

Routing Slip

NO. 000052

DATE 8/15/77

Document I.D. Shaw Trial Proceedings Vol. 48

INDEX

CHARGE to JURY
VERdict

COPY TO

Robert Blakey
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Kenneth Klein
Charlie Mathews
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Donovan Gay
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Cliff Fenton

Team #1

Team #2

Team #3

Team #4

Team#5

Form #2

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002052

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

.....	.	
STATE OF LOUISIANA	.	198-059
VS.	.	14:26 (30)
CLAY L. SHAW	.	Section "C"
.....	.	

PROCEEDINGS IN OPEN COURT BEGINNING
FRIDAY, FEBRUARY 28, 1969

JUDGE HAGGERTY'S CHARGE TO THE JURY

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Dietrich & Pickett, Inc.
Stenotypists

333 ST. CHARLES AVENUE, SUITE 1221
NEW ORLEANS, LOUISIANA 70130-522-3111

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THE COURT:

Gentlemen of the Jury, I am not going to take a recess. Just remain seated in your jury box. I have promised to give copies to the press. If the gentlemen will come to my chambers, I will give them copies.

Please check, Mr. Sheriff, to see if there is anybody outside. I don't want them coming in or out when I am reading the charge.

I want to know if they have locked the front door.

THE BAILIFF:

It is now locked, Your Honor.

THE COURT:

All right. Take this down.

I have been requested, before the case started, by the Defense to give a written charge. I am complying with the law by giving a written charge. I have also, before I am reading this charge, given a copy to the District Attorney and to

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1 the Defense, which is required by
2 law.

3 Let everybody have a seat, Sheriff.

4 That is just what I am talking
5 about.

6 THE BAILIFF:

7 Nobody is going to interrupt, Judge.

8 THE COURT:

9 General Charge -- Jury Instructions.

10 It becomes my duty as judge to instruct
11 you concerning the law applicable
12 to this case, and it is your duty
13 as jurors to follow the law as I
14 shall state it to you.

15 The function of the jury is to try the
16 issues of fact that are presented
17 by the allegations in the indict-
18 ment filed in this court and the
19 defendant's plea of "not guilty."
20 This duty you should perform un-
21 influenced by pity for a defendant
22 or by passion or prejudice against
23 him. You must not suffer your-
24 selves to be biased against a
25 defendant because of the fact that

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1 he has been arrested for this
2 offense, or because an indictment
3 has been filed against him, or
4 because he has been brought before
5 the court to stand trial. None of
6 these facts is evidence of his
7 guilt, and you are not permitted
8 to infer or to speculate from any
9 or all of them that he is more
10 likely to be guilty than innocent.

11 Gentlemen, you are to be governed solely
12 by the evidence introduced in this
13 trial and the law as stated to you
14 by me. The law forbids you to be
15 governed by mere sentiment, con-
16 jecture, sympathy, passion, pre-
17 judice, public opinion or public
18 feeling. Both the State and the
19 Defendant have a right to demand,
20 and they do demand and expect, that
21 you will conscientiously and dis-
22 passionately consider and weigh
23 the evidence and apply the law of
24 the case, and that you will reach
25 a just verdict, regardless of what

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1 the consequences of such verdict
2 may be. That verdict must express
3 the individual opinion of each
4 juror.

5 Gentlemen, you are the exclusive judges
6 of the facts and of the effect and
7 value of the evidence, but you must
8 determine the facts from the evi-
9 dence produced here in court. If
10 any evidence was admitted and after-
11 wards was ordered by me to be
12 stricken out, you must disregard
13 entirely the matter thus stricken,
14 and if any counsel intimated by any
15 of his questions that certain
16 hinted facts were, or were not,
17 true, you must disregard any such
18 intimation, and must not draw any
19 inference from it. As to any
20 statement made by counsel in your
21 presence concerning the facts in
22 the case, you must not regard such
23 a statement as evidence; provided,
24 however, that if counsel for both
25 parties have stipulated to any fact,

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1 you are to regard that fact as
2 being conclusively proved; and if,
3 in the trial, either party has
4 admitted a fact to be true, such
5 admission may be considered by you
6 as evidence in the case.

7 The State and the Defendant are both
8 entitled to the individual opinion
9 of each juror. It is the duty of
10 each of you, after considering all
11 the evidence in this case, to deter-
12 mine, if possible, the question of
13 the guilt or innocence of the De-
14 fendant. When you have reached a
15 conclusion in that respect, you
16 should not change it merely be-
17 cause one or more or all of your
18 fellow jurors may have come to a
19 different conclusion, or merely to
20 bring about a unanimous verdict.
21 However, each juror should freely
22 and fairly discuss with his fellow
23 jurors the evidence and the deduc-
24 tions to be drawn therefrom. If,
25 after doing so, any juror should be

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1 satisfied that a conclusion first
2 reached by him was wrong, he un-
3 hesitatingly should abandon that
4 original opinion and render his
5 verdict according to his final
6 decision.

7 The attitude and conduct of jurors at
8 the outset of their deliberations
9 are a matter of considerable impor-
10 tance. It is rarely productive of
11 good for a juror, upon entering the
12 jury room, to make an emphatic
13 expression of his opinion on the
14 case or to announce a determination
15 to stand for a certain verdict.
16 When one does that at the outset,
17 his sense of pride may be aroused,
18 and he may hesitate to recede from
19 an announced position if shown that
20 it is fallacious. Remember that
21 you are not partisans or advocates,
22 but rather judges. The final test
23 of the quality of your service will
24 lie in the verdict which you return
25 to this court, not in the opinions

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1 any of you may hold as you retire.
2 Have in mind that you will make a
3 definite contribution to efficient
4 judicial administration if you
5 arrive at a just and proper verdict
6 in this case. To that end, the
7 court reminds you that in your
8 deliberations in the jury room
9 there can be no triumph excepting
10 the ascertainment and declaration
11 of truth.

12 If in these instructions any rule,
13 direction or idea be stated in
14 varying ways, no emphasis thereon
15 is intended by me, and none must
16 be inferred by you. For that
17 reason, you are not to single out
18 any certain sentence, or any indi-
19 vidual point or instruction, and
20 ignore the others, but you are to
21 consider all the instructions as a
22 whole, and are to regard each in
23 the light of all the others.

24 The order in which the instructions are
25 given to you has no significance

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1 as to their relative importance.

2 At times throughout the trial the court
3 has been called upon to pass on the
4 question whether or not certain
5 offered evidence might properly be
6 admitted. You are not to be con-
7 cerned with the reasons for such
8 rulings and are not to draw any
9 inferences from them. Whether
10 offered evidence is admissible is
11 purely a question of law. In admit-
12 ting evidence to which an objection
13 is made, the court does not deter-
14 mine what weight should be given
15 such evidence; nor does it pass on
16 the credibility of the witness. As
17 to any offer of evidence that has
18 been rejected by the court, you, of
19 course, must not consider the same;
20 as to any question to which an
21 objection was sustained, you must
22 not conjecture as to what the
23 answer might have been or as to
24 any reason for the objection.

25 The court has endeavored to give you

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1 instructions embodying all rules
2 of law that may become necessary
3 in guiding you to a just and lawful
4 verdict. The applicability of some
5 of these instructions will depend
6 upon the conclusions you reach as
7 to what the facts are. As to any
8 such instruction, the fact that it
9 has been given must not be taken
10 as indicating an opinion of the
11 court that the instruction will be
12 necessary or as to what the facts
13 are. If an instruction applies
14 only to a state of facts which you
15 find does not exist, you will dis-
16 regard the instructions.

17 In arriving at a verdict in this case,
18 you should not discuss or consider
19 the subject of penalty or punish-
20 ment, as that is a matter which
21 lies with the court.

22 I am striking the rest of that paragraph
23 out.

24 Gentlemen, the Defendant at the bar is
25 presumed to be innocent until he

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is proven guilty beyond a reasonable doubt.

The consequence of this rule of law is that he is not required to prove his innocence, but may rest upon the presumption in his favor until it is overthrown by positive affirmative proof. The onus, therefore, is on the State to prove to your satisfaction, and beyond a reasonable doubt, the guilt of the accused as to the crime charged in the indictment.

If you entertain any reasonable doubt as to any fact or element necessary to constitute the Defendant's guilt, it is your sworn duty to give him the benefit of that doubt and return a verdict of acquittal. Even where the evidence demonstrates a probability of guilt, yet if it does not establish it beyond a reasonable doubt, you must acquit the accused. This doubt must be a reasonable one,

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1 that is, founded upon a real,
2 tangible, substantial basis, and
3 not upon mere caprice, fancy or
4 conjecture. It must be such a
5 doubt as would give rise to a grave
6 uncertainty, raised in your minds
7 by reason of the unsatisfactory
8 character of the evidence; one that
9 would make you feel that you had
10 not an abiding conviction to a
11 moral certainty of the Defendant's
12 guilt. If, after giving a fair and
13 impartial consideration to all of
14 the facts in the case, you find the
15 evidence unsatisfactory upon any
16 single point indispensably neces-
17 sary to constitute the Defendant's
18 guilt, this would give rise to such
19 a reasonable doubt as would justify
20 you in rendering a verdict of not
21 guilty.

22 The prosecution must establish guilt by
23 legal and sufficient evidence
24 beyond a reasonable doubt, but the
25 rule does not go further and re-

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1 quire a preponderance of testimony.
2 It is incumbent upon the State to
3 prove the offense charged, or
4 legally included in the indictment,
5 to your satisfaction, and beyond a
6 reasonable doubt. A reasonable
7 doubt is not a mere possible doubt.
8 It should be an actual or substan-
9 tial doubt. It is such a doubt as
10 a reasonable man would seriously
11 entertain. It is a serious doubt,
12 for which you could give good
13 reason.

14 The indictment in this case is a mere
15 accusation or charge against the
16 Defendant, and it is not evidence
17 of the Defendant's guilt, and the
18 fact that such an indictment has
19 been found is of no weight, and
20 does not carry any presumption of
21 guilt, and you must not be influ-
22 enced by it in considering the
23 case. It has no more probative
24 value than a bill of information
25 filed by the District Attorney or

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1 an affidavit made by an individual.
2 Gentlemen of the Jury, you are prohibi-
3 ted by law and your oath from going
4 beyond the evidence to seek for
5 doubts upon which to acquit or
6 convict the Defendant, but must
7 confine yourselves strictly to a
8 dispassionate consideration of the
9 testimony given upon the trial.
10 You must not resort to extraneous
11 facts or circumstances in reaching
12 your verdict. That is, you must
13 not go beyond the evidence to find
14 facts or circumstances creating
15 doubts, but must restrict your-
16 selves to the evidence that you
17 have heard on the trial of this
18 case.

19 You are the exclusive judges of the
20 facts. You are to find from the
21 evidence which facts have been
22 proved and which facts have not
23 been proved. For this purpose,
24 you determine the credibility of
25 the witnesses, accordingly as you

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1 are impressed with their veracity.

2 You may take into account their demeanor,
3 their manner on the stand, the pro-
4 bability or improbability of their
5 statements, the interest or want of
6 interest they may have in the case,
7 and every circumstance surrounding
8 the giving of their testimony which
9 may aid you in weighing their state-
10 ments.

11 If you believe that any witness in the
12 case, either for the State or the
13 Defense, has willfully and deli-
14 berately testified falsely to any
15 material fact, then I charge you
16 that you are justified in disre-
17 garding the entire testimony of
18 such witness as proving nothing
19 and as unworthy of belief. You
20 have the right to accept as true,
21 or reject as false, the testimony
22 of any witness accordingly as you
23 are impressed with his or her
24 veracity.

25 You are also judges of the law, but in

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1 a different sense. You receive the
2 evidence from the witnesses; you
3 receive the law from the Court,
4 and it is your duty to accept the
5 law and to apply it as given to
6 you.

7 The Defendant is permitted by law to
8 testify in his own behalf. If he
9 exercises his privilege, he is
10 governed by the same rules, in
11 testing his credibility and the
12 correctness of his statements, as
13 every other witness. You have the
14 right to believe or disbelieve him,
15 just as he impresses you as to the
16 truth or falsity of his testimony.
17 When he does not avail himself of
18 this privilege, you should not con-
19 sider this fact, or permit it to
20 raise a presumption of guilt against
21 him, and you should consider in
22 determining his guilt or innocence,
23 only those facts testified to and
24 brought out on the trial of this
25 case.

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The Defendant is entitled to the individual opinion of each juror, but any juror may change his opinion as the result of reasonable persuasion by his fellow jurors.

The law requires and obliges the District Attorney, representing the State of Louisiana, to make an opening statement explaining the nature of the charge and the evidence by which he expects to prove the same. The law leaves to the counsel for the Defendant the option of explaining their defense and the evidence by which he expects to establish the same or of waiving his right to make an opening statement.

The function and purpose of an opening statement by the District Attorney is simply to explain the nature of the charge and the evidence by which he expects to establish the same; the opening statement by counsel for the Defendant is to

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1 explain the theory of the Defense
2 and the evidence by which he ex-
3 pects to prove same. Whether an
4 opening statement is made by the
5 District Attorney or Counsel for
6 the Defendant, you are not to con-
7 sider the opening statement as
8 proving anything at all in the
9 case. You are to consider only
10 the evidence in the case and the
11 testimony of sworn witnesses who
12 have appeared before you on the
13 witness stand.

14 Should either the District Attorney or
15 the Counsel for the Defendant make
16 statements in an opening statement
17 and fail to substantiate them by
18 the testimony of sworn witnesses
19 on the statements made by them, but
20 on the contrary, you should disre-
21 gard the same as if never having
22 been uttered.

23 In law there are two methods by which
24 facts can be established; by
25 direct evidence and by circumstan-

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1 tial evidence.

2 Direct evidence is the evidence of
3 material facts relating directly,
4 and without inference, to the ques-
5 tions at issue, or the facts to be
6 proved.

7 Circumstantial evidence is the evidence
8 of material facts which may be
9 inferred from the existence of
10 other material facts relating to
11 the questions at issue, or the
12 facts to be proved.

13 Circumstantial evidence is legal and
14 competent and must be considered
15 by the jury together with the
16 direct evidence, if any, which may
17 have been adduced at the trial.
18 The jury should draw inferences
19 only from the facts which have been
20 proved beyond a reasonable doubt.

21 When the evidence in a case consists of
22 both direct and circumstantial
23 evidence, you must not convict
24 unless you are satisfied beyond any
25 reasonable doubt of the Defendant's

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1 guilt.

2 When the evidence in a case consists
3 exclusively of circumstantial evi-
4 dence, the rule is that, assuming
5 every fact to be proved that the
6 evidence tends to prove, in order
7 to convict it must exclude every
8 reasonable hypothesis or theory of
9 innocence.

10 Every expert witness must state the
11 facts upon which his opinion is
12 based. The test of the competency
13 of an expert is his knowledge of
14 the subject about which he is
15 called upon to express an opinion,
16 and before any witness can give
17 evidence as an expert, his compe-
18 tency so to testify must have been
19 established to the satisfaction of
20 the court. Experts are persons who
21 are learned in a particular science,
22 and they are permitted to express
23 their opinion upon scientific
24 matters at issue, but such experts
25 are not called into court for the

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1 purpose of deciding the case. You,
2 the jurors, are the ones who, in
3 law, must bear the responsibility
4 of deciding the case. The experts
5 are merely witnesses, and you have
6 the right to either accept or re-
7 ject their testimony and opinions
8 in the same manner and for the same
9 reason for which you may accept or
10 reject the testimony of other wit-
11 nesses in the case.

12 There are certain legal presumptions in
13 law, and these are covered in R.S.
14 15:432.

15 "R.S. 15:432. Effect of legal presump-
16 tions; rebutting evidence; illus-
17 trations.

18 "A legal presumption relieves him in
19 whose favor it exists from the
20 necessity of any proof; but may
21 nonetheless be destroyed by rebut-
22 ting evidence; such is the pre-
23 sumption attaching to the regu-
24 larity of judicial proceedings;
25 that the grand jury was legally

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1 constituted; that public officers
2 have done their duty; that a rela-
3 tion or subject matter once estab-
4 lished, continues, but not that it
5 pre-existed; that the defendant
6 intended the natural and probable
7 consequences of his act; that the
8 defendant is innocent; that the
9 defendant is sane and responsible
10 for his actions; that the person
11 in the unexplained possession of
12 property recently stolen is the
13 thief; that evidence under the con-
14 trol of a party and not produced by
15 him was not produced because it
16 would not have aided him; that the
17 witnesses have told the truth."

18 "R.S. 14:26 -- Criminal Conspiracy.

19 "Criminal conspiracy is the agreement
20 or combination of two or more
21 persons for the specific purpose
22 of committing any crime; provided
23 that an agreement or combination
24 to commit a crime shall not amount
25 to a criminal conspiracy unless, in

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1 addition to such agreement or com-
2 bination, one or more of such
3 parties does an act in furtherance
4 of the object of the agreement or
5 combination.

6 "Where the intended basic crime has been
7 consummated the conspirators may be
8 tried for either the conspiracy or
9 the completed offense, and a con-
10 viction for one shall not bar a
11 prosecution for the other.

12 "Whoever is a party to a criminal con-
13 spiracy to commit a crime punish-
14 able by death or life imprisonment,
15 shall be imprisoned at hard labor
16 for not less than one nor more
17 than twenty years.

18 "Whoever is a party to a criminal con-
19 spiracy to commit the crimes of
20 theft or receiving stolen things
21 shall be fined not more than two
22 hundred dollars, or imprisoned for
23 not more than one year, or both.

24 "Whoever is a party to a criminal con-
25 spiracy to commit any other crime

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1 shall be fined or imprisoned, or
2 both, in the same manner as for the
3 offense contemplated by the con-
4 spirators; but such fine or im-
5 prisonment shall not exceed one-
6 half of the largest fine, or one-
7 half the longest term of imprison-
8 ment prescribed by such offense,
9 or both."

10 "THE INDICTMENT.

11 "The Grand Jurors of the State of
12 Louisiana, duly impaneled and sworn
13 in and for the body of the Parish
14 of Orleans, in the name and by the
15 authority of the said State, upon
16 their oath, PRESENT That one CLAY
17 L. SHAW, late of the Parish of
18 Orleans, between the 1st day of
19 September and the 10th day of
20 October, in the year of our Lord,
21 One Thousand, Nine Hundred Sixty-
22 Three, with force and arms in the
23 Parish of Orleans aforesaid, and
24 within the jurisdiction of the
25 Criminal District Court for the

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1 Parish of Orleans did willfully
2 and unlawfully conspire with DAVID
3 W. FERRIE, herein named but not
4 charged and LEE HARVEY OSWALD,
5 herein named but not charged and
6 others, not herein named, to murder
7 JOHN F. KENNEDY, contrary to the
8 form of Statute of the State of
9 Louisiana in such cases made and
10 provided and against the peace and
11 dignity of the same."

12 Signed "ALVIN V. OSER, Assistant District
13 Attorney of the Parish of Orleans.

14 "No. 198-059 (M-703)

15 "Section 'C'

16 "STATE OF LOUISIANA versus CLAY L. SHAW

17 "INDICTMENT FOR VIO.R.S. 14:26(30)

18 "TRUE BILL/s/ ALBERT V. LaBICHE, Foreman
19 of Grand Jury

20 "New Orleans, March 22, 1967

21 "Returned in Open Court and recorded
22 and filed March 22, 1967

23 "/s/ GEORGE W. PLATT, Minute Clerk

24 "Arraigned April 5, 1967 and pleaded
25 not guilty. Granted until May 5,

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1 1967, to file pleadings.

2 "/s/ HELEN SULLIVAN, Minute Clerk

3 "3/22/67 - Capias issued: Bond set at

4 \$10,000.00 /s/ Geo. W. Platt, M.C."

5 The law defines a conspiracy to be an
6 agreement or understanding between
7 two or more persons that they will
8 commit an unlawful act, that is,
9 that they will combine together to
10 accomplish by the united action a
11 criminal or unlawful purpose, or a
12 purpose which is not in itself
13 criminal or unlawful, by criminal
14 or unlawful means, to accomplish
15 which agreement and in furtherance
16 thereof an overt act is committed
17 by one or more of the parties to
18 the agreement. In other words, a
19 conspiracy is a criminal partner-
20 ship, the design and object of
21 which is to do an unlawful act or
22 series of unlawful acts, or to do
23 a lawful act or a series of lawful
24 acts by unlawful means, accompanied
25 by an overt act to effect the object

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1 of such agreement.

2 Where a criminal conspiracy has been
3 formed, each of the persons form-
4 ing the same, while he is a member
5 thereof, is liable for every act,
6 and is bound by the acts and declar-
7 ations of each and all of the con-
8 spirators, done or made in pur-
9 suance and furtherance of the said
10 conspiracy, and continues to be so
11 liable and bound for so long as he
12 remains a member thereof.

13 In contemplation of law, during the time
14 when persons are co-conspirators,
15 the act of one in pursuance of the
16 common design is the act of all,
17 and each is legally responsible
18 for any act of a confederate that
19 follow incidentally in the execu-
20 tion of the common design as one of
21 its probable and natural conse-
22 quences, even though it was not
23 intended as a part of the original
24 plan, and even though he was not
25 present at the time of the commis-

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1 sion of such act.

2 The formation and existence of a crim-
3 inal conspiracy rarely can be
4 shown by direct evidence, and cir-
5 cumstantial evidence alone may
6 support a finding of the formation
7 and existence of a conspiracy.

8 In determining whether an alleged con-
9 spiracy was formed and existed, it
10 is proper to take into consider-
11 ation the relation of the accused
12 parties and their personal and
13 business associations with each
14 other, if any. You may consider
15 all facts tending to show what, if
16 anything, occurred between the
17 accused parties at or before the
18 time of the alleged combination or
19 agreement, or thereafter, in rela-
20 tion thereto. You may also con-
21 sider evidence of the acts and
22 declarations of said parties after
23 the formation of the alleged com-
24 bination or agreement, in respect
25 to, and in pursuance and further-

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1 ance of, the alleged conspiracy.

2 It is not necessary in proving a con-
3 spiracy to show a meeting of the
4 alleged conspirators or the making
5 of an express or formal agreement.
6 The formation and existence of a
7 conspiracy may be inferred from all
8 circumstances tending to show the
9 common intent and may be proved in
10 the same way as any other fact may
11 be proved, either by direct testi-
12 mony of the fact or by circumstan-
13 tial evidence, or by both direct
14 and circumstantial evidence.

15 Although an essential element of a
16 criminal conspiracy is an agreement
17 between two or more persons, and
18 although the proof must show the
19 existence of such an agreement to
20 support a conviction, the law does
21 not require that the agreement be
22 a formal one, or that it be in
23 writing, or that the persons hold
24 a meeting and expressly state the
25 terms of a common undertaking, or

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1 that the agreement be stated in
2 words between them as men usually
3 express a lawful business agreement.
4 The agreement of criminal conspir-
5 acy may come into being through a
6 tacit, mutual understanding, and
7 the willful, intentional and know-
8 ing adoption by two or more persons
9 of a common design, if the other
10 necessary elements of such a con-
11 spiracy are present.

12 Any member of a conspiracy may withdraw
13 from, and thereafter cease to be a
14 party to, the unlawful confederacy
15 and may thus terminate his liabil-
16 ity as to all future acts of the
17 conspiracy, but to accomplish that
18 effect he must not only cease par-
19 ticipation in the conspiracy, but
20 must give notice of his withdrawal
21 to all other members of the con-
22 spiracy of whom he has knowledge.
23 Such a withdrawal does not erase
24 his previous participation in the
25 conspiracy nor relieve him of

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responsibility for the acts of the
conspiracy committed while he was
a member.

A person who, by conspiring with others,
advises and encourages the commis-
sion of an unlawful act cannot
escape responsibility by quietly
withdrawing from the operations of
the conspiracy. The influence and
effect of his advice and encourage-
ment continue until he actually
renounces the common purpose and
makes it plain to all other con-
spirators of whom he has knowledge
that he has done so and that he
does not intend to participate
further in any act of the con-
spiracy. If he does so withdraw,
he is not liable for any subsequent
acts of the conspirators, but the
withdrawal does not erase his pre-
vious participation in the con-
spiracy nor relieve him of responsi-
bility for the acts of the con-
spiracy committed while he was a

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1 member.

2 Gentlemen, the law of Louisiana is
3 covered in Article 338 which reads
4 as follows:

5 "338. Cases requiring jury of twelve -
6 Number required to concur.

7 "Whenever the indictment does not charge
8 a capital offense, but does charge
9 a felony necessarily punishable
10 with imprisonment at hard labor,
11 the trial shall be by a jury of
12 twelve, nine of whom must concur
13 for the finding of any verdict."

14 Therefore, you are hereby advised and
15 instructed that you do not have to
16 be unanimous, that only nine out of
17 twelve is necessary to reach a legal
18 verdict in this case. When you
19 have at any time reached the nine
20 votes on one decision, you do not
21 have to remain and deliberate until
22 you make it unanimous.

23 The Deputy Sheriff at my request has
24 placed paper and pencils in your
25 room for your use in the event you

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1 cast secret ballots.

2 You are permitted by law to review any
3 exhibits offered into evidence
4 either by the State or by the
5 Defense prior to your leaving the
6 court to deliberate in this matter.
7 However, once you have left, you
8 cannot come down and read and
9 inspect such exhibits.

10 The law does not of recent date permit
11 a re-reading of any testimony by
12 any witness, so you must rely on
13 your memory as to what was said
14 during the course of this trial.

15 I am required by the law of Louisiana
16 to give you a written list of the
17 verdicts responsive, and this is
18 covered, which I will now read to
19 you, by Articles 809 and 810 of
20 the Code of Criminal Procedure of
21 the State of Louisiana:

22 "Art. 809. Judge to give jury written
23 list of responsive verdicts.

24 "After charging the jury, the judge
25 shall give the jury a written list

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1 of the verdicts responsive to each
2 offense charged, with each separ-
3 ately stated. The list shall be
4 taken into the jury room for use by
5 the jury during its deliberation."

6 In connection with that I have a sheet
7 of responsive verdicts:

8 No. 1. We, the jury, find the defendant
9 guilty.

10 No. 2. We, the jury, find the defendant
11 not guilty.

12 On the reverse I have the date -- it is
13 March 1 as of this second -- New
14 Orleans, Louisiana. "We, the jury,
15 find the defendant" -- whatever
16 your verdict is -- and let your
17 foreman sign it. You have a fore-
18 man.

19 "Art. 810. Form of verdict; delivery of
20 verdict.

21 "When a verdict has been agreed upon,
22 the foreman shall write the verdict
23 on the back of the list of respon-
24 sive verdicts given to the jury and
25 shall sign it. There shall be no

1 formal requirement as to the lan-
2 guage of the verdict except that it
3 shall clearly convey the intention
4 of the jury.

5 "The foreman of the jury shall deliver
6 the verdict to the judge in open
7 court."

8 If a situation arises where there is a
9 difference of opinion among the
10 jurors and they wish that I repeat
11 or re-read any part or all of my
12 instructions, let them notify the
13 Deputy Sheriff and I will gladly
14 grant your request. If the jury
15 would like a further explanation
16 of a particular point of law, I
17 will be happy to orally give such
18 explanation to the jury. I repeat,
19 nine out of twelve of you must vote
20 in order to bring a legal verdict
21 in this matter. The possible
22 responsive verdicts in this case
23 are guilty or not guilty. The form
24 on which you shall write your ver-
25 dict is this: You will write "New

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1 Orleans, Louisiana" and then the
2 date, whether it be February 28 or
3 possibly March 1 -- and it is now
4 March 1 -- as the case may be, 1969.
5 And the form of your verdict should
6 be written on the reverse of the
7 paper that I am handing you which
8 spells out for you the responsive
9 verdicts. Your verdict should be
10 in the form, "We, the Jury, find
11 the Defendant" whatever your ver-
12 dict may be. And the foreman signs
13 his name and writes under his name,
14 "Foreman."

15 Now, gentlemen, before you retire, just
16 a moment and let me ask the State
17 and the Defense a question or two.
18 Even though I have been requested
19 to give a written charge, and have
20 given said written charge to the
21 jury, is there any request on the
22 part of the State or Defense
23 counsel for any additional instruc-
24 tions, additional charges, or is
25 there any particular objection to

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1 the charge as given to the jury?

2 (NO RESPONSE)

3 Now in connection with the special
4 charges given to me, let me rule
5 on them and then I will see if you
6 have any requests of me.

7 I have granted for the Defense Special
8 Charge No. 8, No. 11 and No. 12.
9 The others I refused because they
10 have been covered in my general
11 charge under Article 807 of the
12 Code of Criminal Procedure. So
13 the Defense may wish to take a bill.

14 MR. DYMOND:

15 In connection with that ruling, the
16 Defense would like to object and
17 reserve a bill to the refusal of
18 granting Special Charges 1, 2, 3,
19 4, 5, 6, 7, 9, 10, 13, 14, 15, 16,
20 and 17, reserving a separate bill
21 on each charge, making the entire
22 record, the special charge sub-
23 mitted, the court's general charge,
24 and all testimony part of the bill.

25 THE COURT:

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Now with respect to the special charges presented to me by the State, Special Charges 1, 2, and 3, I have refused to give them because I feel I have covered them in my general charge with respect to Article 807 of the Code of Criminal Procedure.

I will now read the special charges that I will grant.

"Special Charge No. 8.

"The defense of alibi is not applicable in a case involving the charge of conspiracy to the same extent that it would be applicable in other types of cases.

"The reason for this is that if the defendant has been a party to a conspiratorial agreement or combination, his presence at the scene of the commission of an overt act need not be proven in order to warrant a conviction, provided he has not withdrawn from the conspiracy and the conspiracy has not yet terminated.

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1 "Alibi could be an element of the
2 defense in the conspiracy case in
3 this sense. However, if the State
4 contends that a defendant was pre-
5 sent and a party to a conspiratorial
6 meeting, alibi would be relevant to
7 show the untruth of this contention.
8 Likewise, if the State contends
9 that a defendant committed an overt
10 act at a certain time and place,
11 alibi likewise would be relevant to
12 prove the untruth of such conten-
13 tion. Alibi is evidence of the
14 fact that defendant was not at a
15 particular location at the time
16 that the State contends that he
17 was there, and the jury need not
18 be fully satisfied with the truth
19 of such an alibi, but the evidence
20 in support of it should be con-
21 sidered in connection with all the
22 other evidence in the case in de-
23 termining whether there is reason-
24 able doubt as to the guilt of the
25 accused."

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1 "Special Charge No. 11.

2 "The general reputation of an accused
3 for honesty, truthfulness, peace
4 and quiet."

5 I have changed my mind. I am going to
6 refuse this charge. I refuse this
7 because I rule that it is not per-
8 tinent under Article 807. You may
9 take a bill.

10 MR. DYMOND:

11 We will not reserve a bill on that,
12 Judge.

13 THE COURT:

14 I am going to grant No. 12.

15 "The verdict of a jury represents the
16 collective opinions of the members
17 of that jury. It is the duty of
18 each juror to listen carefully and
19 intently to the verbal evidence,
20 closely examine the physical evi-
21 dence, accept the law as given by
22 the Court in its charge to the jury,
23 and, applying that law to the evi-
24 dence, form his opinion as to the
25 guilt or innocence and then cast

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1 his vote accordingly.

2 "Once a juror has decided upon a proper
3 position as to guilt or innocence,
4 the law does not say he cannot
5 change his position. In fact, it
6 is the duty of a juror to change
7 his position as to guilt or inno-
8 cence should he be actually con-
9 vinced by a reconsideration of the
10 evidence, discussion and analysis
11 of the evidence with his fellow
12 jurors, or otherwise that his pre-
13 vious position was an incorrect one
14 under the law and the evidence, and
15 that the position to which he has
16 changed it is a correct one under
17 the law and the evidence.

18 "The only way in which a juror can pro-
19 perly change his position as to
20 guilt or innocence is if he is
21 convinced he is changing to a
22 proper position. It would be a
23 violation of the law and a viola-
24 tion in your oaths as jurors to
25 change your position and your vote

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1 as to guilt or innocence merely for
2 the reason that your original posi-
3 tion was adhered to by a minority
4 of the voters. It would likewise
5 be improper for a juror to change
6 his position for the purpose of
7 speeding up the termination of his
8 service as a juror on the case, or
9 for any other reason which would
10 cause his vote not to reflect his
11 honest opinion as to guilt or inno-
12 cence under the law and the evi-
13 dence."

14 Gentlemen of the Jury, I will now hand
15 you the responsive verdicts, and
16 you will cast your vote.

17 MR. DYMOND:

18 If the court please, we would like an
19 opportunity to object to a parti-
20 cular part of this charge before
21 you do that.

22 THE COURT:

23 All right. You may proceed.

24 MR. DYMOND:

25 First of all, on the bottom of page 5

1 of the charge --

2 THE COURT:

3 I have it.

4 MR. DYMOND:

5 -- we object to the statement that the
6 prosecution must establish guilt by
7 legal and sufficient evidence be-
8 yond a reasonable doubt, but the
9 rule does not go further and re-
10 quire a preponderance of testimony.

11 This objection is based upon the fact --

12 THE COURT:

13 I tell you what. That sentence is not
14 necessary. I will advise the jury,
15 but the rule does not -- I will ask
16 them to disregard that sentence:

17 "...but the rule does not go further
18 and require a preponderance of
19 testimony." Gentlemen, disregard
20 that (part of the) sentence. "The
21 prosecution (the State) must estab-
22 lish guilt by legal and sufficient
23 evidence beyond a reasonable doubt"
24 -- period -- and I will strike the
25 rest of that sentence.

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1 MR. DYMOND:

2 Your Honor, the only other objection is
3 on the nine-out-of-twelve verdict
4 to which we object. We have a
5 special charge submitted on that.

6 THE COURT:

7 All right. (Handing document to Sheriff)
8 Here you are, Sheriff.

9 MR. DYMOND:

10 The objections on due process -- I would
11 like to reserve a bill.

12 THE COURT:

13 Do any of the jurors wish to view any
14 of the exhibits before retiring?

15 (NO RESPONSE)

16 THE COURT:

17 All right. The twelve gentlemen seated
18 will go up. When you get upstairs
19 safely, then I will be able to
20 excuse the two alternates.

21 (Whereupon, the jury retired.)

22 THE COURT:

23 The two alternates here with us are now
24 excused from the case. Thank you
25 very much for your service.

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1 Court will be in recess awaiting the
2 verdict.

3 (Whereupon, a recess was taken at 12:10
4 o'clock a.m.)

5 AFTER THE RECESS:

6 THE COURT:

7 The jury has returned.

8 Gentlemen, have you arrived at a verdict?

9 Don't state what it is, just say
10 yes or no.

11 (The Foreman nodded affirmatively.)

12 THE COURT:

13 Sheriff, will you give it to me, please.

14 (Verdict handed to the court.)

15 THE COURT:

16 Stand up, Mr. Shaw.

17 Mr. Clerk, you may read it, sir.

18 THE CLERK:

19 (Reading)

20 "March 1, 1969, New Orleans, Louisiana.

21 "We the Jury find the defendant not
22 guilty."

23 THE BAILIFF:

24 Order in court, please.

25 THE COURT:

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Read the rest of it.

THE CLERK:

Signed "Sidney J. Hebert, Jr."

THE COURT:

Does the State wish to poll the jury?

(NO RESPONSE)

THE COURT:

The State has not requested a poll of the jury, so let the verdict be recorded as a legal verdict.

Will you just have a seat, Mr. Shaw. I will order you discharged without date. I would like you to just have a seat until I get rid of the jury.

Sheriff, I have the discharge certificates for the twelve jurymen, and I have put a memorandum of service January 21 to March 1, and this will be a memento of your service, and I am further writing an order to the Jury Commissioners ordering your names removed from the wheel for the rest of your lives.

Now on behalf of all concerned I want

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1 to thank you citizens for having
2 discharged such an onerous burden
3 without cost to the City.

4 Let everybody have a seat, Sheriff, and
5 let the jurors be escorted out of
6 the court.

7 Quiet, please.

8 Gentlemen of the Jury, you are herewith
9 discharged from the case, and I
10 thank you for your citizenship.

11 Let the jurors leave first, and after
12 they leave then the press can leave
13 after that.

14 This court stands adjourned until next
15 Wednesday morning, March 5.

16
17 Thereupon, at or about 1:15 o'clock
18 a.m., the proceedings herein were
19 concluded....
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