

Reject Shaw Plea for Writer Testimony

Court Cites Illegality Of Motion

A plea by Clay L. Shaw's defense counsel to bring magazine writer James Phelan here for immediate testimony was tossed out of Criminal District Court today.

The attorneys for Shaw, the only man accused of conspiring to kill John F. Kennedy, wanted Phelan to give a sworn statement in open court.

Judge Edward A. Haggerty Jr. overruled the motion after less than a half hour of argument.

"GENTLEMEN," he told defense lawyers F. Irvin Dymond and William and Edward Wegmann, "I have studied your motion intensely during the past week and have studied the law involved, and I find it is not even close legally."

At Columbus, Ohio, meanwhile, another court refused to dismiss a third Louisiana complaint against fugitive witness Gordon Novel. And the judge there gave Louisiana an extra 30 days to extradite the man. Dist. Atty. Jim Garrison says is a "very important witness."

As the hearing on Shaw's motion opened this morning, Dymond argued that two sections of the state criminal code give the court authority to take author Phelan's testimony.

ASST. DA JAMES Alcock replied the law covered only persons who had been arrested on

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material witness warrants and were in jail unable to make bond.

The DA's assistant termed the law an "escape valve" for innocent men who have been detained as material witnesses.

Dymond called that strict interpretation of the law oppressive, adding:

"The law does not force a judge to perform futile and useless acts. The question is, 'Does a man have to go to jail, or can he give testimony voluntarily.'"

Dymond pointed out that Phelan, who wrote an article for the Saturday Evening Post criticizing Garrison's Kennedy death plot investigation, has said he would come here and give a sworn statement. He said Phelan travels world-wide in his job and may not be available when the Shaw case is tried.

The defense lawyer said two witnesses already had been lost to Garrison's case because of what he termed "futile procedures."

HE POINTED to the difficulty the DA's office is having in attempting to return Sandra Moffett McMaines from Nebraska and Gordon Novel from Ohio, and asserted:

"The state probably will never get them back."

Novel went before municipal court at Columbus this morning while the Shaw hearing was in progress here. He was arrested yesterday on a fourth Louisiana charge and released immediately on the \$10,000 bond under which he was placed April 1.

THE LATEST arrest stemmed from direct charges of burglary filed by Terrebonne Parish authorities in connection with the mysterious disappearance of explosives from an oil service company's bunker at Houma in 1961. Garrison has charged

Novel and one-time anti-Castro leader Sergie Arcacha Smith with conspiring to burglarize the munitions magazine.

Municipal Court Judge Bruce Jenkins denied a motion by Novel to cancel the fourth charge and continued all four cases until July 3.

At the same time, he gave Louisiana Gov. John J. McKeithen an extra 30 days to perfect faulty extradition papers in the state's attempt to get him back.

JENKINS SAID he felt the burglary offense "is of considerable importance to Louisiana" and added he felt it is "in the best interest of the public to give Louisiana authorities additional time to return the Louisianian."

The judge, however, warned Louisiana: "If they don't do something by the end of 60 days, they're out of business. We can't string this on forever. If they have a case, let them get on with it."

The state asked for Novel's return two weeks ago, but the extradition papers were returned by Ohio Gov. James A. Rhodes because of what were described as "technical errors."

Phelan thrust himself into the case when he wrote a story for the national magazine which was published last week. Highly critical of the Garrison investigation, the Phelan article contends that Asst. DA Andrew Sciambra's original interview report on star witness Perry R. Russo makes no mention of Shaw or an assassination conspiracy.

RUSSO TOLD three judges at Shaw's preliminary hearing that he overheard Shaw, the late David W. Ferrie and Lee Harvey Oswald plot Kennedy's death here two months before the President was slain at Dallas.

Oswald was named by the Warren Commission as the

lone slayer of Kennedy. Ferrie, a onetime airline pilot whom Garrison called "one of history's most important men," was found dead in his apartment here Feb. 22—five days after the Garrison inquiry became public.

PHELAN'S ARTICLE drew an immediate challenge from Sciambra who termed the story "distorted and incomplete." The assistant DA said he wants to face Phelan before the grand jury.

The hearing today at Columbus centers on Garrison's charge that Novel, Ferrie and onetime anti-Castro leader Sergio Arcacha Smith conspired to burglarize a munitions bunker at Houma in the summer of 1961.

NOVEL HAS said the Houma incident was no burglary at all. He contends it was a routine pickup of explosives which were used in connection with the abortive Bay of Pigs invasion.

Both Novel and Arcacha are charged with burglary of the bunker by Terrebonne Parish authorities. Novel is free on \$10,000 bond. Arcacha, who was arrested at Dallas, is free on \$1,500 bond. Both are fighting extradition.

At New Orleans, a grand jury subpoena was served yesterday on a truck salesman who said he was approached two weeks before Kennedy's death by two men, one of whom called himself Oswald.

The salesman is Oscar W. DeSlatte, who reported the incident to the Federal Bureau of Investigation immediately after Kennedy's murder.

His attorney, G. Wray Gill, said the two men talked with DeSlatte about buying a truck.