IN RE: REGIS L. KENNEDY
SUBPOENAED TO APPEAR BEFORE
ORLEANS PARISH GRAND JURY

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 subpo of the Orleans Parish Grand Jury served upon Special Agent, Regis L. Kennedy, of the Federal Bureau of Investigation and and answers as follows:

I.

The State denies that the Department of Justice Ord No. 324-64 has the effect of law in the instant case and furt denies that the Attorney General of the United States is empowered to prohibit the production or disclosure of any inf mation pursuant to Department of Justice Order No. 324-64 or 5 U.S.C. 22 except information which is privileged. The colo perogative of determining whether information is privileged r with the Judiciary. See United States v. Reynolds 345 U.S. 1 (1953). N.L.R.B. vs. Capitol Fish Company, 294 F.2d 868 Fifth (1961). Giancana v. Johnson 335 F.2d Seventh Cir. (1964).

II.

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

III.

1. The State denies that the facts alleged in sub-Paragraph 1 of Article 3 of the Motion to Quash are true and th State further denies that the allegations of fact in sub-Paragr 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 i empowered to prohibit the production or disclosure of any infor mation pursuant to Department of Justice Order No. 324-64 or 5 U.S.C. 22 supra information which is privileged. The sole perogative of determining whether information is privileged res with the Judiciary. See U. S. v. Reynolds 345 U.S. 1 (1953), N.L.R.B. vs. Capitol Fish Company, 294 F.2d 868 Fifth Cir. (19 Giacona v. Johnson 335 F.2d 372 Seventh Cir. (1964).

3. Notwithstanding the fact that an instruction fro the Attorney General pursuant to Order No. 324-64 could not de the information to be privileged, nowhere in the record is the of a specific instruction from the Attorney General to Agent Kennedy ordering him not to give any testimony before the Orle 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 ALLEGES:

V.

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

1. [redacted] OF ATTORNEY GENERAL

The Attorney General of the United States does not have the power through a Departmental Regulation to place subordinates beyond the reach of legal proc[ess]. See Giancana v. Johnson 335 F. 2d 372 (1964).

2. JUDICIAL DETERMINATION OF PRIVILEGE

5 U.S.C. 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 house keeping authority. It cannot bar the Judicial determination of the question of a privilege or demand that 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. United States Attorney 199 F. Supp. 662 (1961). See United States v. Reynolds 345 U.S. 1 (1953).

3. [redacted] OF ASSERTION OF PRIVILEGE

Agent Kennedy's motion is premature as he has not been asked any questions upon which he can assert privilege at this time. The United States Supreme Court in the United States v. Reynolds 345 U.S. [illegible] (1953), 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 speci[fic]

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. United States Attorney, 199 F.Supp. 862 (1961).

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

JAMES L. ALCOCK
Executive Assistant District Att