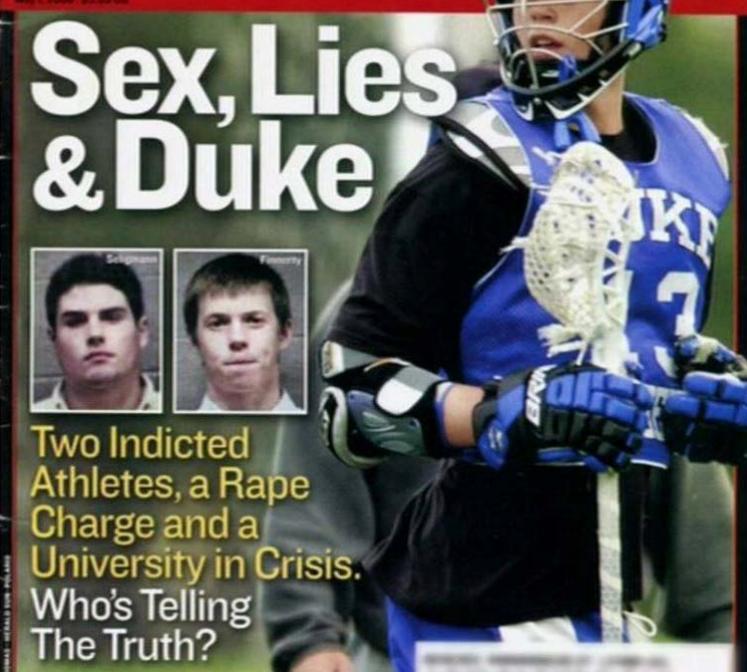


**Change of Venue
and
Change of Judge**

**Indiana Prosecuting Attorney's Council
Summer Conference 2016**

**Robert Roberts
Chief Deputy Prosecutor
Vigo County, Indiana**

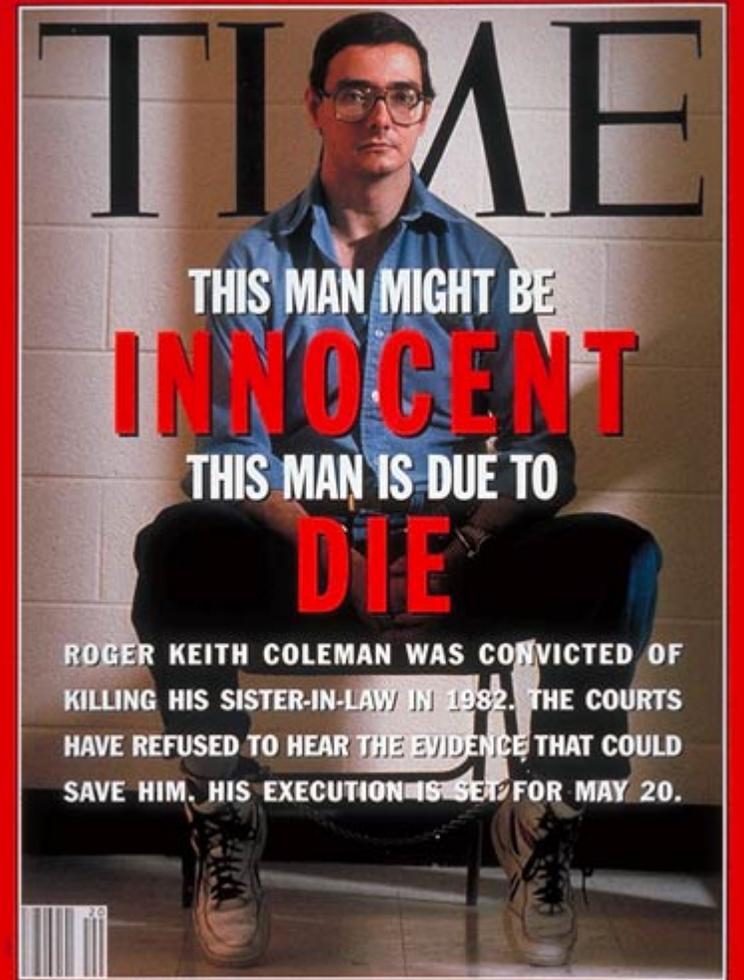
Newsweek



Sex, Lies & Duke



Two Indicted Athletes, a Rape Charge and a University in Crisis. Who's Telling The Truth?





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Who is Indiana serial killer suspect Darren Deon Vann?

By Greg Botelho, CNN

Updated 9:51 AM ET, Thu October 23, 2014



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Cold Justice: Tale of two dead wives

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August 18, 2014
2:30 PM MST



Kelly Siegler and Yolanda McClary.....complete another season of Cold Justice.

Vigo County man who killed second wife now accused of killing first



Tim Evans, tim.evans@indystar.com

10:46 a.m. EDT July 2, 2014



(Photo: Provided photo)

For the second time this year investigators from a television show that focuses on cold cases have helped the Vigo County Sheriff's Office solve an old murder.

Earl Taylor, the suspect arrested Tuesday, had been released from prison in January after serving more than 25 years for the 1987 murder of his second wife. Now, Taylor faces a new murder charge. He is accused of killing his first wife 12 years earlier.

Taylor, 62, is being held at the Vigo County Jail at Terre Haute, Chief Deputy Clark Cottom said. He was arrested after the Sheriff's Office reopened the

investigation into the 1975 death of Kathy Taylor with the assistance from "Cold Justice," a TNT television show that looks into unsolved criminal cases.

TOP VIDEOS



Boy left in woods as punishment goes missing

0:58

Earl Taylor's lawyers ask for change of venue

RECEIVED
David R. Crockett

OCT 22 2014

Clerk of the
Vigo Circuit Court

STATE OF INDIANA
VIGO SUPERIOR COURT
2014 TERM

STATE OF INDIANA

VS.

NO. 84D01-1407-MR-1742

EARL TAYLOR

**SUBMISSION OF ADDITIONAL EXHIBIT TO
MOTION FOR CHANGE OF VENUE FROM THE COUNTY**

Comes now the defendant, by counsel, and hereby submits an additional exhibit to his original Change of Venue Motion from the County. The item submitted is a newspaper article dated October 22, 2014. Appearing in the Terre Haute Tribune Star which not only lists the facts of the instant case, but of the defendant's first conviction. The item also has factual errors and is misleading and the information would mislead jurors. And the headline of the article is misleading in that it makes it appear that the defendant has more than one attorney. While the fact that the headline is incorrect may seem inconsequential, it does make it appear like the defendant has a cadre of attorneys representing him, which is not the case.

Counsel requests that this article be added to the list of exhibits already submitted to the Court in support of his Motion for Change of Venue from the County.

Vigo County Sheriff's Department as he sat quietly through the afternoon hearing.

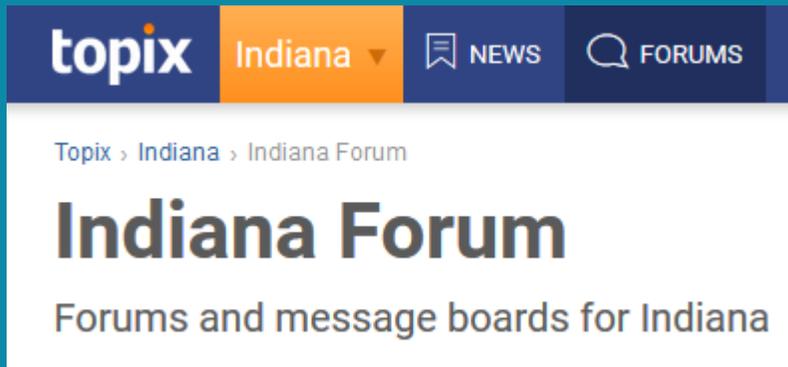
Also in Tuesday's court session, Roach criticized the Vigo County Sheriff's Department for working with a national TV crime-solving program in a way that had investigators talking about what they see as Taylor's guilt in a case that remains open.

Turn to TAYLOR, A8



Seeking change of venue: Earl Taylor is led to Vigo Superior Court 1 in the Vigo County Courthouse on Tuesday to seek a change of venue in the murder case against him.

Tribune-Star/
Joseph C. Garza



“O.J. Simpson...Rubin “Hurricane” Carter...Roger Keith Coleman...Duke Lacrosse Players...Michael Brown...

These are just a few examples of the media’s use of the criminal justice system as a platform for its never-ending need for more Web page clicks.”

William J. Fitzpatrick, NDAA President
The Prosecutor, Vol. 49, Number 2, April/May/June 2015

Outline of Discussion

1. Change of Venue

Statute and Criminal Rule

Case Law

2. Name that Judge

3. Change of Judge

Statute and Rules

Indiana Constitution, Article 1 § 13:

“In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed...”

Venue – I.C. 35-32-2-1

(a) Criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law.



Criminal Rule 12 Requirements:

A Motion for Change of Venue shall:

1. Be verified or accompanied by an affidavit signed by the criminal defendant or the prosecuting attorney
2. Setting forth facts in support of the constitutional or statutory basis or bases for the change
3. Be filed within thirty (30) days of the initial hearing.

Criminal Rule 12 Requirements:

Subsequently discovered grounds. Application shall...

1. Be verified
2. Specifically allege when the cause was first discovered
3. How the cause was first discovered
4. Facts showing the cause
5. And why such cause could not have been discovered before by the exercise of due diligence.

Counter Affidavits:

1. Any opposing party
2. Shall have the right to file opposing affidavits
3. Within ten (10) days

Hearing on the Motion

- “[A]nd after a hearing on the motion...”

Criminal Rule 12

- “A facially sufficient and timely motion for change of venue requires a hearing on the motion; it may not be summarily denied.”

Davidson v. State, 580 N.E.2d 238, 243-44 (Ind. 1991).

Burden of Proof

- “In order to obtain a change of venue, it is incumbent upon a defendant to produce evidence of community bias or prejudice sufficient to convince the trial court that he [the defendant] could not obtain a fair trial in that county.”

Blacknell v. State, 502 N.E.2d 899, 904 (Ind. 1987).

- “A defendant must prove that the jurors are unable to disregard preconceived notions of guilt and render a verdict based on the evidence.”

Specht v. State, 734 N.E.2d 239, 241 (Ind. 2000).

Burden of Proof

- “It is not a prerequisite to a fair trial that the jurors be totally ignorant of the facts involved. The standard to be applied is whether or not ‘the juror can lay aside his impression or opinion and render a verdict based on evidence presented in court.’”

Williams v. State, 386 N.E.2d 670, 672 (Ind. 1979)
(quoting Irvin v. Dowd, 366 U.S. 717, 723 (1961)).

Burden of Proof

- “In order to prove error in the denial of a motion for change of venue from the county, the defendant must show that he exhausted his peremptory challenges in an effort to secure juror impartiality.”

Neal v. State, 506 N.E.2d 1116, 1123 (Ind. Ct. App. 1987)
citing Bixler v. State, 471 N.E.2d 1093, 1100 (Ind. 1984).

Juror Impartiality

- Prejudicial publicity requiring a change of venue is “that which contains inflammatory material which would not be admissible at trial or contain misstatements or distortions of the evidence given at trial.”

Evans, 563 N.E.2d 1251 (Ind. 1990).

Cold Justice: Tale of two dead wives

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0:58



Considerations by the Court

- “[T]he trial court has the duty to balance the rights of the news media, the defendant, and the citizens as it determines the right to change of venue.”

Mendez v. State, 370 N.E.2d 323, 325 (1977)
citing Brown v. State, 247 N.E.2d 76 (1969) .

Options available to the Court

- Grant (then what?)
- Take Under Advisement (then what?)
- Deny (reviewed for abuse of discretion)

What happens if Granted

- Within three (3) days, parties can agree in open court to the new county, the court shall transfer such action to the county.
- Within two (2) days after that, the Court shall submit a written list of all adjoining counties and set a time table
- The moving party strikes first – failure to strike and the court resumes general jurisdiction
- If the non-moving party fails to strike, the Clerk shall strike off names for the party.

Taken Under Advisement?

- Prior to trial, defendant filed a verified motion for change of venue from Posey County based on the publicity which had been accorded the jailbreak by local news media. The trial court deferred ruling on the motion until the jury had been selected. **After voir dire and selection of the jury**, the court held a hearing on the motion, wherein defendant presented various clippings from the local newspaper in which defendant's escape and subsequent apprehension had been reported. The court then denied the motion.

Underhill v. State, 428 N.E.2d 759, 762-3 (Ind. 1981)

Pretrial Publicity

Slone v. State, 496 N.E.2d 401 (Ind. 1986)

- “It is not the amount of pretrial publicity that is important, but rather, a consideration of that which contains inflammatory material or misstatements or distortions of the evidence which could not be admissible at the trial.”
- “The question is not whether potential jurors had heard of the crime or Appellant's identification with it, but whether those potential jurors had a preconceived notion of a defendant's guilt and whether they were able to set aside that notion and render a verdict based upon the evidence.”



Pretrial Publicity

Slone v. State, 496 N.E.2d 401 (Ind. 1986)

- “It is insufficient to establish local prejudice warranting a change of venue unless there is a demonstration that jurors were unable to deliberate fairly.”
- See also I.C. 35-37-1-5

Pretrial Publicity

Slone v. State, 496 N.E.2d 401 (Ind. 1986)

- The Court reviewed over 30 newspaper articles
- “nothing more than factual accounts of the incident and the progress of the trials of the three defendants.”



Pretrial Publicity

Slone v. State, 496 N.E.2d 401 (Ind. 1986)

- Appellant also called several citizens from the community. Some interviewed had definite opinions as to the guilt or innocence, and some of them felt Appellant could not get a fair trial in DeKalb County.”
- A police officer attempted to influence a potential juror.
- A person hollered “Hang him.” at a prospective juror.



Pretrial Publicity

Slone v. State, 496 N.E.2d 401 (Ind. 1986)

- “We see no abuse of discretion in the trial court's denial of the motion for change of venue here in view of the evidence before the trial court.”



Pretrial Publicity

Bauer v. State, 456 N.E.2d 414 (Ind. 1983)

- “Silver Compact Car Rapist” was included in more than 50 stories prior to arrest.
- In excess of 180 stories post arrest.
- One mistrial granted when State used “Silver Compact Car Rapist” during voir dire.
- Two month postponement of 2nd trial ordered by Court when it was unable to select a fair and impartial jury.

Pretrial Publicity

Bauer v. State, 456 N.E.2d 414 (Ind. 1983)

- “Appellant offers no evidence of bias or prejudice except photostatic copies of some of the articles. He argues a presumption of prejudice, based upon the use of the name ‘silver compact car rapist,’ over an eighteen month period.”
- “We still hold actual proof of community bias or prejudice is required. Mere knowledge of the crime does not necessarily produce veniremen who cannot fairly judge the appellant, based upon the evidence adduced at trial.”

Speedy Trial Request

State v. Jackson, 857 N.E.2d 378 (Ind. Ct. App. 2006)

- April 18, 2005 – Motion for Change of Venue (Def. #1)
- April 27, 2005 – Motions for Change of Venue and Speedy Trial (Def. #2)
- April 27, 2005 – Motion for Speedy Trial (Def. #1)
- May 2, 2005 – State files Motion for Joinder
- May 5, 2005 – Hearing on Change of Venue and Joinder
- July 25, 2005 – Court granted both
- October 13, 2005 – Order venuing case to new county



Speedy Trial Request

State v. Jackson, 857 N.E.2d 378 (Ind. Ct. App. 2006)

- October 20, 2005 – Clerk of new County issues certification of venue indicating transcript of the case was received.
- Speedy trial period begins to run anew once the new Court “receives the transcript and original papers and assumes jurisdiction.”
- January 3, 2006, Misty and Charles filed motions for discharge and dismissal pursuant to Criminal Rule 4(C).



You might need a Change of Venue if...

Ward v. State, 810 N.E.2d 1042 (Ind. 2004)

- Over 80% of your panel has knowledge of the case.
- Over 65% of your panel indicate they have formed a belief as to guilt or innocence.
- Nearly 40% of your panel is struck for cause.
- All but one of your jurors have seen, heard or read about the case.
- All of your jurors are among those that formed a belief.
- One of your jurors indicates being unsure if she can return a verdict based solely on the evidence presented at trial.

Name That Judge...



Change of Judge

- Criminal Rule 12(b) – Change of judge – Felony and Misdemeanor cases.
- Criminal Rule 13 – Procedures to follow in selection of special judge

Code of Judicial Conduct, Rule Canon 2.11

- (A) A Judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.
- No motion is required by a party.
- In other cases, a judge has the discretionary power to disqualify himself or herself sua sponte whenever any semblance of judicial bias or impropriety comes to the judge's attention.

See *Calvert v. State*, 498 N.E.2d 105 (Ind. Ct. App. 1986).



A Request for Change of Judge:

A Motion for Change of Judge requires:

1. Be made by an affidavit indicating the judge has a personal bias or prejudice.
2. Setting forth facts in support of the reasons for the belief.
3. The attorney of record must certify a good faith belief that the facts in the affidavit are true.
4. Be filed within thirty (30) days of the initial hearing OR
5. Can be filed for late discovered reasons.

Answers to Name That Judge...

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Vigo County, Indiana



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