

Shaw may take stand

State's case against Shaw remains strong

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NEW ORLEANS FEB 26, Clay Shaw is now directly answering in court the charge by New Orleans District Attorney Jim Garrison that Shaw participated in a conspiracy to kill former President John F. Kennedy.

When the prosecution closed its case on Feb. 20, with the traditional words "The State rests", Shaw's defense counsel, F. Irvin Dymond immediately filed a motion with the judge to dismiss the suit against Shaw. He said that the State of Louisiana had not established Shaw's involvement in a conspiracy.

Dymond argued that a criminal conspiracy is the agreement of two or more persons with the specific purpose of committing a crime. He said that the state had not proven the existence of a specific agreement in the testimony of key prosecution witness Perry Russo. Russo said early in the trial that in Sept. of 1963, in David Ferrie's New Orleans apartment, he had witnessed a discussion between Leon Oswald, Clay Bertrand, and David Ferrie on how to kill the President, escape and establish alibis.

On cross-examination, Dymond contended he had specifically asked Russo if he had heard Shaw, Ferrie or Oswald agree to do anything. (Russo identified Clay Shaw as being the man he knew as Bertrand). Since Russo had answered "No" to this question, and had testified that as far as he knew, the discussion was a bull session, and not a conspiratorial meeting, Shaw's attorney informed Judge Haggerty that there was no conspiracy. "Without an agreement to do anything, you do not have a conspiracy," he said.

Furthermore, Dymond said on Shaw's behalf, Louisiana law requires that there be at least one overt act committed in furtherance of the conspiracy for a conviction "and the prosecution has not proven this."

Testimony about Shaw's trip to the West Coast at the time of the assassination did not show any connection with the conspiracy, Dymond claimed. The trip by Ferrie to Houston, Texas, the day after the assassination, according to Dymond, also did not

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connect with the alleged conspiratorial agreement. Other action specified by the State as being overt act in furtherance of the alleged conspiracy were similarly dismissed by the defense as being irrelevant.

Assistant District Attorney Jim Alcock, speaking for Jim Garrison's office, in rebuttal, said that the crime of conspiracy is very complicated. He said: Perry Russo is not a lawyer

capable of defining a conspiratorial meeting of agreement, and this question must be decided by a jury as instructed by a judge.

Furthermore, Alcock continued, Dymond overlooked the fact that the meeting overheard by Russo was not a bull session as evidenced by the fact that one of the alleged participants, Lee Harvey Oswald, was present in the book depository in Dealey Plaza on the day President Kennedy was killed.

Shaw's trip to the West Coast at the time of the assassination, claimed Alcock, closely corroborated Russo's testimony instead of being irrelevant because Russo said he heard the man he knew as Bertrand discuss with Oswald and Ferrie a West Coast trip as an alibi.

Russo also testified he heard Ferrie, a very experienced pilot, discuss with Bertrand and Oswald the use of a plane as an escape vehicle. Ferrie's peculiar three-day, thousand mile trip right after the assassination, with a stopover at a skating rink where Ferrie noticeably stayed by a pay phone for several hours, was also a corroboration of Russo's testimony as to what he overheard, said Alcock.

Alcock concluded his arguments against the defense motion for dismissal of the case with the statement that "Russo has not been destroyed as Dymond promised in the opening statement... Dymond now wants us to believe Perry Russo" (that is, believe Russo's opinion that he had not participated in a conspiratorial meeting)... "Let the case go to the jury and let them put their stamp on it."

The prosecution had presented over 40 witnesses before this argument between the opposing attorneys developed. These had included from very credible people who said they had seen Shaw with Oswald and/or Ferrie although Shaw had denied knowing either of them.

Some of the prosecution witnesses gave testimony on the assassination scene at Dealey Plaza. They claimed that they had seen evidence of shots from other areas than the book depository, or others besides Oswald leaving the area in a suspicious manner. (See the two previous issues of the Free Press for details of the testimony by these prosecution witnesses).

The purpose of the Dealey Plaza witnesses and the repeated showing of the Zapruder films (detailing the President's movements forward, as if first hit
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from the back, and then backwards, as if hit by a shot coming from the front) was obviously to convince judge and jury that the conclusion of the Warren Commission on the assassination was wrong. Whereas the Warren Report said that only one assassin committed the murder, Garrison's office was trying to show that the crossfire discussed in New Orleans in Sept., 1963, actually materialized in Dallas in November of that year.

When the judge announced that he would consider the defense motion for a directed acquittal overnight and would read Russo's testimony thoroughly before making a decision, the tension began to build up in and around the courtroom.

The majority of spectators in the courtroom have been newsmen and newswomen, and most of these have been consistently hostile to Garrison throughout the trial, which is a story that I cannot detail or explain at this time for lack of space. These critics of Garrison were almost completely convinced that the judge was going to throw the case out without the defense having to put on their own witnesses. Neither the evidence as to multiple gunmen at Dealey Plaza or the chain of circumstantial evidence being developed around Shaw had budged their obviously closed minds.

But many of those who had been applauding the courtroom attacks on the Warren Report were also convinced that the judge's decision would likely go against Garrison. So much hinged on the testimony of Perry Russo! He seemed a frail support for a case directed in part against the huge governmental bureaucracies, which, according to War-

ren Report critics, had not stopped at falsification and concealment of facts contrary to their interest.

So what if Garrison had brought forward eye witnesses to the assassination who had not been called before the Warren Commission, seemingly for the sole reason that their testimony was known to contradict the politically comfortable solution of Oswald, the single assassin!

So what if Garrison had brought forward credible witnesses who testified that government agents told them to shut up!

So what if the district attorney's efforts made the privately owned and historically important Zapruder films available to the public as never before.

It was feared that all this "progress" would be obscured by the case being thrown out of court because Garrison had not established a proper foundation for the conspiracy charge.

However, Judge Haggerty did rule against the motion, as everyone in the country knows by now. He came into court at 9 a.m. on Feb. 21 and simply said, "The motion for a directed verdict is denied." He was not required by law to explain his decision.

Not enough attention has been given to the reasons for the judge's decision. To that unknown reporter, here in New Orleans, who was willing to bet \$100 against \$10 that the judge would dismiss the case, the decision must seem like a capricious act of judicial authority to be accepted but impossible of rational explanation.

However, this present writer, himself previously skeptical as to what Garrison had legally established against Clay Shaw (See the last two issues of the FP) is now accepting the proposition that the judge ruled as he did only because Garrison, in fact, had established the legal foundations for a conspiracy charge, certainly enough of a foundation for the trial to continue beyond the prosecution presentation and, perhaps, enough even for a conviction.

Conspiracy is a strange

charge. No one expects conspiratorial activities to be easily exposed by their participants. That is why laws opposing conspiracy are usually openly unfair against the accused, to the point that they are often illegal when counterposed to the civil rights provisions inherent in the United States Constitution.

(The Louisiana law is probably not illegal, being based on a corresponding federal statute. However, so many appeals will be made against the courtroom decisions of Judge Haggerty, that Clay Shaw may never see the inside of a prison during his lifetime, even if convicted.)

The point is that Shaw can be convicted if the jury is simply convinced that Shaw did sit in on that conversation at David Ferrie's apartment and, whether or not Shaw himself took the conversation to be serious, one overt

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action not at all necessarily connected with either Dealey Plaza or any other crime, was committed in furtherance of that conversation, thus implying that an agreement had been reached at that meeting. That's pretty vague, but that's conspiracy law.

Just as it becomes increasingly easier to understand what Garrison is doing and why Judge Haggerty is ruling as he is, it becomes increasingly difficult to understand Clay Shaw's defense. Nothing would seem to be gained from Clay Shaw by a defense of the Warren Report, and yet, that is exactly what his lawyers are doing.

Shaw would certainly benefit if he would maintain in court what some of the Warren Report critics have claimed, that is, that according to all legal standards and available evidence, it cannot be proven that Oswald fired a single shot at Dealey Plaza.

There is the paraffin test given Oswald with negative results, the fact that the only witness who saw Oswald carry anything into the depository that fatal morning is actually proof that he did

not carry the rifle later found on the sixth floor, the fact that a rifle purchased may possibly be traced to Oswald, but certainly no ammunition purchase, and numerous other discrepancies noted by some of the sharpest legal minds in the country.

However Shaw's attorneys are not using the Warren Report critics to break every possible link of Shaw with the conspiracy. They are not simply ignoring Dealey Plaza as irrelevant, which was the trial plan originally announced. At the very moment that the prosecution had scored substantial points against the Warren Report, Shaw's attorney's were devoting themselves on the one hand to an attack on Russo's credibility (the Oswald that Russo saw at Ferrie's was not clean shaven, but Lee Harvey was always clean shaven, etc.) and, on the other hand, that Lee Harvey Oswald was really at Dealey Plaza firing at the President, a point which doesn't do anything for Shaw except possibly hurt him (unless we accept the speculation probed further on that Shaw really was involved in a very high-level conspiracy to kill the President).

The Shaw defense thus far has been a total disaster area. Dymond calls Marina Oswald and her former friend and roommate, Ruth Paine, to testify about Lee Harvey's shaved face, clean clothes and the fact that they never knew Lee to be acquainted with Shaw, Bertrand, Ferrie, etc.

Under cross examination it turns out that Marina and Ruth know astonishingly little about Lee Harvey and cannot testify as to his whereabouts much of the time. For example, he tells them he is working when he is really out of work, and no one knows where his days are spent.

Dymond called Shaw's former boss and former private secretary to the witness stand. Both testified that in the months before the assassination, Clay Shaw is unusually busy arranging leases for a new Trade Mart building. This prevents days off, involves long hours, and implies that here are two people who can testify to Shaw's whereabouts every minute of the day and night in those critical months before the murder of JFK.

However, it turns out that these two business associates of some 19 years standing each, have never been to Shaw's apartment, do not share his social life or social friends after business hours, are obviously eager

to dis-associate their private lives from a man who now has the reputation of being a French Quarter homosexual, and thus are hardly in a position to testify as to Shaw's whereabouts or associates when he leaves work.

Then there is Robert Frazier, the FBI ballistics agent who testifies that all of the shots at Dealey Plaza came from the rear of the presidential limousine, from Oswald's opposition, on the sixth floor of the book depository building, but cross examination of Frazier revealed that because of the instructions he received he never examined the possibility that shots could have come from other areas in Dealey Plaza. No one in the FBI re-enactment

of the assassination, or in laboratory ballistics rifle tests, could duplicate Oswald's feat of firing three aimed shots from an elevation of 60 feet at a moving target 265 feet away in six seconds with an old rifle whose telescopic sight was wobbling. (Frazier testified that he had to tighten the screws before he would even attempt at a shot with that rifle).

Frazier disclosed that the Warren Commission ordered him to fire only at a stationary target from a horizontal position to see if three aimed shots could be fired in six seconds. Of three FBI men who are expert rifle-

men, only Frazier himself could duplicate the alleged time of Oswald, a man who barely achieved the lowest rifle qualification in the Marine Corps in a test which hardly duplicated the difficult shooting conditions Oswald is said to have overcome at Dealey Plaza.

Then the Shaw defense called Pierre Finck, colonel in the U.S. Army. Finck is one of the three pathologists who conducted the autopsy of President Kennedy's body on Nov. 23, 1963. Finck testified that his examination showed that the wounds could only have been caused by bullets from the rear.

Under cross-examination, however, Finck admitted that the autopsy performed on the late President was not complete because the pathologist was instructed by generals and admirals present not to trace the track of the bullet wound in the neck. Dr. Finck testified here in New Orleans "I am only a colonel. I take orders."

Since most of the surgeons at Parkland Hospital in Dallas, Texas, where the president's wounds were first seen, had identified the wound in front of the president's neck as an entrance wound, the colonel's admission that his autopsy was incomplete clouded his conclusion that bullets struck the President only from the back.

Also Dr. Finck admitted under a piercing cross-examination which lasted an entire day, that there were too many wounds for the number of shots that Lee Harvey Oswald could have fired. This came up in a discussion of what damage could be related to the almost complete bullet found on a stretcher at Parkland Hospital, Warren Commission Exhibit #399.

On redirect examination, defense counsel led Dr. Finck to testify that he would not have accepted an order to modify or change his medical opinion. But Dymond could not get Dr. Finck to retract his crucial testimony about #399, which alone, without any other evidence, disproves the Warren Report conclusion of a single assassin.

Whether the jury will appreciate these fine technical points is still to be seen; they can hardly overlook the fact that the experts the Warren Commission relied on were excessively sloppy and/or unduly influenced by high ranks. Incidentally, I have been informed that more than half of the present jury has read Mark Lane's book on the Kennedy assassination, *Rush To Judgment*. They are on the jury because,

when questioned, they said they had no opinion about the assassination.

This brings us to last Tuesday's testimony of Dean Andrews, a New Orleans attorney. According to Andrews' testimony before the Warren Commission in 1964, he received a call from a Clay Bertrand on Nov. 23, 1963, the Saturday following Kennedy's assassination. The caller offered Andrews the job of defending Oswald.

When Andrews reported this call to the FBI that weekend, an unsuccessful and secret hunt for Clay Bertrand began. This was more than two years before New Orleans district attorney Jim Garrison arrested Clay Shaw, prominent New Orleans retired businessman, on the charge of being Clem or Clay

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Bertrand, and of having participated under that name in a conspiratorial meeting to kill President Kennedy. Since the assassination, Andrews has vacillated in his description and identification of Clay Bertrand. His vacillation has already resulted in a conviction on a charge of perjury.

On Tuesday, Dean Andrews was called by Shaw's attorney as a defense witness. He was advised in court that he had the right to remain silent because his perjury conviction is being appealed.

Andrews, for an as yet unexplained reason, agreed to testify. Under direct examination, he said that Clay Shaw was not Clay Bertrand and then invoked the Fifth Amendment to refuse to answer other questions under cross-examination.

Judge Haggerty finally made a ruling that Andrews could not take the Fifth Amendment on questions about Clay Bertrand after having testified that Shaw was not Bertrand. When this ruling was announced, having already taken a stand in defense of Shaw far more than normal prudence would dictate, Andrews startled the courtroom with the "admission" that all of his previous testimony under oath including that given to the Warren Commission in 1964 and the New Orleans Grand Jury in 1967, was a lie, that the name Clay Bertrand was a figment of his imagination and that a caller received the day after Kennedy's death was only about the sale of an automobile.

Andrews' testimony, if true, would seem to reinforce Shaw's contention that he had been known by the name Clay Bertrand, however, by now there is other evidence to indicate the existence of a Clay or Clem Bertrand in the alleged conspiracy, including credible testimony by French Quarter postmen as well as Perry Russo.

The question must be asked, however, why did Dean Andrews at the Clay Shaw trial, despite legal advice to the contrary, stick his neck out for Shaw and then, to continue defending Shaw, guarantee himself a prison term on perjury charges?

Andrews has been known in the past to explain his conflicting statements about Clay Bertrand by reference to phone calls from "Washington" threatening physical harm. Suppose that there is really something to the high level conspiracy plot which most of the critics of the Warren Report have indulged in.

Suppose that New Orleans, the link of the United States with Latin America, was really tied in to anti-Castro plots. Suppose that Oswald was really an American intelligence agent, low-grade, whose particular relation to the Fair Play for Cuba Committee was the establishment of an intelligence cover.

Suppose that Clay Shaw, the man in New Orleans with many foreign trade connections as head of the International Trade Mart, a man with many bizarre connections in the French Quarter because of his special sexual taste, was really a high-level agent of the Central Intelligence Agency.

Supposing all of these things to be true, wouldn't you expect sufficient "muscle" around to influence people to make otherwise inexplicable sacrifices of personal interests. Like Andrews putting himself in prison for Shaw, and Clay Shaw, against his personal interests, defending the Warren Report.

Of course, this is only speculation. Since Garrison is only a local district attorney involved in a limited conspiracy case, he can't extradite the people from other states previously known to have been involved in CIA activities in New Orleans, like Gordon Novel, and prove the speculation. He can do only what he claims to have done: try to lift up a seemingly evident small corner of a much larger affair, pull a little and see what happens. Are there other specula-

tions which fit all the known facts as easily or better, and in which Clay Shaw plays a totally innocent role?

On Wednesday of this week, the Clay Shaw defense included the testimony of Charles Andrew Appel, Jr., a former FBI handwriting expert, who denied that Clay Shaw signed a New Orleans airport register as Clay Bertrand (the handwriting analyst for the defense will probably be counter-

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ed by a handwriting analyst for the prosecution in rebuttal).

Jeff Biddison, a longtime friend of Clay Shaw's in the Quarter, testified Wednesday that he had not loaned his 1960 black Cadillac limousine to anyone in 1963, including Shaw (a reference to the alleged trip of Shaw, Oswald and Ferrie to Clinton, La.). He also testified that he had never received mail at his home addressed to Clem Bertrand (although a postman had previously testified to such delivery).

Scheduled to testify Wednesday for the defense is writer James Phelan on some serious discrepancies in a Garrison office memo about Perry Russo. (When James Phelan takes the stand, he will probably be answered by Mark Lane in rebuttal).

And then Dymond has promised everyone that Clay Shaw will himself take the stand. This may take place by the time this issue is on the newsstands. If he does, the rumor is that Jim Garrison himself will handle the cross-examination of Shaw.

The fireworks of that confrontation will be a fitting end to this trial, and then it will be up to the jury.