

JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : HSCA
RECORD NUMBER : 180-10099-10063

RECORDS SERIES :
NUMBERED FILES

AGENCY FILE NUMBER : 002030

DOCUMENT INFORMATION

ORIGINATOR : CRIMINAL DISTRICT COURT PARISH OF ORLEANS, LA
FROM :
TO :

TITLE :

DATE : 02/20/69
PAGES : 51

SUBJECTS :
SHAW, CLAY L.
STATE OF LOUISIANA VS. CLAY L. SHAW

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : U
RESTRICTIONS : OPEN IN FULL
CURRENT STATUS : O
DATE OF LAST REVIEW : 05/06/93

OPENING CRITERIA :

COMMENTS :
TRANSCRIPT OF COURT PROCEEDING. BOX 44.

Routing Slip

NO.

002030

DATE 8/15/77

Document I.D. Shaw trial proceedings Vol. 26

INDEX

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CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

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STATE OF LOUISIANA . 198-059
VERSUS . 1426(30)
CLAY L. SHAW . SECTION "C"
.....

PROCEEDINGS IN OPEN COURT,
FEBRUARY 20, 1969

B E F O R E : THE HONORABLE EDWARD A. HAGGERTY, JR.,
JUDGE, SECTION "C"

Dietrich & Pickett, Inc.
Stenotypists

333 ST. CHARLES AVENUE, SUITE 1221
NEW ORLEANS, LOUISIANA 70130-522-3111

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1 Pursuant to the adjournment, the
2 proceedings herein were resumed at 9:32
3 o'clock a.m., appearances being the same
4 as heretofore noted in the record. . . .

5 THE COURT:

6 Out of the presence of the Jury, I wish
7 to state for the record that an
8 application for a writ of certiorari
9 order directed to the Honorable
10 Edward A. Haggerty, Judge of Section
11 "C", Criminal District Court for the
12 Parish of Orleans, was filed with
13 the Supreme Court of Louisiana last
14 night by the District Attorney's
15 office. I have been awaiting word,
16 which we have just received from
17 Mr. Moise, who is Clerk of the
18 Supreme Court, that the application
19 has been denied, and it is signed
20 by six of the seven Justices of the
21 State Supreme Court. The only
22 Justice not signing it was Justice
23 E. Howard McCaleb.

24 So I am proceeding with the trial at
25 this moment.

1 Bring the Jury up.

2 MR. ALCOCK:

3 Your Honor, prior to bringing the Jury
4 down, the State has a motion to
5 make.

6 THE COURT:

7 All right. I will be glad to hear you.

8 MR. ALCOCK:

9 Your Honor, prior to bringing the Jury
10 down, the State would like to move
11 the Court to reconsider its ruling
12 of yesterday afternoon, and the
13 State would like to present to the
14 Court very briefly oral argument
15 in connection with that motion.

16 THE COURT:

17 I will hear it.

18 MR. ALCOCK:

19 I think the testimony adduced on the
20 predicate clearly demonstrated --
21 and I am not going to belabor the
22 point, the presence of Defendant's
23 Counsel approximately four hours
24 before he was taken over to Central
25 Lockup. Counsel (a) conferred with

1 him privately on two occasions at
2 least, in the District Attorney's
3 office, and as the Court noted in
4 rendering its decision, the District
5 Attorney's office afforded him all
6 of his constitutional rights. Once
7 over in the Central Lockup, and more
8 particularly in the B of I Room, we
9 have a conflict in testimony as to
10 whether or not the Defendant was
11 accorded his constitutional rights.

12 Now, Mr. Wegmann did take the stand and
13 testify he never entered the con-
14 fines of that room, and I have no
15 reason to dispute that, especially
16 in connection with the testimony of
17 Captain Curole who said that he had
18 asked Mr. Wegmann to leave the
19 premises because of a rule of the
20 New Orleans Police Department, but
21 I would respectfully call to the
22 Court's attention the testimony of
23 the Defendant himself. Now, it is
24 his constitutional rights that we
25 have under consideration at this

1 time.

5

2 The Defendant said that he made no

3 statement to Officer Habighorst.

4 The Defendant additionally said

5 that Officer Habighorst asked him

6 no questions. Now, Officer Habig-

7 horst's testimony was diametrically

8 opposed to that testimony, to the

9 effect that he did ask him questions

10 and in response to those questions

11 he got certain routine information

12 which he used to fill in the finger-

13 print card.

14 We have the testimony of Officer Butzman,

15 who specifically recalls seeing the

16 Defendant converse with Officer

17 Habighorst. However, he only over-

18 heard one portion of the conversa-

19 tion and that related to the correct

20 spelling of the Defendant's name.

21 He did not recall whether or not

22 as a matter of fact Officer Habig-

23 horst had in his possession the

24 Arrest Register or the Field Arrest

25 Report. Captain Curole was not

1 present and therefore he could
2 not testify as to what Officer
3 Habighorst may or may not have had
4 in his hand at the time that he
5 questioned the Defendant relative
6 to the routine information or per-
7 sonal data needed for the identi-
8 fication record. Officer Perkins
9 was not present.

10 It is my point simply, Your Honor, that
11 the Defendant by taking the witness
12 stand himself and saying that he
13 made no statement, that no questions
14 were asked of him, has obviated the
15 need for the State laying this
16 predicate. The predicate is solely
17 to determine whether or not as a
18 matter of law which the Court must
19 pass on first prior to the tryer
20 of fact, which would be the Jury,
21 whether or not as a matter of law
22 the Defendant's rights, constitu-
23 tional rights, were abridged.

24 Now, I submit that when the Defendant
25 took the stand himself and said he

7

1 made no statements, that he himself
2 under oath testified that none of
3 his constitutional rights were
4 abridged. He stated emphatically
5 that he had never been abused
6 physically at any time, he had
7 never been made any promises, no
8 inducements were ever made or
9 offered to him to make any statement.
10 His testimony was that he remained
11 almost completely mute in the B of
12 I Room.

13 Now, I submit whether or not the Defen-
14 dant responded to Officer Habighorst
15 as to his alias being Clay Bertrand
16 or not is a matter for the Jury to
17 determine, a matter of credibility
18 to determine whether or not this
19 man said this or whether Officer
20 Habighorst is completely truthful
21 or the Defendant is completely
22 truthful, but the mere fact that
23 the Court may or may not believe
24 Officer Habighorst as to whether
25 or not the Defendant made this

1 statement, although I say the only 8
2 evidence we had in the court besides
3 the testimony of the Defendant and
4 the testimony of Habighorst, seemed
5 to corroborate Habighorst and
6 demonstrate that the only person
7 lying was the Defendant when he said
8 he made no statements. It is still
9 my position when he makes that
10 statement that he made no statements,
11 he is telling this Court that no
12 constitutional right of his was
13 abridged.

14 The question then becomes, did he make
15 the statement or did he not, not
16 under what circumstances it was
17 made. Certainly they would be
18 useful for the Jury in giving
19 weight to whatever statement they
20 felt he made, but I strenuously ask
21 this Court to reconsider its ruling
22 in the light of the fact that the
23 Defendant himself said none of his
24 constitutional rights were abridged,
25 and I respectfully request this

Court to reverse its decision and
allow the State to introduce "S-60"
and the oral testimony surrounding
this alleged statement.

THE COURT:

Do you wish to be heard, Mr. Dymond?

MR. DYMOND:

If the Court please, Counsel is in
effect at this time asking Your
Honor to reconsider a ruling and
as a result of that reconsideration
to overrule the Supreme Court of
Louisiana.

As we see it, this fingerprint card in
question, and more particularly the
information contained thereon, got
there in one of two ways: either
as a result of questioning by
Officer Habighorst, in which event
the Miranda and Escobedo rights of
the Defendant were violated and in
which event it would necessarily be
inadmissible, or else it was placed
on there by Officer Habighorst after
the card had been signed in blank

1 by the Defendant, in which case
2 it would also be inadmissible as
3 merely a declaration of Officer
4 Habighorst's.

5 I think it is quite obvious how this
6 information came into being. You
7 can follow the chain right down the
8 line. First you had a search
9 warrant with Officer Ivon being
10 the person who executed it, in
11 which search warrant it was alleged
12 that Mr. Shaw had the alias, Clay
13 Bertrand.

14 From this search warrant we next go to
15 the Field Arrest Report, also made
16 out by the same officer, Officer
17 Ivon, once again containing the
18 alias which Officer Ivon himself
19 had originally put in the affidavit
20 supporting the search warrant.

21 Then we have the original Arrest Register,
22 which by the testimony of all those
23 who testified, is taken from the
24 Field Arrest Report. So once again
25 you have the transfer of the original

Ivon idea of the alias from the
affidavit to the Field Arrest
Report to the Arrest Register.

Then according to the testimony, the
information from the Arrest Register
goes onto the fingerprint card
after it has been signed in blank
by this Defendant.

Now, to permit the Jury to hear the
evidence surrounding these documents
would certainly be prejudicial, it
would be a needless thing, needless
prejudice. We have something that
no matter which way the information
got on there, it is inadmissible,
and I submit to the Court it is a
completely futile, useless and pre-
judicial act to permit the Jury to
hear this evidence.

THE COURT:

Do you wish to reply?

MR. ALCOCK:

Yes, Your Honor.

Briefly, I think Mr. Dymond's argument
by going back to the execution of

1 the search warrant by Officer
2 Ivon and then proceeding to the
3 Field Arrest Report and then to
4 the Arrest Register, is probably
5 and might on most occasions have
6 been the proper procedure. However,
7 that was not the testimony in this
8 case. Officer Ivon never testified
9 that Habighorst had a copy of the
10 Arrest Register or the Field Arrest
11 Report, and Habighorst said he did
12 not. But I don't want to again
13 belabor that area of the case. I
14 think it again exhibits a weakness
15 in the defense position in arguing
16 this, because in a sense essentially
17 what they are arguing is that
18 Habighorst is not believable as to
19 where the name, Clay Bertrand, came
20 from. Did it come from some form
21 that he had or did it come from the
22 mouth of the Defendant? That is
23 an issue which is solely within
24 the province of the Jury, it has
25 no relevancy whatsoever to a

1 predicate, and again when they
2 argued that, they are arguing in
3 effect that the Jury should not be
4 allowed to hear this because it is
5 prejudicial. Every piece of evi-
6 dence the State puts on is I hope
7 prejudicial against the Defendant.
8 It is for the Jury to weigh this
9 evidence. The only issue before
10 Your Honor is whether or not the
11 Defendant, if he made a statement
12 at all, made it freely and volun-
13 tarily and after having been duly
14 warned of his constitutional rights.
15 Now he says he made no statement;
16 the State says he did. The tryer
17 of fact should be the body to
18 determine whether or not he made
19 the statement, and, if he did, what
20 weight should be given to that
21 statement, and I respectfully
22 request this Court to reverse its
23 ruling.

24 MR. DYMOND:

25 If the Court please, I would like to make

1 just one brief remark.

2 It is axiomatic that when either side,
3 State or the Defense, places a
4 witness on the witness stand, that
5 side vouches for the credibility of
6 that witness. Officer Habighorst
7 said that he got this information
8 by questioning the Defendant. If
9 you are going to vouch for the
10 credibility of that witness, which
11 the State must, we run squarely
12 into the prohibitions of Miranda
13 Escobedo. Your Honor has ruled on
14 that, Your Honor has been affirmed
15 by the Louisiana Supreme Court, and
16 we respectfully submit your previous
17 ruling is immanently correct and
18 ask you to abide by it.

19 MR. ALCOCK:

20 The Defendant says his constitutional
21 rights were not abridged. Addi-
22 tionally, the Defense vouched for
23 the credibility of Sergeant Butzman
24 who contradicted flatly the Defen-
25 dant's own testimony as to whether

1 there was any conversation between
2 the Defendant and Habighorst. I
3 submit if we are going to go on
4 vouching for credibility, the
5 Defendant himself destroyed the
6 very issue before this Court,
7 whether or not he gave this state-
8 ment freely and voluntarily, and
9 again I request this Court to reverse
10 it prior ruling.

11 MR. DYMOND:

12 Just one remark, if I may, in answer.

13 Mr. Alcock has very politely stated

14 that the State hopes that all the
15 evidence they put on will be pre-
16 judicial to the Defendant, and I
17 certainly don't criticize that
18 remark but I would like to comment
19 on it by saying that this evidence
20 cannot and may not be evidence
21 which is the product of the
22 imagination of investigating
23 officers, which is the only other
24 way that the information could have
25 gotten on that card other than by

questioning this Defendant.

MR. ALCOCK:

Well, that is for the Jury to decide,
Your Honor. That is my whole
point, that is for the Jury to
decide, that is not for the Court
to decide on a predicate as to the
freeness and voluntariness of a
confession.

THE COURT:

Is the matter submitted?

MR. ALCOCK:

Yes, Your Honor, it is submitted.

THE COURT:

The way I read the Code on confessions,
which includes inculpatory state-
ments, it is first for the Court
to decide, not the Jury, the Court
must first decide whether it was
freely and voluntarily given.

Under Article 451:

"Before what proposes to be a concession
can be introduced into evidence, it
must be affirmatively shown that it
was free and voluntary, not made

1 under the influence of fear, duress,

17

2
3 or promises."

4 Now, that means that the State must
5 affirmatively show to the Court
6 out of the presence of the Jury
7 that the statement, whether oral
8 or written, is not tainted with
9 some illegality.

10 Now, this particular case is not up to
11 Mr. Shaw or his counsel, nor, for
12 that matter, to the State, that
13 his constitutional rights were not
14 violated; it is up to me to make
15 that decision, not Mr. Shaw. He
16 can say what he wants. But the
17 controlling point as I see it in
18 this case is, as Mr. Dymond well
19 said a moment ago, this information
20 printed, typewritten on the finger-
21 print card wherein it states that
22 Mr. Clay Shaw has an alias of Clay
23 Bertrand, could have only gotten on
24 there in one of two ways, either
25 Mr. Habighorst put it on there

1 himself without questioning Mr.

2 Shaw, and got the information which
3 originated with Officer Ivon, or he
4 did question him and he got the
5 information from Mr. Shaw himself.

6 Now, if he got the information in the
7 first instance, then it is a self-
8 serving declaration and it should
9 not be imputed to Mr. Shaw in any-
10 wise, irrespective of Miranda and
11 Escobedo.

12 MR. ALCOCK:

13 That would be the --

14 THE COURT:

15 Let me finish, Mr. Alcock.

16 In the other instance, if he did in fact
17 admit orally to Officer Habighorst
18 that he had an alias -- which I
19 told you yesterday I seriously
20 doubt -- then Mr. Habighorst did
21 not follow the Miranda decision by
22 telling Mr. Shaw, I am going to ask
23 you a question that may inculcate
24 you or may be detrimental to you,
25 and you do not have to answer. But

1 Officer Habighorst did not do that. 19

2 So if he did not do that, it violates
3 the principles of the Miranda and
4 Escobedo decisions.

5 Now the second point. When Mr. Wegmann,
6 Eddie Wegmann, and Mr. Panzeca --
7 particularly Mr. Eddie Wegmann
8 wanted to be with his client and
9 Captain Curole -- I find no fault,
10 because he is not expected to know
11 the latest Supreme Court decisions
12 of the United States, but in the
13 Escobedo case we had the same
14 principle, his attorney was clamor-
15 ing to get to his client and they
16 wouldn't let him get to him, they
17 wanted to question him and try to
18 get a confession, and the general
19 principle of law is that Captain
20 Curole had no right, irrespective
21 of a police regulation that a man
22 cannot be with his client when he
23 is being fingerprinted, so I see
24 clearly that Captain Curole's
25 instructions violated the Danny

Escobedo case.

2

Now, under both situations -- and that is the only way the typewritten information could have gotten on this fingerprint card -- in both instances it was illegally obtained. So I have reconsidered and I will not change my decision.

All right. Bring the Jury down.

MR. ALCOCK:

Your Honor, in the Jury's presence I would like to take a bill of exception to Your Honor's ruling.

THE COURT:

Very well. You can repeat the bill in the presence of the Jury when they come down without stating what --

MR. ALCOCK:

I won't.

(Whereupon, the Jury returned to the courtroom.)

THE COURT:

Now are the State and the Defense ready to proceed?

MR. ALCOCK:

21

Your Honor, I would like to take a bill of exception to the Court's ruling on the State's motion for the Court's reconsideration of a ruling made last night, and I would like to make a part of that bill the Court's ruling last night, the argument adduced in support and in opposition to the State's motion this morning, the Court's ruling on the motion and the State's objection thereto all parts of the bill.

THE COURT:

Very well.

Call your next witness.

MR. ALCOCK:

The State rests.

MR. DYMOND:

If the Court please, at this time the Defense would like to file a motion which is required by law to be filed outside of the presence of the Jury.

1 THE COURT:

2 Sheriff, take the Jury back upstairs.
3 (Whereupon, the Jury retired from
4 the courtroom.)

5 THE COURT:

6 You may proceed.

7 MR. DYMOND:

8 If Your Honor please, at this time the
9 Defense would like to file a motion
10 for a directed verdict, which we
11 are prepared to argue at this time.

12 THE COURT:

13 Have you served a copy on the State?

14 MR. DYMOND:

15 I have, yes.

16 THE COURT:

17 I can see the reasonableness of excluding
18 the Jury, but what is your authority
19 that you should argue this out of
20 the presence of the Jury?

21 MR. DYMOND:

22 Your Honor, it has been held reversible
23 error for the Jury to be informed
24 that a motion for a directed verdict
25 has been filed and denied, for the

1 reason that it gives the Jury the 2
2 impression that the Court as of the time
3 of denying that motion feels that a prima
4 facie case has been made out by the State,
5 and it would consequently indirectly
6 amount to a comment on the evidence by
7 the Court.

8 THE COURT:

9 I understand that, but I wondered why
10 when they drew this article, why
11 they didn't include it in there.
12 It seems obvious.

13 MR. DYMOND:

14 It is not specifically included in the
15 article.

16 THE COURT:

17 It is not in Article 778 of the Code of
18 Procedure, but I can see where it
19 would be prejudicial to give the
20 Jury the impression that the Judge
21 thinks they have made out a prima
22 facie case.

23 MR. DYMOND:

24 That is correct.

25 THE COURT:

1 If you do it out of the presence of
2 the Jury, they do not get that
3 information.

4 MR. DYMOND:

5 That is correct.

6 THE COURT:

7 I will hear your argument on that point.

8 MR. DYMOND:

9 If the Court please, at the outset we
10 would like to respectfully call the
11 Court's attention to the specific
12 wording of R.S. 1426.

13 THE COURT:

14 That is the conspiracy article?

15 MR. DYMOND:

16 That is the conspiracy article, the
17 statute under which this Defendant
18 stands charged.

19 THE COURT:

20 You may proceed.

21 MR. DYMOND:

22 Your Honor will note that criminal
23 conspiracy is defined as the
24 "Agreement or combination of two
25 or more persons for the specific

1 purpose of committing any crime."

2 Then, of course, you must have an
3 overt act, as the statute goes on
4 to say.

5 Now, if the Court please, our motion is
6 primarily directed at the nonexistence
7 of an actual agreement or combin-
8 ation, according to the very testi-
9 mony of the State's witnesses.

10 Before getting into the contradictions
11 of Perry Russo, the witness upon
12 whom the State must rely in attempt-
13 ing to establish this agreement or
14 combination, let me call the Court's
15 attention to one specific verbatim
16 quotation from the testimony of
17 Russo:

18 "Q. And it is your testimony that you
19 sat in, or listened in, on a con-
20 spiratorial meeting with a man whom
21 you saw represented in the paper
22 and on television as the killer of
23 President Kennedy, and didn't report
24 it at any time to any law enforcement
25 agent? Is that right?

1 "A. No. I never said anything about
2 a conspiracy; I didn't sit in on
3 any conspiracies."

4 Now, if the Court please, I can well
5 anticipate the State's answering
6 this by saying that Perry Raymond
7 Russo is not qualified to pass upon
8 whether this amounted to or did not
9 amount to a conspiratorial meeting.
10 Such an argument as that would be
11 very, very difficult to answer were
12 it not for the other testimony of
13 Perry Raymond Russo wherein we
14 actually got down to the specifics
15 of what he did hear and did not hear.

16 If Your Honor will recall, on cross-
17 examination I asked Perry Raymond
18 Russo:

19 "Q. Did you hear Clay Shaw agree to do
20 anything?"

21 The answer was an unequivocal no.

22 "Q. Did you hear David Ferrie agree to
23 do anything?"

24 "A. No.

25 "Q. Did you hear Leon Oswald agree to

1 do anything?

27

2 "A. No."

3 If Your Honor please, I submit in that
4 connection that without an agreement
5 to do anything you cannot have an
6 agreement or combination, an agree-
7 ment in the sense used in R.S. 1426
8 as actually a meeting of the minds
9 as you would have in a contract in
10 civil law, and without any of the
11 three alleged participants to an
12 agreement agreeing to do anything,
13 I submit to Your Honor that the
14 requirements of 1426 cannot be met,
15 because this Act requires that there
16 be an agreement or combination for
17 the specific purpose of committing
18 any crime, which means that the
19 participants must specifically agree,
20 there must be a meeting of the minds.

21 Now, we went on further with Russo.

22 Russo was asked whether he ever
23 heard any particular victim of an
24 assassination referred to as being
25 the victim of it, was he sure

1 whether they were planning to kill
2 Kennedy or Castro. He did not
3 know, he could not say.

4 Then the requirement that there be an
5 agreement to commit a specific
6 crime is completely nonexistent.

7 We then go further in the testimony of
8 Perry Raymond Russo, and, as I am
9 sure the Court will recall, I said,
10 "Russo, was there any agreement or
11 was there any plot or plan, or was
12 this a bull session? Was it a bull
13 session as you had heard David Ferrie
14 conduct and participate in on many
15 other occasions?" At which time
16 Perry Raymond Russo admitted from
17 that witness stand that, by his own
18 terminology, this was nothing more
19 than a bull session.

20 Now, I submit to Your Honor that at
21 certain times when President
22 Kennedy was extremely unpopular
23 because of specific things that he
24 had done in connection with his
25 office as President of this country,

1 there were many loose bull session
2 remarks made by many people who
3 disagreed with his policies, and
4 certainly it would be ludicrous and
5 ridiculous to brand each such remark
6 or bull session as the type of
7 agreement or combination which is
8 required by the terminology of R.S.
9 1426 to constitute an unlawful con-
10 spiracy to commit a crime.

11 Perry Raymond Russo, as Your Honor well
12 knows, is the only witness who
13 allegedly witnessed this alleged
14 conspiratorial meeting. Where else
15 can we learn at this point of the
16 case what went on in that meeting?
17 What was the attitude of the people?
18 Was it an attitude of seriousness,
19 or was it a bull session? Was there
20 a plan or plot? Was there a legally
21 prohibited agreement or combination
22 to commit a crime?

23 Your Honor, I say there is nowhere else
24 that we can now learn that, and,
25 therefore, this Court is constrained

1 to accept the word of Perry Raymond 30
2 Russo for the purpose of this motion
3 for a directed verdict, as to what
4 was the atmosphere at 3330 Louisiana
5 Avenue Parkway.

6 Was there a conspiracy? Russo's answer
7 is no, I did not sit in on any
8 conspiracy, I have never referred
9 to anybody as a conspirator. Did
10 you hear Mr. Shaw agree to anything?
11 No, I didn't hear him agree to any-
12 thing, I didn't hear Ferrie agree
13 to anything, I didn't hear Leon
14 Oswald agree to anything. Was this
15 a serious meeting? No, it was a
16 bull session -- in his own words --
17 a bull session such as I have heard
18 David Ferrie participate in many
19 times. It was characteristic of
20 the man to do so.

21 So we say, Your Honor, that this strikes
22 at the very heart, strikes at the
23 very core of what is necessary for
24 the State to start out with, what
25 it is necessary for the State to

1 have proven even to be able to
2 prove overt acts, even to hold one
3 alleged conspirator responsible for
4 the acts of another one.

5 We get then to the absolute void, to the
6 absolute failure of the State to do
7 the two necessary things in con-
8 nection with the alleged overt acts,
9 that is, prove that the acts were
10 committed and prove that, if they
11 were committed, they were committed
12 in furtherance of an illegal con-
13 spiracy or a combination or agree-
14 ment.

15 We ask that Your Honor review the overt
16 acts alleged by the State, review
17 the overt acts attempted to be proven
18 by the State.

19 We have the trip of Mr. Shaw to the West
20 Coast alleged as an overt act. We
21 in all sincerity submit to this
22 Court that while there is no dispute
23 about a trip to the West Coast by
24 Mr. Shaw, likewise there is actually
25 no connection, no showing of any

1 connection between this trip to
2 the West Coast and the alleged
3 conspiratorial meeting. Nowhere
4 in this record has it been estab-
5 lished that this trip was taken in
6 furtherance of anything other than
7 a desire by Mr. Shaw to fulfill a
8 speaking engagement on the West
9 Coast.

10 We went then to the trip to Houston,
11 Texas, by David W. Ferrie. In con-
12 nection with that, Your Honor, I
13 submit that once again we have a
14 complete lack of connection between
15 this trip and the alleged conspir-
16 atorial meeting and the object of
17 the conspiracy. So David Ferrie
18 did go to Houston. Actually the
19 witness by which they proved that
20 he went to Houston destroyed his
21 own credibility, claiming that he
22 had been contacted by Mr. Sciambra
23 back in 1964, when I don't think
24 Mr. Sciambra was even in the District
25 Attorney's office. But even accept-

1 ing as true, accepting at face
2 value the testimony of this witness,
3 there is no connection whatsoever
4 established between the trip by
5 David W. Ferrie and any agreement
6 or combination to kill President
7 Kennedy.

8 Further in connection with that alleged
9 overt act, Your Honor, I might point
10 out that at the time of this alleged
11 overt act, President Kennedy had
12 been shot, had been dead.

13 We get then to the alleged overt act
14 concerning the taking of the rifle
15 by Lee Harvey Oswald from the home
16 of Mrs. Paine to the Dallas School
17 Book Depository.

18 First of all, if the Court please, it
19 has yet to be proven by the State --
20 and all that we have to go on for
21 purposes of this motion is the record
22 as it exists right now -- it has yet
23 to be proven by the State that Lee
24 Harvey Oswald ever took a gun to
25 the School Book Depository. The

1 witness produced by the State in
2 connection with that alleged overt
3 act merely testified that he had a
4 package which he, Lee Harvey Oswald,
5 said contained curtain rods.

6 As a matter of fact, I might point out
7 that the State has by implication
8 tried to show that Lee Harvey Oswald
9 actually had nothing to do with this
10 shooting.

11 Now, Your Honor, I have covered three
12 of the alleged overt acts. The two
13 remaining ones are actually con-
14 tained in, and interwoven in, the
15 alleged conspiratorial meeting at
16 3330 Louisiana Avenue Parkway.
17 Actually they are part of it. How-
18 ever, in connection with those, I
19 can merely revert back to the testi-
20 mony of Perry Raymond Russo, and
21 just as I submitted to the Court
22 that his testimony actually destroyed
23 the contention that there was an
24 agreement or combination, his testi-
25 mony has the same effect upon the

1 alleged overt acts which were inter- 35
2 woven in that meeting, that is, the
3 effect of destroying them.

4 So in closing, Your Honor, we respectfully
5 submit to the Court that, Number One,
6 no agreement or combination to
7 commit a specific crime has been
8 proven by the testimony of the
9 State's own witnesses. That is
10 Element Number One of the crime
11 missing. No overt acts have been
12 proven, which is Element Number Two
13 of the crime, which adds up, Your
14 Honor, to one thing, and that is
15 that the State has not made out a
16 prima facie case, and we ask that
17 Your Honor exercise the power vested
18 in you by the Louisiana Legislature
19 and direct that this Jury return a
20 verdict of not guilty at this time.

21 MR. ALCOCK:

22 May it please the Court, in answer to
23 Mr. Dymond's argument, I would first
24 call the Court's attention to the
25 fact that the State feels that the

1 Court has already, at least if not
2 directly, indirectly and infer-
3 entially ruled on this matter,
4 because the Court has already held
5 that conversations which transpired
6 outside the presence of the Defendant
7 after the meeting on Louisiana Park-
8 way were admissible, and the only
9 reason that they could be admissible
10 would be that this Court had found
11 as a matter of law that the State
12 had proven the case prima facie,
13 and I am sure the Court recalls that
14 it did allow these conversations
15 subsequent to this meeting on
16 Louisiana Avenue Parkway, so I feel
17 that the Court has already ruled on
18 this matter. However, I would like
19 to address myself briefly to some
20 of the arguments of Defense Counsel.

21 There is no doubt, and certainly the
22 State has no argument with the fact
23 that it must show this agreement or
24 combination. This is the very
25 essence of the crime of conspiracy.

1 However, the Court also knows that
2 the crime of conspiracy is somewhat
3 complicated and certainly very broad,
4 very, very broad. The Court can
5 recall during voir dire examination
6 many times jurors, prospective
7 jurors and perhaps jurors sitting on
8 this panel today, became confused in
9 the explanation of the crime of con-
10 spiracy, and Mr. Dymond is quite
11 right when he suggests that the
12 State would come before this Court
13 and argue that Perry Raymond Russo,
14 Number One, is not a lawyer, Number
15 Two, certainly is in no position to
16 determine the proper definition, the
17 legal definition, of a conspiratorial
18 meeting or a conspiratorial agree-
19 ment. What words Perry Russo puts
20 on the conversation are, as far as
21 this motion is concerned, irrelevant.
22 They may not be irrelevant to the
23 Jury, the ultimate trier of fact
24 in this case, because certainly the
25 Jury can consider Perry Raymond

1 Russo's appreciation of the gravity
2 of the conversation, but at this
3 particular time as a matter of law
4 the Court must decide whether or not
5 a prima facie case hadn't been made
6 out.

7 I feel, as I suggested at the outset,
8 the Court has already made this
9 decision.

10 There is only one thing wrong with Mr.
11 Dymond's argument about this con-
12 versation being a bull session: He
13 seems to overlook the fact that one
14 of the parties in this conversation
15 which he has termed a bull session,
16 which admittedly the State's witness
17 termed a bull session, was Lee
18 Harvey Oswald, who was present, by
19 the testimony of the State's wit-
20 nesses, in the Texas School Book
21 Depository shortly before or cer-
22 tainly on the same morning that the
23 President of the United States was
24 gunned down in Texas. Additionally,
25 the trip to the West Coast in and of

1 itself, as I explained to the Jury,
2 is an innocuous thing. The physical
3 transportation to the West Coast in
4 and of itself is innocent. However,
5 recalling the testimony, the undis-
6 puted testimony, of Perry Russo that
7 the Defendant said he would be on
8 the Coast and in the public eye at
9 this time in order to establish an
10 alibi, raises this trip to a much
11 more serious level. Again, it
12 corroborates Perry Russo's recall
13 on the agreement or combination or
14 the words spoken between the alleged
15 conspirators. In addition to that,
16 the trip of David Ferrie again
17 establishes and corroborates what
18 was said during the course of this
19 conspiratorial meeting.

20 The Court well knows that Perry Russo's
21 personal appreciation of what
22 transpired at that meeting or what
23 was the ultimate or serious intent
24 of the alleged persons who were
25 conspiring, is not material at this

1 point. As pointed out, it may be
2 material later on.

3 Again, we are talking about -- and Mr.

4 Dymond brought this out -- a meeting
5 of the minds. Now, a meeting of the
6 minds can be demonstrated in many
7 ways, not just verbally. A meeting
8 of the minds can be demonstrated in
9 the physical action of the persons
10 who allegedly had the meeting of the
11 minds.

12 Additionally, I call to the Court's
13 attention -- and I believe I am
14 correct, and I am sure the Court
15 will recall -- that Perry Russo
16 under cross-examination testified
17 that he was not there the entire
18 time that this conversation was
19 taking place between Lee Harvey
20 Oswald, the Defendant, and David
21 Ferrie. He did report to this
22 Court those elements that he did
23 hear, and those elements were con-
24 firmed when Lee Harvey Oswald was
25 found at the scene of the killing

1 of the President of the United
2 States, and the two trips taken in
3 complete accord with the agreement
4 or combination reached in David
5 Ferrie's apartment.

6 The only evidence we have to the overt
7 acts as to the conversation again
8 is Perry Raymond Russo. Again he
9 has not been destroyed as Mr. Dymond
10 announced he would do in his opening
11 statement. He cross-examined him
12 for a day and a half and now wants
13 the Court to believe Perry Raymond
14 Russo, because Perry Raymond Russo
15 characterized this conversation as
16 a bull session. On one hand, he
17 wants you to believe him because he
18 characterized it as a bull session;
19 on the other hand he wants you to
20 disbelieve it because the State has
21 alleged that this conversation or
22 part of this conversation or the
23 refining of a plan were also overt
24 acts in the commission of this crime.

25 The State simply feels, Your Honor, that

1 it has proven prima facie its
2 case and feels that the Court has
3 already ruled on this motion in its
4 ruling on an evidentiary matter
5 earlier in this case, and respectfully
6 asks the Court to deny this motion
7 for a directed verdict and allow the
8 case to go to the Jury, the trier of
9 fact, and let them put their stamp,
10 let them put their appreciation on
11 the nature of this conversation and
12 the evidence that has been adduced
13 during the State's case. Thank you.

14 MR. DYMOND:

15 If the Court please, Mr. Alcock has
16 stated that I have asked you to
17 believe Perry Raymond Russo. In
18 one respect that may be so, but let
19 me state that if you do not believe
20 Perry Raymond Russo, there is no
21 question but that the entire case
22 falls.

23 Secondly, we might touch upon the credi-
24 bility of Perry Raymond Russo, we
25 might ask Your Honor to remember

1 his having admitted not on one but
2 more than one occasion subsequent
3 to his having made his report to
4 the District Attorney's office, that
5 he was not sure at all whether Clay
6 Shaw attended this meeting.

7 We might also point out to the Court the
8 Defense contention, which I feel at
9 this point has been very well estab-
10 lished, that in Baton Rouge when
11 Russo first spoke with Mr. Sciambra,
12 before he had an opportunity to
13 speak with representatives of the
14 State, to by their very questions
15 know what they wanted, to read the
16 newspapers in connection with this
17 matter, made no mention whatsoever
18 of any alleged conspiratorial meet-
19 ing.

20 I would like to get on now, Your Honor,
21 to the remark by the State that the
22 very significant thing as to the
23 seriousness of the meeting on
24 Louisiana Avenue Parkway, if one
25 did take place, is that Lee Harvey

Oswald happened to be working right in Dealey Plaza on Elm Street when the assassination parade (sic) went by. In that connection I would like to respectfully refer Your Honor to the testimony of a State witness, once again a person whose credibility is vouched for by the State, that is, the young man who was a co-worker of Lee Harvey Oswald in the Texas School Book Depository, the young man who rode him back and forth on weekends between Dallas and Irving, Texas. If Your Honor will recall, this witness testified that the Texas School Book Depository Company had two warehouses, one on Elm Street and the other one some two and a half blocks away not fronting on Elm Street, and that when Lee Harvey Oswald got his job at the Depository, which was well in advance of the planning of the trip to Dallas and the parade route, that it was by pure chance that Lee Harvey Oswald was

1 assigned to the Depository fronting 45
2 on Elm Street rather than the other
3 Depository building. We submit,
4 Your Honor, that this casts an
5 entirely different light on just how
6 much the presence of Lee Harvey
7 Oswald in a job on Elm Street adds
8 to the seriousness of the alleged
9 meeting on Louisiana Avenue Parkway.

10 Now, if the Court please, the State has
11 attempted to make capital of that
12 portion of Russo's testimony which
13 for the first time enlightened us
14 as to the fact that he had been in
15 and out of the apartment there on
16 Louisiana Avenue Parkway during the
17 time that these people were allegedly
18 present. In this connection we
19 merely submit to the Court that no
20 one, Your Honor, no jury, no one can
21 presume that something took place
22 in that meeting while Russo was not
23 there, in the absence of any testi-
24 mony as to something having taken
25 place, and that is really what the

1 State is asking you to do in that
2 connection.

3 So, Your Honor, once again we urge that
4 the case has not been made out here,
5 a prima facie case has not been
6 proven. The elements of the crime
7 are lacking, and if there is any
8 doubt in the Court's mind, we
9 respectfully request that Your Honor
10 take this under advisement, study
11 the alleged overt acts, study the
12 indictment, and we feel certain that
13 Your Honor will conclude that a case
14 has not been proven.

15 MR. ALCOCK:

16 Your Honor, I would just like to briefly--

17 THE COURT:

18 I will be glad to hear you.

19 MR. ALCOCK:

20 -- reply on one point where I feel Mr.

21 Dymond has gone completely outside
22 of the record. There is no testi-
23 mony whatsoever to substantiate his
24 position, and that is, that Lee
25 Harvey Oswald's position in the

1 warehouse that was positioned at
2 the intersection of Elm and Houston
3 Streets in the city of Dallas, Texas,
4 was by mere chance. Mr. Frazier
5 testified that he was assigned to
6 their; he did not testify that he
7 was present when Lee Harvey Oswald
8 was given his job. Mr. Truly did
9 not testify, and I think it was his
10 testimony that it was from Mr. Truly
11 that he got his job, and by infer-
12 ence we may assume that Lee Harvey
13 Oswald got his job from Mr. Truly.
14 I feel that Defense Counsel in this
15 matter has gone completely outside
16 the record. There is absolutely no
17 evidence to show it was by happen-
18 stance or accident that Lee Harvey
19 Oswald was assigned to this warehouse
20 rather than the one two blocks down.
21 I just call that to the Court's attention,
22 and I feel that rather than belabor-
23 ing the individual points and my
24 appreciation of the testimony and
25 Mr. Dymond's appreciation, again I

1 recall to the Court that the State
2 feels that the Court has already
3 ruled on this matter by its ruling
4 on the evidence adduced subsequent
5 to this meeting, and ask that this
6 Court deny this motion.

7 MR. DYMOND:

8 Your Honor, briefly, I don't pretend to
9 be infallible in recalling what was
10 testified to on that point, and I
11 am sure Mr. Alcock doesn't either,
12 and we will in that connection ask
13 that in taking this matter under
14 advisement Your Honor ask the court
15 reporter specifically what was asked
16 of this witness at that time and
17 what the answer is.

18 THE COURT:

19 I made voluminous notes, I have three
20 notebooks that I filled up myself.
21 Mr. Sullivan, get me the Shaw files, and
22 I am going to take a recess until
23 quarter to eleven. Bring those
24 files to my office, and I would like
25 to see the court reporter in my

1 office.

2 I will recess until quarter to eleven.

3 (Whereupon, a brief recess was taken.)

4 AFTER THE RECESS:

5 THE COURT:

6 I have had a conference in my chambers
7 with the State and Defense Counsel,
8 and because I am going to excuse the
9 Jury the rest of the day in order
10 to facilitate Counsel in lining up
11 their witnesses -- as they have
12 stated, the State and the Defense
13 have a logistics problem of getting
14 people here from out of the city and
15 out of the state, so I was going to
16 grant that request even before the
17 motion for a directed verdict came
18 up. Since the Jury will be excused
19 the rest of the day, I am going to
20 use the intervening time to read the
21 entire testimony of Perry Raymond
22 Russo. I have been supplied by
23 Defense Counsel with a verbatim
24 transcript of Perry Raymond Russo's
25 testimony of the first day, which I

1 have in my possession at this time,
2 and Mrs. Dietrich and her firm will
3 give me this afternoon, late this
4 afternoon, the remaining portion of
5 Mr. Perry Raymond Russo's verbatim
6 testimony. I intend to read both
7 transcripts, or the entire Perry
8 Raymond Russo testimony, and I will
9 then make my decision tomorrow
10 morning at 9:00 o'clock on the motion
11 for a directed verdict.

12 I just wanted that to go into the record.
13 Now we are going to bring the Jury down,
14 please.

15 (Whereupon, the Jury returned to the
16 courtroom.)

17 THE COURT:

18 Gentlemen of the Jury, before we started
19 to take testimony in the case, I was
20 requested by both the State and the
21 Defense, because of the problem of
22 securing witnesses from out of the
23 city and out of the state, under-
24 standing the expense of putting them
25 up at hotels and what-have-you, they

do need time to align their witnesses to get them here from wherever they are, so I did it for the State in the beginning upon their request, and I am going to do it for the Defense upon their request. So we are going to recess the trial at this moment until tomorrow morning at 9:00 o'clock.

Again, as I have so many times, I admonish you not to discuss the case amongst yourselves or with any other person until such time as it is given to you for your verdict.

(Jury excused.)

THE COURT:

Mr. Shaw, you are released under your same bond, sir.

We stand adjourned until tomorrow morning at 9:00 a.m.

. . . . Thereupon, at 11:30 o'clock a.m., the proceedings herein were adjourned to 9:00 o'clock a.m. on Friday, February 21, 1969. . . .