

SHAW CHANGE OF VENUE PLEA DENIED

Trial Shift Ruling Will Be Appealed

Criminal District Judge Edward A. Haggerty Jr. today denied a motion to move the trial of Clay L. Shaw outside New Orleans.

Shaw's attorneys were given 15 days to file writs of review with the Louisiana Supreme Court.

ASSISTANT District Attorney James L. Alcock said the case will not be set for trial until the Supreme Court acts on the writs of review.

Shaw, 55, is charged with conspiracy in the assassination of President John F. Kennedy. His attorneys sought to have the trial moved at least 100 miles from New Orleans on grounds the publicity about the case has made it impossible for Shaw to get a fair trial here.

Haggerty read in court his eight-page opinion, or reasons for judgment.

Defense counsel William Wegmann said the defense "respectfully reserves a bill of exceptions to your ruling." He said this would include all exhibits in the case and all testimony of witnesses in the change of venue hearing.

WEGMANN FILED a written motion of intent to apply to the Supreme Court for a writ of review. If the writ is granted, the high court would hear the case and could then order Haggerty to reopen the hearing or simply order the change of venue itself.

If it refuses the writ, District Attorney Jim Garrison's office has the right to set the case for trial.

Wegmann first asked for 30 days to file the writ but the judge objected. A compromise of 15 days was agreed upon.

HAGGERTY SAID, "this case is ready for trial" and suggested to Alcock that he set it for the earliest trial day in May. Alcock said however, the DA's office would wait until the Supreme Court acted.

Wegmann told newsmen no decision will be made on whether an attempt will be made to take the case to the federal court until the state Supreme Court acts.

In his reasons for denying the change of venue, Haggerty said "I am fully aware of the publicity" in this case.

HE SAID HE is trying a conspiracy case, "not the War-

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ren Commission Report or the murder case in Dallas, Tex."

The judge said the state does not have to prove the culmination of a conspiracy, but under Louisiana law a conspiracy can be proved beyond a reasonable doubt if the state shows a meeting of the minds of two or more persons to commit a crime and that one of these persons commits an overt act in furtherance of the conspiracy.

Haggerty said national and international publicity about the assassination and the Warren Report "probably assures that everyone over the age of 7 years has heard of these particular matters."

The legal question involved, he said, is whether or not because of the publicity a prejudice has arisen against the defendant, Clay L. Shaw.

The judge cited federal court decisions to the effect that publicity intrudes on the judicial process in two ways:

1. When the press reports news that does not get into evidence, or that comes to the attention of jurors "unexamined and unchallenged" before the trial.

2. When the amount and intensity of general press coverage becomes so significant and so partisan that the whole community atmosphere is permeated with passion sufficient to preclude a fair trial.

He quoted decisions to the effect that a juror's word must be depended on as to whether he is prejudiced.

Haggerty said the decisions show "a trial cannot be held in a vacuum, hermetically sealed against rumor and report."

He added that if "mere disclosure of the general nature of evidence relied on would vitiate a subsequent trial, few verdicts would stand."

The judge said that in his opinion "the general environment of Orleans Parish would not subvert the processes of justice were this case to be tried within the jurisdiction."

Haggerty said most of the 80 jurors questioned in the hearing said they had heard so much pro and con they did not know what to believe. They said they would have to hear the evidence in open court before rendering a judgment.

"This is what a trial is for," said the judge. "In my opinion there is no wave of public passion existing at this time, if indeed it ever did exist."

HE SAID DEFENSE counsel in their arguments referred to the trial of Billy Sol Estes in Texas and Dr. Samuel Sheppard in Ohio. He cited reasons why he believes the Shaw case is different from these.

He said live television of a preliminary hearing and a circus atmosphere created by newsmen in the Estes case tended to impress the public with "the notorious character" of the defendant.

In the Sheppard case, Haggerty said a "massive barrage of unfavorable publicity" and activity of the newsmen in the courtroom itself led to a reversal.

In the Shaw case, the judge said, the preliminary hearing before Judge Bernard J. Bagert, "was not televised, had no circus atmosphere and the press coverage was like any other case in the public domain."

Testimony of newsmen in the Shaw change of venue hearing, he said, showed that publicity here has "subsided and abated."

Concluding his arguments, Haggerty said:

"I BELIEVE jurors will honestly answer (questions about whether they are biased) and I further believe that witnesses who will be called will testify freely and frankly.

"I do not believe that the state of the public mind of the citizens of New Orleans is against the defendant, and I further believe he can receive a fair trial in this jurisdiction.

"For the above and foregoing reasons, the change of venue is hereby denied."