

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS

Misc. No. 98-148 (NHJ)
UNDER SEAL

FILED

MAY 22 1998

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Pending before the Court is the motion of the Office of Independent Counsel ("OIC") to compel the testimony of Secret Service Officers Gary Byrne and Brian Henderson and Secret Service General Counsel John Kelleher. These witnesses have refused to answer questions before a grand jury, asserting the protective function privilege. Mr. Kelleher has also asserted the governmental attorney-client privilege in response to certain questions. Upon consideration of the OIC's motion to compel, the supporting and opposing memoranda, and the oral argument of counsel, it is this 22nd day of May 1998,

ORDERED that the motion be, and hereby is, granted with respect to the questions to which the three witnesses asserted the protective function privilege; and it is further

ORDERED that the Independent Counsel shall submit to the Court no later than Friday, May 29, 1998, materials that show his need as defined by In re Sealed Case, 121 F.3d 729, 754 (D.C. Cir. 1997) for the evidence claimed to be covered by the governmental attorney-client privilege. Specifically, the Independent Counsel must show "first, that each discrete group of the subpoenaed materials [or testimony] likely contains important evidence; and second, that this evidence is not available with due diligence elsewhere." Id.


NORMA HOLLOWAY JOHNSON