

# DISMISS SHAW SUIT, GARRISON AIDE ASKS

T-P-6-19-68  
Four Motions Heard by  
Federal Court

One of District Attorney Jim Garrison's assistants Monday asked a special three-judge federal court to dismiss without further hearing a suit filed by Clay L. Shaw seeking to block his prosecution in criminal district court on a charge of conspiring to murder President John F. Kennedy.

The plea was made by Assistant District Attorney James L. Alcock as the court heard arguments on four technical motions filed in connection with Shaw's suit.

A court 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 took the motions under submission after three hours of argument.

Attorneys were given until Monday to file written briefs. No indication was given as to how long it would take the court to rule on the motions.

Motions taken under submission include Garrison's asking dismissal of the entire Shaw suit as well as one seeking dismissal of Alcock and First Assistant DA Charles R. Ward as defendants in the suit.

Also taken under submission were motions by Shaw's attorneys asking that the United States Attorney General Ramsey Clark be joined as a defendant in the case, and that four of Garrison's aides be compelled to answer questions asked when they appeared for depositions sought by Shaw's attorneys.

## ATTORNEY APPEARS

United States Attorney Louis C. La Cour appeared in court and formally objected to inclusion of the attorney general.

Shaw's federal court suit seeks an injunction to block his prosecution by Garrison as well as a declaratory judgment holding that the Warren Commission report on Kennedy's assassination is valid and binding on all courts. The report held that Lee Harvey Oswald acted alone in

the killing of the President.

It also seeks to have declared unconstitutional a number of statutes used in the Shaw prosecution, including the Louisiana conspiracy statute and the law dealing with the number of jurors in criminal cases and the number needed to concur in convictions.

Early in the hearing La Cour, who had been invited by the court to appear, entered the formal objection to the inclusion of the Attorney General and was given permission by the court to file a legal memorandum as "friend of the court."

In urging dismissal of the Shaw suit, Alcock claimed that the court is really considering more than just the Shaw case and hanging in the balance is the whole issue of comity between state and federal courts.

He cited a number of United States Supreme Court cases in which he claimed that federal courts have historically refused

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to interfere in state prosecutions.

### 'IN DEPTH' STUDY

At this point Judge Ainsworth and Judge Heebe both asked Alcock to include in his brief an "in depth" study of first amendment rights, and asked him to also include any contemporary case in which an injunction was issued under the same circumstances as in the Shaw case.

Alcock contended that as a matter of law, Shaw's suit should be dismissed without further evidentiary hearing.

He claimed that there is no need for an injunction because Shaw has adequate remedies by way of a jury trial, appeals to higher state courts and by way

of federal habeas corpus procedures.

Alcock claimed that all defendants are inconvenienced by criminal prosecutions, but said that he could see no difference between the inconvenience to Shaw and that of any other defendant.

Judge Ainsworth questioned Alcock about how much evidence would be placed before the court in the event an evidentiary hearing was held and the assistant DA answered that he had been given to understand that Shaw's attorneys would want to place all of their evidence before the court.

"Wouldn't we be trying the criminal case in federal court?" Judge Ainsworth asked.

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"Yes," Alcock replied.

In response to further questioning by the court, Alcock estimated that the Shaw trial in Criminal court would take about six weeks.

He said that if an evidentiary hearing were held in federal court it would probably take less than four weeks because no jury would be present.

Alcock said that if Shaw was granted an evidentiary hearing all of the inmates in parish prison would ask for the same thing.

He also contended that it would impinge upon the district attorney's privileged evidence.

In answer to a question from Judge Ainsworth, Alcock agreed that the court must rule on Shaw's attack upon the constitutionality of the state statutes, regardless of what it does on the motion to dismiss. If the Louisiana conspiracy statute is declared unconstitutional, he conceded, the Shaw prosecution will fall.

In his reply, Edward F. Wegmann, one of Shaw's attorneys, argued that the prosecution of Shaw was not brought in good faith and with no hope of conviction.

He claimed that the federal court has jurisdiction over the case because of the extraordinary circumstances pleaded in the suit, adding that for the purposes of the DA's motion to dismiss, all of the allegations in the complaint must be treat-

ed as being true.

Wegmann argued that the charges of Garrison are in contradiction of the Warren Report which he claimed was the "most elaborate investigation ever made in the United States."

He asserted that the Warren Commission had at its disposal the entire Federal Bureau of Investigation, the Justice Department, the Secret Service, the Dallas Police Department, and other government agencies.

#### NO ONE KILLED

"We have the conclusion of the Warren Commission that Lee Harvey Oswald acted alone. We have the conclusion that Oswald did not even know that Jack Ruby existed, that Oswald did not act in concert with any other person or government, but here we have a statement by the District Attorney of Orleans Parish that Oswald did not kill anyone in Dallas," Wegmann asserted.

He charged that Garrison, Alcock and Ward manufactured evidence against Shaw and claimed that he can show in court that Perry Raymond Russo, one of Garrison's major witnesses, testified while under post-hypnotic suggestion.

The sole purpose of the Shaw prosecution, he alleged, is to provide Garrison with a vehicle through which to at-



—Photo by The Times-Picayune.

A SMILING Clay L. Shaw (right) is accompanied by his attorney, Edward F. Wegmann, as a three-judge hearing opened Monday in federal court in New Orleans. Shaw, charged by District Attorney Jim Garrison with conspiring to assassinate President John F. Kennedy, is seeking a permanent federal injunction barring Garrison from prosecuting him on the state conspiracy charge.

tack the Warren Commission.

Asked by Judge Ainsworth why Garrison would have such a motive, Wegmann said that he has never had the opportunity to discover it on cross examination but that he can only "surmise" the district attorney's motive.

"I have not made any allegations, only that he required a judicial forum for his criticism of the Warren Commission," Wegmann added.

#### GRAPEFRUIT CIRCUIT

He said that Garrison has joined the "grapefruit circuit" and has made speeches as far away as San Francisco.

Judge Heebe asked if Garrison discusses the Shaw case in his speeches and Wegmann replied, "As for Garrison, he doesn't, but according to Ed Wegmann, he discusses it in all of his speeches. He does indirectly what he allegedly does not do directly."

The attorney called upon the court to use its broad and general equity powers to block the prosecution and called attention to a number of cases which recently were decided by federal courts here involving what he termed Garrison's "abuse of his power."

Pressing the motion to join the attorney general in the suit, F. Irvin Dymond, another Shaw attorney, took the position that it was the duty of the attorney

general to become a party to the proceedings because statute provides that it is the duty of the United States attorney to prosecute or defend any civil proceeding in which the government is concerned.

"It follows that if it is the duty of the United States attorney, then it is the duty of the Attorney General," Dymond argued.

#### JOHNSON ACCUSED

Dymond charged that Garrison has accused the President of the United States of being an accessory after the fact in the Kennedy killing; that he has branded the temporary restraining order issued by Judge Heebe an illegal interference by the government; that he has impugned the chief justice of the United States, the President, the attorney general, the members of the Warren Commission and other federal agencies; and that the DA is seeking to destroy confidence in the United States government.

Judge Ainsworth questioned Dymond about any legal authorities he had to support his position that the attorney general should be compelled to enter the case. He cited several authorities and claimed that the court undeniably has the right to order the attorney general to appear.

Judge Heebe asked if it was

not "one thing for the court to order an executive employe" of the government to appear but another to order an officer such as the attorney general. "Doesn't this run right into the teeth of the separation of powers?" he asked.

Judge Ainsworth then asked the attorney if he thought that the President of the United States could be compelled to join in a suit and added, "Can we join him too? The President might say 'Sorry, I haven't got time.' Is he in as good a position as the attorney general?"

#### CAN BE JOINED

Dymond replied that he thought the President could be joined.

Assistant District Attorney Numa V. Bertel took the position that the court was being asked to substitute its judgment for that of the attorney gen-

eral.

He said that the relief sought by Shaw's attorney could be granted without the joinder of the attorney general.

Judge Ainsworth then announced that he had invited the United States attorney to be present although the attorney general was not at that time a party.

LaCour then explained that he was appearing, not as a party to the action, but "merely to observe in that the only interest the United States has in this action is the fact that plaintiffs have filed a motion seeking to join the attorney general of the United States as a party defendant."

He added, "At this time we enter a formal objection to such joinder of the attorney general and request leave of court for sufficient time for the filing of a legal memorandum by the government as amicus curiae, stating the legal grounds for our objection to such joinder."

#### AIDES COMPELLED

The first motion argued was Shaw's request that four of Garrison's aides be compelled to answer questions they refused to answer when Shaw's attorneys sought to take their depositions.

Judge Heebe had ordered that they submit to the depositions. But the four, Alcock, Assistant DA Anthony Sciambra, and investigators Lynn Loisel and Louis Ivon, refused to answer most of the questions.

William Wegmann, another Shaw attorney, cited a letter from Garrison to his aides in which he told them to give no information other than their names, rank in the office, and social security numbers when at the depositions.

Wegmann took the position that the four aides did not rely on any law in refusing to answer but were acting solely on the orders of their superior.

#### BAD FAITH

He called it a pattern of refusal in bad faith and a "blind following" of Garrison's instructions.

He claimed that none of the questions went to any of the evidentiary matter in the Shaw case and he listed a number of the questions that were asked.

Alcock responded by claiming that his office felt that all of the matters covered in the questions were aimed

at privileged information.

In answer to a question from Judge Heebe, Alcock said that he filed no motion in opposition to the depositions because his research showed that such motions are rarely granted.

In asking the court to dismiss Alcock and Ward from the case, Bertel argued that their presence as defendants was not necessary because Garrison is the sole person responsible for the prosecution and if an injunction would be granted it would apply to all others in the DA's office and those acting for him.

Edward Wegmann argued that the two assistants are necessary defendants because Garrison is frequently out of town and an assistant, particularly Ward, would be in a position to carry on the prosecution.