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# Another Catch Stalls Newton Trial

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By Tim Findley

A complicated legal "Catch 22" provided the latest delay yesterday in the start of Black Panther Huey Newton's third trial in the 1967 slaying of an Oakland police officer.

Yesterday's no-progress session was marked by a flare of tempers between defense attorney Charles Garry and prosecutor Donald Whyte. It was finally adjourned until tomorrow to await a State Supreme Court ruling on Garry's motion to disqualify Alameda County Superior Court Judge Lyle E. Cook.

About an hour after the manslaughter trial was adjourned, however, the Supreme Court, which was not expected to rule until today, denied Garry's motion.

## WITNESS

The little spat erupted over attempts by Garry to obtain the police record of Del Ross, a key witness, who refused to testify in Newton's first trial and turned up as a crucial prosecution witness in the second trial.

Before the first trial, Ross had made a tape-recorded interview with Garry, saying he was pressured by police to tell the Alameda County Grand Jury that Newton leaped into his car after allegedly shooting officer John Frey. Ross later refused to testify at the trial and said he could not remember the incident.

But at the second trial, Ross acknowledged he was afraid of both sides in the case and repeated his grand jury testimony.

"I want to know if some-

thing in his record was used (by the prosecution) to taint Mr. Ross' testimony in the second trial," Garry said yesterday. "Obviously something went haywire."

## 'COMMANDOS'

Prosecutor Whyte jumped to his feet and snapped, "The only thing haywire was when Garry's commandos took Mr. Ross out of the Pacific Bowl (where Ross worked) and to Mr. Garry's office for that interview . . . If we're going to talk about taint, we ought to look at Garry and his cohorts first!"

"Commandos!" exploded

Garry. "He (Whyte) has the whole fascist police force at his command. This is not a game we're playing. What we're seeing here is the type of mentality this fascist-minded prosecution has!"

"Right on," somebody in the courtroom audience yelled.

"Now just a minute," cooled Judge Lyle E. Cook, "we don't have any fascists in this courtroom and we don't have any, uh, other ists."

"He started it," Garry mumbled.

## RULING

At 2:30 p.m., after some phone calls to the Supreme Court, Judge Cook recessed the case until tomorrow to await the high court's ruling on Garry's appeal.

The ruling came unexpectedly at about 3:30 p.m., denying Garry's challenge of Cook on ground that he is a member of the all-white Elks Club.

But the complications still abound.

Garry insists he still has

the right to exercise a peremptory challenge against Judge Cook, even though the Supreme Court has rejected his appeal.

Because Judge Cook could not rule yesterday on whether Garry does have that right and because, if Garry did use the peremptory challenge after jury selection began it could be considered double jeopardy for Newton, the trial was delayed until Thursday.

## CASE

Now that the Supreme Court has ruled on Garry's appeal, the case could settle down to a series of pre-trial motions still pending and perhaps even Garry's peremptory challenge, which could start the three-year-old case all over again with another judge.

"As I see it," Judge Cook said yesterday, "if we proceed now we might be wasting time. Then again, if we don't proceed now, it looks like we'll be wasting time."