

## Recesses Called in Writ Hearing; to Be Resumed at Lansing

By BILL BROWN

Allegations that the two convicted Clutter killers did not receive a fair trial here weren't proven during yesterday's session in District Court.

That's the consensus of observers of the day-long hearing on an application for a writ of habeas corpus for Perry Edward Smith and Richard Eugene Hickock, both sentenced to hang for the slayings of four members of the Herbert Clutter family.

The unusual legal proceedings are to continue tomorrow at the Kansas State Penitentiary in Lansing where both Smith and Hickock are expected to testify about their trial here.

Wichita Attorney Russell Shultz, appointed by the Supreme Court to represent the pair in this latest writ to avoid execution, attempted through seven hours of hearing here yesterday to find proof of his charges that a change of venue should have been granted, the judge should have disqualified himself due to acquaintance with the Clutters, that Smith and Hickock weren't adequately represented by counsel and that there was improper examination of jurors.

What his 20 witnesses, all subpoenaed to appear, told the court was, in essence:

- 1—That no change of venue was asked for by the defendants and it was believed necessary for a fair trial.
- 2—That none of the members of the jury nor the presiding judge had been close friends of the Clutters.
- 3—That the court-appointed attorneys represented the pair to the best of their abilities and did not do so "reluctantly."
- 4—That there was no threat made to these attorneys or jurors, and there wasn't any lynch-mob attitude here when the killers were returned or during the trial.

The 12 jurors who served during the trial, plus the 2 alternates, took the stand yesterday morning to answer questions about their acquaintance with the Clutters before it went to trial and when they had made up their mind on the verdict.

All testified they listened to the trial proceedings with open minds, and did not reach a verdict before the evidence was presented.

Shultz took the stand after the money was Lillian Valenzuela, district court reporter who testified she did not record the voir dire questions asked by the state and was not requested to do so.

Telegram Editor Bill Brown was next, and had been subpoenaed to bring his newspaper testimony to the counts of the trial. He produced two rolls of micro-film which said contained all of the stories about the return of Smith and Hickock and the trial. Both Shultz and attorneys for the state agreed that copies would have to be made if any stories were to be submitted into evidence, but Shultz later ruled this out due to cost.

Court-appointed attorney Harrison Smith, who defended Hickock, took the stand next and testified for more than an hour. He denied expressing any "reluctance" to serve as counsel for

the defendant as claimed in some news stories. He estimated he had conferences with Hickock about 24 times prior to the trial, and that, at his own expense, he had talked by long-distance telephone with Hickock's father.

As to the decision to stand trial with Perry Smith instead of separately as first planned, Attorney Smith said this was done after it appeared Smith and Hickock might testify against each other if given separate trials.

He said the decision for a joint trial was agreed to by Hickock and his father.

When asked why he didn't seek a change of venue, Smith said that an organized group in this city, the Ministerial Alliance, was opposed to capital punishment and was speaking out publicly against hanging the two defendants.

"I wasn't aware of any such group anywhere else that made public statements against capital punishment at that time," he added.

He also spoke of an earlier damage case in the court here in which Herbert Clutter had sought damages. He said the jury went against Clutter in its decision.

## Hearing Could Return Here

There's a possibility Garden City hasn't seen the last of the hearing on the Smith-Hickock application for a writ of habeas corpus.

Although Shultz told the court at the end of yesterday's session that he didn't intend to return here for more testimony, there's a chance the state will do so.

Attorneys for the state indicated that they might return here for rebuttal testimony to the evidence Shultz admits tomorrow at Lansing. This is expected to be statements about trial by jury, the return of the Clutter family, and about the news men who have interviewed the pair.

At the conclusion of the hearing—wherever that is—Walter Thiele, former State Supreme Court justice who is conducting the proceedings, will report his findings to the Supreme Court. This court will make the decision on whether the writ of habeas corpus should be granted and a new trial ordered.

Shultz told the court earlier in the day yesterday that he "wasn't exactly certain" that the two defendants had been told of their right to this hearing. "He stressed that his purpose in calling yesterday's witnesses was to determine if any stories were to be submitted into evidence, but Shultz later ruled this out due to cost."

It was apparent through the session that he has based his allegations on certain facts that the two defendants have told him, and also on some stories in The Topeka Daily Capital about the trial here.

and felt this had an advantage for his client in a trial here.

Smith said he did not receive any threats for serving as Hickock's attorney, but produced an anonymous post card which advised him he would be more popular if he would "lose this case."

Both Smith and A. M. Fleming, court-appointed attorney for Perry Smith and who took the stand next, testified that they did not think a preliminary hearing would be a help to the defendants.

Hickock and Smith waived preliminary hearing before being represented by counsel, and they brought this out several times during the afternoon.

Shultz also told Attorney Smith that Hickock had said, during a visit last week Shultz had with the condemned man at Lansing, that he had not agreed to a joint trial.

"Mr. Hickock is not telling the truth," Smith testified.

Fleming also testified that he was not "reluctant" to serve as attorney for one of the defendants.

When asked about why he didn't seek a change of venue, Fleming replied:

"I believed there were more people in this area who might be inclined to be lenient than in any other area."

Duane West, county attorney at the time of the trial and chief prosecutor, testified that he would have a preliminary hearing and they chose to waive this hearing.

He also stated that he considered the jury to be "fair and impartial." He said that 44 prospective jurors were examined, and 12 were chosen to get the 12 members, and six more were questioned to get the two alternates.

Assistant Attorney General J. Richard Poth and his special assistant, Charles Vance, Liberal, who represented the state here yesterday, called only two witnesses to the stand—neither of whom had been subpoenaed.

Telegram Sports Editor Bob Greer was called to identify a picture taken by former Telegram Photographer Darrell Moore in front of the courthouse shortly before Smith and Hickock were returned here. He named several newsmen, including himself, in the picture, and described the mood of the others as students.

Greer estimated the crowd at the trial was 200 people, and he said he saw no evidence of "any hostility." "It was more of a jovial crowd," he added.

Another newsmen in the picture, Dick Parr of the Kansas City Star, took the stand to say that the crowd actually decreased at the time the picture was taken and Smith and Hickock arrived.

Former Supreme Court Justice O. J. Watson Co. Wichita, for a new body on a refuse truck. It is for a Hell Mark 11 body. Other bids were from Tradewind, Liberal, of \$4,225 with trade-in, and from Berry Tractor and Implement \$4,700 with trade-in.

In other action this morning the commission:

- 1—Raised the salary of the district court from \$9,600 to \$10,000, retro-active to Jan. 1, 1962.
- 2—Accepted a petition for construction of sanitary sewer extension in the Briar Hill Addition, and passed a resolution creating the sewer district and ordering construction. Also passed ordinance authorizing temporary notes for the sewer district.
- 3—Passed ordinance creating sanitary sewer district in lots C and D, Block 16, of Emerson and Elgie subdivisions.
- 4—Approved cereal malt beverage licenses for Ella Herrell at the Blue Room and James Stuckey.

Shultz then asked for Tate's opinion, if he thought such a change should have been asked for. Tate replied he had no opinion on the matter—that the request for change of venue was clearly a matter of law.

Tate has served on the district court bench here since 1953. He described the trial as "the most orderly I have ever been involved in—either as judge or attorney."

Tate said the courtroom was packed but that no standing was permitted. "I never once had to rap for order," he emphasized.

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Ouch:

Seven-year-old Dennis Kinsey, son of Mr. and Mrs. Robert Kinsey, doesn't appear to be very happy over the polo shot he's getting from Dr. J. W. Neumann, Mrs. John Archibald, polo clinic assistant at Alta Brown School, helps restrain the youngster. More than 2,000 Finney County residents received the polo shots today. This was the third county-wide polo clinic sponsored by the county March of Dimes chapter.

## Request Made to Install Community Antenna System

Permission to install a community television antenna system in Garden City was requested this morning by the City Commission.

Dorote, Inc., of Pryor, Okla., submitted a proposal to the city for the cable system which would bring all networks into the city to subscribers without any individual antennas.

City Attorney Lloyd Haag said that this comes under the city's franchise ordinance. The commission instructed Haag and City Manager Deane Wiley to investigate the proposal and draw up a franchise agreement for study by both parties.

Two representatives of the Dorote firm said the system would involve overhead or underground cables to be installed in the utility right-of-way over the city and on utility poles. They also said that all of the television from local or area stations now being received would be piped in on the community system.

They believed it would offer local viewers a choice of five channels rather than two now received here.

A low bid of \$4,120, including trade-in, was accepted from the O. J. Watson Co. Wichita, for a new body on a refuse truck. It is for a Hell Mark 11 body. Other bids were from Tradewind, Liberal, of \$4,225 with trade-in, and from Berry Tractor and Implement \$4,700 with trade-in.

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er at the North Side Grocery.

- 5—Approved bond of Kenneth L. Butt as secretary-treasurer of the Firemen's Relief Assn., and license and permit bond for the Kansas Plumbing and Heating Co., Inc., of Liberal.
- 6—Tabled a request of Jack Smith of the Kansas Plastic Co. to build a private-owned tele-hangar at the airport until plans are submitted.
- 7—Authorized a mayor and clerk to execute a lease agreement between city and Fred Ramirez for 5-acre tract south of US50 from Airlinks Industrial Park east of town.
- 8—Agreed to renew contract as presently being with Merita Smith for the Little America concession at Finney Park.

Part Three will consist of "Climb Every Mountain," "The Exodus Song" from "Exodus," Polly Bock, student director, will lead the choir in singing "Wondering Night," "Accompagnists for the Robed Choir are Linda Ellington, Donna Selover and Becky Rogers. Jo Ellen Wampler will accompany the Mixed Chorus.

During part four, the Mixed Chorus will sing "Grant Us Peace," "It's a Gray Night for Singing" and "Erie Canal."

A sweetheart song album will be presented by small ensembles from the high school as the concluding performance.

## Annual Robed Choir Concert Is Tonight

The Garden City Senior High Robed Choir—115 voices strong—will be in concert Wednesday 8 p.m., at Hope Auditorium for the annual presentation—"Say With Me."

Julius Hultquist is director. Opening number will be "Three Kings" followed by "Out of the Silence" and "Heaven Above."

Part two will consist of "The Lord's Prayer" and theme from "King of Kings."

Part three will consist of "The Lord's Prayer" and theme from "King of Kings."

Part four will consist of "The Lord's Prayer" and theme from "King of Kings."

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Part six will consist of "The Lord's Prayer" and theme from "King of Kings."

Part seven will consist of "The Lord's Prayer" and theme from "King of Kings."

Part eight will consist of "The Lord's Prayer" and theme from "King of Kings."

Part nine will consist of "The Lord's Prayer" and theme from "King of Kings."

## Powers to Be Free to Talk: JFK

WASHINGTON (AP)—President Kennedy said today U2 pilot Francis Gary Powers is cooperating voluntarily with government investigators and eventually will be free to testify to congressional

committees and appear at a news conference.

Kennedy opened a news conference with a statement on the case of Powers, who was freed by the Russians Saturday in exchange for U.S. release of Soviet spy Rudolf Abel.

The President declined to say how Powers was brought down while flying a high-altitude U.S. reconnaissance plane over Russia on May 1, 1960. He said answer must await the end of questioning by appropriate government authorities.

In his opening statement, the President said he knew there have been many questions about the release of Abel and of Powers.

He said he is happy Powers is back and that he can add only that Powers is cooperating voluntarily with the government in discussions of important information.

Powers will be free to testify to Congress after the official investigation and any questions available to the press "at the earliest possible moment," the President promised. There have been numerous demands in Congress for committee interrogation of the pilot.

This was the forthcoming disagreement between the President and Congress. Kennedy said that "of course I would be glad to go" if his personal presence would help bring some forward movement.

In that case, he said, every head of state would be pleased to sit in a summit.

This was much the same position he took in a formal message to Soviet Premier Nikita S. Khrushchev, released Saturday and a half before the news conference.

Answering a question on a related matter, Kennedy said at one point that he thought any arms agreement with Russia would have to include Red China, and the rest of the world if it were to have any real effect.

In response to another question, Kennedy said he had no idea what neutralist countries, particularly India, might do about sending representatives to a summit meeting next month as suggested by Khrushchev.

These other matters came up in the news conference: NUCLEAR—A reporter quoted British Prime Minister Harold Macmillan as saying that there will be no nuclear testing on Christmas Island until the Geneva conference begins. Kennedy said that statement is correct and that the recent correspondence with Khrushchev has not changed it.

AUTOMATION—Kennedy said it is 25,000 new jobs must be found each week and "this places a major burden on our economy and our society."

If our economy is moving forward, we can absorb such numbers, he said, although there may be special problems in such industries as coal.

He said a "major domestic challenge in the sixties is maintaining employment while automation goes on."

He said the President was told some Congress members were complaining that budget items for the Central Intelligence Agency would show in other portions of the budget.

Kennedy replied that some concern was necessary in the interest of national security. He said that the area was not signed by the United States, this country served notice it would take a serious view of renewed aggression in the area. This was reaffirmed later he said, and the United States has been helping Viet Nam maintain its independence with military training mission and economic aid.

KASHMIR—Kennedy said the United States would like to help India and Pakistan resolve the Kashmir dispute, but that the method suggested, that of sending President Eugene Black of the World Bank as mediator, his not met favor with the Indian government.

Powers quoted Glenn as saying: "Well, we knew the weather was forecast to be marginal, so I'm not too surprised. All we can do is watch the weather. Everything else, including me, is going."

"I'm going back to bed and get some rest."

The decision to postpone the flight was made by Walter C. Williams, Project Mercury operations director, after a two-hour weather conference which began at midnight.

Asked how long the launch could be postponed on a day-to-day basis, Powers said he didn't know on his way for four or five days.

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## garden—Tate As a Witness

It was a serious matter being discussed at yesterday's hearing in district court here but there were some humorous aspects.

Former Supreme Court Justice W. Thiele who conducted the hearing interrupted once to ask the location of the jail where Smith and Hickock were kept. He was told it was upstairs above the courtroom.

"You see, I've never been in jail here before," he added.

Throughout the day Russell Shultz, the Wichita attorney representing Smith and Hickock, kept referring to the "crown at the arena stadium" which was on hand when Smith and Hickock were returned here after their capture. This brought smiles to those who knew they were not returned by train and there wasn't any crowd at the station.

Late in the afternoon, when Ben Greer of the Telegram staff was the state witness, he showed a picture of the crowd outside the courthouse, the railroad station and the jail.

Yesterday's questioning brought out an "anniversary date" for County Attorney Harrison Smith. He said that it was 14 years ago this day that the law practice in Finney County.

Judge Roland H. Tate—who presided over the Smith-Hickock murder trial here—was one of Tuesday's most emphatic witnesses.

He spoke firmly and in a clear voice in response to questions. His testimony cleared up matters which had been raised by the petition for the writ.

The judge dealt firmly with the matter of the "acquaintance" with Herbert W. Clutter, head of the family of which four members were slain.

He indicated he was introduced to Clutter in 1947 and was only a casual acquaintance of the victim. "I saw him only once, twice, maybe a dozen times during the course of the year."

Tate testified he had "never attended a social function in connection with the Clutter family" (Clutter) was present. He added that none of his family knew the Clutters as friends.

Clutter had been in Judge Tate's court some several years ago. That was in a case out of a transport-service plane made an emergency landing and damaged some of Clutter's property.

Tate was especially emphatic when parrying Attorney Russell Shultz on the matter of a change of venue in the murder trial. The Wichitan inquired if Judge

Tate did not think he should have granted such a change.

"Mr. Shultz," he answered back—then went on to stress that the court, under Kansas law, could not grant such a change on its own motion. And he noted that no such change was applied for.

Shultz then asked for Tate's opinion, if he thought such a change should have been asked for. Tate replied he had no opinion on the matter—that the request for change of venue was clearly a matter of law.

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## Cool Follows Balmey Weather

Old Man Winter has snapped Southwest Kansas back to weather realities. The chill conditions ended several days of rare 80-degree readings in February.

Tuesday's high reading at Garden City 10 miles east of town was 62 degrees. Low was 44.

At noon today the thermometer had struggled only up to 48. The sky was covered with low overcast, keeping the sun out.

No significant fronts were in the area, however. Low-pressure systems were centered over central Texas and central Montana. A low-pressure trough was over the eastern slope of the Rockies.

Gus says it's taking Astronaut John Glenn longer to get off the ground than it will to orbit the earth three times.

## New Storm Threatens

CAPE CANAVERAL, Fla. (AP)—A new storm in the western Atlantic today threatened to force a ninth postponement of the orbital flight of astronaut John H. Glenn Jr., now very tentatively set for Thursday morning.

Glenn, Marine lieutenant colonel, had hoped to get off on his long-delayed trip whirling about the world this morning, but a heavy overcast, drifting over the boiling Atlantic forced Project Mercury officials to cut it off until 7:30 a.m. Eastern Standard Time Thursday, at the earliest.

A weather advisory issued shortly before 10 a.m. today by the National Aeronautics and Space Administration made it highly uncertain that the historic flight would go Thursday. It was being freely predicted here that it would probably go over until Friday at the earliest.

Officials won't push the button for Glenn's Atlas to rise skyward until the high school as the concluding performance.

The eighth postponement was made known to newsmen shortly after 2 a.m. today.

As soon as the cancellation was announced, Glenn's NASA public information director, ad-

The NASA weather advisory today said:

"The intense low pressure trough located just east of Bermuda is still active, and a new storm center is moving off Cape Hatteras, N.C., this morning, and is forecast to be near Bermuda Thursday morning, with strong winds and rough seas covering much of the area to the east and west of Bermuda."

If Glenn completed only one orbit he probably would be brought down about 500 miles east of Bermuda. After two orbits the plans are for him to alight about 500 miles south of Bermuda, and after three orbits, about 600 miles southeast of Cape Canaveral.

If the bad weather forecast continues unchanged, the ninth postponement might be announced officially about mid-afternoon today.

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vised the White House of the delay by telephone.

Glenn was awakened at 3:15 a.m. by his doctor, William K. Douglas, and advised of the postponement. He had gone to bed in his special quarters four miles from the launch pad at 2 p.m. He was scheduled to arise at 2 a.m., for today's 7:30 a