

PERSPECTIVE

Will the Real Jim Garrison Please Stand Up

BY BENNETT L. GERSHMAN

OLIVER STONE'S controversial film "JFK" has been praised for providing a provocative counter-myth to the establishment "truth" of the Warren Commission Report on President Kennedy's assassination. The film also has been vilified because it is seen as an irresponsible distortion of historical fact. Absent from the public debate over the film, however, has been an informed critique of the actual role of Jim Garrison, the New Orleans District Attorney who launched a heavily publicized investigation into the assassination, and who unsuccessfully prosecuted Clay Shaw, a local businessman whom Garrison charged with conspiracy to murder the President.

Garrison, played by Kevin Costner, is the central figure in the film. He is portrayed as an idealistic crusader for justice who believes that the Warren Commission Report was a sham, that Lee Harvey Oswald was an innocent patsy, and that the plot to kill Kennedy involved major segments of American government, organized crime and other parties. Garrison is depicted as acting in good faith and within legal bounds to vindicate the cause of justice. The Jim Garrison of "JFK" is driven but honest, zealous but fair, passionate but careful. The real-life Jim Garrison, however, was very different from Stone's portrayal. Indeed, the federal courts which reviewed Garrison's conduct characterized him as a reckless and irresponsible demagogue who abused individual rights, subordinated truth to self-aggrandizement, and needed to be stopped before he wreaked further damage to innocent persons.

Judicial intervention resulted from an extraordinary application by Clay Shaw to enjoin Garrison's attempt to prosecute him for perjury following Shaw's acquittal, after 55 minutes of jury deliberation, of conspiring to assassinate President Kennedy. Although federal courts ordinarily are forbidden to interfere with pending state criminal trials, *Younger v. Harris*, 401 U.S. 66 (1971), the federal district court, following an evidentiary hearing, issued a permanent injunction restraining Garrison from prosecuting Shaw again, *Shaw v. Garrison*, 328 F.Supp. 390 (E.D. La. 1971), and the Court of Appeals for the Fifth Circuit, in an opinion by Judge John Minor Wisdom, unanimously affirmed. *Shaw v. Garrison*, 467 F.2d 113 (5th Cir.), cert. denied, 409 U.S. 1024 (1972). These opinions discussed at length Garrison's "unique and bizarre" conduct in his investigation and prosecution of Shaw. 328 F.Supp. at 392. They concluded that Garrison undertook a "baseless investigation," in "bad faith," and for "ulterior motives." *Id.* at 395, 396, 397, 398, 400.

Why did Garrison decide to investigate the assassination? Garrison's office had initially participated in a brief investigation shortly after the assassination, upon learning that Oswald had spent the prior summer in New Orleans and was acquainted with David Ferrie, also a New Orleans resident. Garrison believed that Ferrie might have been a link between Oswald and a supposed New Orleans-based conspiracy to assassinate the president. That investigation ended without charges being filed. Three years later, however, after the Warren Commission issued its findings, Garrison decided to

charge Shaw, without submitting the matter to a grand jury, "demonstrates ulterior motives." *Id.* Although Garrison so testified at a preliminary hearing that Shaw was present at a conspiratorial meeting in New Orleans, Garrison was unable at Shaw's trial to identify Shaw as having been present. In fact, Garrison knew that Russo had been equivocating. Garrison had been given a report by Lieutenant Edward O'Donnell, the New Orleans Police Department's polygraph expert, in which Russo stated that he did not believe that Shaw attended any conspiratorial meeting. According to O'Donnell, Garrison came enraged upon reading the report, and insinuated that O'Donnell had "sold out to the press or to someone." *Id.* at 396. Garrison suppressed O'Donnell's report from Shaw's trial counsel. *Id.* at 396.

How was Garrison's investigation financed? Garrison used private funds collected from friends to pursue his investigation. An organization known as "Truth or Consequences" was formed to allow Garrison to avoid counting publicly for his expenditures in conducting his investigation. The contributors "expected results from the money contributed." *Id.* at 398. Garrison gave the results in the form of prosecutions of Shaw for conspiracy and perjury. When Shaw was arrested the money came in; when he was acquitted, the money stopped. The district court found that "the evidence is clear that Garrison was in bad faith in using these funds to prosecute Shaw." *Id.*

WHAT ABOUT GARRISON'S concern for the rights of Shaw? Garrison's tactics in arresting Shaw were "outrageous and inexcusable," and demonstrated Garrison's "total disregard of Shaw's rights." *Id.* at 399. Garrison carefully staged Shaw's arrest to maximize the publicity of the event. Shaw voluntarily appeared in Garrison's office at 1 p.m. and remained there for four and one-half hours until he was arrested. During the interim, representatives of the media were summoned. They were allowed to photograph Shaw through a two-way mirror unbeknownst to him. Following his arrest, Shaw was taken handcuffed through the hallway outside Garrison's office which by then had become congested with newsmen, photographers, television camera crews, and members of the general public. Shaw was shoved through the crowd, even though he could have been taken down a private elevator located in Garrison's office. Garrison "intentionally used the arrest for his own purposes, with complete disregard for the rights of Clay Shaw." *Id.* at 399. Garrison's pretrial tactics further accentuated his disregard of Shaw's rights. Garrison held several press conferences and issued several press releases during this period. Garrison released information to the press that he refused to give to Shaw's attorney. *Id.* at 399.

Why did Garrison bring perjury charges against Shaw the day after the jury acquitted Shaw of conspiracy? The court was aware of no other instance in which a defendant who took the stand and was acquitted was subsequently charged with perjury. Garrison gave no explanation, and there was no additional evidence

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Judicial intervention resulted from an extraordinary application by Clay Shaw to enjoin Garrison's attempt to prosecute him for perjury following Shaw's acquittal, after 55 minutes of jury deliberation, of conspiring to assassinate President Kennedy. Although federal courts ordinarily are forbidden to interfere with pending state criminal trials, *Younger v. Harris*, 401 U.S. 66 (1971), the federal district court, following an evidentiary hearing, issued a permanent injunction restraining Garrison from prosecuting Shaw again, *Shaw v. Garrison*, 328 F.Supp. 390 (E.D. La. 1971), and the Court of Appeals for the Fifth Circuit, in an opinion by Judge John Minor Wisdom, unanimously affirmed, *Shaw v. Garrison*, 467 F.2d 113 (5th Cir.), cert. denied, 409 U.S. 1024 (1972). These opinions discussed at length Garrison's "unique and bizarre" conduct in his investigation and prosecution of Shaw. 328 F.Supp. at 392. They concluded that Garrison undertook a "baseless investigation," in "bad faith," and for "ulterior motives." Id. at 395, 396, 397, 398, 400.

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WHY DID GARRISON target Clay Shaw for investigation? The district court found that there was "no factual basis for questioning Shaw concerning the assassination." Id. The events leading to Shaw's arrest are noteworthy. Garrison's office first interviewed Shaw in December 1966, and arrested him on March 1, 1967. Shaw's arrest came a few days after a meeting between Garrison's staff and Perry Raymond Russo, an acquaintance of David Ferrie. Ferrie had died on Feb. 20, 1967, and Russo's name was mentioned in a newspaper article relating to Ferrie's death. The story that Russo allegedly told Garrison's office — that there was a conspiratorial meeting between Shaw, Ferrie, and Oswald — provided the sole basis for Shaw's arrest. A detailed memorandum of that meeting was prepared by a member of Garrison's staff. There is no mention in that memorandum of any reference by Russo to a conspiratorial meeting to assassinate the president. Two days after this interview, Garrison instructed his staff to subject Russo to sodium pentothal and hypnosis. Although Garrison claimed that these procedures were used to "obtain a degree of corroboration" of Russo's alleged claim of a conspiratorial meeting, the federal court found these "extraordinary tactics" were more likely used "to implant into Russo's mind a story implicating [Shaw] in an alleged conspiracy plot," and through post-hypnotic suggestion to induce Russo "to concoct his story." Id. at 395-96. That Garrison immediately moved to arrest and

the money contributed." Id. at 398. Garrison gave them results in the form of prosecutions of Shaw for conspiracy and perjury. When Shaw was arrested the money came in; when he was acquitted, the money stopped. The district court found that "the evidence is clear that Garrison was in bad faith in using these funds to prosecute Shaw." Id.

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Why did Garrison bring perjury charges against Shaw the day after the jury acquitted Shaw of conspiracy? The court was aware of no other instance in which a defendant who took the stand and was acquitted was subsequently charged with perjury. Garrison gave no explanation, and there was no additional evidence to charge Shaw with perjury other than that given at the conspiracy trial. Indeed, it would have been much more logical to charge Russo with perjury given the substantial discrepancies in his testimony. The explanation, according to the federal court, was reasonably clear. Garrison had "a significant financial interest in the continued prosecution of Clay Shaw." Id. at 400. Garrison had written a book, *Heritage of Stone*, about his investigation of President Kennedy's assassination, and had a contract to write three additional books. Garrison's "desire for financial gain is among the motives which prompt[ed] the continued prosecution of Clay Shaw." Id. The further prosecution of Shaw provided a means by which Garrison could "profit, and also repay the substantial obligations owed to one of his financial backers." Id. at 400.

Garrison's relentless prosecution of Shaw epitomizes a prosecutor's abuse of power. In view of the strong policy considerations surrounding the *Younger* abstention doctrine, it is extraordinary that a federal court would ever intervene to enjoin a pending state prosecution. Garrison's prosecution was demagogic because it reflected illegitimate personal considerations as opposed to valid law enforcement objectives. As the federal courts concluded, Garrison was motivated by actual "bad faith," "ulterior motive," and "the specific intent to deprive Shaw of his rights." Ironically, although "JFK" is intended to expose governmental deceit and abuse of power, it conceals the well-documented abuse and corruption by its hero. This is not to suggest that there was not a conspiracy to assassinate President Kennedy. Whether there was or not, Garrison was not embodying the pursuit of truth and justice. Millions of Americans, however, as they watch Kevin Costner, won't see it that way.

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