

Should Garrison resign? Will

LA EP ART KUNKIN 3/14/69
The Los Angeles Times editorial statement of March 4th on the New Orleans conspiracy trial of Clay Shaw is a masterpiece of malicious lying. There certainly must be a special place in hell reserved for the editorial writer who can say, "As weird a collection of witnesses as ever decorated a courtroom was brought in by the prosecution, only to destroy themselves by their own testimony... If there is one fact proven beyond all dispute in the Shaw case it is that Jim Garrison is unfit to hold public office."

Let us look at the facts! Did New Orleans District Attorney Jim Garrison conduct a public circus or a legal proceeding in charging Clay Shaw with conspiring with Lee Harvey Oswald and David Ferrie to kill former President John F. Kennedy? Did he have proper evidence against Shaw or was Shaw's involvement, as the Times claims, "based on the most tenuous of evidential supposition, along with a great deal of imagination by the prosecution"?

Why, if Garrison had a proper case, did the jury return a verdict of not guilty? Is this verdict proof that Garrison had an "absurd

and malicious case?" And is Jerry Cohen, Times staff writer who covered the trial in New Orleans, justified in concluding that "The integrity of the Warren Commission, which Garrison tried to destroy, remains intact." (L.A. Times, March 2).

Those who say that Garrison should now resign or be "investigated" make it appear that the New Orleans District Attorney has such great personal power, and ability to misuse it, that single-handedly and without legal restraint, he was able both to arrest Shaw and maliciously subject him to the degradations and expenses of a trial. Quite the contrary is true.

Clay Shaw was arrested on March 1, 1967. He was booked under the Criminal Conspiracy Statute in the new Louisiana Code of Criminal Procedure, based on Napoleonic law. He was released on \$10,000 bond.

The pertinent portions of the Conspiracy statute says: "Criminal conspiracy is the agreement or combination of two or more persons for the specific purpose of committing any crime: provided an agreement or combination to commit a crime shall not amount to

a criminal conspiracy unless, in addition to such agreement or combination, one or more of such parties does an act in furtherance of the object of the agreement or combination.

"Where the intended basic crime has been consummated the conspirators may be tried for either the conspiracy or the completed offense, and a conviction for one shall not bar a prosecution for the other."

"Whosoever is a party to a criminal conspiracy to commit a crime punishable by death or life imprisonment shall be imprisoned at hard labor for not less than one nor more than 20 years."

After the arrest Garrison had three legal routes for bringing Shaw to trial: a bill of information, a Grand Jury indictment or a preliminary hearing. Although only needing one of these procedures, Garrison proceeded to get both a Grand Jury indictment and, on March 1, 1967, a four day preliminary hearing by a panel of three judges.

The three judges on the panel ruled unanimously to have a trial. Chief Judge Bagert told newsmen: "This wasn't a question of guilty or not guilty. It was a question of

Shaw still be jailed?

probable cause... Given what we got in there, I had no choice. Russo (the key prosecution witness) stood up. There were some minor discrepancies, but you tend to doubt, you have to doubt it, when here is a 100 percent story every time."

Naturally, the judges could not have commented on the guilt or innocence of a defendant in a forthcoming trial. They and the Grand Jury, however, were ruling on whether or not the state had sufficient evidence to bring Shaw to trial. Judge Bagert said, "Think of what the alternative would be to cut him (Shaw) loose when the defense presented no real case. They were just grabbing at straws."

When the trial finally began, in January 1969, Shaw's attorney again had a chance, after the prosecution presented its case to ask presiding Judge Haggerty to dismiss the case for lack of sufficient evidence. They did do so, asking the judge to grant a motion for a directed verdict of acquittal, but the judge denied this motion.

This history shows that not only Garrison but four judges and a Grand Jury believed the evidence against Shaw dictated that a trial

be held. Claiming under these circumstances that Garrison is unfit to hold public office and should resign because he did bring Shaw to trial is nothing, then, but sheer nonsense and a malicious attempt to confuse the public. If a Grand Jury indicts a person, a District Attorney must prosecute or he is really demonstrating unfitness.

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It is interesting to note that the L.A. Times, and the others who are calling for Garrison's resignation, do not voice a word of criticism about the preliminary hearing panel, the Grand Jury or the trial judge. Just a mention of these judicial bodies and their decisions explodes the argument

that Garrison is automatically unfit to hold public office because "he" brought Shaw to trial.

What then about the "weird" prosecution witnesses who destroyed themselves with their own testimony? The State of Louisiana brought forward 49 individuals to testify against Shaw, 43 witnesses in the presentation of the case and 7 in rebuttal (one, Dr. John Nichols, a pathologist, testified two times). In past Free Press articles, we have covered the testimony of the first 43 in some detail so let us start here with the 7 rebuttal witnesses, and then briefly summarize the rest of the so-called weirdos.

The first prosecution rebuttal witness was Emmett Charles Barbe, Jr., the maintenance foreman at William B. Reilly Coffee Company, New Orleans, where Lee Harvey Oswald had been employed. Barbe was Oswald's immediate supervisor and testified that he fired Oswald on July 19, 1963 because of excessive absences and indifference to his duties.

This testimony was important because Shaw's attorneys had called Marina Oswald as a defense

witness and she had testified about Oswald's life in New Orleans. She had testified that to her knowledge Oswald did not know Shaw, Ferrie, Perry Raymond Russo, etc; that Oswald went to work during the day and stayed home at night. But she had testified that prior to her leaving New Orleans on September 23, she had discovered that Oswald was out of work for three days without her knowing about it.

Barbe's testimony completely destroyed the image that Marina knew all about Oswald, his whereabouts and his friends. His testimony showed that Oswald had been out of work for two months, between July 19 and the end of September, without Marina knowing his whereabouts or source of

income during what was according to Garrison a critical period in the planning of the conspiracy.

Weirdo One—A man who has worked steadily for ten years at one job in supervisory positions, and whose testimony demolished that of Marina Oswald.

Second rebuttal witness, Eugene C. Davis, owner of a bar in the French Quarter in New Orleans. He testified that he was never known as Clay or Clem Bertrand.

This testimony was in answer to that of Dean Andrews, a New Orleans attorney, who testified before the Warren Commission in 1964 that, when Oswald was arrested in Dallas, he received a call from a Clay Bertrand asking him to defend Oswald. Andrews has been convicted of perjury because of conflicting statements he made before the Warren Commission and the New Orleans Grand Jury as to the identity of Clay Bertrand.

Garrison charged that Bertrand is Shaw, but during the Shaw trial Andrews claimed that he lied both to the Warren Commission and the Grand Jury and that there really had been no call requesting him to defend Oswald. He said that the name came to mind because many years previously he had been introduced to a man named Clay Bertrand who he knew to be Davis.

There was no reason to doubt Davis as to his testimony, particularly as it conflicted with that of a convicted perjurer who testified as a defense witness... Therefore it's not accurate to call Davis "weird" and self-destructive.

Third rebuttal witness for the prosecution, Nicholas Tadin. Now here we have a real one. In the direct examination it developed that Mr. Tadin is a business agent for the Musician's Union and spends as many as six nights a week in the French Quarter. He is a responsible citizen and a former schoolmate of the judge. He has seen Shaw many times and can recognize him.

He has two sons. In 1964 they were taking flying lessons from David Ferrie. The boys greatly admired Ferrie. They are deaf and he was the first adult outside of their family to pay attention to them as human beings. However Tadin and his wife learned that Ferrie was a homosexual with a liking for boys and they were at the airport every time the boys had a lesson.

As the questioning continues we learn that in the summer of 1964 Mr. and Mrs. Tadin (she testifies next and corroborates her husband's testimony) drive to the airport and see David Ferrie come out of a hanger with Clay Shaw. Mr. Tadin tells his wife, "Oh, that's Clay Shaw," (in a somewhat derogatory tone, as if to say there's proof of Ferrie's homosexuality) and she comments on Shaw's distinguished bearing and goodlooking hair.

According to the Tadin's, Shaw then goes to his car while Ferrie walks over to them. Tadin: "I see you have a new student." Ferrie: "That's not a new student. That's Clay Shaw, a friend of mine from the International Trade Mart."