

Judge

Denies Shaw Jurors Call 80 to Be 'Sampled'

5-1 3/11/68
By ROSEMARY JAMES

Criminal Court Judge Edward A. Haggerty Jr. today denied a motion by attorneys for Clay L. Shaw to subpoena 1,300 prospective jurors in the attempt to transfer Shaw's conspiracy trial out of New Orleans; he ruled that a sampling of 80 jurors will be called.

Shaw, 54-year-old retired businessman, is accused by District Attorney Jim Garrison of conspiring to kill President John F. Kennedy. Shaw and his lawyers claim that he cannot get a fair trial here and have filed for a change of venue.

A hearing on the move to have Shaw tried at least 100

miles from the city recessed last Wednesday after his attorneys filed a motion to subpoena every person on the jury wheel.

THE MOTION was filed after the defense was told by Judge Haggerty repeatedly, during two days of testimony from newsmen, news executives and other witnesses, that the only relevant issue is whether or not prospective jurors can give the Shaw case an impartial hearing.

When the hearing resumed

today at 10 a. m., Judge Haggerty said that in the interests of a speedy trial he was denying the motion to call all persons whose names are now in the wheel.

Instead, each Criminal District Court judge will select 10 prospective jurors by lot and this sampling of the wheel will be subpoenaed to appear a week from today.

AFTER READING his judgment, Haggerty recessed the

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hearing until 10 a. m. next Monday. At that time, questioning of the jurors will begin.

The judgment reads as follows:

"On Wednesday, March 6, 1968, there was filed with the court a motion for instanten supenas requesting this court to subpena all prospective jurors whose names were then and there contained within the jury wheel maintained by the Jury Commission for the Parish of Orleans, State of Louisiana.

"The court at that time requested counsel for defendant to supply to the court by 4 p. m. the following day, to wit, March 7, 1968, a memorandum of authorities supporting the request made in said motion.

"The court received a letter dated March 7, 1968, from Mr. William Wegmann, of counsel for the defendant, wherein he stated that their research failed to disclose any juris-

prudence of cases bearing on this particular point of law.

"In case No. 112-503, State of Louisiana vs. John Dorsey, et al, we find that counsel for the defendant Dorsey, who at that time was Mr. Edward I. Mahoney, requested that the entire contents of the jury wheel be subpoenaed to testify in open court and his purpose at that time was to find out how many persons were of the white race and how many of the colored race. The forms and slips themselves did not, and do not at this time, give any indication of race. That out of 1,360 names furnished by the Jury Commission, 1,034 appeared in court and testified in open court; that out of the said total of 1,034 persons, 946 were found to be of the white race and 88 of the colored or Negro race.

"This court is of the opinion that it was necessary for these persons to appear and testify because that was the only way a legal determination could be made as to their

race.

"I AM OF the opinion that a different legal situation exists in this instant case because we are not trying to learn the race of the prospective jurors but whether or not they have a fixed opinion as to the guilt or innocence of the defendant were they to sit on his case as a juror.

"At the outset, I wish to call attention to the fact that the grand jury indictment was rendered on March 22, 1967.

"Continuances have been requested by the defense and have been granted by the court in this matter. Even as of this date, this case cannot be set for trial by the state because the pleadings have not as yet been finally completed.

"It must be noted that the defendant, under the constitution, is entitled to a speedy trial and it also must be noted that justice delayed is justice denied.

"It is noted by the court that on the hearing held on March 5 and 6, that some 25 witnesses were subpoenaed by the defense. Of this number, 14 were actually called to the witness stand and only one witness was asked the question, could he grant the defendant, Mr. Clay L. Shaw, a fair trial if he were selected as a juror to try the case and his answer was in the affirmative, yes, that he could.

"THE LAW OF Louisiana requires that the Jury Com-

mission for the Parish of Orleans, State of Louisiana, maintain and keep a minimum number of 750 names of prospective jurors in the wheel at all times. Inquiry was made of Mr. Noel Rada, chairman of the Jury Commission, who advised me Wednesday that there were approximately 1,300 names of prospective jurors in the wheel at that time.

"It must be pointed out that there is a minimum number required by law but not a maximum number. Recently, judges, en banc, requested the jury commissioners to add to the wheel because it was felt that the more names in the wheel at any given time, the less chance a person would have of repeating each year serving on the jury.

"It was further hoped that by having such a large number of prospective jurors in the wheel, that a person would not be called until every third or fourth year.

"THE REQUEST is made of this court to call the approximately 1,300 prospective jurors as witnesses to testify as to whether they have a fixed opinion as to the guilt or innocence of the defendant, Mr. Clay L. Shaw.

"Were I to grant such a request, one would have to guess as to how many months it would take before we finally concluded the taking of the testimony of the approximately 1,300 witnesses. Were we to take 10 witnesses

a day, it would take 130 working days.

"The possibility of witnesses dying or moving to distant places certainly must be visualized.

"I believe it is entirely possible, feasible and legal to take a certain group, a certain number of prospective jurors from the various sections of the Criminal District Court. With this sampling of the projected number, I believe that it could be fairly and legally ascertained whether or not the defendant can get a fair trial from the citizens of this parish.

"I am hereby requesting the Honorables, the other seven judges of the Criminal District Court, comprising Sections A, B, D, E, F, G, and H, to select 10 names by lot from the list of jurors on their respective panels for the month of March.

"I RESPECTFULLY ask my brother judges to make this selection Wednesday morning, March 13, 1968, and to return to me said names, together with their addresses, and I will then take the 80 names selected, including the 10 selected from Section C, and have them be ordered and subpoenaed to appear as witnesses on Monday, March 18, 1968, at 10 a. m.

"These 80 witnesses to be subpoenaed will be considered witnesses called by the court and they will be subject to cross examination by both the defense and the state after

they have been questioned by the court.

"I would like to specifically state in my ruling today that the defendant has not been denied his right to exhaust the entire jury wheel at the proper time. There is no limit to challenges for cause and a legal cause for challenge does exist when a person states he or she has a fixed opinion prior to serving on a jury.

"The defendant's rights to challenge for cause all prospective jurors still remains his prerogative to be exercised when this case goes to trial.

"Considering the foregoing reasons, the motion for instanter subpoenas for the approximately 1,300 prospective jurors is hereby denied."

AFTER THE JUDGE read his decision, F. Irvin Dymond, chief trial attorney for the defense, took a bill of exceptions to the ruling and the hearing was recessed.

When the 80 jurors have been called, the defense can call additional witnesses. When the defense has completed its argument for a change of venue, the state will have an opportunity to present rebuttal testimony.

Asked today if the state plans to call its own witnesses, Assistant District Attorneys Richard V. Burnes and James L. Alcock said they won't know until after the defense has completed its arguments.