

2005

OPENING DAY OF THE SHAW CASE

FEBRUARY 6, 1969

10:00 A.M.

THIS COPY FOLLOWED BY GARRISON'S
OPENING STATEMENT ALREADY TRANS-
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Dietrich & Pickett, Inc.
Stenotypists

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NEW ORLEANS, LOUISIANA 70130 - 522-3111

Exnicios which states as follows:

"In keeping with the message from you through your Minute Clerk, John Sullivan, I enclose a statement from Dr. F. J. Padua concerning my client. Since Mr. Beauboeuf has filed an affidavit to the effect that he does not wish to avail himself of this privilege, I have no other alternative but to supply the Court with the exhibit, which is hereby handcarried to be delivered to and receipted for by the Court. I would, however, request that an order be issued by you overruling my previous objection and requiring the production of this exhibit."

I have so ordered. I overrule his objection and require the production of it. I am turning it over to the Property Clerk as an exhibit in this case.

MR. ALCOCK:

Your Honor, that is not a part of the

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1 official record at this time, is
2 it?

3 THE COURT:

4 I am merely putting it as an exhibit
5 to be offered at the right time,
6 not as a part of the case. It
7 hasn't been offered by either side
8 as an exhibit.

9 Now, I believe that disposes of it, Mr.
10 Klein.

11 MR. KLEIN:

12 Yes, sir, it does.

13 THE COURT:

14 That means that I sustain your inter-
15 vention, and that brings us up to
16 the other motion. May I have the
17 State's answer?

18 MR. ALCOCK:

19 The State at this time files its answer
20 to Motion for Protective Order,
21 serving copies of the answer on
22 Defense Counsel and providing the
23 Court with its formal answer (hand-
24 ing document to the Court).

25 THE COURT:

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1 Take this down, Mrs. Dietrich. It is
2 very short and I will read it into
3 the record.

4 "Now into Court comes the State of
5 Louisiana, through the undersigned
6 Assistant District Attorney for
7 the Parish of Orleans, for the
8 purpose of answering the Defendant's
9 Motion for Protective Order, and
10 does answer as follows:

11 "I.

12 "The Defendant's request for a protective
13 order is completely foreign to the
14 law of Louisiana. Article 61 of
15 the Louisiana Code of Criminal
16 Procedure provides in part that
17 the District Attorney 'determines
18 whom, when and how he shall prose-
19 cute' any violation of the criminal
20 law within his jurisdiction. Counsel
21 for the Defendant has not, nor
22 indeed can he, cite any law to the
23 contrary. The Court simply is with-
24 out authority to grant the relief
25 sought.

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1 "The State of Louisiana, therefore,
2 respectfully requests this Honor-
3 able Court to deny the Defendant's
4 Motion for Protective Order.

5 "WHEREFORE, the State prays that this
6 answer be deemed good and suffi-
7 cient in law and that the Defendant's
8 Motion be denied."

9 I will be glad to hear from you, Mr.
10 Dymond, oral argument.

11 MR. DYMOND:

12 If the Court please, in asking for this
13 protective order, we have asked
14 for the only thing which will
15 satisfy Counsel for Sandra Moffett
16 McMains and persuade him to make
17 this witness available to us. We
18 realize that the order which we
19 have requested goes outside the
20 scope of the protection which is
21 offered by the Interstate Witness
22 Act, which, of course, guarantees
23 immunity from arrest only for past
24 actions. However, we submit that
25 Article 17 of the Louisiana Code

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1 of Criminal Procedure in general
2 terms gives the Court authority
3 to issue such an order, wherein
4 that Article states that: "A
5 court possesses inherently all
6 the powers necessary for the
7 exercise of its jurisdiction and
8 the enforcement of its lawful
9 orders, including the authority
10 to issue such writs and orders as
11 may be necessary or proper to aid
12 in its jurisdiction. It has the
13 duty to require that criminal pro-
14 cedures shall be conducted with
15 dignity and in an orderly, expedi-
16 tious manner, and to so control
17 the proceedings that justice is
18 done. The court has the power to
19 punish for contempt."

20 Now, if the Court please, as has been
21 made public, Perry Raymond Russo
22 contended that Sandra Moffett
23 McMaines was with him on the night
24 of the party in question. Sandra
25 Moffett McMaines has publicly denied

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1 this, stating that she did not
2 even make the acquaintance of
3 David Ferrie until sometime in
4 the year 1965. This lady has
5 moved to the state of Iowa, which
6 has no provision for sending a wit-
7 ness to this state contrary to that
8 witness's wishes. We feel that she
9 is an essential witness here, she
10 is needed for the proper presenta-
11 tion of this case, and we ask that
12 the Court exercise the power granted
13 by Article 17 and furnish the pro-
14 tection which her lawyer has demanded
15 as a condition precedent to his
16 advising her to come to Louisiana
17 to testify.

18 THE COURT:

19 Well, the State's answer certainly is
20 legally sufficient. I have not
21 heard of it being done, nor have
22 I heard of it being done in the
23 state.

24 MR. DYMOND:

25 I think it was done for Gordon Novel,

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Your Honor.

THE COURT:

He was charged as a material witness.

Now, if a person is charged as a material witness, I can put them in jail under a bond. Are you suggesting that we charge this person as a material -- she has been charged and we weren't able to get her back.

MR. DYMOND:

She has been charged and she has been unable to be obtained. That is exactly why we need the protective order, Your Honor. Her attorney has stated those are the only conditions under which he will permit her to come here to Louisiana. In blunt terms, she is fearful of arrest by the District Attorney's Office.

MR. ALCOCK:

Your Honor, I would like to have an opportunity to respond --

THE COURT:

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I will give you that opportunity.

MR. ALCOCK:

-- to Counsel's remarks.

THE COURT:

Counsel, the only solution I can think of is to put her in the Parish Prison.

MR. DYMOND:

We have to get her here first.

MR. WEGMANN:

We have to get her here first.

THE COURT:

First promising to keep her safe, if that is what you mean.

I will be glad to hear you, Mr. Alcock.

MR. ALCOCK:

Your Honor, the Court has recognized that the State limited itself in its answer to the sole legal issue presented to the Court, and that is whether or not this Court has the power to grant immunity to anyone, no matter who that person may be, from prosecution. As the Court well knows, the District

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1 Attorney is granted complete powers
2 as to whom, when and how he shall
3 prosecute. I would like to make
4 it clear at this time that the
5 State of Louisiana, the District
6 Attorney's Office for Orleans Parish,
7 does not intend to clamp this woman
8 in irons the moment that she crosses
9 the parish line. However, the State
10 cannot accede to something that is
11 outside the law. In effect, this
12 Court would be going outside the
13 law and granting to the Defense
14 something which they are not en-
15 titled to. If this witness comes
16 into our parish and commits any
17 violation of the law, it would not
18 only be -- we would not only charge
19 her but it would be our duty to
20 charge her lest we be charged with
21 malfeasance in office, and this is
22 our position. We do not intend to
23 arrest this girl should she come
24 back. As a matter of fact, if the
25 record were made straight, the

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1 reason she is in Iowa is because
2 we attempted to get her back first
3 by the usual procedure of the
4 Interstate Witness Act, and she
5 ran to a state which is not signa-
6 tory to that Act and therefore she
7 is beyond the bounds of this court
8 using that particular vehicle, but
9 I would assure the Court the District
10 Attorney's Office has no intention
11 of arresting this girl merely be-
12 cause she is present in this parish,
13 but if she does commit a crime in
14 this parish, she like anyone else
15 is not above arrest and prosecution.
16 She will be prosecuted.

17 THE COURT:

18 Her fears are unfounded, in other words?

19 MR. ALCOCK:

20 Her fears are completely unfounded.

21 THE COURT:

22 Do you wish to be heard at this time,

23 Mr. Dymond?

24 MR. DYMOND:

25 Yes, sir. If the Court please, as a

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1 practical matter it doesn't make
2 any difference whether Your Honor
3 or whether we are convinced as to
4 whether this girl's fears are un-
5 founded. We are trying to convince
6 her attorney that those fears are
7 unfounded, and we have no way in
8 which to do that. I think it is
9 the State's responsibility to see
10 that justice is done. The State
11 wants her here, we now want her
12 here. If we are in accord, I think
13 we have a way of getting her here,
14 by the issuance of that order.

15 THE COURT:

16 We have been trying to get her back for
17 about a year and a half. I think
18 the State made the first effort to
19 get her here. They certainly were
20 trying to get her back before you
21 people.

22 MR. DYMOND:

23 We have been assured by her attorney
24 that she will come here if this
25 order is issued.

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1 THE COURT:

2 I cannot issue it. You have a statement
3 from the District Attorney that he
4 has no intent of putting this person
5 in jail. If her attorney can't
6 accept that, I don't know what he
7 can accept.

8 MR. DYMOND:

9 I can't stand here and tell you what her
10 attorney will accept other than
11 what he told me that he would
12 accept, and he says that the only
13 condition under which he will per-
14 mit her to come to Louisiana is
15 with a protective order of the kind
16 that we have requested.

17 THE COURT:

18 I am going to rule that your motion is
19 denied.

20 Now let's bring the Jury down, and take
21 your Bill of Exception.

22 (Jury brought to the box.)

23 THE COURT:

24 Are both the State and the Defense ready
25 to proceed?

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1 MR. DYMOND:

2 We are ready.

3 MR. ALCOCK:

4 The State is ready.

5 MR. DYMOND:

6 If the Court please, in the presence of
7 the Jury I would like to reserve a
8 bill of exception to Your Honor's
9 overruling our Motion for a protec-
10 tive order for Sandra Moffett
11 McMaines, making parts of the Bill
12 our exhibits filed with the Motion.

13 THE COURT:

14 Very well.

15 Are the State and the Defense ready to
16 proceed at this time?

17 MR. DYMOND:

18 We are, and at this time, if the Court
19 please, we will ask for a seques-
20 tration of witnesses.

21 THE COURT:

22 Just a minute. Those witnesses whose
23 names have been enumerated and
24 those who know they will be wit-
25 nesses whose names were not on

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1 there are requested to step out-
2 side of the courtroom.

3 MR. DYMOND:

4 Your Honor, we will ask that you also
5 require the State to advise any
6 person whom they intend to use as
7 a witness, whether that person be
8 aware of it or not, to step outside
9 the courtroom, and the Defense will
10 do the same.

11 THE COURT:

12 I think that is a fair request.

13 All right. The State and the Defense
14 are both ordered by the Court, if
15 they know a person is to be a wit-
16 ness, to ask that person to step
17 outside, whether their name is
18 listed on the record or not.

19 MR. ALCOCK:

20 Your Honor, may I have a five-minute
21 recess in order to discuss this
22 with Defense Counsel?

23 THE COURT:

24 We will take a five-minute recess. There
25 is no need to send the Jury back.

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~~(Whereupon, a brief recess was taken.)~~

AFTER THE RECESS:

THE COURT:

Gentlemen, are the State and the Defense
ready to proceed?

MR. ALCOCK:

Yes, sir.

I have complied with your request, Mr.

Dymond, and following our confer-
ence I have requested all witnesses,
whether named or not, to get out of
the courtroom.

MR. WILLIAM WEGMANN:

One of your witnesses I wish you would
instruct is Mr. Matt Herron. I
saw him before and he was still
here.

MR. ALCOCK:

Would you repeat his name?

MR. WEGMANN:

Matt Herron.

THE BAILIFF:

I just sent him out, Judge.

THE COURT:

If the State and the Defense are ready

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1 to proceed, the first order of
2 business is the opening statement
3 by the District Attorney.

4 MR. DYMOND:

5 Is Your Honor going to have the Indictment
6 read to the Jury first?

7 THE COURT:

8 I think that is a very good idea.

9 First let the record reflect that the
10 jurors were individually sworn
11 after they were accepted, so the
12 jurors have been officially sworn
13 for the trial of the case.

14 All right. Mr. Sullivan, read the Indict-
15 ment to the Jury, please.

16 THE CLERK: (reading)

17 "INDICTMENT.

18 "The Grand Jurors of the State of
19 Louisiana, duly impaneled and
20 sworn in and for the body of the
21 Parish of Orleans, in the name and
22 by the authority of the said State,
23 upon their oath, PRESENT That one
24 CLAY L. SHAW, late of the Parish
25 of Orleans, between the 1st day of

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"TRUE BILL/s/ ALBERT V. LaBICHE, Foreman
of Grand Jury
"New Orleans, March 22, 1967
"Returned in open Court and recorded and
filed March 22, 1967
"/s/GEORGE W. PLATT, Minute Clerk."

THE COURT:

We will now hear the opening statement
by the District Attorney.

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