

CLARK CALLED IN SHAW CASE

T-P 6-14-68
Attorney General Sought
as Defendant

Clay L. Shaw's attorneys asked Thursday that United States Attorney General Ramsey Clark be made a defendant in the federal court suit which is aimed at blocking Shaw's prosecution by District Attorney Jim Garrison on a charge of conspiring to murder President John F. Kennedy.

They also filed an amendment to their original suit in which they attack the constitutionality of Article 782 of the Louisiana Criminal Code which deals with the number of jurors in criminal cases and the number who must concur in a verdict.

Garrison's office filed three technical pleadings. One asked dismissal of the Shaw suit. Another asked that Assistant District Attorneys James L. Alcock and Anthony Sciambra be dismissed as defendants in the suit; and the third is an answer to a motion by Shaw's attorneys seeking to compel Alcock, Sciambra, and investigators Louis Ivon and Lynn Loisel to answer questions asked when they appeared for pre-trial depositions.

All technical pleadings were filed shortly before attorneys for Shaw and members of the district attorney's staff went into a two-hour conference with the special three-judge court which is scheduled to hear Shaw's suit for an injunction against his prosecution.

HEARING MONDAY

The court is scheduled to hear arguments on all motions Monday at 10 a.m. The court is composed of Judge Robert A. Ainsworth Jr. of the United States Fifth Circuit Court of Appeals and District Judges Frederick J. R. Heebe and James A. Comiskey.

A trial date for the case is expected about the first of July. Judge Heebe has issued a temporary restraining order halting the state prosecution until the federal suit is decided.

United States Attorney Louis C. LaCour and his first assistant Gene S. Palmisano attended the conference in Judge Heebe's office for a short time; and when they left, they said only that the attorney general has been served with Shaw's motion and that they are

awaiting instructions from Washington.

In addition to the injunction, Shaw's suit asks for a judgment declaring that the Warren Commission report on the Kennedy assassination be held valid and binding on all courts.

In their motion to join the attorney general as a party defendant, Shaw's attorneys claim that they requested Clark to join them as a plaintiff but he refused.

Shaw's attorneys charged that Garrison has engaged in a premeditated and well calculated scheme to use the court to conduct an illegal, fraudulent and useless probe of the president's assassination.

They claim that the primary purpose and ultimate objective is to discredit the Warren Report and to convince the public that Kennedy was not killed by Lee Harvey Oswald or by any other lone assassin, but as a result of a well planned conspiracy involving many individuals and organizations.

ACCUSATIONS ALLEGED

The motion alleges that Garrison has accused the President of the United States as "an accessory after the fact" in the assassination and the Attorney General and the Chief Justice of the United States have likewise been "subjects of vitriolic, intemperate and baseless charges and accusations."

As a result of the inaction of all who have been the subjects of these attacks, it is charged, Shaw has been placed in the position of having to defend the Warren Report, whereas the proper party is the Attorney General.

The case is of tremendous public importance, not only to Shaw, but also to all citizens of the United States, the integrity of the United States, and the Warren Commission, the motion claims.

In Shaw's amended complaint, it is argued that the state statute dealing with jurors in criminal cases is unconstitutional in that it denies Shaw the right to a trial by a jury of 12 of his peers who would decide the outcome unanimously. It claims that under the statute he is denied due process, equal protection of the laws and trial by jury.

It is pointed out that the crime

with which Shaw is charged is punishable by imprisonment at hard labor for not less than one and not more than 20 years, and Article 782 stipulates that such cases must be tried before a 12-member jury and nine jurors must concur in the verdict.

The amendment claims that the crime Shaw is charged with is a "serious offense" and one that should be tried by 12 persons who must unanimously agree on the verdict.

To deny this is to deny due process and trial by jury, it is contended.

RULINGS CITED

Shaw's attorneys told the court that the United States Supreme Court has interpreted the Sixth Amendment as guaranteeing this right and has held the Fourteenth Amendment guarantees a right to a jury trial in all criminal cases which, were they to be tried in a federal court, would come under the Sixth Amendment's guarantee.

They claim that Article 782 provides that cases in which the punishment may be imprisonment at hard labor shall be tried before a jury of five jurors, all of whom must concur in a verdict; and to require a verdict of only nine of 12 in the case of "a more serious offense" and a unanimous verdict in the case of the "less serious offense" is discriminatory.

Shaw's attorneys also charged

that Garrison's prosecution was not brought lawfully or in good faith, in that the indictment was based on hallucinatory, drug-induced and hypnotically-induced testimony.

This is a reference to testimony of Perry Raymond Russo, one of Garrison's chief witnesses who testified that he was hypnotized by the district attorney's investigators as a means of helping him remember events which allegedly linked Shaw to a conspiracy.

Shaw's attorneys charged that Shaw has been made a "patsy" or "pawn" in the "fraudulent investigation."

They further charged that

Garrison's office is "not motivated by an expectation of a valid conviction but the actions are part of a plan to employ illegal searches and seizures to harass . . ."

Attached to the amendment is a long list of proceedings in Criminal District Court through which it is alleged Shaw's rights were violated.

The first motion filed by Garrison's office seeks dismissal of Alcock and Sciambra as defendants in Shaw's suit. It claims that Garrison has the sole and exclusive authority over prosecution of all cases and is therefore the only indispensable party.

In the answer to Shaw's motion seeking to compel Garrison's aides to answer the questions they refused to answer in the depositions, it is claimed that they refused upon advice of counsel and that Shaw's attorneys are not entitled to information they seek. It is also claimed that Shaw is not entitled to the \$3,000 for reasonable expenses connected with his motion seeking to compel the testimony.

A memorandum attached to the answer claims that information sought by Shaw's attorneys is privileged and concerns the investigative file of the district attorney, including methods used in the investigation and preparation of the case.

Much information sought has already been denied by Judge Edward A. Haggerty Jr. in Criminal District Court, it is contended; and Shaw attorneys allegedly are attempting to use liberal civil rules of discovery to obtain information to which they are not entitled under criminal rules.

In the motion asking dismissal of the federal suit, Garrison's office claims that it should not be considered because Shaw's prosecution is still pending in Criminal District Court.

It is alleged that a section of the United States code prevents the federal court from enjoining prosecution as long as the case is pending.