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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH H. SMITH. *et al.*,

Defendants.

) Case No.: 1:06CR394

) JUDGE ANN ALDRICH

) CATHOLIC DIOCESE OF CLEVELAND'S  
) AND BISHOP ANTHONY M. PILLA'S  
) MOTION TO QUASH SUBPOENAS  
) ISSUED TO MCDONALD & COMPANY  
) AND MERRILL LYNCH PIERCE  
) FENNER & SMITH, INC. BY  
) DEFENDANT ZGOZNIK

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On March 1, 2007, Defendant Anton Zgoznik issued subpoenas to (1) McDonald & Company for records relating to Bishop Anthony Pilla's personal account and (2) Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch") for records relating to an account that was held by the Office of Catholic Education of the Diocese of Cleveland. The subpoenas attempt to compel the production of documents at the law offices of defendant Zgoznik's counsel on a date well before the trial in this matter.

The subpoenas are objectionable for a number of reasons. In its motion to quash the subpoenas at issue, the government addressed two of those reasons. First, the subpoenas are defective because a party may not issue a subpoena compelling production at a location other than the Court. Second, they are defective because a party may only issue a subpoena compelling pretrial production of documents in a criminal case upon order of the Court. See Fed. R. Crim. P. 17. Rather than reiterating those arguments, the Diocese of Cleveland and Bishop Pilla join in them and incorporate them herein by reference.

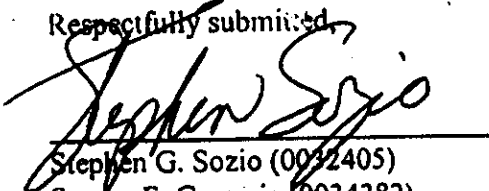
Moreover, under Criminal Rule 17, a party's requests must meet a three-prong test of relevancy, admissibility and specificity. *United States v Nixon*, 418 U.S. 683, 700 (1974). *Accord United States v. Hughes*, 895 F.2d 1135, 1145-46 (6th Cir. 1990). The requests also cannot be either unreasonable or oppressive. *Nixon*, 418 U.S. at 698; *Hughes*, 895 F.2d at 1146. Here, defendant Zgoznic is attempting to make an end-run around the requisite showing to this Court that each of those requirements is met. He should not be permitted to do so.

The Court currently has before it a motion to compel filed by defendant Smith that includes precisely the same requests as are in defendant Zgoznic's subpoenas issued to McDonald & Company and Merrill Lynch. *See* Smith's Motion at 10, 14-15. In their opposition to the motion to compel and to modify or quash the draft subpoena that defendant Smith has been ordered to file and serve, the Diocese and Bishop Pilla will address why defendants have not met, and cannot meet, the requirements of relevancy and admissibility with respect to the McDonald & Company and the Merrill Lynch documents.

Defendant Zgozcki should not be permitted to circumvent that process and ignore the mandates of the Supreme Court and Rule 17. The subpoenas issued to McDonald & Company and Merrill Lynch by defendant Zgozcki should be quashed.

Dated: March 7, 2007

Respectfully submitted,



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Bishop Anthony M. Pilla

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Catholic Diocese of Cleveland's and Bishop Anthony M. Pilla's Motion to Quash Subpoenas issued to McDonald & Company and Merrill Lynch Pierce Fenner & Smith. Inc. by Defendant Zgoznic was sent by ordinary U.S. mail, postage prepaid, on this 7th day of March, 2007 to:

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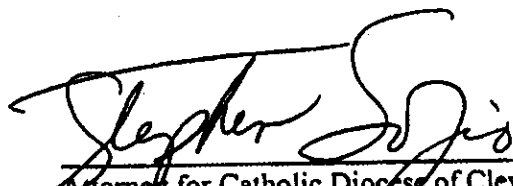
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