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New Orleans (AP)- Criminal Dist. Judge Bernard Bagert ruled Wednesday the Justice Department does not have the authority to prohibit its agents from testifying before a grand jury investigating the Kennedy assassination.

Bagert ordered FBI agent Regis Kennedy to appear before the Orleans Parish Grand Jury later in the day.

The New Orleans-based FBI agent had been subpoenaed last week. Federal attorneys asked Judge Bagert to dismiss the subpoena. They said Atty. Gen. Ramsey Clark had ordered Kennedy not to testify because of a Justice Department executive order forbidding FBI agents from disclosing information surrounding their official work.

In making his ruling, Judge Bagert said, "the serious question presented herein is whether the executive branch of our government has the general and unlimited authority to instruct its many employes and subordinates not to give testimony in cases pending in court."

Bagert said the question of privilege must be determined by the courts and not by the arbitrary decisions of executives of federal agencies.

Government attorneys filed notice of objection to the ruling.

Before ruling on the Kennedy subpoena, the judge turned over to the foreman of the grand jury a report from the Central Intelligence Agency. Contents of the report were not revealed.

The grand jury last week issued a subpoena for the CIA to supply a picture of Lee Harvey Oswald and another man.

Dist. Atty. Jim Garrison, who is directing the assassination investigation, claims the picture was made in Mexico City just a few days before the President's death. Garrison contends the picture was suppressed when sought by the Warren Commission, which identified Oswald as the lone assassin.

FBI agent Kennedy investigated the New Orleans phases of the November 1963 assassination. DF301pcd May 17