

T-P 1/28/69

JUROR EXCUSED; ANOTHER PICKED

Total Remains at Eight
T-P in Shaw Trial
1/28/69

By CLARENCE DOUCET
Eighty-two more prospective jurors in the conspiracy trial of Clay L. Shaw were excused Monday — seven by peremptory challenges—and one more juror was selected.

However, the selection of retired Fire Capt. Sidney J. Hebert Jr. had the effect of regaining ground lost earlier in the day when Criminal Court Judge Edward A. Haggerty announced he was excusing one of the jurors already selected because of illness.

Lloyd E. Heintz, 40, who was selected last Friday, took ill over the weekend and was taken to Touro Infirmary where he was still recuperating Monday.

Heintz had become the eighth juror, but until Hebert was agreed upon by both the state and the defense at 5:10 p. m. Monday, the jury had fallen back to seven members.

CHALLENGED BY STATE

One other prospective juror seemed on the edge of acceptance just before Judge Haggerty adjourned the Monday session at 6:04 p. m., but the state exercised a peremptory challenge to excuse Miss Nancy L. McDaniel.

Thus far, some 285 prospective jurors from the panels of three different sections of the Criminal Court have been questioned for possible jury duty.

The defense used four more peremptory challenges on Monday; the state, three. Each side

Cont. in Sec# 1, Page 3, Col. 4

is allowed 12 such challenges, legal moves by which they may excuse a juror without giving a reason. The state has four remaining and the defense five. Once each side has exhausted its challenges only the judge may excuse prospective jurors and then for cause.

ALCOCK, DYMOND ARGUE

Monday's session was punctuated with a few arguments

between Assistant District Attorney James L. Alcock and F. Irvin Dymond, the chief counsel for Shaw.

Shaw is charged with having participated in a conspiracy to assassinate President John F. Kennedy.

The new juror retired from the New Orleans Fire Department in June, 1967, and is now an inspector for the Housing Authority of New Orleans. He resides at 4026 Eunice dr., is married and has one child. He is 55 years old.

Miss McDaniel was the third woman called as a prospective juror thus far in the jury selection which began last Tuesday. The two other women, both married, were excused when they said jury duty would impose a hardship on their families.

The jury selection will be resumed at 9 a.m. Tuesday.

Judge Haggerty announced the plight of Heintz as the trial resumed Monday morning, explaining: "We cannot proceed with this trial until all the jurors are physically present. Therefore, because of this physical infirmity, I will excuse Mr. Heintz."

Dymond objected immediately arguing that law does not provide for such an excusal, and Judge Haggerty told him he was aware of this, but added "criminal law should be reasonable, not unreasonable."

The first nine prospective jurors called were those left over from the 44 names that were on the jury list for Judge Frank Shea's section of the court. The remaining 72 persons called during the day were from the jury list of Judge Rudolph F. Becker Jr.

BRANIFF'S SECTION

On Tuesday, those persons on Judge Becker's list still not questioned will be called, and prospective jurors from the list of Judge Matthew S. Braniff's section are being ordered to appear for the session beginning at 1:30 p. m.

Fourteen persons must be selected—12 jurors and two alternates—before the actual trial of Shaw can begin.

Although Judge Haggerty took a new approach to questioning jurors Monday, the results remained the same.

Last week he asked them if because of what they had

"read, seen, heard or discussed" they had formed a fixed opinion. On Monday he asked them additional questions to determine how strong the opinion was, or if it was merely a strong impression, but a high number of the prospective jurors still managed to be excused because they said their opinions were firmly fixed.

At one point, Judge Haggerty told a prospective juror who had just said he had a fixed opinion: "I'm not surprised to hear you say that; it's been in the paper for the past four days."

USE OF CHALLENGES

The state exercised its peremptory challenges to excuse John H. Schluter, Elmo C. Waltzer and Miss McDaniel. In addition to two challenges during the morning, the defense utilized two more during the afternoon: Robert J. Klein and James McDermott Jr.

It was during the questioning of Klein and also McDermott that the defense asked Judge Haggerty to excuse the witnesses for cause because of statements they made.

Klein, who admitted to having read parts of the Warren Report, said, "There are some things in there that are hard to believe."

Questioned by Dymond, Klein said he did have some opinions about whether the death of President Kennedy resulted from a conspiracy.

Judge Haggerty reminded Dymond that the Warren Report was not on trial, but rather a criminal activity that allegedly took place in New Orleans.

Dymond then challenged Klein for cause, maintaining that in order to convict the defendant the state must prove a conspiracy before showing Shaw as a part of it and the prospective juror already admitted to having an opinion about a conspiracy.

OBJECTION SUSTAINED

Alcock objected and Judge Haggerty sustained the objection.

Dymond then asked Klein a question about his opinion of whether Lee Harvey Oswald might have been involved in a conspiracy and Alcock again objected asserting Dymond's question was "totally absurd."

Dymond pointed out that Shaw is accused of having conspired with Oswald and

David W. Ferrie and that the prospective juror's answer is important. However, Judge Haggerty again sustained the state's objection and a few minutes later Dymond used a peremptory challenge to excuse Klein.

McDermott had said, when questioned about the death of Kennedy, he had a feeling "it just couldn't be one person" involved. After additional questions by Dymond, the defense attorney asked for another excusal for cause, but again the state objected and the judge sustained the state's objection.

Regarding the assassination itself, Alcock maintained that all persons having an opinion about whether the death of the President resulted from a conspiracy or was the act of one man would be eligible for excusal by Dymond's thinking: Those with an opinion about a conspiracy would be challenged for cause by the defense, and those with an opinion about the death resulting from the actions of one man, by the state.

It has been stated repeatedly in the court that conspiracy and murder are two separate crimes. Conspiracy involves an arrangement or meeting of the minds coupled with an overt act by one of the members furthering the object of the conspiracy.

At one point during the morning Judge Haggerty told a prospective juror that the Warren Report is not an official document and is "fraught with hearsay and unsworn testimony."

TWO CHALLENGES

The defense exercised two more of its peremptory challenges during the morning session, one to excuse Anthony J. Sciortino and the other to excuse Earl P. Marcel.

In all, 25 prospective jurors — either from the lists of Judge Becker — were excused during the morning.

The first prospective juror to be called was Harold Cade Polk, who was excused for cause by Judge Haggerty after he said, "I'd be looking for Mr. Shaw's attorneys to prove his innocence, rather than for the district attorney to prove his guilt."

Gerald Seymour Hennessey was excused because he said he had a fixed opinion, and Walter L. O'Rourke was also excused for the same reason. It was O'Rourke's appearance that set

the stage for the first fireworks of the trial thus far although the flare-up between Alcock and Dymond was minor. At one point Judge Haggerty cautioned the two attorneys not to get excited, and seconds later, when Dymond answered a question Alcock had asked the judge, Alcock raised his voice and said, "I'm not asking you, Mr. Dymond." The judge pleaded for decorum in the courtroom.

CAUSE OF ARGUMENT

The argument developed when Alcock asked to have O'Rourke repeat a statement which Alcock claimed he had not heard. Dymond objected because, he said, Alcock had not said at the time the question was asked that he couldn't hear, but had waited a minute or so. Alcock maintained that he could not decide if the witness should be excused for cause if he could not hear what he had said, but finally agreed to accept Judge Haggerty's judgment in the matter and the brief flare-up ended.

Sciortino was then challenged by the defense, and in rapid order the following were excused: Harrison W. Johnson, because he had taken time off from his job to complete some research, and, if selected, would in effect suffer a loss of the time off; Glen J. Barbay, because of a fixed opinion; John Ed Simpson, because he would have undue concern for his family; Harold G. Meyers Jr., because he would receive only 30 days' pay, and Warren Angelo Hains, because he said he did not think he could be a fair and impartial juror.

This exhausted the 44 names of the prospective jurors from Judge Shea's list, and following a brief recess Judge Haggerty began calling the names of jurors from Judge Becker's section.

Excused were: William E. Haar Sr., because of an illness in his family; Richard B. Hellkamp, because he would suffer a partial loss of earnings; Lucious Jenkins Jr., because of concern he would have for his family (which includes nine children); James Hall, who would not be paid, and Marcel, who was challenged by the defense.

Prior to recessing for lunch, Judge Haggerty excused the following because of financial

problems they would encounter if selected: Alton F. Durio, George Gray Jr., Woodrow W. George, Sidney A. Minor III, Floyd S. Rawls, John Scott Jr., David A. Smith, Edward Reynolds Sr., Kenneth J. Lapeyre, Willard J. Nolan and Charles B. Felton.

PERSONS EXCUSED

These persons were excused during the afternoon:

Timothy R. Clifford, fixed

opinion; Leonard J. Harding, medical reasons; Norman J. Dubuclet, would not be paid; Raleigh J. Santiago, fixed opinion; John I. Hebert, because of his position as head of a business; Randolph W. Nicaise Jr., would lose a part of his earnings; John H. Schluter, peremptory challenge by state; Elmo C. Waltzer, peremptory challenge by the state; Edward J. Pinkney Jr., fixed opinion.

Also, the following because they would not be paid or suffer a loss of part of their earnings: John M. Parker III, Henry J. Muniz Jr., Maurice J. Shea, Lawrence Martin, Charles J. Martino, Noel A. Dolliole Sr., Louis J. Hebert, Herbert L. Pierce, Percy L. Gaines, David J. Smith, Lawrence N. Hunsinger, Richard K. Reynolds, Jeremy L. Powers, Ray J. Melinie, Louis J. Mayronne, Godfrey L. Milton, Raymond Jackson Jr., Albert Nemonia, Fernando L. Patron, George J. Cassard, Cleveland Grant, Leslie C. Jones.

Others, Lester J. Held, because of a report he must get out; William Rothchild Jr., because he said the defense would have to prove Shaw's innocence; Edward A. Simmons Jr., fixed opinion; Edward M. Slaughter, fixed opinion; John J. Fernandez, illness in family; Alfred C. Green, fixed opinion; Robert J. Klein, peremptory challenge by defense; James McDermott Jr., peremptory challenge by defense; Kenneth E. Olsen, fixed opinion; Raymond D. Murray, fixed opinion; Joseph R. Martin Jr., hardship; Leo J. Verret, will lose part of earnings; Charles J. Denson, fixed opinion.

And, William H. Butts, working on project as engineer; Simmie V. Chaffin, would suffer loss of work; Samuel J. Barra, fixed

opinion; Troy C. Dunaway, would believe testimony of law enforcement officers over civilians.

Louis A. O'Brien, fixed opinion; Terry R. Heaberlin, fixed opinion; Robert Griffin, hardship; John M. Hebert, because of professional test he must take; Ervin M. Arata, knows a member of the district attorney's staff personally; Wesley A. Senette, fixed opinion; Matthew E. Gormly Jr., fixed opinion, and Miss McDaniel, peremptory challenge by state.

U.S. Won't Try to Block Testimony

WASHINGTON (AP)—New Orleans District Attorney Jim Garrison learned Monday the Justice Department will not attempt to block the testimony of federal agents Garrison wants at the Clay Shaw conspiracy trial.

For the second time in four days, a circuit court judge ordered an FBI agent to go to New Orleans in the absence of any objection from the Justice Department.

The department is not expected to object either to the extradition of a retired Secret Service agent for the Shaw trial, due in a Maryland court proceeding later this week.

In Monday's hearings, circuit Judge Harry Perry G. Bowen Jr., of Maryland's Prince Georges County, ordered FBI firearms expert Robert A. Frazier to appear at the Shaw trial where Garrison wants him as a material witness. Shaw is accused of conspiracy in the assassination of President John F. Kennedy.

On Jan. 24 a Northern Virginia circuit court judge ordered the appearance of FBI photo analyst Lyndal L. Shaneyfelt at the New Orleans trial after the Justice Department filed a consent order in his case.

Former Secret Service agent Roy Kellerman, who rode in the death car in Dallas, Tex., is scheduled to appear in another Maryland court Wednesday for an extradition hearing. It is expected the Department will file a consent order in the Kellerman, case too.