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CIVIL SUBPOENA

D. C. Form No. 1 (Rev. 1-51)

United States District Court

FOR THE

UNITED STATES OF AMERICA

FREEDOM

vs.

THE STATE

CIVIL ACTION FILE NO.

To YOU

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the District of

at THE FEDERAL COURTHOUSE in the city of EVERYWHERE,
on the day ~~of~~ after receipt, 1972, at 10:00 o'clock A.M. to testify on behalf of the State
in the above entitled action. and to bring with you

Personal bank records, lists of organizations to which you belong now, or in the past, your views on the war in Vietnam

and to answer questions (IN SECRET AND WITHOUT YOUR ATTORNEY), such as

Name all meetings and demonstrations you attended in 1971, the dates and places, the names of all others participating, how these events were funded, and describe what was talked about, or happened

FAILURE TO COOPERATE COULD RESULT IN YOUR IMPRISONMENT UNTIL SUCH TIME AS YOU DO.

Had this been a genuine subpoena, you would have discovered that (1) you were to be interrogated before a federal grand jury, by a government attorney without your attorney being present (2) questions asked of you may be broad and vague—clearly indicative of a "fishing expedition," *not* an investigation of a specific event, criminal or otherwise (3) the entire proceeding would be secret (4) the refusal to give information about friends, family, or anything you're questioned about, could result in your being jailed for contempt *until you do testify*. You'd also find that the possibility of being jailed does not give you the right to a jury trial.

"Good Morning, I'm From the FBI"

Most likely, your ordeal would have begun with a visit from the FBI. If you had refused, the result is a threat of a subpoena. Keep refusing and a subpoena like the one above arrives in short order. Here's where the situation begins to take on sinister overtones. The FBI, as a part of the executive branch of the government, *cannot compel your testimony*. It lacks subpoena power. Congress purposely set it up that way. The grand jury, however, being an arm of the judiciary, can subpoena whomever it desires.

So there develops a subversion of the grand jury by the executive, in this case the FBI. What follows is not only a violation of the separation of powers doctrine, but a very dangerous attack upon our freedom through forced testimony to police agencies. To characterize the latter as totalitarian police state tactics is not empty rhetoric!

How can abuses of power like this be stopped? By court action. And that means money. But for the first time you're not being asked to give for "the other guy," or some cause not directly related to you. Because if you've

"Hoover & Mitchell, We're Watching You"

Here's where we, at the Center for Constitutional Rights, are helping out. We take cases dealing with problems like the one described above (two of which are summarized further on). In our 5 years of existence, members of our staff have worked on over 375 cases. You are probably familiar with some, such as the Harrisburg 8 (Berrigan), Chicago Conspiracy, Catonsville, Attica, the John Sinclair case (the wiretap case now on appeal to the U. S. Supreme Court).

Following are only two of the actual legal encounters the Center has had in its struggle against the government's misuse of the federal grand jury. Though they are admittedly complicated, we include them in order to communicate to you the real substance of this threat to personal and political freedom.

THE FIRST IN A TREND
THE KINOY CASES

After two visits from FBI agents during the fall of 1970, Arthur Kinoy, professor of law at Rutgers University, was served with a subpoena ordering his appearance before a federal grand jury in New York City. Prof. Kinoy had refused to answer the questions of the FBI and had been told by them that the case would be turned over to the Justice Department. The U.S. Attorney in the case subsequently admitted that the only information desired from Prof. Kinoy was the whereabouts of his daughter, Joanne—the same question the FBI had asked.

Center attorneys petitioned the court to quash the subpoena on several grounds, among them an assertion of wiretapping of grand jury subpoenaees.** Additional grounds were child-parent and attorney-client privileges, which Prof. Kinoy felt he should not and could not violate. This case also demonstrated clearly the misuse of the judicial subpoena power by the Justice Department in attempting to gain information for the FBI; a police agency deliberately left without subpoena power by the Congress.

**It is important to note that what for months was characterized as a mere claim of wiretapping in various grand jury cases has now been established, almost a year later, as proof in the Boston grand jury by affidavits offered by Center attorneys there.

Immunity

The court refused to quash the subpoena, but Joanne, who had never been underground in any sense, was herself subpoenaed when she appeared with her father during one of the legal arguments. The FBI had insisted to Prof. Kinoy that they only wished to ask Joanne the whereabouts of a second person, whom they thought might have information about a fugitive! This rather lengthy explanation for questioning Joanne was subsequently confirmed by U.S. attorneys, again demonstrating the use of judicial subpoena powers to perform police investigations.

Joanne refused to answer questions before the grand jury on First, Fourth, and Fifth Amendments privileges. At this point the U.S. attorneys offered her immunity in return for her testimony, but immunity of a slightly different type from that which the framers of our Bill of Rights had in mind. This was not immunity from prosecution, or transactional immunity as attorneys call it and as is usually offered, but "use" immunity, which is, as a Center attorney characterized it later, offering us our Fifth Amendment right at a 50% discount!

This new type of immunity, only days old, was a part of the Organized Crime Bill of 1970 and became effective Dec. 15. It has been named "use" immunity by attorneys, as it only protects the witnesses against the use of their testimony in prosecuting them, not against prosecution for the event about which testimony was given. Joanne Kinoy, age 21, gainfully employed, living in Madison, Wis., at the same address for two years, owner of a car registered in her name, peace activist, is hardly the archtype of organized crime. Nor would it seem that the FBI should have had too much difficulty in locating her.

The Court, in response to Center attorneys' arguments, ruled the new "use" immunity was unconstitutional, and that Joanne could not be forced to testify under it. The government did not appeal, but did continue to attempt to use this form of immunity in other parts of the country in which Judge Motley's decision was not binding. Three other circuits have now had similar rulings against the statute, and one has ruled in favor. The latter is being appealed to the U.S. Supreme Court, and Center attorneys have an amicus brief.

THE BOSTON GRAND JURY

The Justice Department, through this grand jury, is attempting to investigate and prosecute individuals involved in the Pentagon Papers case. The Center has two clients who have been subpoenaed to this grand jury. The first of these, a physicist and resident fellow at the Institute for Policy Studies in Washington, Dr. Leonard Rodberg, is also an aide to Senator Mike Gravel of Alaska. Center attorneys attempted to have the subpoena quashed on First Amendment grounds, as well as the claim of protection offered to senators and their associates under the Speech and Debate Clause.

The court refused to quash the subpoena, but did grant Senator Gravel the right to intervene. Subsequent to that intervention, a narrow protective order prohibiting the questioning of Dr. Rodberg regarding Senator Gravel's June 29th reading of the Pentagon Papers into the Congressional record was issued. The appeal from the protective order resulted in not only the staying of Dr. Rodberg's subpoena, but also a precedent setting decision calling a halt to the entire grand jury proceeding for a time.

The second of the Center clients, Ralph Stavins, is also a fellow at the Institute for Policy Studies and co-author of a recently published critical account of American foreign policy in S.E. Asia. *Washington Plans an Aggressive War* (Random House, 1971). A sequel to this work titled *Washington Wages An Aggressive War* is underway with Dr. Rodberg and Mr. Stavins as co-authors. In researching this work, Mr. Stavins gained access through confidential sources to information hitherto unknown to the general public.

The original application to quash Mr. Stavins' subpoena was made on two grounds: First Amendment rights and an allegation of unlawful wiretapping. This was lost, and Mr. Stavins appeared before the grand jury twice, refusing in both instances to answer any except the most preliminary of questions.

On October 29th the government asked for a court order compelling Mr. Stavins' testimony. At this point Center attorneys filed affidavits describing the results of scientific tests made during the previous two nights at the Institute and Mr. Stavins' home, which demonstrated that both places were indeed the subject of electronic surveillance. The court immediately ordered the government to cease attempting to question Mr. Stavins unless and until it could satisfactorily rebut the affidavits. This the government has not yet done.

Help!

Like many non-profit organizations, the cost of services provided by the Center cannot be met by our clients. But unlike many non-profit organizations, we are boat rockers. And the waves tend to wash away most of the big money. So we must depend on help from people like yourself. Please make out a check to The Center For Constitutional Rights. Call it a contribution (it's tax deductible) or call it a thinking person's insurance policy. But send it in today. Thank you.

Center for Constitutional Rights

588 Ninth Avenue (at 42nd St.) New York, N. Y. 10036
(212) 265-2500

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