

# Third Trial for Newton

By Paul Avery

District Attorney Lowell Jensen said yesterday that Huey Newton will be tried a third time on the charge he killed Oakland police officer John Frey.

Newton, co-founder and minister of defense of the Black Panther party, indicat-

ed he was not surprised by Jensen's announcement that, this morning, he will request a new trial date be set.

Through his defense counsel, Charles Garry, Newton, once again declared he is innocent of having gunned down Frey on Seventh street in Oakland's west ghetto on Oct. 28, 1967.

"It should be obvious to Mr. Jensen by now that no jury is going to swallow a story that Huey Newton is guilty of anything but having been in the wrong place at the wrong time," Garry said. "Officer Frey shot Huey... Huey never shot anyone."

On Sunday, after six days of deliberation, a jury of ten women and two men announced itself hopelessly deadlocked — 11 to 1 for conviction—and unable to render a verdict.

Superior Court Judge Harold B. Hove declared a

mistrial and dismissed the 12 jurors and four alternates who had listened to four weeks of testimony in the controversial case.

District Attorney Jensen said "Certainly... certainly, what do you think?" when asked if he intended to try Newton again.

"We would retry a case like this under any circumstances," he went on. "A case like this is not a normal case. It involves the slaying of a police officer — about the most serious offense we can think of."

Jensen was the State's prosecutor in Newton's first trial in 1968 when the Black Panther leader, charged with first degree murder, was found guilty of voluntary manslaughter and sentenced to a prison term of from two to 15 years.

That verdict was over-  
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turned by the State Court of Appeal last year on the grounds the 1968 trial judge had committed "reversible error" in having neglected to read one legal instruction to the jury before it retired to begin deliberations.

Following the appeal court's decision and an order he be granted a second trial, Newton was freed after 22 months confinement at the California Men's Colony at San Luis Obispo when supporters raised \$50,000 bail.

The 29-year-old black militant will continue free on bail pending the outcome of a third trial.

Only one of the several jurors who could be reached yesterday was willing to comment in detail on the deliberations, but all emphatically denied that Ruthie Ellis of Oakland, the lone black among the 12, was for acquittal.

"Mrs. Ellis stood with the majority and was one of the most vocal in arguments for a guilty verdict," said the juror willing to discuss the deliberations. "The hold out for acquittal was white — and stubborn."

Three jurors who asked they themselves not be identified named Juanita Henderson of San Lorenzo as the one who voted for a not guilty verdict.

Mrs. Henderson refused to discuss the case when a reporter spoke with her at her home in the early afternoon.

"I have nothing to say . . . at this time or ever," Mrs. Henderson stated. She would not confirm she was the hold-out juror.

Her husband said Mrs. Henderson had been "very upset" since the beginning of the trial, which got under way on June 29.

One juror said it was the "theory of unconsciousness" that persuaded Mrs. Hender-

son to "stick to her guns."

The defense contention in both trials was that Newton, after being shot in the stomach by Frey, suffered shock, blacked out, and to this day cannot remember what occurred until he reached Kaiser Hospital an hour after the incident.

Under California law, unconsciousness is a legal defense and a jury can find a defendant not guilty if it believes the crime was committed while the defendant was in a state of mental blackout.

"Mrs. Henderson argued the 'shock' theory practically from the beginning, and for a day or so a couple of the others went along with her," said the juror. "One of the first votes had it nine for conviction and three for acquittal."

"Later on, in an attempt to reach a compromise, eight voted to convict Newton of voluntary manslaughter, three were for guilty of involuntary manslaughter. Mrs. Henderson stood firm for acquittal."

The Alameda County District Attorney's Office said it has not yet computed the total cost of the just-ended trial, but estimated it could run "well above" \$25,000. Most of this would involve salaries paid to the judge, his court attaches, the prosecutor and numerous bailiffs who provided special security during the five weeks of the trial.

Prosecutor Donald Whyte could not be reached for comment. He was tight-lipped with anger and stalked out of the courtroom after the mistrial was declared and the jury had departed.

A source close to District Attorney Jensen said "he (Jensen) feels Whyte did a fine job in presenting the State's case and intends to have him handle the prosecution in the next trial."