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# Court Rejects Novel Pleas

## Ruling Says Return for Suit Required

By GORDON GSELL

Federal District Judge James A. Comiskey refused Wednesday to nullify a move aimed at having Gordon Novel appear here Friday to give testimony in connection with his \$50 million suit against District Attorney Jim Garrison and others.

Attorneys for Garrison have served notice that they want Novel to appear Friday at 10 a.m., before U.S. Commissioner Fritz H. Windhorst to give a deposition.

Steven Plotkin, Novel's attorney, sought to have the notice quashed. His major contention was that if Novel appears here he will be arrested on charges which have grown out of the district attorney's probe of the assassination of President John F. Kennedy.

Novel's attorney also sought to have the deposition taken in Columbus, Ohio, where Novel is now living, or some other place outside Louisiana. He also claimed that the information sought by the defendants in the civil suit could be obtained through the submission of written interrogatories.

### BEST WAY, VIEW

Judge Comiskey, in denying the motion to quash the notice, said that jurisprudence recognizes that the best way of taking discovery testimony is normally through oral examination.

"In considering the charges and counter-charges in this suit, no doubt a deposition on oral examination would be far superior to the use of interrogatories by long distance to Ohio," the judge held.

Plotkin told the court in his argument that Novel is wanted on two theft charges in New Orleans, is charged as a material witness in the Garrison case, and is under a burglary charge in Terrebonne Parish.

Judge Comiskey held that Novel's difficulties with the district attorney should not be used as a barrier to the discovery process provided for in the Federal Rules of Civil Procedure.

Novel's attorney claimed that Judge Comiskey could use broad discretion in ordering that the deposition be taken elsewhere and that if Novel returns here

he "would be absolutely subject to the will of one of the main defendants in this case."

### 'WILLING AND ABLE'

He added that Novel is "ready, willing and able" to give his deposition, but not in Louisiana.

Referring to Novel's fight against extradition from Ohio to the criminal charges, Plotkin argued that if he is required to return to New Orleans the district attorney would be accomplishing through a civil procedure what he has been unable to do in the criminal matters.

Plotkin also sought a protective order from Judge Comiskey which would enjoin state authorities from arresting Novel if he returns to New Orleans.

The attorney proposed that the deposition be taken at a neutral place such as Gulfport, Miss., Biloxi, Miss., or Mobile, Ala.

He also claimed that he should be given additional time to prepare for the deposition and proposed that it be delayed 30 days.

Judge Comiskey commented from the bench that the only cases he has been able to find on the subject deal with a person's financial inability to travel to another place for a deposition or ill health.

### 'NO HARDSHIP'

In his reasons for denying the motion to quash the judge said that none of these special circumstances is present in the Novel case and no undue hardship is even seriously suggested by Novel's attorney.

Malcolm W. Monroe, Garrison's attorney, argued that Louisiana law already provides immunity from arrest for Novel.

He claimed that because Novel chose to file his suit in this district his deposition should be taken here.

"The plaintiff is now coming back into the state of Louisiana by his own choosing by filing this action against Jim Garrison and the others. His allegations are extreme and very broad. He has, in effect, alleged all of the facts which are pending in the criminal proceedings.

"He has chosen this civil suit to try them. He was under no compulsion to bring suit at this time while his extradition is pending in Ohio," Monroe claimed.

The defense attorney also contended that the defendants should not be put to the expense of having their attorneys travel to another place to take the deposition.

NOTES TRAVEL  
In answer to an allegation by Plotkin that Novel is now under the jurisdiction of Ohio courts and cannot leave that state without permission, Monroe said, "If I can believe what I read he was recently in Tennessee."

At one point during Monroe's argument, Judge Comiskey asked Garrison's attorney if the district attorney places the same construction on the Louisiana law which he claimed provides immunity to Novel.

"It is our view as attorneys," Monroe answered. He added that he has not had an opportunity to discuss the interpretation

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tion of the statute with Garrison and I cannot say if the district attorney in his official capacity would concur."

Plotkin claimed that the state law which Monroe cited applies to witnesses; and since Novel is charged with felonies, the law does not apply to him, and he would be subject to arrest if he returns.

He claimed that Monroe's argument along this line was "fallacious, illogical and erroneous."

Thomas Rayer, attorney for Cecil Shilstone, one of the defendants in the Novel suit, told the court that his client's defense to the action may be different than Garrison's, that Shilstone has no authority to arrest Novel, and that he should not be put to the expense of going to another place to take testimony.

Other defendants in the suit include Willard E. Robertson, Joseph M. Rault Jr., Truth and Consequences, the organization formed to finance Garrison's investigation, and "John Does" who are sued as individual members of that organization.

Shilstone, Robertson and Rault were organizers of Truth and Consequences.

Novel claims that Garrison's statements and accusations against him have ruined his reputation and that he has never been connected with the assassination.