step father is Mr. David Hill. He tells me he has no prior record, Your Honor, and as I see the record he is charged with only one offense.

The Court: How many?

Mr. Balance: One.

The Court: Jerry Jacobs?

Mr. Balance: Jerry Jacobs has three offenses. The third defendant- - -

The Court: How old is he?

Mr. Balance: Jacobs is 19. His record may be wrong. His mother just called me back and advised me they have him down as 21 but that he is 19. He tells me he is 19. His mother is here if you want to verify it.

The Court: The one record he has, is it in Juvenile Court.

Mr. Balance: He advises me it is not. Your Honor, I'll remind the court there are two Jerry Jacobs.

The Court: This is not Jake?

Jerry Jacobs: I'm Jerry Jacobs.

The Court: Jerry Leon.

Jerry Jacobs That's the other one.

Mr. Balance: By the way, Your Honor, Jacob's present bond is $15,000. Peterson's present bond is $10,000. That's the present bond.

The Court: Did you say Peterson?

Mr. Balance: Yes, sir. Michael Peterson. He has one charge.

The Court: I see. We have already been over him. Is that right?

Mr. Balance: Yes, sir. He was the first one. Coming to the third person I represent at this time, Your Honor, Tommy Atwood. Atwood is 19 years of age. He has one charge conspiracy to murder. His present bond is $10,000. He is unemployed at the present time. He was laid off from his job with a trucking company here in Wilmington. His parents are Mr. and Mrs. John T. Atwood who live here in the City. He has a prior record. On one occasion he tells me he was convicted of engaging in an affray approximately a year and a half ago and received a fine as a result of that conviction. On another occasion he tells me he was convicted of non-support, and he received a suspended sentence. He had some minor traffic violations. As I said, his present bond is $10,000. Other than that, I think that prior counsel all indicated the circumstances of all these defendants in regard to making a high bond. I won't go over that.

The Court: Mr. Solicitor, do you want to say anything?

Mr. Stroud: No, sir.

The Court: I know that no matter what I do there will be criticism from certain people, letters, news releases and that sort of thing. I know it has been said that these men are political prisoners and I have been accused of putting a bond on Mr. Chavis to keep him from being active. That has not been my purpose. I have had chances before with others. Roderick Kirby has worked right with them, George Kirby has worked in what we call the Civil Rights Movement. Golden Frinks. I have never heard a word saying I put an excessive bond on Roderick Kirby. I thought the bond I put on him would be sufficent and he would be here for trial. I never heard a word from Golden Frinks, that I put an excessive bond on him, or George Kirby. So,

If I was out to put bonds on people to keep them from being active, I think I would have done it on other occasions. I have had ample opportunity. I realize, as you attorneys have set out, that bond is to be sure he is here for trial. And by the way, it has been in some news release that I set these bonds initially. I did not set these bonds. They were set by the magistrate and there was no communication between me and the magistrate whatsoever about setting these bonds.

In the case of James McKoy - $7500.00 bond.

In the case of Willie Vereen - $7500.00 bond.

In the case of Jerry Jacobs, three counts - $10,000.00 bond.

In the case of Connie Tindall - $10,000.00 bond.

James Bunting - $2,000.00

Carnell Flowers - $2,000.00

Ann Shepherd - $2,000.00

Michael Peterson - $2,000.00

Tommy Atwood - $10,000.00. That's what was on him.

Marvin Patrick - $25,000.00 bond.

I am not going to comment on Mr. Chavis. I'm going to make his a $50,000.00 bond.

Mr. Hunoval: Your Honor, at this time I request a transcript of this preliminary hearing in behalf of my client.

The Court: At this point?

Mr. Hunoval: I don't really know what the proper point is.

The Court: Let me put it this way. If you want to read one, I think we can make one available. These men have ordered one and I assume she will have a file copy and I assume she will let you look at it, if you return it to her.

STATE OF NORTH CAROLINA) IN THE GENERAL COURT OF JUSTICE
) SUPERIOR COURT DIVISION
COUNTY OF PENDER) 6-5-1972 SPECIAL CRIMINAL SESSION

STATE OF NORTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
BENJAMIN FRANKLIN CHAVIS)
(File Nos. 72-CR-1653, 1654 & 1955),)
MARVIN PATRICK)
(File Nos. 72-CR-1656, 1657 & 1658),)
CONNIE TYNDALL)
(File Nos. 72-CR-1659, 1660 & 1661),)
JERRY JACOBS)
(File Nos. 72-CR-1662, 1663 & 1664),)
WILLIE EARL VEREEN)
(File Nos. 72-CR-1665, 1666 & 1667),)
JAMES MCKOY)
(File Nos. 72-CR-1668, 1669 & 1670),)
REGINALD EPPS)
(File Nos. 72-CR-1671, 1672 & 1673),)
WAYNE MOORE)
(File Nos. 72-CR-1674, 1675 & 1676),)
JOE WRIGHT)
(File Nos. 72-CR-1677, 1678 & 1679),)
GEORGE KIRBY)
(File Nos. 72-CR-1680 & 1681), and)
ANN SHEPARD)
(File Nos. 72-CR-1682 & 1683),)
)
DEFENDANTS.)

TRANSCRIPT OF TESTIMONY

VOLUME ONE

(Contains pages 1 - 200)

(pp 39 and 199 skipped in numbering; pp. 150 through 159 duplicated in numbering and designated as 159a, etc.)

This cause came on to be heard before the Honorable Joshua S. James, Judge Presiding, and a jury at the June 5, 1972, Special Criminal Session of the Superior Court of Pender County, North Carolina.

Appearing for the State of North Carolina was the Hon. James T. Stroud, Assistant District Solicitor, Fifth

Solicitorial District, Wilmington, North Carolina. Also present on certain instances was the Hon. W. Allen Cobb, District Solicitor, Fifth Solicitorial District, Wilmington, North Carolina.

Appearing on behalf of the defendants Benjamin Franklin Chavis, Marvin Patrick, Connie Tyndall, Jerry Jacobs, Willie Earl Vereen, James McKoy, Reginald Epps, Wayne Moore, Joe Wright, and George Kirby were Mr. James E. Ferguson, II, firm of Chambers, Stein, Ferguson & Lanning, Charlotte, North Carolina; and Mr. John H. Harmon, Attorney at Law, New Bern, North Carolina; and Mr. Frank Ballance, Attorney at Law, Warrenton, North Carolina.

Appearing on behalf of the defendant Ann Shepard was Mr. Matthais Hunoval, Attorney at Law, Wilmington, North Carolina.

* * * * * * * * * *

JUNE 5, 1972:

(THE PROSPECTIVE JURORS AS SUMMONED FOR SERVICE AT THIS SESSION OF COURT WERE CALLED FORWARD BY THE CLERK OF SUPERIOR COURT, AND THOSE PRESENT WERE DULY SWORN BY THE CLERK OF SUPERIOR COURT. THE COURT ADDRESSES THE PROSPECTIVE JURORS AS TO THIS CASE TO BE TRIED AND INSTRUCTED THEM AS TO THEIR CONDUCT AS JURORS DURING THE TRIAL OF THIS CASE. THEREAFTER, ALL PROSPECTIVE JURORS WERE EXCUSED BY THE COURT UNTIL AFTER THE LUNCHEON RECESS, AT TWO O'CLOCK P.M. THE DEFENDANTS THEN

TAKE THEIR SEATS WITH THEIR COUNSEL AT COUNSEL TABLES.)

THE COURT: Gentlemen, I understand you have some motion. Do you wish to go into those now before the defendants are arraigned?

MR. FERGUSON: Yes, sir, your Honor. (MR. FERGUSON CONFERS WITH MR. STROUD.) If your Honor please, on behalf of the - all of the defendants in this case, we have filed the following motion which I will take up with the Court in the order that I call them out, if that is agreeable with the Court.

THE COURT: All right.

MR. FERGUSON: We filed a motion for disclosure of favorable evidence. We filed a motion for production of evidence and disclosure of witnesses. We filed a motion for a change of venue, which has already been granted by the Court. We have filed a motion to quash the bills of indictment on the grounds of exclusion of members of the defendants' race, age, and economic class. We filed a motion to quash the venire of petit jurors on the same grounds. And we filed a motion to sequester the jurors during the voir dire examination. Subsequent to the filing of our motion for production of evidence and disclosure of witnesses, we received from the State certain information which we have not previously had. If I might, I would just like to -- If the Court desires, I will read the motion into the record so you will know what we are asking for.

THE COURT: All right.

MR. FERGUSON: Come now the defendants in the above-captioned cases - and the above-captioned cases are the cases we understand relate to the incident at Mike's Grocery on February 6th, 1971 - by and through their undersigned counsel and respectfully move the Court for an order: (1) compelling the State to make available to the defendants for the purposes of inspecting and copying all evidence in the possession, control, and custody of the State which will or may be used against the defendants in their trial; (2) compelling the State to disclose and make available for interview any and all prospective witnesses which the State will or may call to testify against the defendants; (3) compelling the State to make available for the purposes of inspection and copying any and all police reports relating to the investigation and circumstances surrounding the crimes which the defendants are charged with, including any and all statements taken from witnesses and the defendants; (4) compelling the State to make available for defendants any and all writings written by the defendants which are or may come to be in the possession of the State; (5) compelling the State to make available to the defendants all results of reports of physical examinations and of scientific tests or experiments made in connection with these cases, including but not limited to: (a) all comparisons of fingerprints, clothing, hair, fiber, or other materials made in connection with these cases; (b) all photographs secured at the scene of the crime;

and (c) all reports made by fire investigators in the course of the investigation of these crimes; (6) compelling the State to make available to the defendants all tangible objects pertaining to the investigation of these cases, including but not limited to: (a) all tangible objects obtained from the scene of the crime; and (b) all tangible objects obtained from the state's witnesses in these cases; (7) compelling the State to make available to the defendants the names and addresses of all persons who have knowledge of these cases or who have been interviewed by the investigating officers in connection with these cases; (8) compelling the State to make available to the defendants the S.B.I., F.B.I., and local arrest and conviction records of all persons named in connection with the proceeding paragraph which in essence would be witnesses for the State; (9) compelling the State to make available to the defendants all materials and information now known to the State or which may become known or which through due diligence may be learned from the investigating officers or witnesses in these cases which is exculpatory in nature or favorable to the defendants or which may lead to exculpatory material. This request includes the reports of any investigations carried out in connection with these cases of suspects other than the defendants or other persons who have been charged with these defendants. As grounds for seeking the above information, the defendants respectfully show the Court the following: (1) the

defendants know upon information and belief that the State has in possession items of evidence which will or may be used against the defendants at their trial; (2) defendants know upon information and belief that the State has interviewed numerous witnesses in connection with the crimes with which the defendants are charged; (3) it is necessary that the defendants inspect the evidence in possession of the State and interview prospective witnesses in order to adequately prepare for and defend against the charge against them. Therefore, the defendants respectfully pray the Court to grant them permission to inspect the State's evidence and to interview the State's witnesses in these cases. Now, if your Honor please, on or about the 11th of May of this year, we received from the State two statements which were made by one of the State's witnesses, Allen Hall. One of these statements was made shortly after Mr. Hall was taken into custody in May, of 1971. The other statement was made on February 18th, 1972, in Goldsboro, North Carolina. These are the only statements of witnesses that we have received from the State. I believe crossing in the mail last week when we mailed these motions in was a statement from Mr. Stroud which included a list of the State's prospective witnesses and a brief statement of what each witness was expected to testify to. We would like to inquire through the Court at this time whether the State has in its possession any other written statements of any witnesses that

have not been made available to the defendants.

THE COURT: Mr. Solicitor, do you care to make any answer?

MR. STROUD: Your Honor, I have provided Mr. Ferguson with statements of Allen Hall, the primary State's witness in this case. There are no other written statements that I am aware of, of witnesses that are going to be utilized in the trial. And, of course, your Honor, Mr. Ferguson was present at the preliminary hearing. They do have a transcript of the preliminary hearing. Allen Hall testified at that hearing; he was the only witness presented at that hearing by the State.

MR. FERGUSON: That is correct, your Honor. We did secure a copy of the preliminary hearing transcript from the Reporter at that hearing. Your Honor, we would like to inquire whether there are any scientific or physical tests run in connection with these cases, the reports of which the State has in its file, and if so, we would ask the Court to make these reports available to the defendants.

THE COURT: Mr. Ferguson, I don't know exactly what you are referring to, nor do I know what section you rely upon in requesting the Court to require the State to furnish this information to you that you have pointed out to the Court.

MR. FERGUSON: Your Honor, I believe it's 15-155.

THE COURT: What does that provide?

MR. FERGUSON: It provides that we are entitled to

scientific reports and also statements of expert witnesses that the State may call in the trial of the case. I don't have the section before me now.

THE COURT: That is it in substance, I take it. Mr. Solicitor, have there been any so-called scientific tests or.....

MR. STROUD: Your Honor, may I have just a second to take a look at the statute?

THE COURT: All right.

MR. STROUD: Pardon me just a second, your Honor. (READING STATUTE.) Your Honor, as I understand 15-155.4, it requires on showing of good cause to his Honor that the defense counsel on behalf of the defendants be allowed to inspect scientific evidence and perhaps to have it for the purpose of testing in order to prepare a defense. Also, that the defendants are entitled to examine expert witnesses to be utilized by the State during trial upon showing good cause to the Court. In the cases at hand to be tried during this term.....

THE COURT: Excuse me just a minute. I may not have mentioned one thing which I will at this time. There will be no entering and leaving the court room except at recesses. Please understand that it creates disorder, and that will not be permitted, so if you come in you must stay until there is a recess and you cannot come in during, at any time except at a recess. Do you understand, Mr. Officers, about that?

(OFFICERS INDICATE AFFIRMATIVE.)

THE COURT: There will be a recess at least mid-morning generally, as well as at the noon day period.

MR. STROUD: The statute, as I understand it, your Honor, entitles him upon showing good cause to the Court to inspect copies of tests, any exhibits - specifically identified exhibits which may be utilized at the trial which is in the possession of the State. Secondly, the statute allows upon showing of good cause to the Court that the defendants' attorneys or the defendants themselves be allowed to examine expert witnesses to be utilized by the State at the trial. In the cases at hand we do have some exhibits primarily in the area of diagrams which have not yet been made, photographs, and other physical exhibits. There will not be utilized by the State in the course of the trial of the cases at hand any expert witness. So, as to the examination of an expert witness, we have none for the purpose of the trial of these cases. We do have exhibits.

THE COURT: And they are now available?

MR. STROUD: Not presently, your Honor. Some of the exhibits are available. I have the photographs with me. The other physical evidence is being brought up from the evidence lockers from New Hanover this morning.

THE COURT: Do you gentlemen desire to inspect those at times of recess or evening? Will that suffice to you?

MR. FERGUSON: At any convenient time, your Honor,

we would like an opportunity to inspect what the State has.

THE COURT: That motion will be granted then. Now, you have several other motions?

MR. FERGUSON: Does the Court grant the entire motion? There were certain other aspects that we wanted to ask for.

THE COURT: The only parts of it which the Court understood which would be applicable would be the exhibits Mr. Stroud speaks of. What other parts do you have?

MR. FERGUSON: I wanted to inquire whether or not the State has in its possession any writings or statements from the defendants in these cases to be called today.

MR. STROUD: The State is not aware of any such written statements.

THE COURT: I am not sure that would be covered under the section you referred to.

MR. FERGUSON: No, sir, it would not be. It would not be covered under that section. We are addressing ourselves now to the power of the Court.

THE COURT: All right. Go ahead.

MR. FERGUSON: Now, your Honor, we made a part of this motion and also a separate motion for the disclosure of favorable evidence, and we base that motion upon the decisions of the United States Supreme Court in Giles versus Maryland, Brady versus Maryland, and the very recent case of the United States versus Bigelow (PHONETIC). In the previous two cases,

the first two cases, the Court addressed itself to the problem of withholding of favorable evidence by the State, and the Supreme Court disapproved that practice. And in the United States - Bigelow case, the Court addressed itself to the question of arrangements or deals, if you will, between the witness for the State, or the Government in that case, and the Court in that case required a new trial where inquiry had been made about any such arrangements or deals and no disclosure was made and it was later discovered that there was an arrangement or deal. And so, our motion is two-pronged, your Honor. We are asking that a disclosure be made of any kind of arrangements for the benefit of, or deals,of any State's witnesses by the State be made known to us; and additionally/that if the State knows of any witnesses that are benefited by the State or if the State has any evidence whatsoever which would be favorable to all of the defendants or any one of the defendants, we would like to have that disclosed, too. That is the grounds of our motion for disclosure of favorable evidence.

THE COURT: Well, Mr. Ferguson, the fact that there might become proper for the State to use some/favorable evidence, of course, the prosecution is against the defendants and you don't devote your energy to that which might not be consistent to your main objective, which in the case the prosecution would be to convict and the defense to defend. So, I assume you are simply referring to favorable evidence which in the course of

the investigation might have come into the hands of the State?

MR. FERGUSON: Yes, sir. Your Honor, I would, of course, respectfully take exception to one statement of the Court. The responsibility of the defense is to defend, but the prosecution has a greater responsibility than just prosecution. The prosecutor's office has the duty to see that justice is done, as a part of that.....

THE COURT: That is true. Mr. Solicitor, do you have - can you make a statement with respect to that?

MR. STROUD: Your Honor, with regard to any deals with State's witnesses, no such deals have been made. With regard to any evidence that the State is aware of that might be favorable to the defendants, the State is aware of none.

THE COURT: Well, I will have to rely upon that report in that regard.

MR. HUNOVAL: Excuse me, your Honor. Excuse me, Mr. Ferguson. Mr. Ferguson stated that all of the defendants were making all of these motions. I represent one person here, your Honor, and that person is Ann Shepard. I join in those motions, outside of this motion, the motion for a.....

THE COURT: Speak just a little louder.

MR. HUNOVAL: I would like to join in the motion of the other defendants in this case only as regards the disclosure by the State of favorable evidence.

THE COURT: You were not -- You do not wish to be

considered as joining in the other motions?

MR. HUNOVAL: No, sir.

THE COURT: All right. I intended to inquire of Mr. Ferguson whether his motion included your client or not. You did not mean.....

MR. FERGUSON: I am sorry. I did not intend to lie about this. He will be welcome to join in any motions we have, your Honor. I believe that concludes all of the specific items in our motion for production of evidence and motion for favorable evidence. If your Honor please, we did move in that motion for an opportunity to interview prospective witnesses for the State. Now, we do know that at least two of the witnesses for the State are presently in custody; that is, the witness Allen Hall and the witness Jerome Mitchell. We did examine Mr. Hall at the preliminary hearing. Mr. Mitchell did not testify at the preliminary hearing. We would like to ask the Court that we be allowed to interview Mr. Mitchell prior to presentation of evidence by the State, which may be later this week or at such time as we finish the selection of the jury.

THE COURT: The Court will take that under advisement.

MR. FERGUSON: If your Honor please, we filed the following motion with reference to the bills of indictment. Come now the defendants in the above-captioned cases.....

THE COURT: I think, Mr. Ferguson, that I have read rather carefully each of your motions, and I do not think it will be necessary for you to read it in detail.

MR. FERGUSON: All right, sir. We have alleged essentially, your Honor, that the defendants, being aged seventeen to twenty-four, were indicted by a Grand Jury in New Hanover County which excluded substantially members of the age group of the defendants, members of the economic class of the defendants. All of the defendants are indigent, and we are prepared to make a showing in that regard. And members of the defendants' race. And under decisions of our North Carolina Supreme Court and the United States Supreme Court, these defendants, as are all defendants are, of course, entitled to be indicted by a Grand Jury from which members of a different group or class are not excluded.

THE COURT: Systematically.

MR. FERGUSON: Systematically excluded, yes, sir. We have gone into the method or procedure of selecting Grand Jurors in New Hanover County. We made a similar allegation with respect to racial exclusion in a petition for removal which was filed in the United States District Court for the Eastern District of North Carolina, Wilmington Division. In that, in connection with those proceedings, your Honor, we gathered certain facts relating to the jury selection procedures in New Hanover County, and through working together with the State

we were able to stipulate the purposes of the petition for removal what most of the relevant evidence was in connection with the jury selection procedures; and, of course, your Honor knows by reason of our being here the Federal Court rejected our claims in that regard. But we do wish to reserve our claim regarding those exclusions, and in connection with that, if the State would be willing, we would ask that those same stipulations insofar as they relate to the jury selection procedures in New Hanover County be made a part of the record in these cases.

MR. STROUD: The State will continue to stipulate as to those items which the State previously stipulated in the Federal hearing with regard to the method of jury selection in New Hanover County.

THE COURT: Do you desire to make that a part of the record here what those stipulations are?

MR. FERGUSON: Yes, your Honor. I have a copy of them here.

THE COURT: Each of you are familiar with that. May it not be furnished to the Reporter here and inserted in the record at this time without reading them in detail?

MR. FERGUSON: Yes, sir. What we -- What I could do is give her a copy of the stipulations we filed and designate which ones of the stipulations relate to this matter.

THE COURT: All right.

MR. FERGUSON: If your Honor please, I will just give - hand her a copy of it, the stipulations.

MR. STROUD: Your Honor, during the recess Mr. Ferguson and I will get together what part of those written stipulations we desire and furnish it to the Court Reporter.

THE COURT: Very well.

(THE STIPULATIONS ABOVE MENTIONED WERE FURNISHED THE COURT REPORTER DURING THIS DAY AND ARE SET OUT BELOW AS FOLLOWS:)

"14. The charges against the petitioners grew out of a period of racial unrest in the City of Wilmington, during the early part of February, 1971. Much publicity was given to the racial disturbances both during and after this period. Petitioner Chavis was identified by the press, news media and generally as a leader in the Black protest movement. The other petitioners were involved in varying degrees in the Black protest movement.

"15. The basic procedure followed in the jury selection process is as outlined in the attached letter dated December 7, 1971, addressed to the Honorable Lois C. LeRay, Register of Deeds of New Hanover County and signed by the New Hanover County Jury Commissioners.

"In addition to the procedures outlined in the attached letter, it is hereby stipulated and agreed by and between the parties as follows:

"(1) As of November 8, 1971, there were 31,886 names

on the voter registration lists of New Hanover County. Of this number, 26,203 were white and 5,683 were black.

"(2) As of April 6, 1972, there were 37,038 names on the voter registration lists of New Hanover County. Of this number, 20,596 were white and 6,442 were black.

"(3) A total of 16,050 names were taken from the voter registration lists. Of this number, 2,820 were black and 13,230 were white.

"(4) A total of 3,000 names were taken from the tax scrolls by taking the first and last name from each page of the tax scrolls. The race of the persons appearing on the tax scrolls cannot be determined from information in the Tax Office. The Tax Office ceased using racial designations after 1962.

"(5) The actual number of black persons appearing for jury service during the year 1972 is not known because no records are kept as to the race of persons appearing for jury service.

"The Honorable Lois C. LeRay
Register of Deeds of New Hanover County
Wilmington, North Carolina

"Dear Mrs. LeRay:

"In accordance with the provisions contained in Chapter Nine of the General Statutes of North Carolina we deliver into your custody a jury list containing 14,232 names of prospective jurors for the biennium beginning January 1, 1972.

According to figures given us by the Register of Deeds Office of New Hanover County, approximately 6,291 names were drawn for jury duty during 1970-71, hence the figure given above is slightly more than twice the number of jurors drawn for duty during the past biennium.

"The method of selection of names was as follows:

1. A card file was established using names appearing on the permanent voter registration cards of New Hanover County from the fourteen Wilmington precincts and the nine county precincts. Registration totals were approximately 31,000 and in order not to exceed the recommended number of names, every other card was eliminated by computor.
2. A list of names was taken from the tax lists of New Hanover County and incorporated into the file with duplicates being discarded.

"The above constituted a 'raw list' from which names were deleted as follows:

1. Persons known to the Jury Commission as having physical or mental incapacity.
2. Persons who served on the jury during the past biennium.

"Cards were then alphabetized, numbered and filed accordingly.

"The voter registration cards, kept in the office of the New Hanover County Board of Elections made it unnecessary for us to screen the list for deceased persons, those who moved from the county, convicted of a felony or pleaded nol contendre to an indictment charging a felony. Names drawn from the tax list were screened for deceased persons, those who moved from the county, convicted of a felony or pleaded nol contendre to an indictment charging a felony.

"The numbered discs used during the past two years have been examined and found to be in good order so it has been decided to use these same discs for the new jury list. At the suggestion of the Clerk of Superior Court we will not go to the expense of removing the discs numbering above 14,232 so the Clerk of Superior Court, when drawing discs, will discard any with numbers above 14,232.

"We would like to express our appreciation to James G. McKeithan, Clerk of Superior Court who has been most helpful in furnishing us with materials and help necessary to complete our work. We appreciate the assistance of the Executive Secretary of the New Hanover County Board of Elections, Mrs. Louise D. Rehder, and the cooperation of the Board of Elections in opening their records for our use. We would like to thank the Registrar and the employees of the Register of Deed's Office for their assistance. We sincerely appreciate the work done by Mrs. Dorothy Harrell and Mrs. Beth Jordan in compiling the

current list.

"Respectfully submitted,

(SIGNED)

J. D. McCarley, Jr., Chairman

(SIGNED)

Harry D. Griffin, Member

(SIGNED)

J. Holmes Davis, Member"

(END OF STIPULATIONS FURNISHED REPORTER.)

MR. FERGUSON: If your Honor will indulge me just a moment on our motions. (PAUSE.) If your Honor please, finally we will -- Well, not finally. Another motion we filed was a motion to quash the venire of petit jurors on the same grounds of race, age, and economic groups. We would like to preserve our challange in that regard. We have taken a count ourselves of the number of black and white jurors showing up on this venire, and we have also our figures of the black and white jurors remaining after the excuses granted by the Court. We would like to present those figures or have a comparison of those figures with the State and have those figures stipulated for the record. Now, at the time we made this motion, we expected at that time that the trial was going to be in Wilmington. As you will recall we filed a simultaneous motion for change of venue. Mr. Harmon was in Wilmington on the date that the Court granted the motion for change of venue. At

that time we had not had an opportunity to do any kind of a jury study here in Pender County to preceed an evidentiary hearing. I believe in the interest of time, if the Court will permit us, we could enter into certain stipulations with regard to the selection procedures for Pender County for jurys. There is certain information that we would have to gather from the Chairman of the Board of Elections and we would have to get the report of the Jury Commissioners and we would have to get certain information from the Registrar of Deeds; and I believe that we could get that information this week while we are in the process of trying the cases. If we could do it that way, all we would ask the Court is that we be allowed to present evidence on this motion at the beginning of this afternoon. During the lunch recess we will make an effort to obtain and secure the appropriate witnesses for a showing on this motion. Let me just go ahead and state to the Court, our figures based upon the 1960 - strike that - the 1970 census that the ratio of black persons to white persons in Pender County is 43.3, or about 43.3 per cent black. We do not at this time have the number of blacks and whites, or proportion of black and whites, who are on the registration books, the voter registration books, which is one of the books used. Our figures, based upon our position of the jury venire which showed up this morning, show that out of the initial venire those who appeared here there were a percentage of 32.5 black prior to any excuses granted

by the Court, and after the excuses granted by the Court, the percentage of blacks in the venire now is 36.6 per cent. There are cases which have been cited on variances in the range of about 14 per cent. Here the initial variance according to our figures would have been 11 per cent, approximately 11 per cent.

THE COURT: All right. The Court's understanding of the recent decisions of the State Supreme Court, an exact proportion of the jury panel to the population is not necessary, is not required.

MR. FERGUSON: That is correct, your Honor. That is my understanding of the law.

THE COURT: There has to be a very systematic exclusion for it to appear that there has been discrimination to grant your motion.

MR. FERGUSON: That is correct, your Honor. That is my understanding of the law. Let me just say this, though: That one of our contentions would be that the source itself, or at least one of the sources, which is required by statute to be used in the jury selection process, namely, the voter registration lists, is inherently discriminatory by reason of the racial discrimination which has existed in this state, and we believe in this county prior to the most recent times would create a situation whereby you would have a lesser percentage of blacks showing up on the voter registration lists than whites, simply because prior to the Voting Rights Act of 1965

many places did not allow black persons to register, unhappily. That condition carries over. We do not know that this is true of Pender County, but - I am speaking generally now - some places black persons had difficulty registering to vote. They have been subjects of discrimination and harassment of many and various kinds. This has created a situation, we believe, whereby blacks even though under the laws on the books they are entered registered having the right to vote. Still, subsequently this history of exclusion, the history of harassment, this history of discrimination, so that they have not registered in numbers proportionate to their numbers in the population; and we would say that the use of such a source may be inherently discriminatory and unless some effort is made to over come that inherent discrimination that members of the class would be arbitrarily and systemically excluded by reasons that without efforts being made to overcome the effect of that past discrimination and exclusion.

THE COURT: Mr. Ferguson, the Court will take personal and judicial notice of the (THE COURT'S VOICE DROPS LOW SO THAT HE CANNOT BE UNDERSTOOD).

MR. FERGUSON: I'm sorry, your Honor. I'm having some difficulty hearing.

THE COURT: I say, I think the Court will take personal and judicial notice of the voter registration in Pender County. Whatever in the past there has been, there is no

reason to believe that now all qualified persons of either color or race are not registered or any pressure brought to bear to impede or discourage.

MR. FERGUSON: That may well be true, your Honor. I'm simply stating our position that we don't want to waive this matter, and we would like to preserve our rights in this regard.

THE COURT: All right. Do you desire the Court to rule upon these motions at the present time?

MR. FERGUSON: If your Honor will indulge me just a moment. (CONFERS WITH MR. BALLANCE.) Your Honor, we gather from what the Court said, the Court, should it rule now, would be inclined to overrule the motion. We would simply ask -- We have no real objection to the Court ruling at this time, but we would ask that we reserve the right to present the evidence we want to present in connection with this matter and have it made a part of the record, and at such time as we do, have the Court reconsider its position should the evidence presented be justified.

THE COURT: The evidence as to the procedures and modes used in making the jury list?

MR. FERGUSON: Yes, sir. We would -- Let me just give the Court an idea of what we would want to present. We would want to establish what sources were used. My experience has been in almost every county in North Carolina the two

sources used are the tax lists and voter registration lists. Most places don't use any other lists. We would want to get a copy of the report filed by the Jury Commission with either the Registrar of Deeds or the Clerk of Court regarding the procedures that they follow in that regard. We want to show that. We would want to gather statistics from the Chairman of the Board of Elections and from the Executive Secretary of the local Board of Elections in order to get the number of blacks and whites on the voter registration lists as of the time the jury venire were selected. We would want to present the statistics from the 1970 census or 1960 census, whichever would be appropriate, to show the number of blacks and whites living in the county as a whole. We would want to present to the Court an affidavit from each of the defendants stating his race, age, and that he is indigent. That is essentially what our evidence would be upon this hearing.

THE COURT: Well, very obviously that will take considerable time for you to gather. So long as there is any basis for the defendants that the Court might allow the motion, I don't see how the trial could obviously proceed until the motion is passed upon.

MR. FERGUSON: Yes, sir.

THE COURT: As you have indicated, have surmized, the Court presently would not be inclined to grant the motion; that is true. Based upon counsel's on observation of the ratio

figures on the jury panel this morning both before and after the excuses by the Court, those facts together with the decision as the Court understands are very recent from the Supreme Court of North Carolina, there seems to be sufficient basis for the Court to overrule the motion at this time. The Court prefers to pass on the motion at this time, overruling it, and you may take an exception. (EXCEPTION NO. 1-MT)

MR. FERGUSON: Well, may I -- I just want to understand whether or not the Court's action at this time we will have an opportunity to present any further evidence upon the question of exclusion in connection with the motion?

THE COURT: If you desire to have further information obtained for the record for possible later use, I will consider whether you may do that, but for the present purpose to delay this trial, the Court sees no purpose will be served by it at this time in that respect.

MR. FERGUSON: All right, sir. Well, let us take an exception to the Court's ruling on that. (EXCEPTION NO. 2-MT)

THE COURT: All right. Is there one other motion?

MR. FERGUSON: We have one other written motion, your Honor, and then I have two oral motions to address to the Court.

THE COURT: It is necessary that we recess very shortly for the lunch period. If you will state them briefly, I will rule on them now. If not, I will take them up later.

I had hoped to complete these before the jury returned. What are these two motions?

MR. FERGUSON: The two oral motions? But first, I wanted to take up the motion as to sequester the jury during voir dire. I think we discussed that in chambers.

THE COURT: Yes.

MR. FERGUSON: I think we disposed of that one.

THE COURT: Yes.

MR. FERGUSON: I would just like to -- Well, let me state what the other two are, and then I will come back to that one. I want to move the Court at this time to reduce the bond on each one of the defendants; and I want to further move the Court to allow counsel for the defendants an opportunity at reasonable times to visit with the defendants who are incarcerated along with any witnesses they may desire, the defendants, to talk to. And I can stand upon our reasons for all, if the Court desires.

THE COURT: We can discuss the merits of those motions in chambers further before the Court passes upon them.

MR. FERGUSON: All right, sir. If your Honor will indulge me just one moment; I want to speak with Mr. Hunoval. (CONFERS WITH MR. HUNOVAL.) Your Honor, I am inquiring of the State now regarding the specific statute under which the defendants are charged with reference to conspiracy to burn with incendiary devices, because I would like to inject a

motion to quash based upon the unconstitutionality of that statute because of vagueness, and I was trying to secure the statute.

THE COURT: I will hear you carefully when you inquire. Perhaps a little forethought on the part of you and counsel for the state, I will hear and consider that in chambers. All right. At this time we will take a recess for lunch. I believe I told the other jurors two o'clock, but take a recess until two-thirty.

(LUNCHEON RECESS.)

THE COURT: Indicate that we are out of the presence of the jury. (THE COURT AND COUNSEL AND THE COURT REPORTER ARE IN CHAMBERS DURING THE FOLLOWING:)

THE COURT: All right. Which is the first matter we should take up here then?

MR. FERGUSON: I believe our motion to sequester the jury during the voir dire would be the next one, your Honor.

THE COURT: I heard your informal argument this morning before we commenced, I believe?

MR. FERGUSON: Yes, sir.

THE COURT: And that in substance was almost verbatim to what you set up in the motion?

MR. FERGUSON: That is correct, your Honor. I believe we set forth in the written motion why it should be conducted that way.

THE COURT: The Court has considered the reasons set forth in the written motion, together with the repetition orally of the reasons by counsel for the defendants and is of the opinion that insufficient cause - that sufficient cause has not been shown for the allowance of the motion, and it is therefore denied. (EXCEPTION NO. 3-MT)

MR. FERGUSON: Your Honor, we want to move for a reduction of bond for each of the defendants. I better get my notes. (REFERS TO NOTES.) The defendants were initially arrested on or about the 17th of March, 1972; the preliminary hearing was initially scheduled for the 23rd of March, but because of conflict of schedule between counsel and the solicitor the hearing was continued until March 3rd, 1972. A hearing was held on March 30, 1972, and all defendants were bound over for trial in Superior Court. None of the defendants were able to post bond between the time of their initial arrest and the time of the preliminary hearing, and therefore, they all remained incarcerated in the New Hanover Jail for appearance two weeks prior to the preliminary hearing. In the course of the preliminary hearing, bond was set for the defendants in the following manners: Benjamin Chavis, $50,000; Jerry Jacobs, $10,000; James McKoy, $7,500; Marvin Patrick, $25,000; Connie Tyndall, $10,000; Willie Vereen, $7,500. The defendants William Dallas Wright, Jr., Reginald Epps, Wayne Moore, and George Kirby were not subjects of the preliminary hearing because no warrants had

been issued and they had not been indicted as of that time. The four defendants just named were indicted the week of April 24th, and bond was set in their cases in amounts ranging from $10,000 to $15,000, I believe in a hearing last week before the Honorable Winifred Wells. The bonds of William Dallas Wright, Jr., Reginald Epps, and Wayne Moore were reduced to $5,000. None of those three defendants has been able to post bond between that time and the present time. None of the defendants has any serious crime - criminal records. All of the defendants with the exception of the defendant Chavis are residents of New Hanover County and have roots in the community. Each defendant is prepared to make a showing on his individual circumstances on his motion for reduction of bail. Each of the defendants has numerous witnesses that need to be contacted in order to prepare a defense, and it is necessary that the defendants be released from custody in order to aid counsel in order to locate witnesses, gather evidence, and preparing a defense. All of the defendants are indigent and upon inquiry will make such showing to the Court, and our first extreme difficulty is securing finances to defray the costs of preparing and presenting a defense in retaining counsel of their own choosing. Most of the defendants were gainfully employed prior to their arrest, and if released from custody will remain employed and will be able to help defray the costs of their defense. The defendants Wright, Epps, and Moore were in school

prior to their arrest and were scheduled to graduate in the normal course of events this June. The initial trials in these matters were scheduled for May 1, 1972, in New Hanover County Superior Court; at that time the defendants, with the exception of Wright, Kirby, Epps, and Moore, filed a petition for removal to Federal Court. That petition remained pending before the Federal Court until ruled upon by the Honorable Judge Dupree on the 26th of May, when these causes were remanded to New Hanover Superior Court. During the week of May 1st, 1972, all of the defendants with the exception of Wright, Epps, and Moore, were transferred to the North Carolina Department of Correction. Defendants Chavis, Tyndall, and Kirby were incarcerated in the Central Prison, at Raleigh, North Carolina, and were subjected there to the same rules and regulations as applied to persons convicted of crimes and who were serving sentences. Defendants Patrick, McKoy, Jacobs, and Vereen were also transferred to the Department of Correction, but were housed elsewhere than Central Prison, some at Polk Youth Center and others at Odom Prison, in Jackson, North Carolina. Because of the dispersal of the defendants as mentioned above, counsel were placed at extreme hardship in maintaining contact with the defendants and preparing them for trial, defendants all being subject to the regular rules and regulations of the North Carolina Department of Correction. None of the defendants is able to meet bond under which he is now being held. None of

the defendants has any prior record of flight from prosecution. All of the defendants would give their promise to the Court that they would remain amenable to the processes of the Court and would appear at such times as directed by the Court if the Court should see fit to release them on their own recognizances or on a reasonable appearance bond within their means to secure. It is expected that the trial of these cases will be an extended trial and it will be necessary for the defendants and counsel to continue in their preparation for trial during the preliminary proceedings and during the selection of the jury and during the presentation of the state's case. The trial being conducted in Pender County pursuant to motion for change of venue filed on behalf of the defendants, the defendants are being incarcerated during the trial in the New Hanover County Jail, in Wilmington, North Carolina. Most of the witnesses for the defendants are located in and around New Hanover County, and counsel is in need of the physical presence of the defendants in locating and interviewing witnesses and preparation for the presentation of the defendants' cases. With the exception of the defendants Wright, Epps, and Moore, no application has heretofore been made for reduction of bond to any Superior Court Judge. During the pendency of petition for removal, jurisdiction over these cases was in the Federal District Court. Because of the schedule of counsel for the defendants, because of the distance between counsel for the defendants and the

situs of the trial and the situs of the place of incarcerations of the defendants, it has been difficult for counsel for the defendants to make application for bail prior to the present time. Finally, if released from custody all of the defendants would appear for trial at the appointed times and will abide by any reasonable restrictions imposed by the Court.

THE COURT: As I understand it, the defendants Wright, Epps, and Moore had their bond reduced by Judge Wells?

MR. FERGUSON: That is correct, your Honor.

THE COURT: And that was when? Last week?

MR. FERGUSON: I was last Wednesday, I believe. As I recall, your Honor, Judge Wells had set the initial bonds for those defendants when they were arrested on the capiases pursuant to bills of indictment which were issued by the Grand Jury.

MR. COBB: That is correct.

MR. FERGUSON: And I have been in touch in one instance with one of the parents, and she has indicated to us she would hear us and reduce the bonds in those cases. No applications were made to her at that time as to the remaining defendants because the remaining defendants and Kirby had been bound over. Your Honor might recall when we appeared before your Honor, first I indicated we would be interested in getting a bond reduction, and I believe the Court was of the opinion and rightly so because of the filing of the petition for

removal, the Court would not hear the motion for application at the time.

MR. BALLANCE: One further thing: Judge Wells indicated she would further reduce those bonds if they could not be met. Mr. Harmon could not be back before now, and I could not get before her.

MR. COBB: Your Honor, I didn't hear all of this, but I heard part of it. The original basis was that the boys might graduate from high school last Friday. I believe Judge Wells asked Mr. Harmon to check with the school and report back on their position of graduation last Friday, and I don't know but guess that is why she reduced bond to $5,000.

MR. FERGUSON: It is my opinion and I am not sure - you can check for accuracy - William Dallas Wright and Moore were eligible to graduate in June, but Epps would not be eligible to graduate in June because he had some make up work to do. I am not sure.

THE COURT: Mr. Hunoval, you are not.....

MR. HUNOVAL: My client's bond was reduced from - I can't remember - from something like $10,000 to $2,000; and then on the two other charges, indictments were sworn out against her on the 24th of April or whenever the date was. Judge Wells put two more thousand dollars on her, so my client is now out of jail on a total of $4,000.

MR. FERGUSON: Let me mention just one other fact I

should bring to the attention of the Court. Willie Vereen, one of our defendants, was bound over on a $7,500 bond from District Court and I had made contact with his parents and relatives and they were prepared to post a property bond; however, some of the property that they proposed to be used on that bond was located in Brunswick County. The family had gone ahead and secured statements from the Tax Office regarding the value of the property and contacted the Clerk in an effort to have the property accepted for collateral. The Clerk advised them he would refuse to accept bond without the certificate of the attorney about the property; therefore, they were unable to get him out on bond due to fees of an attorney to check out the property. Since that time, additional charges have been brought against Willie Vereen in these cases, and some of the charges brought against him at that time - I am not sure.....

MR. COBB: I don't know at the moment.

MR. FERGUSON: I think it may be back up to $15,000 or so.

THE COURT: Anything from you, Mr. Solicitor, or you, Mr. Stroud?

MR. COBB: No, sir.

MR. STROUD: No, sir.

MR. BALLANCE: We just learned this morning that one of the defendants has a medical condition that was diagnosed while he was at Polk. He has a hernia.

and others in the community. I am suggesting and there are other influences here that will assure their presence here at the trial. Our Chavis bond is higher than any of the rest of them, and I suppose more has been written and said about him. I have dealt with him for about five years about different matters and I have known of no occasion when he has failed to be in court, and I have represented him on about five or six different charges and he has never been convicted of anything. Your Honor is probably aware of the Federal trial in Raleigh he was recently acquitted on, and he, when he learned he had other charges, he contacted me and he said he wanted to come in and surrender himself to the court. I made contact with the Solicitor's Office and the Sheriff's Office, and he came in. Mr. Stroud said the fact that an accessory after the fact - the outstanding warrant was related about - and I made contact with him and with the Solicitor's Office and he came in voluntarily at that time. Even on these latest series of charges at the time, although he is not a resident of the community, he was in Wilmington at the time he was arrested and warrants served on him on those charges, so he does have a continuing interest in the community and has no hesitancy at all. He will be here if he is released on bond. I have represented Willie Vereen, and his mother and father which always worked with me and him in assuring me he would show up at the time of the trial. Since I have been involved in the cases I have come to know all

of the parents personally, and what they are interested in is seeing their children are represented and given a fair trial and their names cleared, and they certainly have no intention at all in trying to circumvent efforts to bring them to trial. And we do feel very honestly that the bonds are too high for the circumstances, particularly considering the backgrounds of the defendants that we have here.

THE COURT: Last week in Wilmington, I believe on Thursday it was, your associate, Mr. Harmon, was in town. I believe neither of you were.

MR. FERGUSON: That is correct.

THE COURT: And I was then considering what arrangements would be made for housing and transporting the defendants during the trial. The New Hanover authorities were very anxious that they be housed here in Pender County since the cases were being removed here on the motion for a change of venue. Mr. Harmon expressed the hope that I would rule that the defendants should be returned to Wilmington each evening, he saying that in all probability that the three of you would have hotel or motel accomodations in Wilmington and that it would be for your convenience in talking with your clients in the evening hours if they were there. And that appealed to me, so I overruled the expression of opinion by Mr. Stroud, who was present I believe, as well as the jail authorities, who wanted them out and kept in Pender, and ruled that they should be returned to

New Hanover each evening so that they would be available for you gentlemen to interview. I do not recall that Mr. Harmon at that time made any reference to seeking a reduction in bond. It's possible that he intimated it. I do not know. The cases have been remanded from Federal Court now since the 26th. Frankly, I had anticipated in all probability that you would petition for a reduction in bond prior to now. I can understand the difficulties you have had in preparing for trial with some of them in New Hanover and some in Raleigh and you gentlemen in other places. I feel that I can honestly say that had an application been made for reduction of the bonds for the purpose of allowing you to have private intercourse with the defendants in preparation for trial, had that application been made since the order remanding the cases to the State courts was entered, I should have felt very much inclined to consider it seriously. From what you tell me I would suppose that in many, if not all the cases, some if not all of the defendants, that would have afforded very little, if any, relief unless the bonds were drastically reduced, since as I recall the defendants Wright, Epps, and Moore even with the reduced bond which Judge Wells allowed, they have not been able to make bond.

MR. FERGUSON: That is correct as I contend, your Honor; however, it has at least been by and large where they can hope and we would like to have all of the defendants in

that position if possible. Frankly, we had intended applying to you for a motion before now, but it's just been virtually impossible for dates when we would have been able to appear for this. I know just last week I was involved in two trials in Union County which did not come to trial, and also a Federal trial in Raleigh. We have had some problems.

THE COURT: You will, of course, recall on one occasion this Court did reduce the bond of Benjamin Chavis?

MR. FERGUSON: Yes, sir.

THE COURT: And because it appeared to be called for. Here we are in the first day of trial time. If any were to be entitled to a reduction in bond, it would necessitate some detail on my part. You say they are prepared to make a showing. It would necessitate involving some considerable time as to each of them. As I say, we are here beginning trial. The Court has, as I mentioned, rather insisted that the defendants be transported back to Wilmington each evening in order to be available for consultation with counsel. They are at least grouped together in one bunch when you can have them all together, which has not been true heretofore. I can certainly understand how if they were out on bond they could do some leg work for you in getting witnesses.

MR. FERGUSON: That is very much needed, Judge. Let me just give you an example of an experience that I had last evening. And I don't think anything I am about to mention was

intentional on anybody's part. I got into Wilmington late yesterday evening, somewhere between six and seven o'clock. I had pre-arranged meetings with parents of a number of the defendants and we did meet and had some rather extended conversation with them and with one or two witnesses or potential witnesses we have been able to secure. Mr. Ballance and Mr. Harmon were delayed in getting here, and I attempted to get in touch with them at the jail and ascertain if they got here. At any rate, at approximately ten o'clock I decided I would cut short what I was doing and get down and talk to the defendants, so I called the jail and identified myself and told them I would like to come over and talk to the defendants, and I was told to come over that I could talk to them. However, when I arrived at the jail, some other arrangements had to be made I was advised, some calls had to be made and some other people were being brought into the jail. I was told I wouldn't be able to see them together. And it is necessary to talk to some of the defendants together in getting the cases together, but they were able to get them in one cell. I was kept waiting in total some forty-five minutes if not longer before I could get upstairs and when I did get up there, it was something after eleven o'clock as I recall and I was there in a large cell into which they had all been brought, and of course I had to speak to them through the bars. Well, I am sure that the jail authorities there did all they could to accomodate me at the time. It

is a matter of limitations or security rules they have there what can be done, and security measures and what have you. Nevertheless, the effect that it has on me or us in trying to make contact is just very, very limited. And that is just an example of what I have experienced. There was no way in Raleigh and Jackson and Polk to talk to them together or to get witnesses in there to talk to them. I think it just had me very geographically the position we were in and I think it is perhaps more important now than perhaps at any other time, with the three of us here together and all of them here - the three of us I am referring to the attorneys representing the defendants - to have this opportunity to tie up the ends of necessity lying loose because of the difficulties we have had.

THE COURT: Of course, I am sure it would be more convenient for you and assist you. As I say, had application been made a week ago I should have felt much inclined to consider it seriously. I do not feel at this point in the midst of trial that I can make any change in the bonds. I will do whatever is necessary to assist you in having contact with your clients in the evening or as necessary during the trial or during the recess in the evening or at lunch. I think the fact that they will be in Wilmington and you in Wilmington even though they will, of course, not be free to assist you personally in searching for people, but at this late day, gentlemen, I cannot in good conscience allow your motion in

that respect. I must deny it. If it was a matter I felt like just some relatively small change would do the work, I could consider that but from what you say I do not understand that anything less than a drastic reduction or something more than that, letting them out on their own recognizance, would afford you any relief. I do not see any good purpose to be served in changing the bonds at this time, or at least any purpose that I feel that I am called upon to make under the circumstances. So, that motion is denied. At the same time I repeat, if you have difficulties in talking with them in the evening, I will direct the jailers to do whatever is necessary to make it the most convenient for you within reason.

MR. FERGUSON: All right, your Honor. In that connection let me say two things: One, first of all, we don't mean to represent to the Court we would not like the Court to consider anything but a drastic reduction; anything the Court would do would be helpful to the defendants in that regard. On the second point, we do have a number of requests we would like to make to the Court regarding accessability of the defendants for the purposes of preparation. We would like to be able to visit them in the jail in the evenings. We would like to be able to take witnesses to the jail for the purpose of conferring with them. We would like to be able to confer with them in privacy outside of the hearing of any persons and outside of the hearing of any other inmates there in the jail.

In addition, I just [illegible] today when I got back from lunch that the defendants were transported on a bus downstairs and each defendant apparently was required to get out of the bus individually, be handcuffed, and then another one would get out and be handcuffed onto the next one until all then of them were handcuffed together in a line. All of this took place downstairs outside there and all brought upstairs all handcuffed together. Of course, the humiliation to the defendants is important and a great risk is run that any jurors or prospective juror could have been there and seen what had gone on in prejudice to the defendants in that regard.

THE COURT: I can't tell how that would be influencing. It could be to the contrary.

MR. FERGUSON: It was too great to justify whatever reasons there are for doing it.

THE COURT: Let me say this: Up until this point, over the weekend as you probably knew or you might not have known, I have been the object of a great deal of criticism for moving the cases up here. The people in this town seem to be under a great deal of apprehension. I felt then, and I am glad to say now, I do not see any indication they have need to be that way; but I assume that the officers, those responsible for the safekeeping of the defendants, felt it necessary to take steps which they felt would avoid any possibility of escape. If by tomorrow all is quiet and things seem to be

moving along in an orderly and usual way, I will discuss with the officers whether they cannot safely avoid the handcuffing which you discussed, which you mentioned; however, with eleven or ten, maybe that magnifies the possibility of somebody running. I don't know whether that exists here. I don't know; you don't know; the officers don't know. Now, as to the matter of convenience in interviewing them in jail, I don't know what the policy heretofore has been regarding taking a witness up in the jail.

MR. COBB: I don't know. Mr. Jackson is here. He is not the jailer. He is in charge here, and I can tell him about what you have in regard to the jail.

THE COURT: I think you should have the opportunity to talk to them privately without being mixed up with eavesdroppers or others hearing. Unless there is a definite rule to the contrary applying to the jail about taking a witness up, so long as they were not taking up a number, perhaps one at a time, I think that might be worked out. Would you know any.....

MR. COBB: Judge, I don't know what rules they have, but I will talk with Sgt. Jackson.

THE COURT: I will go along with that proposition.

MR. FERGUSON: All right, sir.

MR. COBB: This is one of the motions you made out there that needs to be resolved, is that right?

MR. FERGUSON: Yes.

THE COURT: That is.....

MR. COBB: I believe the motion he made out in court was he be allowed to talk to them in jail and have witnesses there and talk to them privately.

THE COURT: I will allow that motion subject to reasonable limitation.

MR. COBB: I will get Sgt. Jackson up here and let you talk to him.

MR. FERGUSON: All right, sir. Again I came up here without the statute book relating to the statute with which he is charged.

(DISCUSSION OFF THE RECORD. THE STATUTE BOOK IS BROUGHT IN. THE COURT SPEAKS WITH SGT. JACKSON AND THE SHERIFF, ALL OFF THE RECORD. MR. BALLANCE REPORTS TO THE COURT AFTER TALKING TO THE DEFENDANT, WILLIE VEREEN, REGARDING THE HERNIA.)

MR. FERGUSON: Your Honor, we move to quash the bills of indictment which have been returned against the defendants charging them with a conspiracy to burn the grocery store at 302 South 6th Street, belonging to Mike Poulas. Our basis for moving to quash the bills is that the statutes under which they are charged, G.S. 14-50 and G.S. 14-50.1, are unconstitutional for vagueness and overbreadth. In support of that, your Honor, let me just say that G.S. 14-50 is the statute which makes a conspiracy to burn with an incendiary device a criminal act; 14-50.1 defines explosive or incendiary device

or material. Now, first, let me read to the Court the definition. I am quoting from 14-50.1: "As used in this Article, 'explosive or incendiary device or material' means nitroglycerine, dynamite, gunpowder, other high explosive, indendiary bomb or grenade, other destructive incendiary device, or any other destructive incendiary or explosive device, compound, or formulation; any instrument or substance capable of being used for destructive explosive or incendiary purposes against persons or property, when the circumstances indicate some probability that such instrument or substance will be so used; or any explosive or incendiary part or ingredient in any instrument or substance included above, when the circumstances indicate some probability that such part or ingredient will be so used." Now, your Honor, the statute sets out certain substances which it defines as explosive or incendiary devices. Those are nytroglycerine, gunpowder, dynamite or other high explosive. Now, I submit, number one, exactly what "other high explosive" is. It is impossible to determine from a reading of this statute anything other than those substances set out which might be subject to question whether it is a high explosive. One is not put on notice by the statute of what is a high explosive. The statute goes further than that. It talks about instrumental substances capable of being used for destructive explosives when the circumstances indicate some probability that it might be used as such. Now, I, as a lawyer, your Honor,

in reading this cannot sit here and decide what this statute prohibits. Number one, almost any instrument or substance that is to any extent inflammatory is capable of being used for destructive explosive or incendiary purposes. Again, I am unable to guess at what substances are included in this statute. In addition to guessing at the substance, I, as a lwayer, would have to guess at what circumstances or probabilities the substance might be used. And I submit to the Court, as I as a lawyer would have to guess at that, then you have at least two other classes of people who would have to guess at that. One is a jury. What is meant or what is prohibited by this statute? So, the jury shall have to guess at what might be used as a destructive or incendiary device. The jury is therefore to guess at what could be used for a destructive or incendiary purpose. They could say any instrument capable of causing a fire could be used for that purpose. So, if I conspired to used some straw and a match for the purpose of burning down a building or attempting to, then under this statute that is included, when no material even similar to a straw or match is mentioned in the statute itself, so I have no idea what probabily is going to be used. So, it is getting hard for a reasonable man to look at this statute and know what is prohibited. By the same token, no jury is given a standard by which to judge others by looking at this statute or anything. And I will submit that it is vague and it is overbroad. It is

vague because of what it means. It is overbroad because it can mean things that are not contemplated by the statute. It can be used to punish wholly innocent actions, whereas the jury might consider it as being an incendiary device.

THE COURT: I haven't examined the indictments. Is there any particular substance that is alleged?

MR. STROUD: A fire bomb, your Honor.

THE COURT: What is a fire bomb?

MR. STROUD: It's a gas bomb.

THE COURT: As I recall, the one principle to be required in construing a statute or any other writing where a certain series of articles or items are named, the nature of which is understood, and then following that there is the phrase you used, "any other similar substance".

MR. FERGUSON: "Any other substance", as I recall it, your Honor, it says "other high explosive, incendiary bomb or grenade, other destructive incendiary device, or any other destructive incendiary or explosive device, compound, or formulation".

THE COURT: I think under the existing principles that "catch-all" clause would be construed to include not any and everything that was remotely capable of being used, but just in the general nature of those being enumerated.

MR. FERGUSON: I think I understand the principle. The naming.....