

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Criminal Division – Felony Branch**

**UNITED STATES OF AMERICA**

**Criminal Division – Felony Branch**

U.S. DISTRICT COURT OF  
SOUTHERN DISTRICT OF CALIF.  
CIVIL DIVISION

2013 MAR -7 A 9:55

**UNITED STATES OF AMERICA**

**V.**

ALBRECHT MUTH

**Case No. 201 CF1 15683**

**Hon. Russell Canan**

**Status Hearing: March 7, 2013**

**Trial: March 25, 2013**

**MOTION FOR CHANGE OF VENUE**

Trial in this matter is scheduled to begin March 25, 2013. Albrecht Muth, through undersigned counsel, hereby moves to this Court pursuant to the Sixth Amendment's guarantee of a fair trial and *Welch v. United States*, 466 A.2d 829 (D.C. 1983), for a change of venue based on irremediable adverse pretrial publicity against him. Mr. Muth provides the following points and authorities in support of his motion.

1. On August 16, 2011, Mr. Muth was arrested for the murder of Viola Drath, who he found dead in their home on August 12, 2011.
2. Since Ms. Drath's death this case has been in the media as both front page and local news. The press continues to report on almost every status and other hearing in this case and most recently reported in great detail the allegations contained in the government's motion in limine to admit evidence of other crimes, to which the defendant is not yet required to respond.
3. Because of the amount of media coverage there is no way the Mr. Muth will receive a fair trial in the District of Columbia.
4. The leading case on change of venue motions in this jurisdiction is *Welch v. United States*, 466 A.2d 829 (D.C. 1983). In *Welch*, our Court of Appeals cites one of its earlier *en banc* decisions for the proposition that change of venue is not available in the District

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of Columbia. *Welch*, 466 A.2d at 834 (citing *United States v. Edwards*, 430 A.2d 1321, 1345 (D.C. 1981)). In addition, the *Welch* court quotes the following passage from *Nebraska Press Association v. Stuart*, 427 U.S. 539, 565 (1976): "Pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial."


5. Despite these edicts, the *Welch* court went on to recognize that pretrial publicity can be so inflammatory as to give rise to a presumption that a defendant was deprived of a fair trial. *Id.* at 835 (citing *Rideau v. Louisiana*, 373 U.S. 723 (1963)). Even in concluding that the pretrial publicity in the case before it did not rise to the level of precluding a fair trial for the defendant, the *Welch* court left open the possibility that "extreme circumstances" might require a change of venue. *Welch*, 466 A.2d at 835.

6. The *Welch* court affirmed the trial court's factual findings that "the media coverage has been neither inherently prejudicial nor dramatically staged." The trial court also found and the appellate court agreed that "the [media] accounts [of the case] have been straight-forward, unemotional factual accounts of events and of the progress of official and unofficial investigations." *Id.*

7. The same cannot be said of the instant case. Thus, finding a D.C. resident who has not seen and been influenced by these stories will be next to impossible.

WHEREFORE for the foregoing reasons and any reasons that might appear at a hearing on this motion, Mr. Muth respectfully moves this Court for entry of an order changing the venue of the trial to a location that would allow selection of jurors not prejudiced by the sensational pretrial publicity that has attended his case.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Motion was emailed to Glenn Kirschner and Erin Lyons, Assistant United States Attorneys, Office of the United States Attorney, 555 4th Street, N.W., Washington, D.C. 20530, on this 7<sup>th</sup> day of March, 2013.

  
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