

SI 2/20/69

26TH DAY

# Conspiracy Trial Court Activities

Court proceedings in the 26th day of the conspiracy trial of Clay L. Shaw follow:

Judge Edward A. Haggerty Jr. convened the court at 9:30 a.m. He immediately announced that the state's "application for a writ of certiorari, was filed with the Supreme Court last night by the district attorney's office.

"I have received word that the application has been denied. The ruling was signed by six of the seven justices of the Supreme Court. The only judge who did not sign was Justice (E. Howard) McCaleb."

ney James L. Alcock, then said, "The state moves that the court reconsider its ruling. The defendant had the presence of counsel, he conferred with counsel in private on two different occasions."

Alcock said there was a conflict in testimony "as to whether the defendant was deprived of his constitutional rights. I respectfully call to the court's attention the testimony of the defendant him-

ASSISTANT District Attor-

Turn to Page 8, Column 1

Continued from Front Page

self. He said he made no statement."

Alcock said the testimony of Ptn. Aloysius Habighorst, who filled out the fingerprint card in question, was "diametrically opposed" to that of the defendant in that he did ask the defendant routine questions.

ALCOCK SAID Shaw's testimony that he was not coerced, that his constitutional rights were not violated "has obviated the need for the state to lay a predicate.

"The defendant said he made no statements. He said under oath that none of his constitutional rights were abridged.

"It is my position that none of the defendant's constitutional rights were abridged. We respectfully ask the court to reverse its decision."

CHIEF DEFENSE counsel F. Irvin Dymond then answered Alcock. Dymond said the alias Clay Bertrand was recorded on the fingerprint

card in either one of two ways, either of which would make it inadmissible as evidence.

"... The result of a question from Habighorst in which case it would be inadmissible or else it was placed on the card by Officer Habighorst after the card was signed."

Shaw has testified that he signed a blank card.

Dymond then speculated as to how the alias got on the card.

"FIRST WE have a search warrant in which the search warrant alleged that Shaw had an alias Clay Bertrand. Then we have a field arrest sheet, then we have the original arrest register which was taken from the field arrest record.

"No matter which way the information got on there it is inadmissible," Dymond said.

Alcock contended there was no reason to believe Habighorst had a copy of the arrest record. He contended it is up to the jury to decide whether Habighorst is correct in saying he received the information in answer to questions to Shaw or whether Shaw made no statement during the course of filling out the fingerprint card.

DYMOND THEN contended testimony by Habighorst "that he got the information by questioning runs squarely into the ruling in the Escobedo case. Your honor has ruled on that and the Supreme Court has upheld your ruling."

Dymond contended "this evidence cannot be and may not be the product of the imagination of the investigating officer."

Alcock contended again that the veracity of the testimony is "for the jury to decide. That's my whole point. That's for the jury to decide."

Judge Haggerty disagreed with this, saying that the way he reads the law, "It is a question for the court to decide."

HE CONTENTED that the state must affirmatively show information from the defend-

ant was freely given.

"It's not up to Mr. Shaw or his counsel to state that the defendant's constitutional rights are not violated. It's up to me to decide."

Judge Haggerty contended that "either Mr. Habighorst put the information on there (the fingerprint card) himself without questioning Mr. Shaw, or he did question him and did get the information himself."

**THE JUDGE** said that if Shaw did admit the alias orally to Habighorst, which "I seriously doubt, then the procedure violated the Miranda decision."

Judge Haggerty then commented on a regulation which keeps attorneys out of the police Bureau of Identification.

"Capt. (Louis J. Curale had no right, irrespective of regulations, to say that the defendant's attorney could not be with his client," the judge said.

"**IN BOTH** instances it (information on the fingerprint card) was illegally obtained and so it cannot be considered and I will not reconsider.

At this point Alcock announced the state was resting its case.

Immediately after the state rested, Dymond rose and announced he was making a motion for a directed verdict and asked for the exclusion of the jury during the argument.

**JUDGE HAGGERTY** ordered the jury out of the room and then asked Dymond for

his specific authority for wishing to argue the motion outside the presence of the jury.

Dymond replied that to argue a motion for a directed verdict and have it denied by the judge before the jury would imply that the state had actually presented a prima facie case against the defendant.

The judge then permitted Dymond to proceed with his arguments.

**DYMOND SAID** Louisiana Revised Statute 14:26, the conspiracy article, states the crime of conspiracy must include an agreement of a combination of two or more persons for the specific purpose of committing a crime, and an overt act in furtherance of that agreement.

"According to the state's own witness, Perry Raymond Russo, there has been no showing of the existence of such an agreement.

"We wish to call the court's attention to the verbatim quotation of Russo's testimony when I asked, 'You sat and listened in on a conspiratorial meeting with the purpose of killing President Kennedy and did not report it?'

"**TO WHICH**, Russo replied: 'No, I never said anything about a conspiracy. I didn't sit in on any conspiracy.'

"We realize that Russo is not qualified to pass on whether the meeting was a conspiracy, but when we get

down to actual specifics on cross-examination, I asked Russo, 'Did you hear Shaw agree to do anything?' and he answered, 'No.'

"Did you hear David Ferrie agree to do anything?' and he answered 'No.' 'Did you hear Leon Oswald agree to do anything?' and the answer was 'No.'

"We submit in that matter that, without an agreement to do anything, you cannot have a conspiracy.

"**THERE IS NO** showing of an agreement or of a meeting of the minds as is necessary in a contract.

"Without any of these three agreeing to do anything, the meeting does not meet the requirements of RS. 14:26 since this is not an agreement for the specific purpose of committing a crime.

"There must be a meeting of the minds.

**RUSSO WAS** asked whether he heard who the victim of the assassination was to be, whether it was to be President Kennedy or Fidel Castro and he said, 'No, I cannot say.'

"Further, Russo was asked to testify whether 'this was a plot or a plan or was a bull session as you have heard Ferrie conduct or participate in on many other occasions.'"

Dymond said Russo admitted by his own terminology that this was another bull session.

"**AT A TIME** when President Kennedy was unpopular, there were many loose bull session remarks made by many who disagreed with his policies. It would be ludicrous to claim these constituted a conspiracy.

"Russo was the only witness who allegedly witnessed the alleged conspiratorial meeting. Where else can we learn what went on at this meeting? Whether it was serious or a bull session?

"We have to accept the word of Russo as to what was the atmosphere and as to whether there was a conspiracy.

"**RUSSO WAS** asked whether Shaw agreed to anything and he said 'no' and whether Ferrie and Oswald agreed to anything and he said 'no' and he was asked whether this was a serious meeting and he said it was a bull session.

"This testimony strikes at the very heart and core as to what is necessary for the state to prove even to show an overt act.

"There is an absolute void. There is absolute failure of the state to do the two necessary things in connection with proving an overt act.

"Let us now review the alleged overt act.

"**FIRST, IN** connection with the trip of Shaw to the West Coast, we submit that, while there is no dispute as to the trip to the West Coast, there was no showing of a connection between this trip and the

alleged conspiratorial meeting.

"We contend the trip was made by Shaw solely to fulfill a speaking engagement.

"As to the trip to Houston by David Ferrie, we submit once again that there is a lack of connection between that trip and the so-called conspiracy.

"There has been no connection established between Ferrie and the conspiracy.

"AS TO THE alleged overt act of Oswald taking a rifle to the Dallas School book depository, it has yet to be proved by the state that Oswald ever took a gun to the book depository.

"We have a witness's testimony that Oswald carried a package and, by implication, the state tried to show that Oswald had something to do with the shooting.

Dymond said the state has failed to prove an agreement to commit a specific crime and has proven no overt act.

"All this adds up to the fact that the state has not made a prima facie case and we urge the court to use the powers invested by the Legislature and direct a verdict of not guilty."

Answering Dymond, Alcock contended the court has already ruled that conversations which occurred outside of the hearing of the defendant after the meeting on Louisiana ave. pkwy. were admissible.

"I feel the court has already ruled on this matter.

The court knows that the conspiracy law is very broad," he said.

"MR. DYMOND is quite right that the state would come before the court and argue that Perry Russo is not a lawyer and would not be able to give a definition of conspiracy . . . the court must decide whether a prima facie case has been made out."

He then took issue with Dymond in connection with his statement that Russo testified that the conspiracy meeting was a "bull session."

But Alcock said the thing that makes the meeting important was that "one of those who took part in this bull session was Lee Harvey Oswald" and Oswald wound up in the Texas Book Depository.

**THE TESTIMONY** concerning Shaw's trip to the West Coast is important because Perry Russo heard the conspirators say that the trip would be used as an alibi.

"Testimony of Perry Russo that the defendant would be on the West Coast as an alibi raises the importance of the trip to the West Coast," said Alcock.

"A meeting of the minds can be demonstrated any way, not just verbally. A meeting of the minds can be demonstrated by acts.

"The state simply feels that it has a prima facie case

and the court has already ruled on this matter."

**DYMOND, ANSWERING** Alcock, contended Russo was not sure in his identification of Shaw.

"In Baton Rouge, when he first spoke to Andrew J. Sciambra, before he had a chance to talk to representatives of the state, he made no mention whatever of any conspiratorial meeting," Dymond said.

Dymond then attacked the state contention that the presence of Oswald in the book depository represented an overt act in furtherance of the conspiracy.

"I REFER your honor to the testimony of the state witness, vouched for by the state, a co-worker with Oswald in the Texas Book Depository.

"Your honor recalls that this witness testified that the Texas Book Depository had two warehouses . . . one on Elm st. and one two and a half blocks away, not facing on Elm, and that when Lee

Harvey Oswald got his job it was by pure chance that he was assigned to the book depository on Elm."

Dymond again noted that Russo was in and out of the apartment on Louisiana ave. pkwy. when the alleged conspiratorial meeting was held and said, "No one can presume that something took place in the meeting when Russo was not present.

"THE CASE has not been proven . . . we ask that the court take the ruling under advisement."

At this point Alcock went back to Oswald's position in the book depository. He contended there was no testimony which proved it was only by chance that Oswald was assigned to the depository building on Elm st., overlooking Dealey Plaza.

"There is absolutely no evidence to show that by happenstance Lee Harvey Oswald was assigned to that ware-

Continued on Page 14

## Shaw--

Continued from Page 8

house and not the one down the street."

Judge Haggerty then called a recess until 10:45.

Judge Haggerty came back to the bench at 10:35 and announced he had been in a conference with state and defense attorneys.

"Because I excused the jury for the rest of the day to facilitate the defense calling its witnesses, I now will make this announcement.

"I GRANTED this request of the state before the move for the directed verdict came up, so I shall now use the intervening time to read the testimony of Perry Raymond Russo.

"I have asked for a verbatim direct testimony, which will be given to me late this afternoon and I shall spend the remainder of the day reading this testimony."

The judge said the transcript of the testimony was not completed by the stenographers, but it is promised for 5 p.m. today.

The judge said he intends to "read both transcripts of the entire testimony given by Perry Raymond Russo—the direct testimony—and his testimony under cross examination.

"AFTER READING these transcripts, I will make my decision on the request for a directed verdict at 9 a.m. tomorrow."

Judge Haggerty then recalled the jury at 10:45 and told jurors he was excusing them until 9 a.m. tomorrow. He then recessed the court and released Shaw on his bond.