

6-10-1969

Notice of Motion for Disqualification of Supreme Court Justices

Lewis M. Steel '63

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART XXX

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

LUMUMBA ABDUL SHAKUR, et al.,

Defendants.

INDEX NO. 1848-69

NOTICE OF MOTION
FOR
DISQUALIFICATION
OF SUPREME
COURT JUSTICES

SIR.

Please take notice that upon the indictment, the Verified Statement of Gerald B. Lefcourt, sworn to the 10th day of June, 1969, and all the proceedings heretofore had herein, the undersigned will move this Court at a Special Term, Part 30, at 100 Centre Street, New York, New York on the 11th day of June, 1969, at 10.00 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order pursuant to the Fourteenth Amendment to the U.S. Constitution disqualifying all the Justices of the Supreme Court, First Department, New York County, from hearing the trial of this case until such time as an impartial and even-handed method of assignment of felony cases for trial is established in New York County; in the alternative, defendants move the Court

to set the motion down for a full evidentiary hearing
including the issuance of appropriate subpoenas.

Dated New York, New York
June 10, 1969

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
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VERIFIED
STATEMENT

Gerald Lefcourt, being duly admitted to practice in New York State, pursuant to the CPLR, and as one of the attorneys herein, does state:

1. On information and belief, the District Attorney's office in New York County divides the responsibility for the prosecution of cases among its several Assistants in two broad categories.

2. On information and belief, one category of Assistant are assigned, generally two to each Trial Part of the Court, and rotate from Part to Part on a monthly basis; the Justices of said Court are also rotated in the several parts.

3. On information and belief, said Assistants in a custom and practice uniformly condoned by the Justices of this Court, have complete discretion to move cases for trial in their respective parts and in fact do exercise their discretion to do so.

4. On information and belief, the second category of Assistants are assigned to "Special Bureaus" within the District Attorney's office, such as Fraud,

Rackets, etc.; on information and belief, the instant case is being handled by an Assistant in the Rackets Bureau.

5. On information and belief, Assistants from these Bureaus have absolute discretion to move cases for trial in any of the Criminal Trial Terms of the Court; said discretion has been exercised and its exercise has been uniformly condoned by long custom and practice by the Justices of the Court.

6. On information and belief, once such a case is moved for trial in a particular part before a particular judge, it remains in that part.

7. On information and belief, in other counties in New York City, in particular, in Kings and the Bronx, felony cases are assigned for trial by lot; case indictment numbers are placed in a drum and the selection of assignments is made by a chance, random selection/^{basis} and assigned in rotation to the sitting Justices.

8. On information and belief, the sole reason for the existence of the unusual practice in New York County is to permit the District Attorney to select Justices who are inclined to be favorable to his prosecutions in particular cases moved before the respective Justice.

9. On information and belief, said practice was utilized by the District Attorney in the assignment for trial in this case.

10. On information and belief, all attorneys are aware of the differences between judges; some judges

for instance, are well known for their considered treatment of pre-trial motions; other judges are known for the fairness of their trial conduct; some judges are known for the strictness with which they permit the introduction of evidence; others are known for their liberality; some judges are known rarely to disallow any application by the District Attorney; others are known to be harsh on applications by the District Attorney; some judges are known to be generally harsh on sentencing; others are known to be lenient on sentencing; some judges are known for their lenient treatment of narcotic offenders; other judges are known for their harshness in dealing with trials of other crimes; some judges are known to use certain criteria in evaluating bail application; other judges are known for their use of other bail criteria. Indeed the Code provides that review of bail applications be heard by a different Justice than the one which set the original bail. (In fact in the instant case, where one Justice, Charles Marks, fixed \$100,000 bail, another Justice, Irwin Shapiro, reduced it to \$50,000.)

11. Defendants recognize that under the Fourteenth Amendment due process and equal protection clauses they would be denied the right to pick the Justice to sit on the trial of their case.

12. Similarly, defendants contend that they are denied their Fourteenth Amendment rights when the District Attorney has the power to select Judges to sit in the trial of cases. Indeed, there is not a single rational

explanation which can be advanced to support the procedure now in effect; the present procedure in this County is popularly known as a "prosecutor's paradise."

13. Defendants submit they are entitled to an impartial, non-discretionary system of assignment in the trial calendar of the Court wherein the indictment has been returned. Such a system is not only fundamentally fair to all parties in the sense it randomly distributes the risk of least desired judges, but more importantly, it has the appearance of fairness.

14. The Fourteenth Amendment requires the removal of this case from the trial calendar until such time as the Court establishes an impartial and non-discriminatory method of judicial selection under which this case would be assigned for trial.

15. In the alternative, defendants request that the matter be set down for a full evidentiary hearing.

Dated: New York, New York
June 10, 1969


GERALD B. LEFCOURT