

SERIALIZATION OF EXCERPTS FROM THE BOOK

The Garrison Case

A Study in Abuse of Power

By Milton E. Brenner

The next morning Shaw appeared before Judge Bernard Bagert, serving that day as committing magistrate. **10** The purpose of the arraignment before the committing magistrate is to advise arrested persons of their rights to refuse to answer the questions of the police or other representatives of the state to demand the presence of a lawyer, if desired in the event of questioning, and to enable the accused person to request a preliminary hearing if desired.

The "preliminary hearing" is a hearing held in open court to determine whether the state possesses "probable cause" upon which to hold the accused person. Broadly speaking, "probable cause" means exist-

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ence of some evidence tending to show commission of a crime by arrested persons. It is something more than suspicion, but something less than proof such as is required in a trial.

The preliminary examination may be requested either by the accused or by the district attorney. It is almost always requested by the accused, and practically never by the state.

AT THE arraignment of Clay Shaw on March 2, however, before any formal motion could be made by the defense, the assistant district attorney formally moved for a preliminary hearing.

The preliminary hearing, when available, is invaluable to the defense, for the examination is a means of discovery, a rare opportunity to see the cards held by the state. There is, in the usual case, every advantage

and no disadvantage to the defendant in a preliminary hearing. In a sense, no defendant ever loses a preliminary hearing. There is no determination of guilt, only a determination of probable cause to hold him for trial.

News stories concerning the coming preliminary hearing in the matter of Clay Shaw were trumpeted to a fever pitch almost approaching frenzy. The public was not concerned about "technicalities." There would be a determination by the court. There would be a winner and a loser.

THUS, one week after Shaw's arrest his attorneys decided that the price of the preliminary hearing was too high. They moved to set aside the order granting the hearing. They also filed with Judge Bagert an "application for particulars," seeking to be informed as to certain specifics concerning the charges against Shaw.

The motion to set aside the order for the preliminary hearing was denied. The requests for information were likewise denied.

Thus the defense would be

obliged to enter the hearing without the vaguest conception as to the time of the supposed conspiracy, not even the year, much less the month or day, would be known.

ON MARCH 14 the hearing began as scheduled.

Following testimony and arguments by counsel the court retired for a little over half an hour and announced its decision:

"This court finds sufficient evidence has been presented to establish probable cause that a crime has been committed and, further, that sufficient evidence has been presented to justify bringing into play the further

SATURDAY MORNING, OCTOBER 25, 1969

steps of the criminal process against the arrestee, Clay L. Shaw. The defendant is released on his present bond."

On March 22 Russo appeared before the Grand Jury, which thereupon formally indicted Shaw for conspiring "between Sept. 1 and Oct. 10, 1963" to murder John F. Kennedy.

ON JUNE 16, 1967, Police Detective Edward O'Donnell, one of the most experienced polygraph operators in the New Orleans Police Department, was contacted by the district attorney's office and asked to administer a polygraph test to Russo. It was explained to him by one of Garrison's assistants that the operator who had given the previous test had antagonized the witness and that therefore the results were not satisfactory. The assistant explained that Russo would like to meet O'Donnell before the test was given as Russo wanted "to see what kind of person" O'Donnell was. O'Donnell agreed.

About 3 p.m. Russo appeared in O'Donnell's office. O'Donnell attempted to deter-

One of a Series

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mine a pattern by asking routine questions of Russo. This test, referred to as a pneumo-

gram, was impossible. However, as the reading obtained was entirely too erratic. By agreement, Russo returned three days later on June 19 in the early afternoon. O'Donnell again attempted to administer a test, but was forced to stop due to erratic readings.

THE OFFICER suggested to Russo that he relax and that the two of them discuss the entire matter informally. The crucial questions to be asked, explained O'Donnell, involved the subject of Clay Shaw's presence at the party at Dave Ferrie's home.

Russo replied that he was confused.

O'Donnell patiently explained to Russo that he simply

wanted to know whether or not Clay Shaw was present at the party that he had testified about at the preliminary hearing. Russo first stated that he wasn't sure if Shaw had been present or had not been. O'Donnell was not satisfied.

Russo then told the officer that if he were forced to say yes or no, that he would be obliged to say no.

O'Donnell also wanted to know from his subject whether the discussion at this party had been a serious conspiracy or simply a bull session.

RUSO responded candidly that in his opinion it had just been a bull session.

Russo left. O'Donnell immediately went to Garrison's office, spoke to the D.A., and advised him of everything that had transpired. Garrison became enraged and fumed that "they" had gotten to Russo. O'Donnell returned to his office and shortly thereafter received word through a D.A. investigator that he, O'Donnell, should "keep his mouth shut."

O'DONNELL had been on the police force 16 years and did not take kindly to such advice. He immediately typed a full report of everything that had transpired and forwarded a copy to Garrison. There the matter rested for approximately one month.

In mid-July O'Donnell was told that Russo was coming for the polygraph test and the officer was asked to come to Garri-

son's office. Upon arriving he was asked to enter a room where Russo was waiting alone. O'Donnell strongly suspected that the room was "bugged" and waited outside.

Finally, a number of other assistant D.A.'s were called into the room. He noticed several of them carrying briefcases, and he wondered about the presence of recording equipment in them. Finally he entered the room with the assistants and Russo. Also present were Garrison and one of the D.A.'s secretaries who transcribed the meeting that ensued.

Garrison gave a copy of O'Donnell's report to Russo and asked him to examine it and determine if it were correct. Russo read the report and stated that the report was correct except for one small item. The item? His inability to identify Clay Shaw.

DURING the course of the discussion that followed reference was made to Russo's statement that he did not know what had been discussed at the party he had described at the preliminary hearing. Replied Russo to the assembled group: "I have been telling you all along I don't know what was said at that party." The remark was ignored by Garrison and his assistants.

The balance of the meeting was largely spent in a concerted effort on the part of Garrison and his assistants to convince O'Donnell that a supplemental report should be rendered clearing up the one small error in the original report.

O'Donnell advised the group that his original report was quite correct.

Russo never submitted to the polygraph examination. The entire matter was dropped.

On March 5, Layton Martens asked to see me. He expected to be called as a witness

13 in the Shaw preliminary hearing. He asked that I contact the district attorney's office on his behalf and appear with him at any hearing.

Martens was not called during the preliminary hearing.

The next I heard from him was that he had been subpoenaed to appear as a witness before the Orleans Parish Grand Jury on March 29.

I thought of Dean Andrews and I reflected on the thorough interrogation to which Martens had submitted on March 12, his third on the same subject matter. There was little doubt but

that Martens was being set up for a perjury charge.

HE SUBSEQUENTLY went before the Grand Jury and was questioned for about 90 minutes. He was badgered consistently about the trip to Houma in 1961 and at one point was told by an irate juror: "Do you know you're implicated in a burglary! I, of course, was not present. The remark would have been a signal to any attorney to advise silence to any further questions. Martens did not perceive this clear right to refuse to respond to further questions and, under the circumstances, could hardly be expected to have the presence of mind to react properly in any event. He had no way of knowing that lurking in Garrison's mind was the thought of using the Houma episode as a means of charging some of the participants with burglary for the purpose of exerting pressure and maintaining

a hold on them — the same purpose that underlay his charge of sale of narcotics against the fictional Manuel Garcia Gonzales. Martens, of course, had not been advised of his constitutional rights by Garrison or any of his assistants. They had little interest in such niceties.