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State Rests; Judge Will Rule On Shaw Acquittal Request High Court Refuses to Intervene

The state rested its case today in the trial of Clay L. Shaw and the judge promised a ruling at 9 a.m. tomorrow on a defense motion for a directed verdict of not guilty.

Shaw, 55, is on trial in Criminal District Court on charges of conspiring to kill President John F. Kennedy, shot to death in Dallas Nov. 22, 1963.

ENCLOSURE

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SECTION 1

STATES-ITEM

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THE STATE RESTED TODAY after Louisiana Supreme Court refused to intervene in the case and reverse a ruling by Judge Edward A. Haggerty Jr. The judge yesterday barred testimony by a key state witness, New Orleans police Ptn. Aloysius J. Habighorst.

Chief prosecutor James L. Alcock filed an appeal with the high court last night, but was turned down. Today, he asked Judge Haggerty to reverse his ruling, but was again turned down.

IF JUDGE HAGGERTY GRANTS the motion for a directed verdict, the trial is over and Shaw goes free. If he denies it, the defense will begin presenting its case.

This morning, the defense issued subpoenas for two new witnesses, former Gov. John B. Connally of Texas and Lt. T. L. Baker of the Dallas Police Department.

Gov. Connally originally was subpoenaed by the office of District Attorney Jim Garrison, but was not called on schedule last Monday. Garrison aides explained then that trial was behind schedule and indicated he might be called later. But today, the state rested without calling Connally or several other witnesses under subpoena.

JUDGE HAGGERTY SAID HE WILL RULE tomorrow on the motion for a directed verdict after studying the testimony of the state's star witness, Perry Raymond Russo, who said he heard Shaw discussing the assassination here in September, 1963, with Lee Harvey Oswald and David W. Ferrie. The defense contended today the alleged conversation does not constitute a conspiracy.

The state rested today after 10 days of testimony. The trial started Jan. 21, the jury was completed Feb. 5, opening statements were made Feb. 6, and the state began calling witnesses Feb. 7.

Judge Haggerty convened court at 9:30 this morning and announced the state's appeal to the Supreme Court was turned down.

"I have received word that the application has been denied. The ruling was signed by six of the seven justices of the Supreme Court. The only judge who did not sign was Justice (E. Howard) McCaleb," the judge said.

ALCOCK THEN MOVED THAT Judge Haggerty reconsider his ruling, on grounds there was a conflict in testimony on whether Shaw was deprived of his constitutional rights the night of his arrest, March 1, 1967.

Ptn. Habighorst contends that Shaw signed a fingerprint card that night which included the information that Shaw used as an alias "Clay Bertrand." Shaw, taking the stand in his own defense for the first time yesterday, testified the card was blank when he signed it.

JUDGE HAGGERTY SAID YESTERDAY he did not believe the policeman's story, and even if it were true, it could not be admitted in evidence because Shaw's constitutional rights were violated.

Alcock said it should be up to the jury to decide who is telling the truth about the fingerprint card.

Judge Haggerty disagreed, saying, as he reads the law, "It is a question for this court to decide . . . It's not up to Mr. Shaw or his counsel to state that the defendant's constitutional rights are violated, it's up to me to decide."

HE SAID THE POLICE DEPARTMENT had no right to keep Shaw's attorney out of the room while the defendant was being fingerprinted.

After the judge turned down his plea, Alcock announced the state was resting its case. Chief defense counsel F. Irvin Dymond rose and announced he was making a motion

for a directed verdict. The jury was sent out of the room while the motion was argued.

Dymond cited the state conspiracy statute and said under it a conspiracy must include an agreement of a combination of two or more persons for the specific purpose of committing a crime and an overt act in furtherance of that agreement.

HE CITED RUSSO'S TESTIMONY and said it contained no showing of such an agreement. He quoted Russo as saying:

" . . . I never said anything about a conspiracy. I didn't sit in on any conspiracy."

Dymond quoted Russo further as saying he heard neither Shaw nor Oswald agree to kill Kennedy. "We submit in that matter that, without an agreement to do anything, you cannot have a conspiracy."

HE SAID RUSSO BELIEVED the meeting was only a "bull session" and added: "At a time when Kennedy was unpopular, there were many loose bull sessions remarks made by many who disagreed with his policies. It would be ludicrous to claim these constituted a conspiracy."

Dymond termed the state's showing of a conspiracy as "an absolute void."

Going into the alleged "overt acts" the state attempted to show, Dymond said Shaw's trip to the West Coast and Ferrie's trip to Houston the day of the assassination had no connection with any conspiracy.

DYMOND SAID THE STATE failed to show Oswald ever took a gun to the Texas School Book Depository the day Kennedy was slain.

"All this adds up to the fact that the state has not made a prima facie case and we urge the court to use the powers invested by the Legislature and direct a verdict of not guilty," Dymond said.

Answering Dymond, Alcock said the conspiracy statute is "very broad." He said Russo is not qualified to legally define a conspiracy.

WHAT MAKES THE ALLEGED CONSPIRACY meeting important, Alcock argued, is that Oswald "wound up in the Texas Book Depository."

Alcock said the trip by Shaw to San Francisco is important because Russo heard the "conspirators" say the trip would be used as an FBI.

Dymond contended Russo was never sure of his identification of Shaw.

The judge called a brief recess and returned to announce he intends to read the Russo testimony. He said the transcript will not be available until 5 p. m. today.

"AFTER READING THE TRANSCRIPT I will make my decision on the request for a directed verdict at 9 a. m. tomorrow," the judge said, then recessed court.

The legal hassle late yesterday over Habighorst's testimony brought out the most dramatic moment so far in the trial when Alcock angrily demanded a mistrial.

But the appeal he filed last night made no mention of a mistrial. Instead, it sought to have the high court reverse Judge Haggerty and permit Habighorst's testimony to go before the jury.

Shaw testified yesterday as a traverse witness in a lengthy hearing on the admissibility of Habighorst's testimony. The hearing was held with the jury not present. Afterwards, the judge ruled

sible. The ruling came at the end of the four-hour hearing on prosecution evidence involving Habighorst's claim that when he fingerprinted Shaw on March 1, 1967, he asked Shaw if he used any alias and Shaw replied: "Clay Bertrand."

BERTRAND IS THE name Garrison contends Shaw used in plotting with Lee Harvey Oswald and others to murder Kennedy.

Judge Haggerty based his ruling on testimony that Shaw's attorney, Edward Wegmann, was barred from the Bureau of Identification room at the Central Lockup while Shaw was being fingerprinted.

This, the judge said, violates the U.S. Supreme Court decision in the Escobedo case "because no police officer has the right to tell an attorney he cannot be with his client."

THE JUDGE ADDED that "if Ptn. Habighorst's testimony is correct," he also violated the Miranda Supreme Court decision because he did not forewarn Shaw of his right to remain silent when he told him to sign the fingerprint card.

The judge said: "Officer Habighorst did not forewarn Shaw of his right to remain silent. Even if officer Habighorst did question him—and from what I've heard I seriously doubt it..."

"Your honor!" Alcock shouted. "Are you ruling on the credibility of Habighorst?"

THE JUDGE PEERED at Alcock over his spectacles. "No jurors are present," he said.

"But you are passing on the credibility of a witness before the press and the world," cried Alcock.

"I don't care," said Judge Haggerty. "The whole world can hear that I do not believe officer Habighorst. I do not believe officer Habighorst."

Alcock said "A judge's unsolicited comment on evidence..."

"Denied," said Judge Haggerty. "I rule this evidence is inadmissible before the jury."

The jury was sent out of the courtroom as yesterday afternoon's session began with Garrison investigator Louis Ivon on the stand. Ivon handled the arrest of Shaw March 1, 1967.

It soon became apparent that Ivon was not present when Habighorst filled out the fingerprint card. He was excused and Habighorst took the stand.

Habighorst testified he fingerprinted and photographed Shaw about 8 p. m. on that date and that Edward Wegmann was "in and out" during the process.

THE POLICEMAN said that as a matter of routine a suspect is asked his vital statistics. He said he asked Shaw no questions except routine information needed for the fingerprint card.

Shaw, he said, read the card over and then signed it. He said Wegmann was present at the time.

Then the defense began calling traverse witnesses. The first was Capt. Louis J. Curole, who said he was on duty at the Central Lockup when Shaw was delivered for booking.

HE TESTIFIED to the routine of booking procedure, and said Ptn. Habighorst should have had the arrest form with all the information he needed at his disposal.

Sgt. Jonas J. Butzman testified he heard Habighorst question Shaw in the B of I room about the correct spelling of a name, but said the name was not Bertrand.

He said he did not remember seeing Wegmann in the B of I room, but said he saw him near the booking door about 27 feet away.

EDWARD WEGMANN was then called to the stand. He testified he was given a copy of the arrest record before Shaw was fingerprinted and it had no mention of any aliases on it.

Wegmann said he was given an opportunity to confer with his client, but did not do much talking because he feared the room in the DA's office was bugged.

Another Shaw attorney, Salvatore Panzeca, took the stand briefly and said he was the first of Shaw's attorneys on the scene after the arrest.

HE SAID HE advised Shaw not "to speak to anyone at all about anything; not even to say hello or goodbye. I told him not to answer questions from anyone."

Then Shaw took the stand, wearing a blue suit and red tie. He spoke calmly, making his replies in a crisp tone.

He said he was in the DA's office when Assistant DA Andrew J. Sciambra told him he was to be charged "with conspiring to murder the presi-

dent of the United States." Shaw said he asked for an attorney, and was permitted to call Panzeca. He said Panzeca told him not to talk to anyone.

ASKED IF HE followed Panzeca's advice, Shaw replied, "I did."

Shaw said that by the time he was taken to the Central Lockup for booking, Wegmann had arrived. He said he wanted "my lawyer with me at every stage," but was told he had to go into the B of I alone.

He said the fingerprint card was blank when he signed it. Asked why he signed, Shaw said, "I was told it was necessary for getting bail."

Shaw said he was not asked about any alias.

CHIEF DEFENSE counsel F. Irvin Dymond pressed him: "Did you ever tell anyone at Central Lockup you used an alias?"

"I did not," said Shaw. Under questioning by Alcock, Shaw said he was not abused and not offered any reward for answering questions.

When Panzeca arrived, Shaw said, he communicated with him mostly by writing because of the fear the room was bugged.

Shaw said Habighorst did not ask him any questions of any kind.

mony, both sides filed exhibits and Dymond objected Alcock's introduction of the fingerprint card.

It was then Judge Haggerty said he would sustain the objections of the defense to the entire Habighorst testimony, gave his reasons, and interjected he did not believe the policeman's story.

Ptn. Habighorst originally revealed his version of the story in July, 1968, saying that he had kept a copy of the fingerprint card with Shaw's signature and the Bertrand alias on it.

He said at the time that Shaw freely admitted using the Bertrand alias. Shaw has consistently denied this.

AFTER THE MATTER came to light, Alcock released on July 29 a copy of a signed statement given by Habighorst on Jan. 28, 1968. The statement did not make it clear whether Shaw signed his name to the cards before or after the information was filled in.

Police Supt. Joseph I. Giarrusso said the records were locked up by Garrison as evidence after Shaw was booked and no one remembered the alias matter until Habighorst released an "extra" copy he had retained.

AFTER AN INVESTIGATION, Giarrusso on Aug. 6 said he could find no evidence of misconduct on the part of Habighorst in the matter. He said disclosure of the incident was precipitated by a local television reporter and not by the policeman.

Giarrusso said the report revealed Habighorst cleared his TV appearance through Alcock as well as the police department. He said it is not unusual for police officers to retain copies of a report for reference in case he has to testify in court.

A large share of Garrison's case against Shaw hangs on the Bertrand name. New Orleans attorney Dean Adams Andrews Jr. told the Warren Commission a mysterious figure named Clay Bertrand called him the day after the assassination and asked him to defend Lee Harvey Oswald, then accused of the slaying.

ANDREWS WAS convicted of perjury in August, 1967, after allegedly giving conflicting stories on the Bertrand matter under oath.

Garrison contends Shaw and Bertrand are one and the same, and the state's star witness, testified earlier in the trial he was introduced to Shaw as Clem Bertrand at the party at which Russo says the assassination was discussed.

In yesterday morning's session, the state put on three witnesses. They were:

—Dr. John M. Nichols of the University of Kansas.

—Mrs. Jesse Parker, a former hostess at the Eastern Air Lines VIP Room at New Orleans International Airport.

—Richard R. Carr of Dallas.

Dr. Nichols had testified Monday ~~that his~~ opinion as an expert on pathology and forensic medicine is that Kennedy was shot from the front and that separate bullets hit Kennedy and former Gov. John B. Connally of Texas.

He based his opinion on his study of the Abraham Zapruder film of the assassination, which took place Nov. 22, 1963, in Dealey Plaza in Dallas.

ON CROSS-EXAMINATION yesterday, Dr. Nichols said the proper way to conduct an autopsy was to carefully study X-rays and photos. "He said he is suing the U.S. government for access to the Kennedy autopsy reports and photos.

Dymond attacked Dr. Nichols' credentials as an expert and elicited an acknowledgment from the witness that he is largely self-taught in the fields in which he qualified as an expert.

Mrs. Parker testified that she saw Shaw sign the guest register at the VIP room as "Clay Bertrand" in December, 1966. A copy of the register was introduced in evidence.

SHE SAID SHE particularly reemphasized Shaw because of his "gray hair." She pointed out the defendant in the courtroom as the man she saw.

She testified she took a lie detector test on the matter, and a police department polygraph expert testified he administered the test. The results were not revealed.

Carr said he was watching the presidential motorcade in Dallas the day of the assassination from a seventh-floor window overlooking Dealey Plaza directly across from the Texas School Book Depository from where the Warren Commission says the shots were fired.

HE SAID HE saw a man in a fifth-floor window of the depository before the shots were fired. After the shots, Carr said, he saw four men flee the depository, three of them in a station wagon. The man he saw on the fifth floor, Carr said, left on foot.

Carr said he thought the shots came from the direction of the grassy knoll in front of the motorcade. He based this on a movement he saw in the grass in the Plaza seven floors below.

The witness said he was told by the FBI to "keep his mouth shut" about what he saw.

quote."

He praised the performance of the individual reservists, saying "they demonstrated patience with seemingly insurmountable obstacles" and ultimately recalled.



—States-Item sketch by Ralph Vinson.

ALOYSIUS J. HABIGHORST, police officer who fingerprinted Clay L. Shaw, testifies at trial yesterday. Judge Edward A. Haggerty Jr. refused to allow Habighorst's testimony to go before the jury.



SCENES DURING YESTERDAY'S COURT sessions include DR. JOHN M. NICHOLS of Kansas University (upper left sketches), who testified that he believes the bullet that killed President Kennedy was fired from the front; Defendant CLAY L. SIFAW (upper right); RICHARD RANDOLPH

CARR of Dallas (lower) who testified that four men fled the Texas School Depository minutes after the assassination, and MRS. JESSE PARKER, who said she saw Shaw sign a guest register at the New Orleans International Airport as "Clay Bertrand."