

COURT WON'T HALT SHAW PROSECUTION

Refuses to Rule Warren Report Binding

By GORDON GSELL

A special three-judge federal court Tuesday refused to block District Attorney Jim Garrison's prosecution of Clay L. Shaw on a charge of conspiring to murder President John F. Kennedy.

The court dismissed a suit brought by Shaw on May 27 in which he asked for an injunction against the prosecution in Criminal District Court.

Shaw's trial had been set for June 11, but a federal court temporary restraining order issued after Shaw filed his suit upset the trial date until the case could be decided.

In Tuesday's decision the three judges also unanimously ruled against Shaw and his attorneys on three other issues raised in the suit.

WON'T CALL CLARK

The court denied a motion by Shaw's attorneys that United States Attorney General Ramsey Clark be brought into the case as a defendant or an involuntary plaintiff in order to defend the Warren Commission Report which held that Lee Harvey Oswald acted alone in the assassination of the president.

It also refused to issue a declaratory judgment holding that the Warren Report is valid and binding on all courts in the United States, including the Criminal District Court.

The court upheld the validity of the Louisiana conspiracy statute under which Shaw is charged and which was attacked in his federal suit, but

the three judges refused to rule on the constitutionality of a number of other state procedural statutes challenged by Shaw's attorneys.

APPEAL INDICATED

After the opinion was made public, Edward F. Wegmann, one of Shaw's attorneys, indicated that he will appeal the case to the United States Supreme Court. Appeals from a special three-judge tribunal go directly to the highest court, bypassing the United States Fifth Circuit Court of Appeals.

The opinion was a 27-page document signed by Judge Robert A. Ainsworth Jr. of the Fifth Circuit and Federal District Judges Frederick J. R. Heebe and James A. Comiskey. Judge Heebe noted on the opinion that he concurs in its result and will hand down a special concurring opinion at a later date.

In its concluding paragraph the court said, "Our adverse ruling to plaintiff should not be construed as an intimation of any view whatsoever on the merits of the pending criminal charge against him. As a matter of law, plaintiff Shaw's request for relief in the federal court is premature, for under our system of federalism in the circumstances presented here, he must first seek vindication of his rights in the state courts as to this pending prosecution."

Commenting on the motion to dismiss filed by attorneys for Garrison the court said that it treated the motion as one for

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summary judgment and dismissed the suit.

LENGTHY REVIEW

In a lengthy review of the Shaw prosecution and the federal suit, the court points out that Shaw has charged that he is suffering irreparable injury because of the criminal prosecution and that the district attorney is not prosecuting him in good faith but only to use him as a vehicle for attacks on the Warren Report.

Another contention by Shaw is that the district attorney and his assistants are not motivated by an expectation of securing a valid conviction, but their actions are part of a plan to harass him from asserting his rights to free speech and assembly and to harass any and all individuals who disagree with their theories as to the assassination, the opinion states.

The court then discussed a number of cases dealing with the question of when federal courts may enjoin state court criminal prosecutions.

In one of these cases the special court quoted an opinion of the United States Supreme Court which held that federal courts should refuse "to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent injury which is clear and imminent . . ."

NO ONE IMMUNE

The same ruling held that no person is immune from prosecution in good faith for his alleged criminal acts and "its imminence, even though alleged to be in violation of constitutional guarantees, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance may be determined as readily in the criminal case as in a suit for an injunction."

In a summary of the first series of cases cited, the court said that according to these cases the mere fact that the plaintiff was claiming that his constitutional rights were being violated was not a ground for such an injunction.

In addition to such a claim, the court held, a plaintiff must show that he would suffer irreparable injury which is clear and imminent and only such a showing would create the exceptional case

or special circumstances in which an injunction should issue.

The court said that the question of what would constitute irreparable injury had never been answered but under these cases "it is apparent that the danger of a conviction, standing alone, did not constitute irreparable injury because constitutional infirmities in the trial could be reviewed in the various remedies thereafter available to the defendant, such as an appeal to the Louisiana Supreme Court, writ of certiorari to the United States Supreme Court, and writs of habeas corpus to state and federal courts.

CASES DISCUSSED

The court then discussed two later cases, one of them Dombrowski vs. Pfister, in which the Southern Conference Educational Fund, Inc., two of its officers and an attorney, asked for an injunction against prosecutions under the Louisiana Communist Propaganda Control Law, and in which case the United States Supreme Court found "one of the exceptional cases or special circumstances" alluded to in an earlier case.

In the Dombrowski case, the opinion points out, the plaintiffs claimed that the threats to enforce the statutes against them were made without any expectation of valid convictions and were part of a plan to harass and discourage them and their supporters from asserting the constitutional rights of Negroes in Louisiana.

Past events, the court said, had convinced the Supreme Court that the plaintiffs' freedom of expression had been subjected to a "chilling effect." It cited the arrest of officers of the SCEF and its attorney and the raid upon the offices of the organization and the seizure of its files and records as well as indictments against the officers and the attorney.

The court said that in the Dombrowski case the Supreme Court "carved out one of the special circumstances or exceptional cases under which a federal injunction may issue, when it held that under the peculiar circumstances of that case there was an exception to the general policy against federal injunctions of state court proceedings."

EFFECT ON RIGHTS

It called this the "chilling effect" exception because the ir-

reparable injury in that case was the effect on the First Amendment rights of the plaintiffs in the Dombrowski case, which was caused by the threat of repeated raids and arrest.

The fact that a constitutional right has allegedly been infringed, standing alone, is not enough to come within the ruling in the Dombrowski case, the court held, because in that case the Supreme Court said, "It is generally to be assumed that state courts and prosecutors will observe constitutional limitations as expounded by this court, and that the mere possibility of erroneous initial application of constitutional standards will usually not amount to the irreparable injury necessary to justify a disruption of orderly state proceedings."

The court held that in order to come within the exception cited in Dombrowski, Shaw must show that the prosecution has been brought against him, not because the district attorney and his aides in good faith believe that he has violated Louisiana's conspiracy statute, but in bad faith, knowing that he did not commit the crime of conspiracy, in order to harass Shaw in the exercise of his First Amendment rights without any expectation of obtaining a valid conviction.

"It is not enough for the plaintiff to allege that he is innocent of state charges in order to obtain injunctive relief," the court asserted, citing a recent Mississippi case.

The court said that there can be no question but that Shaw has alleged that he is the victim of prosecution conducted in bad faith and "it cannot be doubted that these allegations if proved, would establish that the plaintiff is being prosecuted in bad faith."

But the court held that under Dombrowski and the Mississippi case, Cameron vs. Johnson, in order to obtain injunctive relief the plaintiff must also show that his First Amendment rights are being violated.

NO CLAIM MADE

It is pointed out that Shaw has not claimed that his First Amendment rights are being infringed by certain restrictions placed upon him as a result of the prosecution.

Some of these restrictions, such as the prohibition against him leaving the jurisdiction of the court and the restriction of his business and social activities are merely part of

the "injury incidental to every proceeding brought lawfully and in good faith," the court said, quoting the Cameron case.

There is no suggestion by Shaw, the court said, that the prosecution has the effect of continuous harassment in the exercise by him of protected expression in the context of the Dombrowski case.

"His right of such expression has not been impaired. During the oral hearing on this motion, counsel for plaintiff informed the court that the plaintiff has never publicly taken a stand either for or against the Warren Report, nor has he made any public statements about his theories on the assassination of President Kennedy. It is clear that the prosecution was not instituted for the purpose of discouraging the plaintiff in the exercise of his First Amendment rights. Accordingly, we hold that plaintiff has failed to bring his case within the ambit of the Dombrowski decision," the court held.

FEAR OF CONVICTION

Pointing to the allegation by Shaw that Garrison is not motivated by any expectation of a valid conviction, the court said that in several parts of his suit Shaw indicates that he fears that he may be convicted.

The court said that it does

not believe that Shaw's alleged injury is irreparable because an acquittal in the state court would end the alleged injury and the court's ruling against an injunction does not preclude Shaw from ultimate federal review of state court proceedings and relief from any unjust consequences which he may suffer.

Review of the trial may be obtained by appeal to the Louisiana Supreme Court and the federal courts, it is pointed out.

In dealing with the attack on the Louisiana conspiracy statute the court called it a curious circumstance that the constitutionality of the statute was not questioned in the state court.

NOT MANDATORY

Discussing a case relied upon by Shaw's attorney's in this issue, the court said that the case did not nullify the well-settled rule that the Federal Declaratory Judgment Act is discretionary, rather than mandatory, and that Shaw had demonstrated no constitutional invalidity of the statute.

The court also said, "We believe that it is obviously improper to rule on the constitutionality of the numerous procedural statutes challenged by the plaintiff."

It held that these statutes may be ruled on by the state court.

"Nor should we grant a declaratory judgment decreeing that the Warren Report is binding upon all courts of the United States, including the Louisiana state court in which the prosecution is pending," the three judges held.

Shaw had attacked the constitutionality of statutes dealing with selection and qualifications of jurors, grand jury proceedings, and other technical matters.