SERIALIZATION OF EXCERPTS FROM THE BOOK

# The Garrison Case

## A Study in Abuse of Power

OCTOBER 19, 1969

### Book Jacket Synopsis

*This important book, as absorbing as it is significant, traces the strange, often even weird, tale of the investigation of New Orleans District Attorney Jim Garrison into an alleged New Orleans-based plot to assassinate President John F. Kennedy. This resulted in a series of indictments and eventually in the trial and acquittal of Clay Shaw. This was the Garrison Case. The author of this book is a New Orleans lawyer who himself defended one of the people accused by Garrison, and his intimate knowledge of the background and the tempestuous political history of Garrison over the last four and a half years illuminates a narrative that seems scarcely believable, except that it all actually happened. . . .*

*It tells the story of the large promises and incredible publicity when Garrison first announced, in February, 1967, his investigation into the fancied plot to kill Kennedy, and then the intricate legal maneuvering by which Clay Shaw's trial was put off until January, 1969, when the promised sensational developments never materialized. . . .*

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THE STRANGE spectacle known as the Kennedy assassination probe of Jim Garrison cannot be fully understood without some understanding of the man himself and his tempestuous political career.

He is physically impressive — six feet, six inches tall, handsome, and well built. His dress is immaculate; his voice is deep and beautifully modulated.

The favorable first impression deepens upon closer contact, for Garrison is blessed with an easy mastery of the language. Humor is his key weapon and he has a deft ability to parry the most telling criticism with pointed clever rejoinders.

He is possessed of an irresistible confidence in himself and the correctness of his opinion on any matter he deems significant. Contemptuous of details, he is subject to capricious change of opinion on matters not fundamental to his basic convictions. But the fundamentals of these convictions are his most cherished possessions. They yield to no evidence.

He sometimes appears to stand in awe of his ideas in the manner of a sculptor or painter regarding his work. His manner in meeting attacks upon them is not defensive; it is one of restrained outrage.

There is, finally, a quality about Garrison incapable of definition that renders an abiding dislike of the man virtually impossible upon personal contact. The word "charm" is close, but inadequate. His manner is casual and unhurried.

### One of a Series

**TO READERS: These installments comprise excerpts from the book to which we are limited by our serialization rights. Through necessity, the description of events and the characterizations are not as full as those in the complete book.**

These were the traits that were quickly apparent when I first met Garrison in the fall of 1956 upon joining the staff of District Attorney Leon Hubert, who was later to serve as Assistant Counsel to the Warren Commission. Garrison was Hubert's Executive Assistant. First Assistant was Malcolm O'Hara, who was later to serve as a judge of the Orleans Parish Criminal District Court. There was nothing in Garrison's performance to presage what was to come. I knew nothing of his past, which was, in fact, unspectacular.

Garrison was appointed Assistant District Attorney for Orleans Parish in 1953. Without question, he was the most impressive of the twenty or so lawyers on the District Attorney's staff.

Like the rest of us, of course, he was not without fault. He did, it seemed, have a tendency to make snap judgments on insufficient facts. He was prone to oversim-

plify. His abundant ego could, on occasion, be a cause of annoyance. And it is neither exaggeration nor hindsight to recall that in his humor there could at times be detected traces of cruelty.

Service in the District Attorney's Office in Orleans Parish is under the spoils system, not civil service. The entire force of assistant district attorneys on Leon Hubert's staff suddenly faced (at election time) the prospect of immediate relocation, and Garrison entered the private practice of law.

In 1959 Mayor Morrison ran for Governor against Jimmie Davis and lost. For his support in the campaign, Garrison was appointed Assistant City Attorney, a part-time job paying a nominal salary.

In 1960 Garrison ran with the support of Mayor Morrison against a sitting Criminal Court Judge. Sitting Judges have traditionally been considered unbeatable, a myth that was to remain until destroyed by Garrison himself sometime after his election as District Attorney. Garrison lost by a mere few thousand votes. It is interesting to speculate on the nature of his judicial career had he won.

In 1961 he qualified to run for District Attorney against the incumbent, Richard Dowling.

About a month before the first Democratic primary, there occurred one of the few truly decisive events in New Orleans politics. All of the District Attorney candidates were invited to an open-end panel discussion to be broadcast live on all four



television stations operating in the New Orleans area. Dowling, acting on the advice of his supporters that he had nothing to gain by offering himself as a live target for the various challengers, bowed out with a prior out-of-town engagement. His absence did little, however, to abate the vigor of his opponents' attacks.

Garrison said virtually nothing until well into the program when, with the calm of a man with little to lose, he began an authoritative discourse about the current narcotics problem, its roots, its scope, and the "incredible" failure of the incumbent to attack it. This was the first exposure of consequence of the people of New Orleans to the beautifully modulated self-assured voice and the superbly effective forensics of Jim Garrison. Garrison looked and spoke like a District Attorney. And he had a captive audience.

The program not only finished Dowling, it all but eliminated Dymond as a major candidate. But Garrison had projected beautifully, and the response was tremendous. Support developed; contributions trickled in and TV appearances were possible. In each of them, more and more voters became fascinated by the image of this giant of a man and his flawless delivery.

In the first primary Dowling fell far short of the needed majority. Garrison was a close second. Garrison won the second primary by about 6,000 votes out of approximately 130,000 cast.

I spoke to Garrison about serving in a part-time position on his staff, one that could be pursued without interference with private civil practice. He responded by appointing me to supervise prosecution of all narcotics cases. In the course of my seventeen months in his office, I was assigned considerably more varied duties, but neither I nor most who had served on his staff could find reason to complain about Garrison as a man to work for. He was appreciative and respectful of each man's efforts.

In May, 1962, Garrison and his staff were sworn into office. The major apprehension being voiced by his political opponents and detractors was the tired complaint that Garrison was lazy. This was going to be a do-nothing administration.

Or so they said.

## 2

THE CRIMINAL COURT building in New Orleans is a huge four-story stone building occupying an entire square at the intersection of two large avenues, Tulane and Broad.

The building is often referred to by the criminal practice fraternity as "Tulane and Broad." The pious pronouncement across its imposing facade on Tulane Avenue—"The Impartial Administration of Justice is the Foundation of Liberty"—has been the butt of countless jokes, sometimes crude, sometimes clever, by those familiar with the hit-and-miss nature of the administration of criminal justice within. The building houses many public officeholders and others who aspire to unseat them.

Over the years Tulane and Broad has assumed a character of its own. Those knowledgeable in the petty intrigues and jealousies among its occupants, and with the pressures of public interest in controversial cases, can often sense the rise and fall of tension by merely strolling the crowded hallway. It has also been the scene of many celebrated New Orleans trials, in several of which participants in Garrison's "assassination probe" have taken part.

When Garrison took office as District Attorney in May, 1962, it was with the active support of many in the building and with the goodwill of practically all.

But Garrison despised the system and often appeared to look contemptuously on its members as petty, unprincipled men, un-

worthy of being treated on an equal basis. His disdain for the other occupants of Tulane and Broad made itself felt in a number of minor but irritating ways. Though he was tactless and a trifle arrogant, I felt, as did most who knew Garrison, that his innate honesty was genuine and beyond question. The seeds for his abuse of office, it would develop, lay elsewhere.

By virtue of his office, the District Attorney is potentially the most powerful of the public officials domiciled at Tulane and Broad. That he is potentially the most powerful in the city can be respectably argued. However, until 1962 the full extent of his strength had been convincingly impressed neither upon the community in general nor upon the politicians themselves. It lay largely unused in the statute books. Not until the advent of Jim Garrison was the realization driven home of the large extent to which the D.A.'s power had remained untapped.

The District Attorney in Louisiana can charge any individual with any crime other than a capital offense by the mere signing of his name to a bill of information. By a stroke of the District Attorney's pen, headlines are made. Individuals are publicly embarrassed and compelled to undergo the financial expense of bail and legal representation and the emotional drain of public trial. This last cannot be fully comprehended, save by those who have experienced it. Likewise, by the signing of his name, the District Attorney can dismiss any charge, including capital charges; he need not seek the permission of the court.

Then there is the Grand Jury, which is, in truth, the District Attorney's toy. It is, in modern America, an anachronism, a relic from the legal Stone Age.

Grand Juries in Orleans Parish are selected for six-month terms by one of the eight judges in the Criminal Court.

They hear all capital cases, as such charges can only be tried upon a Grand Jury indictment. In addition, they may hear any other cases and likewise return an indictment if they feel the evidence so warrants. Proceedings are secret. Only the jurors and the District Attorney or his assistants, without limit as to number, are present to hear the witness.

It is understandable that secrecy of the proceedings is so zealously guarded for, often, they are a travesty.

Except in rare instances, the Jury will hear only those witnesses the District Attorney wishes them to hear. They are preconditioned by what the District Attorney has told them of the matter under investigation. There is no judge to strike any of his remarks as prejudicial. No representative of the defendant or prospective defendant is present; none of his witnesses will be heard, except as the Jury might wish to hear them. In this, as in all other matters, most Grand Jurors will be guided by the advice of the District Attorney.

Hearsay and opinion evidence are the rule, not the exception. There is no one to object. Witnesses deemed hostile or untruthful by the District Attorney, arbitrarily or otherwise, may be pointed out in advance. Most judges will permit only one counsel for a side to cross-examine a witness in the course of a trial. In the Grand Jury room, a witness may be badgered by all 12 jurors, plus the District Attorney and as many of his assistants as happen to be present.

The prospective defendant himself is normally not heard unless he requests it. Most lawyers would stand aghast at any suggestion that a client suspected of crime should voluntarily appear before the Grand Jury. Testimony of a prospective defendant who has not been warned of his right to refuse to answer incriminating questions and to sign a waiver of his rights may result in a dismissal of an indictment brought against him.

Prior to 1962, most District Attorneys used the Grand Jury primarily as a buffer between themselves and adverse criticism in unpopular matters. Charges against an important public official or citizen, or on a controversial matter that the District Attorney wanted tried, were usually submitted to the Grand Jury. If indictment followed, no one could criticize the District Attorney. If the public clamored for the filing of criminal charges that the District Attorney felt were not warranted, or were politically unpalatable, the case was submitted to the Grand Jury. If a no true bill was returned, the District Attorney's skirts were clean. Few realized and none dared say publicly that the Grand Jury was, in practice, the puppet of the District Attorney.

Hence, if the Grand Jury was of benefit to the District Attorney, it was in a negative sense. The District Attorney is on the firing line; and most wage a constant battle against adverse publicity. The smart District Attorneys have learned to live with the press as they would with an untamed carnivorous animal. It was constantly to be sated and pacified with newsworthy items of a harmless or innocuous nature, and as long as the animal lay sleeping, so much the better. They would not arouse it.

But Jim Garrison did not think defensively. No one had previously sought to use either the news media or the Grand Jury as offensive weapons. But all of that was to change.

## 3

GARRISON'S CRITICS to the contrary, certain positive accomplishments must be credited to him with respect to the internal operation of his office. His staff has built an impressive record of prosecutions.

Responsibility for the routine adminis-

tration of the office, which is the prosecution of the thousands of cases, including murder, rape, and robbery, as well as gambling and prostitution, was quickly delegated to others almost in its entirety. For almost immediately upon his entry into office, Garrison demonstrated a preoccupation with matters whose genuine connection with the legitimate function of his office has been

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hard to discern.

Shortly prior to Garrison's assumption of office, an assistant district attorney of Richard Dowling, the outgoing D.A., dismissed charges in two pending cases without serious explanation. The dismissals were the subject of considerable publicity and the inference by the public of corruption was undeniably strong. However, those who knew him had little reason to question the assistant's honesty. More to the point, however, there was no evidence of corruption, nor was any developed in the course of the Grand Jury investigation relentlessly pursued by Garrison. Notwithstanding a total failure to develop evidence of bribery, Garrison sought and obtained Grand Jury indictments for "malfeasance in office"—a loosely defined statute well-suited for use, and frequently used, by Garrison during his first years in office, against those he deemed political enemies.

The indictments garnered large headlines. The cases were dismissed by the Court in July, 1962.

In early August, however, there followed nine additional charges of malfeasance against the same former assistant. The purported "malfeasance" consisted of routine dismissals of other prosecutions in none of which had there even been a suspicion of corruption. The new cases likewise were front-page news. Nothing further was heard of these, however, and some were quietly dismissed in the latter part of 1966.

A few days following the multiple indictments of the assistant, Garrison turned his fire on Dowling himself. Dowling was the subject of four Grand Jury indictments based upon routine dismissals of cases by Dowling during his administration as District Attorney, all for reasons apparently deemed insufficient by his successor.

In his public response to the indictments, Dowling suggested that Garrison was seeking publicity.

For several months Garrison's investigators, accompanied by some of his assistants, were staging nightly raiding parties on Bourbon Street while Garrison loudly proclaimed war on vice and vowed to clean up the street. There were many who, almost as loudly, insisted that Garrison was motivated more by a passion for publicity than by revulsion at the rampart B-drinking that flourished along the street.

The Dowling indictments were promptly thrown out as stating no criminal offense recognizable in law. Despite Garrison's announced intention to appeal, no appeals were taken.

Meantime, Garrison's crusade against sin continued with increasing intensity. Nightly raids against honky-tonks and clip joints along a certain segment of Canal Street, the city's main stem, paid off relatively quickly when the clubs folded in the face of repeated arrests of employees and the consequent expense and interruption of business.

The Bourbon Street clubs were more formidable, however, and the attacks were costly. Under the law, one judge had to approve any expenditure by Garrison from the "fines and fees" fund which was used to finance this crusade, and Garrison was quite reticent about revealing details of the expenditures. The judges suspended all authorizations of funds until the entire Court returned from vacation in October. Garrison made a personal $5,000 loan from a local bank to continue the crusade until then.

In October, the judges agreed that no expenditures would be approved except by a majority vote of all judges.

The first inkling I had of the considerable friction that was developing was Garrison's announcement at a staff meeting that he had finally located the trouble at Tulane and Broad. "There is," he said, "a conspiracy among the judges to wreck my administration."

On October 31st Garrison retaliated with a hammer blow. At noon he gave an after-dinner speech to a Jewish Temple Brotherhood. He had had the foresight to invite representatives of the local television stations to be present. That evening, large headlines informed the city of Garrison's after-dinner remarks to the effect that the Parish Prison was becoming dangerously overcrowded with prisoners awaiting trial—the reason being that the eight judges of the Criminal District Court were running a "vacation racket." They were, he said, enjoying 206 holidays a year, not counting legal holidays like "All Saints' Day, Huey Long's Birthday, Memorial Day, and St. Winterbottom's Day," while prisoners languished in jail.

Singled out for special attack was Judge

## The Author

**MILTON E. BRENER was born in New Orleans and was graduated from Tulane Law School in 1952. For almost four years he was a first lieutenant in the Judge Advocate General's Corps, stationed in Korea and Okinawa. After his discharge, he entered the New Orleans District Attorney's office. He has been in private law practice since May, 1958, as a member of Garon, Brener, McNeely and Hart. With his wife and four children, Mr. Brener resides in New Orleans.**

J. Bernard Cocke with whom a bitter feud was developing.

Although most among the Bar and among the politicians and habitues of the building considered the attack to be unjustified, such individuals are relatively few in number and together with relatives and close friends do not constitute a potent factor in any election. The bulk of the 200,000 registered voters of New Orleans, as elsewhere, consists largely of men and women too preoccupied with the daily necessity of earning a living to read beyond headlines. The workings of government and of courts remain a mystery. They are often deeply suspicious of all who constitute a part of this incomprehensible apparatus. The motives and honesty of men in public life are forever suspect to countless citizens who deem them unreal people living in an unreal world known only through newspapers and television.

What was becoming increasingly clear to many was Garrison's remarkable ability to respond to the prejudices and misconceptions of the great mass of voters beyond the circle in which he worked and lived.

The judges, indeed, were in a difficult position. Beyond pointing out that the attack was motivated by their refusal to permit Garrison to "throw money away with both hands" and that he had never complained to the judges personally of the overcrowded conditions in the Parish Prison or of excessive vacations, the response was most moderate under the circumstances, gently taking Garrison to task for intemperate statements. They called for an investigation by the Bar Association into the ethics of Garrison's blast.

Judge William O'Hara, who had recently retired from the bench after nearly thirty years of service (and whose vacancy had been filled by his son, Malcolm), issued his own public statement to the effect that any blame for the crowded conditions of the Orleans Parish Prison must rest with the District Attorney. The statement was factual in tone and attempted to explain the operational deficiencies in Garrison's office that were responsible for the increasing backlog of cases.

Garrison responded publicly:

> The judges have now made it eloquently clear where their sympathies lie in regard to aggressive vice investigations by refusing to authorize use of the D.A.'s funds to pay for the cost of closing down the Canal Street clip joints. This raises interesting questions about the racketeer influences on our eight vacation-minded judges . . . The efficiency and dispatch with which the judges of the present court stopped my undercover investigation of B-drinking and the resolve which they demonstrated in their uniform opposition to any continued vice investigation by this office would gladden the heart of any efficiency expert.

The judges were infuriated. All eight signed a charge of criminal defamation.

The charge was promptly dismissed by Garrison's First Assistant Frank Klein, Garrison having determined that it was baseless. The judges called in Louisiana's Attorney General, Jack Gremillion, to supersede Garrison and to file and prosecute the charges of defamation. Gremillion accepted the resquest, claiming that the "integrity of the judiciary is at stake." Judge William Ponder of Many, Louisiana, was assigned to hear the case.

In January, 1963, the trial was held. One by one the judges paraded to the stand to assure the Court and the public that they were not shirking their duties and that they were not at all influenced by racketeers. The cross-examination, badly handled by Garrison's friend and attorney, Donald Organ, was often embarrassing. That it amounted to something less than proof of racketeering influences, or that there was not a whisper concerning such influences on fully half of the judges, was of no moment to most of the public. The judges took their lumps willingly in anticipation of Garrison's own appearance on the witness stand.

On the day the prosecution was to close its case, Garrison's numerous critics crowded the courtroom. They were undoubtedly looking for a repetition of the Garrison-Dowling debate. They were to be surprised and disappointed. Following the Attorney General's announcement that the prosecution rested, Organ was on his feet:

"Your Honor, the defense also rests."

Garrison was duly convicted. He was sentenced to pay a fine of $1,000. But long before his conviction was reversed by the United States Supreme Court in early 1965, it was clear to all, the eight judges included, that he had won and the judges had lost. The Supreme Court reversal followed an affirmance of the conviction by the Louisiana State Supreme Court and was based on the unconstitutionality of the defamation statute insofar as it applied to defamation of public officials, such as the judges. In such cases, said the United States high court, there must be proof of actual malice. Such proof, according to the Court, was lacking.

Meantime, during the pendency of his defamation trial Garrison had turned to two trusty weapons, the Grand Jury and the malfeasance statute, to gain some measure of vengeance against his major antagonist, Judge Bernard Cocke. Cocke had asked a witness in the course of a preliminary hearing in open court if his, the witness's, testimony had been the same before the Grand Jury. For this the Judge was cited for contempt of the Grand Jury. Then shortly following his conviction for defamation, Garrison sent an assistant district attorney with a voucher for undercover work in connection with Garrison's Bourbon Street campaign to Judge Cocke to seek Cocke's signature. Cocke refused and an indictment of malfeasance followed. Judge Cocke was promptly acquitted. The acquittals were expected even by Garrison, but the humiliation to his antagonist of being forced to sit at the bar as a common criminal was apparently sufficient.

I had felt that such almost childishly punitive measures and blatant abuse of the Grand Jury would cause wide public condemnation. Again I had overestimated the public and underestimated Garrison. Even the irascible Cocke realized that in the eyes of the public Garrison had undoubtedly won again.