

THE PEOPLE v. HINES.

DECISION OF MR. JUSTICE PECORA.

July 28, 1938.

ON MOTION FOR SPECIAL PANEL.

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THE COURT: Then it will be so understood. I am prepared to make my decision, gentlemen, on the motion for a special panel. I think this case essentially is a case in which the Court is justified in granting a motion for a special panel. Subdivision 4 of Section 749-AA of the Judiciary Law specifically refers to the circumstances or instances in which a special jury may be ordered. I refer particularly to this provision in that subdivision: "Where upon such application it appears to the Court that by reason of the importance or intricacy of the case a special jury is required, or that the subject matter of the indictment or the issue to be tried has been so widely commented upon that the Court is satisfied that an ordinary jury cannot without delay and difficulty be obtained to try such issue"-- omitting what follows -- "the Court to which the motion is made may make an order directing that such trial be had by a special jury." The portion of the statute which I have omitted is sort of an omnibus clause which gives the Court a very wide discretionary power to grant such a motion for any cause other than the three that I have already specified from the text of the statute. The Court is convinced from all the papers and the proceedings had in this action that the case is one of much more than ordinary importance to the community as well as to the parties directly involved. The Court's attention

has been called to the making of allegations of charges that as part and parcel of the conspiracy charged in the first count of the indictment judicial officers and others have been influenced, intimidated or bribed by one or more of the defendants. Surely any case involving such factual elements is a case of transcendent importance to this community. For that reason alone, if no other reason existed, the Court would be justified in granting the motion. In addition to that, however, it is the fact, which has very forcibly been brought to the Court's attention on motions for a change of venue made by the defendant Hines, that this case has been very widely commented upon in the public press. That is a specific ground afforded by the statute for the granting of this motion. The Court has, it feels, perhaps with censurable patience, received much testimony today concerning the manner and methods by which the jury lists of this County including the special jury list have been made up. Much of the information conveyed to the Court through the medium of such testimony is new to the Court; it is likewise of exceeding interest. It confirms the opinion which this Court has consistently had that the special jury lists in this County have not been made up in a manner designed or calculated to produce what have been termed in the vernacular convicting juries. The Court might make other observations with respect to

this motion, but further observations, in the light of the conclusion which the Court has come to, would be unnecessary. The motion is granted. The County Clerk, however, will be directed -- I want a suitable provision to this effect to be embodied in the order to be entered upon this motion -- at the time of the drawing of the special panel to place in the wheel the names of all persons appearing on the special jury list at the present time except those, if any, who may now actually be serving as a trial juror in any pending case.

MR. DEWEY: Your Honor, I think you are going to run into conflict with certain orders issued by other members of the judiciary, who have ordered exemptions from two to five years in a certain few cases.

THE COURT: And except the names of such jurors as have already been granted exemption for any limited period of time by any Court having authority so to do.