

Ben Smith Takes on DA Garrison

By RAY LINCOLN

For a quiet, dapper civil lawyer whose name is not exactly a household word, Ben Smith has fashioned a public and private career speckled with controversy, unpopular causes and formidable opponents. Now he's matching wits with Big Jim Garrison, and nobody who knows Ben Smith is about to call it a mismatch.

When the portly, bearded 43-year-old attorney was appointed special prosecutor by Criminal District Judge Malcolm V. O'Hara in DA Garrison's self-imposed gambling and bribery case, it merely presaged another episode in a string of audacious forays by Smith against the entrenched "establishment."

A WHITE, liberal civil rights activist since the days when such labels provoked the wrath of most Southerners, the Arkansas-born, Ruston, La.-raised Smith has found himself on the wrong end of a "Communist subversion" charge, befriended the late Dr. Martin Luther King, defended the late American Nazi leader George Lincoln Rockwell, and dared to mount an anti-war challenge to House Majority Leader Hale Boggs.

No stranger to the role of prosecutor, Smith served two years as assistant district attorney under Garrison's predecessor, Richard A. Dowling, but since resigning in 1960 he has built up a successful civil law practice while maintaining a dogged interest in the legal plight of the poor, the black, the disaffected young and the politically unorthodox.

Smith assessed his stormy career and libertarian philosophy during an interview in his attractive Baronne Street office.

HIS RESIGNATION from the DA's office was on good terms, he said, but he spoke of disillusionment stemming from "putting the same people in jail two or three times" and his unsuccessful urging of Dowling to "prosecute more white-collar crime."

The accent of Smith's career since then has been on labor law and a diverse blend of other civil cases, with much of his time spent arguing federal constitutional cases before courts of appeal and the U.S. Supreme Court.

About a fourth of his time, he says, is devoted to non-fee-generating cases involving civil rights and civil liberties, many on behalf of groups such as the American Civil Liberties Union (ACLU) and the New Orleans Legal Assistance Corporation (NOLAC).

BUT SMITH'S best-known battle in the courts was for his own freedom. A middle-class, church-going Scoutmaster who drew his liberalism from New Deal days, Smith in 1963 fell prey to the distinctly anti-left and especially anti-integration mood of Louisiana politics.

An investigation by the Louisiana Joint Legislative Committee on Un-American Activities led to a raid in which records were seized and Smith and two other men were arrested on charges of violating the state Communist Control and Anti-Subversive Activities Law. Smith's arrest was tied to his membership in the Southern Conference Educational Fund Inc. (SCEF), a group promoting racial integration, and the National Lawyers Guild, labeled by the committee a "Communist-front organization."

After years of legal battles in which Smith denied membership in the Communist Party and the state law itself was declared unconstitutional by the U.S. Supreme Court, the committee dropped the allegations against Smith; Dr. James A. Dombrowski, SCEF executive director, and Bruce Waltzer, then Smith's law partner.

LOOKING BACK on the affair, Smith characterizes his activities as perhaps "injudicious" but hardly subversive. The SCEF "never was in my opinion a Communist organization," he says. "It was a group of Southern liberals and blacks who felt the future of the South lay in integration of the races and elimination of racial discrimination."

The National Lawyers Guild, Smith contends, was a group providing legal aid to a number of left-wing organizations, but was "never a legal arm of the Communist Party," as was charged.

Ironically, two of Smith's adversaries during those legal tangles were Jim Garrison and Judge Malcolm O'Hara. Garrison prosecuted the charges against Smith in October, 1963,

before Judge J. Bernard Cocke ruled there was insufficient evidence to continue the case, and O'Hara the following month instructed the Orleans Parish Grand Jury to investigate the activities of the SCEF.

(Smith and Judge O'Hara are nevertheless old friends who maintain considerable esteem for each other.)

The whole affair cost Smith dearly, both financially and personally but it has hardly slowed the pace of his activities on behalf of minority causes.

HE WORKED closely with the black Freedom Democratic Party in Mississippi, and crossed paths with Dr. King through his SCEF activities. By request of the ACLU, Smith successfully defended Rockwell against disturbing the peace charges in New Orleans, thus proving that his concern for civil rights spanned the political spectrum.

By the late sixties, he had become more active politically, running unsuccessfully for the state legislature in 1967 and stumping for anti-war Presidential candidate Eugene McCarthy in 1968.

Last year, he opposed two major party candidates for the Second Congressional District seat but finished a dismal third with only about 3,250 votes out of more than 70,000. At the time, he stoutly promised to take Boggs on again in 1972, but today he seems less than enthusiastic about taking the political plunge again.

Instead, he appears content, for the time being, to tend to his prosperous practice, subject to interruptions such as the Garrison case, and to cultivate his taste for the kind of legal challenges most lawyers avoid like the plague.

SMITH feels the state and the nation have "come a good distance" in the field of civil rights, and is especially heartened by the results of the recent election in Louisiana. He has strongly advocated specific, revolutionary reforms in the criminal justice and penal systems, which he contends are not serving the ends of impartial justice.

While the civil rights legal battles are becoming less dramatic and more



Ben Smith

workaday, Smith says he intends to continue the course he chose after his 1947 discharge from the Navy. Using the vehicle of law "to put into practice my social and philosophical convictions,"

Those convictions, by Smith's own reckoning, have on occasion led him far afield of the more lucrative legal paths, but that, he says, "is a price I've been prepared to pay. I did it by choice."

Smith to Take DA Case to High Court

Special state prosecutor Benjamin E. Smith was expected in the Louisiana Supreme Court today to challenge the dismissal of a malfeasance charge he brought against Dist. Atty. Jim Garrison.

Smith, who was appointed to prosecute Garrison on a state indictment charging public bribery and gambling, brought the malfeasance charge against the district attorney claiming Garrison was using the state case to avoid

prosecution on similar charges in the federal courts.

Yesterday, Criminal District Judge Malcolm V. O'Hara ruled that Smith did not have the authority to bring this charge and he dismissed the malfeasance case. At the same time, O'Hara, acting on a request by Smith, threw out the state bribery and gambling indictments.

Smith claims he cannot prosecute Garrison without the

evidence federal investigators have developed and the U.S. attorney's office has refused to give up this data until after the federal trial of Garrison, two top police officials and seven persons reportedly linked to the pinball industry here.

Smith has also requested a special state grand jury to investigate Garrison, Judge Israel M. Augustine said he would rule tomorrow on the Smith request.