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reporter-participants
Roger L. Williams and
Michael Parks

CONGRESS SHALL MAKE
NO LAW RESPECTING AN
ESTABLISHMENT OF
RELIGION, OR PROHIBITING
THE FREE EXERCISE
THEREOF; OR ABRIDGING
THE FREEDOM OF SPEECH,
OR OF THE PRESS; OR THE
RIGHT OF THE PEOPLE
PEACEABLY TO ASSEMBLE,
AND TO PETITION THE
GOVERNMENT FOR A
REDRESS OF GRIEVANCES.

SPRING, 1969

THE CONTEMPORARY
FIRST AMENDMENT

The right of access

The new press methods

Public and private rights

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fourth of "we" in the audience know exactly what it's like!

It all depends on your point of view—in the language you use and the language you hear and see. Look for example at a *Detroit News* news story, not an editorial, written by a white man after the 1967 riots: "Community leaders today plunged into the hard practicalities that will take months, even years, to resolve before Detroit can be restored to normal."

Compare that with what was said one week later in a news story, not an editorial, written by a black man, in *The Michigan Chronicle*, a Negro weekly paper: "We can't go back to the status quo. In face of all the appeals from . . . city officials for a return to normalcy, it is generally agreed that this is the great danger that will undergird the fear already paralyzing much of our community. . . ."

"Throughout the community there is a growing desire for change . . . change that will dig deep down into the root causes."

Here are two major newspapers in the same city talking about different "communities," one saying the community wants a restoration to "normal," the other saying that the community wants "change."

It is important to remember that one paper, the *Chronicle*, makes no claim of aiming at anything except the black community, while the other paper, the *News* (like all metropolitan papers) claims to serve all of the communities in its circulation area.

ROBERT E. SMITH
Newsday

The Clay Shaw Trial: reporter-participants

In theory, news reporting is an exercise in observation and evaluation, performed dispassionately. The reporter presumably stands aside from his subject and tries to view it with an intense but detached interest.

Thus the recently completed conspiracy trial of New Orleans businessman Clay L. Shaw is of peculiar journalistic interest. In that case, reporters displayed an uncommon degree of commitment to one side or the other—not only commitment, but in a few cases participation. The bulk of the commitment and participation was on the side of the defendant Shaw, and against district attorney Jim Garrison, but that scarcely lessens the unusual flavor it gave the whole story—or the questions of journalistic behavior it raised.

Reporter participation in court is not a new phenomenon. The celebrated H. L. Mencken was considerably involved with the defense in the Scopes "monkey trial." He consulted with Clarence Darrow and other attorneys in advance of the trial and, according to associates who remember Mencken and the case, counseled them during the proceedings as well. Closer to the present day, ABC correspondent John Scali served as an unofficial courier during the Cuban missile crisis. Scali, at the request of the Russian ambassador and then of Secretary of State Dean Rusk, relayed offers and counter offers that resulted in the dramatic settlement of the conflict, leading Rusk to tell Scali, "John, you have served your country well." More recently still, Bill Baggs, the late editor of the *Miami News*, engaged in what he called "demi-diplomacy" between offi-

cial in Hanoi and Washington.

The Shaw trial provoked more such participation, and more journalistic passions, than the Scopes trial or the missile crisis or the Viet Nam negotiations—more, in fact, than any other story we know about. The reasons are at least threefold. First, the Shaw case was news for two full years, in which time the district attorney made charge after sensational charge and in which many reporters covered at least part of the story. Second, it involved highly controversial questions about President Kennedy's assassination—for instance, was the Warren Commission report valid and complete or was it a cover-up?—and almost all reporters had prior opinions on these questions. Third, the case became so complex that some reporters came to specialize in it and consider themselves an elite.

Nearly two years of Garrison ballyhoo brought about 175 newsmen from seventy agencies to New Orleans for the trial. Apparently because of the harsh criticism by much of the press, Garrison was unavailable to most reporters during the trial. This was a reversal of his previous practice: during the investigation itself, he repeatedly worked with newsmen and frequently a sort of cross-fertilization resulted. A comic example of this was the story that Kennedy was killed as part of a homosexual conspiracy to take over the world. It started as a spoof in *The Realist* but was picked up by Garrison investigators and, like other implausible notions, was incorporated for a time in the district attorney's canon of theories.

The very outlandishness of much of the case turned out a press corps as varied as the cast of the trial itself. There was a 70-year-old woman stringer for the *Bay*

City Times (Michigan), a reporter for the underground *Southern Patriot*, a three-man team from the University of Wisconsin *Daily Cardinal*, a critically acclaimed young novelist, a writer for the right-wing *Dan Smoot Report*, a young Justice Department lawyer who described himself as a freelance writer for a law journal, and several CIA agents, including one posing as a doctoral student in government.

Editors deciding whether to staff the trial, which promised to last six weeks and did, were faced with several long-term national stories at once: the cases of Sirhan B. Sirhan, Clay L. Shaw, and James Earl Ray, the Pueblo hearings, and the change in administrations in Washington. The dailies that were represented for most of the trial included *The New York Times*, *Washington Post*, *Los Angeles Times*, *Baltimore Sun*, *Nashville Tennessean*, and *Chicago's American*. The other three Chicago papers did not staff the trial. Nor did the *New York Daily News*, except for a single story comparing jury selection at the Shaw trial with that at the Sirhan trial. The *New York Post*, *Washington Star*, and *Toronto Telegram* reporters left after less than a week. Papers in neighboring Houston, Atlanta, and Miami did not send anybody. Neither, oddly, did the Dallas papers. Among the periodicals, *Life* was notably absent.

A Detroit editor, whose paper had covered Jack Ruby's trial, explained his reasoning for not staffing the Shaw trial: "It didn't look like Garrison had much, and hindsight proved us right." But an editor who did assign a reporter to cover the trial commented, "At the outset, it appeared there was a chance Garrison might really

be able to rewrite history. At least he was going to try, and that deserved coverage. Even if he failed totally, he still promised to provide a good show."

Midway through the trial, the lines had been solidly drawn among the press corps: the believers in Garrison and conspiracy on one side, the debunkers of one or both on the other, with a scattering — mostly wire service reporters — uncomfortably in the middle. The believers tended to congregate

[Editor's Note: Following is the prosecution's opening statement in the Clay Shaw trial. It outlines the case Jim Garrison plans to prove against Clay Shaw. It's very probable that your readers will never see it unless you print it.]

STATE VERSUS CLAY SHAW
OPENING STATEMENT
by District Attorney's Office
Parish of Orleans
LIBERATION News Service

The State of Louisiana is required by law in all criminal trials to make an opening statement to the jury. This statement is merely a blueprint of what the State intends to prove. It has no probative value and should not be considered as evidence in the case.

The defendant, Clay L. Shaw, is charged in a bill of indictment with having willfully and unlawfully conspired with David W. Ferris, Lee Harvey Oswald and others to murder John F. Kennedy.

The crime of criminal conspiracy is defined

Pro-Garrison: Liberation News Service story for underground and student newspapers

around not only Garrison but his band of amateur sleuths and demonologists, who were loosely referred to as the Dealey Plaza Irregulars. The debunkers fraternized with defendant Shaw, having a jailhouse lunch with him at the noon break or exchanging lighthearted banter with him during short courtroom recesses.

There was a small group of pro-Garrison reporters: June Rolfe, a staffer with a UHF television station in New Orleans, and her husband Dick, a freelance, who gloated when the prosecution scored a point; the Wisconsin students, one of whom had worked on an ad hoc committee investigating the assassination in New York; Art Kevin, a Los Angeles

radio newsman representing RKO stations and a Kennedy assassination buff; and Penn Jones, editor of the weekly *Midlothian Mirror* (Texas), who has devoted five years to the assassination aftermath and keeps a scorecard of mysterious deaths of persons connected with it. Others in the pro-Garrison group included the editor of the *Los Angeles Free Press* and his wife; Florence Jennison of the *Bay City Times*, who, it turned out, is rich and eccentric and who never filed a word; Sue Fitch of the *Dan Smoot Report*; and some of the local newsmen for whom Garrison and his investigation had been a large, ongoing story.

Most passionately pro-Shaw was James Kirkwood, a former Broadway and television actor now a playwright and novelist; on the basis of his first piece of non-fiction, a wholly flattering profile of Shaw for *Esquire*, Kirkwood got an assignment from *Playboy* and a book contract from Simon & Schuster to cover the trial. Several other reporters were strongly pro-Shaw, or anti-Garrison, from the very outset of the trial. And, as the trial proceeded, more and more correspondents acknowledged a pro-Shaw partisanship. Oftentimes it was the illogic of the prosecution case, rather than the evidence or the witnesses presenting it, that turned off these correspondents.

Toward the end of the trial, partisanship on both sides reached such an emotional intensity that some recesses turned into acrimonious, impromptu debates; at least one reporter asked a like-minded comrade to steer him away from confrontation with the opposition, lest he wind up punching one of its members. Garrison's demagogic closing argument left several reporters abject to the point

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of numbness, a feeling that was only partly relieved by the acquittal that came an hour later.

Contrasting with the growing personal skepticism of out-of-town reporters was the continued passivity and gullibility of the New Orleans dailies, the morning *Times-Picayune* and afternoon *States-Item*. For two years, they had been content to accept uncritically whatever the district attorney said, attempting neither to investigate the investigation nor to place the charges in perspective by comparing them with the Warren Commission findings or the theories of the commission critic. Instead, the *States-Item* for months allowed two staffers to act as informal investigators for Garrison in return for exclusive stories.

After Shaw's acquittal, both papers criticized Garrison in front-page editorials, which lauded their own restraint in not editorializing on the case earlier. The *States-Item* called for Garrison's resignation, which a friend of Shaw likened to "demanding Hitler's resignation after V-E Day."

While the local papers seemed uncritical to the point of negligence, the major news media were charged by Garrison supporters with being uniformly censorious. Warren Commission critic Mark Lane referred to the apartment of the *New York Times's* Martin Waldron, the scene of nightly gatherings of out-of-town correspondents, as "the ministry of truth." The belief that Shaw was innocent, Lane said, only half in jest, was "accepted as readily as the notion that the earth is round."

At least three members of the Shaw trial press went beyond the normal bounds of journalistic interest in the story, becoming, in varying degrees, participants as well as reporters. The three were Los Angeles radio newsmen Art Kevin, free-lance writer Jim Phelan, and *Newsweek* correspondent Hugh Aynesworth.

Kevin, the least involved of the three, sat forward of the railing during most of the trial, a position gained by no other daily newsmen, snack among the prosecuting attorneys and Dealey Plaza Irregulars. Kevin says he was only taking advantage of his long, friendly relationship with Garrison, a relationship strengthened by Kevin's firm belief that Kennedy's assassination was the result of a conspiracy. "Sure, I sat with those people," he says. "I'd have sat on the bench if I'd gotten the chance." Kevin admits that keeping his journalistic objectivity, on the whole assassination matter, has been a difficult job: "It's been like stepping on eggs, like trying to make myself two people for the past two years. But I *have* tried to walk a straight line."

Jim Phelan and Hugh Aynesworth, both fiercely anti-Garrison, became in effect special advisers to the defense. They consulted frequently with Shaw's attorneys, passing along tips on aspects of the case they knew best from time spent covering it as reporters. The two of them, says chief defense attorney F. Irvin Dymond, were "extremely valuable" to the defense case. Dymond says he did not solicit any reporter's help, "but after they let us know how they felt [about the case], when they were in town we made it our business to see them."

Mark Lane complains that Aynesworth and Phelan were "in a

sense agents for the defense. They weren't simply prejudiced observers. They were participants." Lane himself hardly qualifies as an objective observer of the Garrison investigation or its press corps, but this particular charge has merit. Phelan, a seasoned magazine writer, became involved in the case two years ago with a *Saturday Evening Post* piece attacking the investigation and particularly the credibility of Garrison's chief witness, Perry Russo. The evidence Phelan turned up convinced him that the investigation was phony. When the case finally came to trial, he took the stand in behalf of the defense, and he paid his own living expenses while waiting to do so.

Phelan, however, was also writing an article on the case for *True*, so he was a reporter as well as a participant. Or was he? Phelan says there is a distinction between newspaper reporters and magazine writers, with the latter expected to interpret events and to call the shots as they see them. In the Shaw case, he says, this meant writing about "how Garrison put this bag of crap together." Phelan also makes a broader defense of his participant role, that of serving the public interest: "I started out being friendly with Garrison. But after I'd talked to him and to Perry Russo, I become convinced this was a bunch of bull—incoherent, undocumented bull. So then what do you do? What do you do in our system when you get into official fraud—and I think this case *was* a complete fraud. Do you as a newsman, remain silent? Or do you call public attention to it?"

Phelan's own answer is clear enough. "Journalism is getting much too chicken these days," he says. "Reporters don't know how

to dig on a story, and they don't know what to do with good stuff when they get it. Is a reporter supposed to be some kind of file clerk, taking pieces of paper from this side and that and giving them all equal weight? This whole business of objectivity is phony. We are really getting criticized for not being conned."

Hugh Aynesworth was more involved with the defense than was Phelan. Aynesworth, before he joined *Newsweek*, covered the assassination and much of the aftermath for one of the Dallas papers. He is probably better versed than any newsman on the details—charges, witnesses, testimony, and whatnot—of the Garrison investigation. Hence, he could be extremely valuable to the Shaw defense, and he was. Attorney Dymond says, "Hugh helped us a hell of a lot, mostly on stuff that did not come out in court." Dymond cites, as an example of the help, Aynesworth's "shooting down" of a prosecution claim that a telephone number in Oswald's address book involved some sort of secret code.

Aynesworth, who makes no secret of the assistance he gave the defense, says he pointed out discrepancies in the stories of various prosecution witnesses: "for instance, the testimony of Roger Craig. I was in Dallas that day, at the scene, and I knew Craig couldn't have gotten caught in traffic. The traffic jam didn't start for 20 or 30 minutes afterward."

While he was consulting with the defense, Aynesworth was filing weekly stories to *Newsweek*. The magazine ran a number of pieces, highly critical of Garrison and his case against Shaw, that were apparently based primarily on Aynesworth's reporting. *Newsweek's* editors had at least an in-

klung of the dual role their correspondent was playing in the trial, but they did not question the propriety of his reporting the story while participating in it; and he did not question it himself. "No one considered for a moment," said *Newsweek's* executive editor, Lester Bernstein, "taking him off a story on which he was the best qualified reporter around."

"I've been in the business twenty years," Aynesworth admits, "and I've never gotten involved in any story like I did in this one. But there's never been another case like this one." Like Phelan, Aynesworth became convinced early in his coverage of the Garrison investigation that the case against Shaw was unworthy of belief. "Garrison," he says, "lied to me several times. He made up stuff, said things that were plain contrary to

What lies behind New Orleans District Attorney Jim Garrison's increasingly notorious investigation of a "plot" to kill John F. Kennedy? To find out, *Newsweek* sent a veteran reporter, who covered the assassination and its aftermath, to New Orleans for five weeks. His account follows.

by Hugh Aynesworth

Anti-Garrison: signed story by Aynesworth in *Newsweek* for May 15, 1967, shows early conclusions

what I knew had happened in Dallas. And some of his witnesses were testifying to things I simply knew were wrong. I felt it was my duty to challenge that, to let the defense know. Besides, they [the witnesses] were attacking my credibility, because they were challenging things I'd written about the assassination.

"To me, this was like seeing a man murdered in cold blood on the street. Do you stop and write a story about it, or do you chase the guy first? I believe you chase first and write later. Reporters are human beings and citizens, and I viewed the case as a tremendous attack on our nation."

The cold-blooded murder analogy, while appealing, is not really apt. The Garrison investigation did not require any such instantaneous reaction or personal involvement. Besides, dramatic, emotional events, because they are dramatic and emotional, call for undramatic and uninvolved reporting.

Bernstein, the executive editor, notes approvingly Aynesworth's explanation that he had been equally responsive to requests from Garrison for information about the assassination. Perhaps, but at the time of the trial Aynesworth was helping only one side, the defense, with the clear aim of seeing Garrison's case destroyed and Shaw acquitted. The key point is that, whether or not Aynesworth's earlier counseling was justified, when the Shaw case came into a court of law, his job as a journalist was to report, but not to aid one side or the other. In an adversary proceeding, reporters are not to be counted among the adversaries.

Aynesworth could have chosen between his twin functions of reporter and participant. He could, for instance, have taken a leave of absence to join the defense team and let someone else cover the Shaw trial for his magazine. Failing that, *Newsweek's* editors should have made the choice for him, to protect their own interests and the interests of their readers. Jim Garrison fully deserved most of the criticism he received over the Shaw case. But it is a long step from criticizing an official and his actions to helping blunt them through actions of one's own. It is a step a journalist can ill afford to take—while he still professes to be a journalist.

ROGER M. WILLIAMS
Time, Atlanta bureau
MICHAEL PARKS
Baltimore Sun

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