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Att on Jury Panel Who Saw Slaying Facing Subpoenas

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Staff Writers

Defense attorneys for Jack Ruby sought Wednesday to disqualify all prospective jurors who saw the slaying of Lee Harvey Oswald on television by subpoenaing them as witnesses in the Ruby murder trial.

Earlier Judge Joe B. Brown had repeatedly rejected defense objections to qualifying prospective jurors who had seen on television the slaying of Oswald by Ruby in the basement of the Dallas City Hall.

Judge Brown also denied Wednesday morning a defense motion for a mistrial after defense counsel Melvin Belli claimed Dist. Atty. Henry Wade was "contaminating" the minds of prospective jurors.

The state was forced to use the first of its peremptory challenges Wednesday to keep the ninth prospective juror from being accepted.

The first juror had yet to be chosen as the trial droned through its third day.

Defense attorney Joe Tonahill said he would issue a subpoena for all prospective jurors who

were witnesses to the Oswald shooting.

The first such subpoena was issued for H. C. Connally, the 10th venireman to be questioned, while the prospective juror underwent continued questioning on the stand to determine whether he was qualified to serve on the jury.

The defense maneuver, based on a provision in Texas law which states that witnesses in a case cannot serve as jurors in the trial, was intended to eliminate from the jury all television witnesses to the Oswald slaying.

But Asst. Dist. Atty. A. D. Jim Bowie said the state would move to quash the subpoenas as soon as they were issued.

This is the point at which Judge Brown would make a ruling.

The mistrial motion came just before Judge Brown excused the seventh venireman because he said he had opinion about Ruby's guilt.

State's attorneys were forced to use one of their free challenges after defense lawyers had ques-

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tioned the ninth prospect, Frank Meza, 38, a warehouseman of 3514 Mount Everest.

NOT PREJUDICED

The potential juror had told Mr. Belli that he would not be prejudiced against the defense because of anything he had heard or read about the case, Ruby or the attorneys in the case.

He also said he had no prejudice against psychiatrists or persons who go to psychiatrists. After lengthy questioning, the defense passed Mr. Meza and the district attorney asked that he be excused without cause.

The mistrial was asked by Mr. Belli on grounds that the district attorney was influencing the minds of prospective jurors with statements, during questioning, about Ruby's part in the shooting of Oswald.

After the judge overruled this motion, defense attorney Tonahill renewed a motion for change of venue.

Mr. Tonahill based the motion on the defense's contention that the 53-year-old defendant cannot receive a fair trial because the "minds of people in Dallas County are saturated" with statements about Ruby's mental capacities and his involvement in the shooting.

The defense motions came during the questioning of J. A. Roper of 3224 Chapel Downs, a fire and casualty insurance agent. When asked about Ruby's guilt or innocence, Mr. Roper, asked the district attorney if he meant an opinion on something other than the fact that Ruby shot Oswald.

Mr. Belli said by pleading Jack Ruby not guilty the question of who shot who, intent and capacity were put squarely in issue and the district attorney could not tell a prospective juror there is no controversy about who shot

Judge Brown excused the first two jurors questioned Wednesday after the potential veniremen said they could not give the death penalty.

The questioning of jurors Wednesday was marked by heated exchanges over the issue of a juror's preconceived opinions on the case.

One particularly bitter outburst from the defense came in questioning the eighth prospective juror, Charles S. Toon, a Mesquite mail carrier. He first passed the "opinion test" by saying he could set aside any opinions he might have and accept only the evidence in court.

But later under examination by defense lawyers he admitted he might have expressed opinions "with the boys."

Judge Brown overruled the defense three times when they sought to have Mr. Toon disqualified on the opinion issue.

Then the judge asked Mr. Toon, "Do you have an opinion?"

The Mesquite man replied, "My opinion is Jack Ruby is guilty" and Judge Brown disqualified him.

I. Richardson, 36, of 424 West Clarendon, said he had religious scruples against capital punishment.

Another possible member of the Ruby jury, Jesse R. Jones of Lancaster, also disqualified on the death penalty question being asked all prospective jurors by attorneys for the state.

Defense attorney Belli objected to disqualifying prospective jurors on the death penalty question, saying the Texas law would provide a jury made up of 12 persons all of whom affirmed their belief in the death penalty.

He contended this kept the jurors from having truly open minds on the case.

Before the first venireman took the stand, Judge Brown asked if the state and defense would agree to free a 450-member panel in the Central Jury Room from possible service in the Ruby case. Both agreed, and the judge held 130 remaining from a panel called specifically for the Ruby case Monday.

Judge Brown pointed out that if the 130 left are all questioned this week without a jury being selected, a new panel can be drawn from the regular body of veniremen reporting next Monday.

"I thought we did pretty good," Dist. Atty. Wade declared when Judge Brown recessed court at 5:16 p.m. Tuesday, after the fourth member of the jury panel had been excused.

The defense suffered a major setback Tuesday when Judge Brown refused to disqualify potential jurors if they witnessed Oswald's slaying on television. In addition, colorful West Coast attorney Belli was forced to use two of the defense's 15 tightly held peremptory challenges to keep the first two veniremen called from becoming members of the jury after the state had accepted them.

The prosecution retained all 15 of its challenges.

(Peremptory challenges are limited and used to disqualify potential jurors without cause. Both state and defense, however, have unlimited challenges for cause, which the judge may accept or reject.)

The only clear-cut victory for the defense came late Tuesday afternoon when attorney Phil Burleson, after extensive questioning, successfully challenged a young City of Dallas librarian because she had formed an opinion about the case. The state offered no objection to the challenge—the first such "opinion" disqualification won by the defense.

Mr. Rolli steadfastly maintained that Ruby could not get a fair trial in Dallas. He said Judge Brown's many rulings in favor of the state during defense questioning was "blackboard proof."

Mr. Wade, as expected, disagreed.

"At this time it looks very good for a jury," he said confidently when Tuesday's court session ended. "I still think we can get a jury within 10 days to two weeks."

The fourth and last member of the jury panel to undergo questioning Tuesday was Mrs. Sherry G. Lundberg, of 9438 Webbs Chapel, a 22-year-old librarian in the city's main public library downtown and across from City Hall, where Oswald was shot to death.

Mrs. Lundberg, who said she had been married only six months, was quickly qualified by Mr. Wade for the death penalty ("no religious or conscientious scruples" against returning it), after taking the stand at 4:15 p.m.

She told the district attorney she and her husband, who works for an insurance company, do not have a television set at home.

She said she had no opinion as to Ruby's guilt or innocence, did not know the lawyers in the case and understood the legal test for insanity in Texas.

Mrs. Lundberg, under questioning by Mr. Burleson, said she had learned about the test in school in Atlanta, and then admitted seeing a televised recording of Lee Harvey Oswald's ~~shoot~~ while visiting the home of friends.

She told the defense attorney that from what she had seen on television, heard on radio and read in newspapers and magazines, she knew of the "facts" of the case and, specifically, that Jack Ruby shot Oswald.

Mrs. Lundberg was successfully challenged for cause and excused, because she had formed an opinion about the case.

"That's hard to say," she answered. "I saw it on TV."

The city librarian was preceded to the stand at 4:05 p.m. by advertising specialty salesman Jack E. Saunders, of 4428 Emerson, the third prospective juror called.

He was quickly challenged for cause by the state after stating he "did not particularly believe in the death penalty" and would hesitate to return it in a case.

"I'd rather not be responsible for a verdict which would take a man's life," Mr. Saunders said.

By afternoon, it had added up to a tough day for the defense.

Judge Brown had opened court at 9 a.m. in the old high-ceilinged room and Hilliard M. Stone, a technical illustrator for Ling-Temco-Vought, took the witness stand as the first prospective juror.

The state satisfied itself on Mr. Stone after only 13 minutes questioning. The defense took approximately three hours and then had to resort to using the first of its 15 valuable peremptory challenges.

The second prospective juror Tuesday, Mrs. C. C. Cherry of 3504 Amherst, took the stand and almost immediately qualified on the death penalty issue.

She also told the district attorney she could consider the full range of punishment from a suspended sentence, through two years to life in prison, or the death penalty in a murder case.

Then for the second time Tuesday the defense sought to disqualify a juror as a witness to the slaying of Oswald because of having seen it on television.

In contrast to Mr. Belli's almost soft-voiced question of the first veniremen, defense attorney Tonahill boomed questions in a deep bass voice.

He probed for a reaction from Mrs. Cherry to her viewing television reports from the basement of the police station on November 24, 1963.

"Did the slaying offend you so much you wanted to wipe it from your mind?" he asked.

"Not more than a lot of other things I have seen," Mrs. Cherry replied.

Judge Brown repeatedly upheld prosecution objections about any effect the TV report had on Mrs. Cherry, and Mr. Wade and Mr. Howie both rose to object to defense contentions that Mrs. Cherry could recognize Ruby.