Nos. 21861 and 21862 -- In the Matters of: Stephfon W., a Child Under 18 Years of Age and Betty B., Parent or Custodian of Said Child; and George Anthony W., a Child Under 18 Years of Age and Joann O., Parent or Custodian of Said Child

Neely, J., dissenting:

Both Mr. S. W. and Mr. G. A. W. were given ample oppurtunity to consult with family members; both were afforded the opportunity to enlist the aid of a lawyer; both were read their juvenile rights and Miranda rights; both, with their parents, signalled their full understanding of such rights and signed knowing and voluntary waivers. Both, accompanied by their parents and relatives, confessed to the homicide and each implicated the other. On the request of the police, both voluntarily took officers to the areas where items of evidence were thrown. Both, after thorough discussions with their lawyers, opted to waive detention hearings. Nowhere is there evidence of threats, promises, illegal or improper inducements or any other form of coercion exerted on either Mr. S. W. or Mr. G. A. W. to make such confessions.

Based on this testimony, the State submitted its proposed probable cause findings of fact and conclusions of law at the beginning of the preliminary hearing. The State presented evidence

concerning the voluntariness of the statements and the validity of the confessions, calling six witnesses and introducing five exhibits into evidence. Armed with copies of all police reports, waivers, audio tapes of the accuseds' and the witness' statements, confessions and video tapes of the homicide scene available to and provided by the State, defense counsel then subjected these witnesses to extensive cross-examination on all the issues presented, including the rights of the accused and the voluntariness of the statements. Based on this evidence and testimony, the court found probable cause that the juveniles had committed the offense of first-degree murder in unlawfully, feloniously, intentionally, willfully, maliciously, deliberately and premeditatedly killing Mrs. Minor.

To urge, as the majority does, that Judge Merrifield make an "independent determination" of his own preliminary hearing findings of fact and conclusions of law is not only redundant and flagrantly inefficient; it also amplifies the plethora of procedural punctiliones that are paralyzing the truth-finding functions of courts in criminal cases.

In the late 1960s, courts embarked upon an ambitious program to advance civil liberties through criminal procedure. This strategy might have worked if simultaneously there had not been the

beginnings of a relentless rise in the overall level of savagery in this country. Thus, court efforts to use criminal procedure to control ignorant and brutal police, corrupt prosecutors and arrogant and class-biased courts actually backfired; procedural niceties in furtherance of civil liberties caused the average person -- including the average judge and the average lawyer -- to become extraordinarily impatient about any procedural technicality. In other words, to release an axe murderer who will certaintly kill again and again simply because a proper search warrant was not executed to find the axe stashed in his refrigerator so confounded the public's legitimate expectations that the government will protect them that all so-called "technicalities" in criminal law came to be held up to ridicule.

When we begin to use "procedural technicalities" as a tool to achieve results motivated by political inclinations, it sours everyone on procedural rules that do, however, contribute to the truth-finding functions of courts-- for example, the rules limiting hearsay, the rules setting minimum standards on the qualifications of expert witnesses, and the legitimacy of certain types of scientific evidence. If a pamrockwellization of the law is to be avoided, see State v. Delaney, 187 W. Va. 212, 218, 417 S.E.2d 903, 909 (Neely, J., dissenting), we must distinguish between procedural niceties that strangle truth-finding to advance political agendas

from procedural niceties that contribute to and enhance truth finding.

In this case, the majority fails to make just such a distinction. Ignoring the almost incontrovertible evidence presented at the preliminary hearing that Mr. S. W. and Mr. G. A. W. committed deliberate pre-meditated cold-blooded murder of a kindly old woman, that their confessions to this murder were made with all procedural safeguards afforded them, and that the full-blown trial-like transfer hearing that the majority now demands has essentially already occurred, is of record, and is fully transcribed in the preliminary hearing, not only renders what the court orders today redundant and superfluous; it also makes courts look preposterous and adds more fuel to inflame the "get tough on crime" enthusiasts. In plucking from the air procedural technicalities that in this case can only be designed to vindicate the majority's denial reflex, to wit, that children should not have evil intent, the majority's decision is like the thirteenth chime of a ridiculous clock which is not only in and of itself absurd, but casts aspersions on the legitimacy of the other twelve.