

Magazine Author

SHAW ASKS

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Data Called

WRITER

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'Essential'

SUBPENA

Sought as Witness

Attorneys for accused presidential murder conspirator Clay L. Shaw today asked Criminal District Court to subpoena a national magazine writer whose critical story of Dist. Atty. Jim Garrison's investigation was published this week.

A motion filed this morning with the clerk of Criminal District Court said the testimony of Saturday Evening Post writer James Phelan is "essential to the defense."

It asked that Phelan whose article, "Rush to Judgment in New Orleans" stirred up a controversy with the DA's office, be called as a material witness and his testimony taken in open court.

Phelan's story of the internationally publicized probe centered on the testimony of star Garrison witness Perry R. Russo, the man who said he heard Shaw, the late David W. Ferrie and Lee Harvey Oswald plot Kennedy's slaying at Dallas.

The motion quoted long passages from Phelan's article and added:

"The testimony of the said James Phelan is essential to the defense of your defendant upon the trial of the case in that same completely destroys the credibility of the witness, Perry Russo. . . ."

Shaw's motion noted that DA Garrison has called Russo "his key witness against Shaw."

The article deals at length with certain reports which Phelan said Garrison gave him during a meeting at Las Vegas be-

fore Russo testified at Shaw's preliminary hearing.

One of them was a report made to Garrison by Asst. DA Andrew Sciambra covering the results of his interview with Russo at Baton Rouge on Feb. 25. Phelan said the report "at no point" mentioned on assassination plot.

Phelan wrote that Russo's memory of the plot he testified to overhearing was brought forward during a series of hypnotic interviews.

Sciambra has replied that any suggestion the DA's office permitted Russo to testify under post-hypnotic suggestion is "ridiculous."

Sciambra and two other assistant DAs, William Alford and James Alcock, said they would not oppose the Shaw motion to bring Phelan here.

Early this afternoon, Sciambra met newsmen and accused Phelan of writing a story which was "incomplete and distorted." The assistant DA said the article was "tantamount to lying."

Sciambra, who along with Garrison bore the brunt of Phelan's critical article, said he wants to cross-examine Phelan and added:

"I guarantee that he will be exposed for having twisted the facts in order to build up a scoop for himself and the Saturday Evening Post."

(Turn to Page 10, Column 1)

NEW ORLEANS
STATES - ITEM

FINAL SPORTS

MARKETS

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Continued from Front Page

Sciambra has replied that Sciambra said Phelan had omitted what he termed the "most important and unreported fact" that Phelan had visited Russo at Baton Rouge and been assured by the witness that he and Sciambra discussed an assassination plot at their first meeting.

"If anyone is guilty of a rush to judgment at New Orleans," the DA's aide said, "it is Mr. Phelan."

In his article for the Saturday Evening Post, Phelan said he questioned Sciambra about what Phelan felt were discrepancies between Sciambra's first report on Russo and the key witness' later testimony.

"I TOLD him I had read his report and knew exactly what was in it," Phelan wrote.

He said Sciambra replied when asked about the omission of an assassination plot in his first report, "Maybe I forgot to put it in."

Shaw's lawyers want Phelan brought to New Orleans to give a deposition in open court following 48 hours notice to both the defense and the DA's office.

If he will not come voluntarily, the motion asks that Phelan be placed under bond and brought to New Orleans until his testimony can be taken.

THE MOTION was filed with the clerk in the absence of Judge Edward A. Haggerty Jr., who is attending a meeting of the Louisiana State Bar Association at Biloxi.

In another development, the attorney for Lavton Patrick Martens said he believes his client's constitutional rights were violated during his appearance before the grand jury.

Martens, a college student who once roomed with Ferrie, was indicted for perjury in connection with the mysterious disappearance of explosives from a munitions bunker at Houma. Two other probe figures have been

charged with burglarizing the explosives dump.

Martens' attorney, Milton Brener, told Judge Oliver P. Schulingkamp, "I strongly believe and do allege his constitutional rights were violated."

Brener appeared at a hearing in support of his motion last week to make available all grand jury proceedings surrounding Martens' indictment.

ONLY THREE questions were released by the grand jury, and Brener argued a "cloak of secrecy" had been thrown around all but that small bit of testimony. He said Martens testified for more than an hour on March 29 and estimated the transcript may run as long as 80 or 100 pages.

Asst. DA Richard Burnes, who questioned Martens before the jury, replied that Brener was confusing the law of confession with the laws of perjury. Brener had suggested Martens was not advised of his rights.

Judge Schulingkamp observed from the bench the defense and prosecution arguments had produced a sharp conflict of law and precedent.

"On one hand we have the general rule of secrecy in the grand jury," he said. "And on the other hand, there is the fundamental fairness of the defendant being apprised of the full charge against him before his trial . . ."

"THERE IS also a scarcity and dearth of jurisprudence in this matter," he said, adding: "I will make no snap judgment in this case."

On the subject of secrecy, Brener noted he is under the jurisdiction of the court. If the jury proceedings are given to him, he said he would respect their secrecy.

"I don't want to give it to the press," he asserted. "I need it to prepare my case."

"The question is," Burnes contended, "did he lie, or did he not lie?"

The hearing ended when Judge Schulingkamp gave Brener until May 5 to prepare a memorandum on his motion.