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'Had No Choice On Shaw Trial'

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NEW ORLEANS — The chief judge of the three-man "New Orleans Plot" panel insists he "had no choice" but to hold for trial his long-time acquaintance, Clay L. Shaw.

Judge Bernard J. Bagert, in an unusual interview, said the star state witness' dogged adherence to the same story despite two wearying days of cross-examination convinced him and his colleagues they had no other course.

But in their deliberations — personal ones during the preliminary hearing and together for 33 minutes on Friday before their ruling — the question of why Perry R. Russo, 25, did not come forward three years ago with his conspiracy tale burdened their minds.

CARBON-STEEL HAND

Bagert, 54, ran the four days of hearings with a carbon-steel hand.

The alloy of emotion showed only Friday afternoon when he read the controversial decision that challenged judicially for the first time the finding by the Warren Commission that Lee Harvey Oswald acted alone in assassinating President Kennedy.

On Saturday, he spent four hours talking with me.

Although some of his statements cannot be printed because they were given off-the-record, he was frank on a surprising number of provocative points.

PROBABLE CAUSE

"This wasn't a question of guilty or not guilty. It was a question of probable cause. I believe there is probable cause, period. I will not go any further than that," Bagert said in answer to the question of whether he

—Turn to Page 6, Col. 1

—From Page 1

thought Shaw, 54, was a conspirator.

"Given what we got in there, I had no choice," he went on. "Russo stood up. There were some minor discrepancies, but you tend to doubt, you have to doubt it, when there's a 100 percent story every time."

Russo testified Shaw, a wealthy businessman; eccentric David W. Ferrie, 49, a suspected pervert; and Oswald spoke in his presence at a September, 1963, beer party of killing Kennedy.

During deliberations, Bagert said, Judge Malcolm V. O'Hara was worried about whether the Warren report should have been allowed into evidence (it was excluded by a 2 to 1 vote) but agreed probable cause to hold Shaw had been shown.

SAME SCHOOL

Bagert, who, like Shaw started off on the wrong side of the tracks and who knew Shaw in junior high school, said, "Just think for one minute about the alternative; that is, if we cut him loose."

With the defense depending on cross examination and not putting in a real case of its own, the nation and the world would have charged a fix, Bagert opined.

He said Shaw's defense "was just grasping at straws."

If Bagert and his fellow judges are certain they did right in throwing down the gantlet before the Warren Commission, there are questions that haunt their ease.

THE PLOT THEORY

Was there really a plot?

He shook off such questions, but obviously they eat at him.

At one point, he said how much he wished Ferrie still were alive, and could be questioned about the case.

Bagert said he had gotten 10 or 12 letters, some against Shaw, some against New Orleans District Attorney Jim Garrison, who has mounted the investigation.

"Some were from cranks," he said.

"No matter we did, there'll always be a question mark," he added. Whether Shaw eventually is acquitted or not, people still will believe as they want and there will be writers and theorists to



JUDGE BAGERT
"There is probable cause"

support them in whatever their conclusions are, he asserted.

Bagert said he felt Garrison "put us right in the middle," by skirting a grand jury and letting the case go before the judges for a preliminary hearing.

CRITIC AND FRIEND

But he was pleased with himself for appointing one judge — O'Hara — regarded as critical of Garrison — and another — Matthew Braniff — regarded as a friend of the flamboyant district attorney.

Although Russo's testimony weighed most heavily with Bagert, he said he was unwilling to dismiss the testimony of admitted drug addict Vernon W. Bundy, 29, who said he saw Shaw give Oswald what looked like money.

"He's no ordinary addict," said Bagert. He has testified he turned himself in because he felt himself drifting back to drugs.

Above Bagert's bench is a framed, tattered American flag.

It came off the LST boat on which he served at the D-Day beaches of Normandy.

To get the tough little New Orleans judge to strike his colors will take more than the Warren Commission.