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IN RE: Regis L. Kennedy Subpoenaed to Appear Before
Orleans Parish Criminal District Court
Parish of Orleans, State of Louisiana

STATE'S OPPOSITION TO MOTION TO QUASH

Now into court through the undersigned Assistant District Attorney comes the State of Louisiana for the purpose of filing the State's opposition to Motion to Quash the subpoena of the Orleans Parish Grand Jury served upon Special Agent Regis L. Kennedy of the Federal Bureau of Investigation and alleges and answers as follows:

I

The State denies that the Department of Justice Order No. 324-64 has the effect of law in the instant case and further denies that the Attorney General of the United States is empowered to prohibit the production or disclosure of any information pursuant to Department of Justice Order No. 324-64 or 5 USC 22 except information which is privileged. The sole ^{er} prerogative ~~xxxxxxxxxx~~ of determining whether information is privileged rests with the judiciary. See United States v. Reynolds, 345 U.S. 1 (1953), NLRB v. Capitol Fish Company, 294 F. 2d 868, C.A. 5 (1961), Giancana v. Johnson, 335 F. 2d C.A. 7 (1964).

II

Agent Regis Kennedy's subpoena for personal testimony (unlike a subpoena duces tecum) did not specify the subject matter of the questions nor the information required of Agent Kennedy. Therefore, movers motion presumes, without justification or authority, the nature and substance of the questions to be propounded to Agent Kennedy. The scope and subject matter of the Grand Jury inquiry cannot be limited by paragraph 2 of the Motion to Quash.

III

(1) The State denies that the facts alleged in subparagraph 3 of the Motion to Quash are true and the State further denies that the allegations of fact of subparagraph 1 are relevant.

(2) The State denies that the Department of Justice Order No. 324-64 has the effect of law in the instant case and further denies that the Attorney General of the United States is empowered to prohibit the production or disclosure of any information pursuant to Department of Justice Order No. 324-64 or 5 USC 22 except information which is privileged. The sole prerogative of determining whether information is privileged rests with the Judiciary. See United States v. Reynolds, 345 U.S. 1 (1953), NLRB v. Capitol Fish Company, 294 F. 2d 868, C. A. 5 (1961), Giancana v. Johnson, 335 F. 2d C.A. 7 (1964).

(3) Notwithstanding the fact that an instruction from the Attorney General pursuant to Order No. 324-64 could not deem the information to be privileged. * Nowhere in the record is there a specific instruction from the Attorney General to Agent Kennedy ordering him not to give any testimony before the Orleans Parish Grand Jury in response to this particular subpoena.) ?

* (Which decision is a judicial decision alone - see Article I of State answer).

IV

Article 4 of the Motion to Quash requires no answer.
AND THE STATE FURTHER ANSWERS AND ALLEGED:

V

The Grand Jury subpoena for Agent Regis Kennedy should not be quashed for the following reasons:

1. LIMITED POWER OF ATTORNEY GENERAL. The Attorney General of the United States would not have the power through a departmental regulation to place subpoenas beyond the reach of legal processes. Giancana v. Johnson, 335 F. 2d C.A. 7 (1964)
2. JUDICIAL DETERMINATION OF PRIVILEGE. 5 USC 22 cannot be construed to establish authority in the executive departments to determine whether certain papers and records are privileged. Its function is to furnish the departments with housekeeping authority. It cannot bar the judicial determination of the question of a privilege or demand the production of evidence found not privileged. The ultimate determination of the privilege remains with the courts. The responsibility for deciding the question of privilege properly lies in an impartial, independent judiciary - not in the party claiming the privilege and not a party litigant. See Pitcher v. U.S.A., 199 F. Supp. 862 (1961). See United States v. Reynolds, 345 U.S. 1 (1953)
3. PREMATURITY OF ASSERTION OF PRIVILEGE. Agent Kennedy's motion is premature as he has not been asked any ~~na~~ questions upon which he can assert a privilege at this time. The United States Supreme Court in United States v. Reynolds analogized a similar executive privilege with that of the privilege against self-incrimination wherein the court inquires into the validity of the assertion of the privilege upon the specific questions propounded to the witness. The proper procedure would be for the witness, Regis Kennedy, to appear before the Grand Jury and, when and

if he is asked questions upon which he asserts the privilege, that the witness be brought before this court to determine whether the privilege can validly be asserted to the particular question. This procedure was held to be the requirement of the Reynolds case in Pitcher v. U.S.A., 199 F. Supp. 862 (1961).

WHEREFORE, the State prays that for the reasons above cited that the Motion to Quash be denied.

/s/ James L. Alcock
Executive Assistant District
Attorney

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. Carl W. Belcher
Chief, General Crimes Section
Criminal Division

DATE: May 11, 1967

NSH
FROM : Nathaniel E. Kossack
First Assistant

SUBJECT: Assassination of President John F. Kennedy
Dallas, Texas, November 22, 1963

Today I conferred with Mr. Lawrence Houston, General Counsel of Central Intelligence Agency on the telephone concerning the reported issuance of a subpoena for an alleged photograph of Oswald and a Cuban in front of the Embassy in Mexico City. Mr. Houston advised me that the subpoena had not been served as yet to his knowledge and if it has been served it was non-productive because the CIA has no such picture in their possession. I suggested to Mr. Houston that his office prepare without delay a brief on their disclosure regulations and have an affidavit in hand from a responsible CIA official attesting to the fact that the search had been made and the CIA has no such photograph.

He has been alerted as well to advise me (or Mr. Belcher in my absence) as well as the United States Attorney in New Orleans as soon as the CIA is served with a subpoena. Assistant United States Attorney Palmisano in New Orleans has also been advised.

cc: Mr. Sanders

*Comm'n XI - 469-70
Helms's affidavit
re exhibit 237
- 468-69
FBI affidavit
re the exhibit*

Mr. John Doar
Assistant Attorney General
Civil Rights Division

May 11, 1967

Fred M. Vinson, Jr.
Assistant Attorney General
Criminal Division

FMV:NEK:CWB:al

Assassination of President John F. Kennedy
Dallas, Texas, November 22, 1963
Civil Rights Complaint

129-11

[REDACTED] 7C+7D

7C+7D On Thursday, May 11, 1967, Assistant United States Attorney Talmisano of the Eastern District of Louisiana, telephoned to advise that he had received a complaint from a local attorney who represented [REDACTED] in connection with [REDACTED] 7C+7D participation in the investigation being conducted by District Attorney Jim Garrison of Orleans Parish. The testimony of [REDACTED] 7C+7D involved information as to whether [REDACTED] 7C+7D] 7C+7D

7C+7D [REDACTED] has insisted vociferously on a number of occasions to Mr. Garrison that [REDACTED] At this time [REDACTED] 7C+7D

[REDACTED] 7C+7D

Assistant United States Attorney Talmisano was instructed not to institute any investigation or further inquiry until and unless he receives authority from your office. This complaint was made orally and there has been no writing received which embodies a complaint.

FILE

cc: Mr. Sanders
Mr. Belcher ✓

filed 8/10/67

FILE

NO. _____

IN THE MATTER OF
REGIS L. KENNEDY,
SPECIAL AGENT,
FEDERAL BUREAU OF
INVESTIGATION

)
)
)
)
)

IN THE _____
COURT OF ORLEANS
PARISH, LOUISIANA

MOTION TO QUASH

The United States Attorney for the Eastern District of Louisiana files this Motion to Quash the subpoena of the Orleans Parish Grand Jury served upon Special Agent Regis L. Kennedy of the Federal Bureau of Investigation on May 5, 1967, and respectfully shows:

I

Special Agent Kennedy is now and has been since _____ attached to the New Orleans Office of the Federal Bureau of Investigation. He conducts investigations assigned to him by his superiors. As with all Special Agents of the FBI the information which he obtains in any investigation is recorded by him in written reports which are forwarded to the headquarters of the Federal Bureau of Investigation in Washington, D.C. Such reports are a part of the official files of the Department of Justice.

By virtue of Department of Justice Order No. 324-64, which has the force and effect of law, every Special Agent of the FBI is prohibited from producing or disclosing information or material contained in the files of the Department of Justice or acquired in the performance of his official duties or because of his official status without the prior approval of the Attorney General of the United States.

II

The Orleans Parish Grand Jury and District Attorney James Garrison are reportedly inquiring into the circumstances of the assassination of President John F. Kennedy. Information or material which Special Agent Regis L. Kennedy has relating to this matter was acquired by him in the performance of his official duties

and has heretofore been recorded by him in written reports forwarded to the headquarters of the FBI. All FBI reports relating to the assassination of President John F. Kennedy including the reports of Special Agent Regis Kennedy were turned over to the Warren Commission and are now deposited in the National Archives.

III

The subpoena for Special Agent Kennedy should be quashed for the following reasons:

1. Traditionally, FBI Agents do not testify before state grand juries with respect to information or material gained by them in the performance of their official duties or by reason of their official status. This rule is based upon the sound policy that the integrity and effectiveness of the FBI is protected by restricting such information and material to federal law enforcement.

2. Department of Justice Order No. 324-64 prohibits any officer or employee of the Department from producing or disclosing information or material contained in the files of the Department of Justice or acquired by him in the performance of his official duties or because of his official status without the prior approval of the Attorney General of the United States. This order and the policy therein set forth follows similar orders and policies of Attorneys General of the United States for many years.

3. Special Agent Kennedy has been instructed by the Attorney General pursuant to Order No. 324-64 that he is not to testify with respect to information or material acquired by him in the performance of his official duties or because of his official status.

IV

Customarily when local authorities seek information from a federal investigative agency, they inquire of the proper federal officials. No inquiry has been made here.

Wherefore, it is requested that the subpoena be quashed.

Respectfully submitted,

f/ 265244