

- b. List any future source of income you might receive such as a pension, social security, or unemployment compensation and the year when such future source of income is anticipated to become due:

Signed-----

(Respondent)

Subscribed and sworn before me
 this ----- day of ----- 19-----

MAREMONT CORPORATION

Docket 8763. Order and Opinion, Oct. 22, 1970

Order granting respondent's motion for a waiver of page limitation, denying all other motions of the respondent, and returning case to hearing examiner for trial.

OPINION AND ORDER DENYING INTERLOCUTORY REQUESTS AND REMANDING TO HEARING EXAMINER

This matter is before the Commission upon respondent's interlocutory appeal and requests for leave to appeal as follows: (1) Respondent's Appeal from Order Denying Applications for Issuance of Subpoenas *Duces Tecum* filed October 27, 1969; (2) Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Discovery Applications filed October 27, 1969; (3) Respondent's Request for Leave to File Interlocutory Appeal from Order Scheduling Hearings filed October 27, 1969; and finally (4) Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Request for Certification to the Commission of "Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications," filed November 10, 1969.¹ Complaint counsel filed a response to this latter request on November 12, 1969.

On November 3, 1969, subsequent to the filing of its October 1969 interlocutory requests and prior to any Commission action thereon, and prior to the filing of its November 1969 request to appeal,

¹ Respondent also on October 27, 1969, filed a document entitled "Emergency Motion for Stay of Hearing Examiner's Order of October 16, 1969." This request was mooted by respondent's action to enjoin the Commission and by the Commission's order issued November 6, 1969 [76 F.T.C. 1081] cancelling hearings for the interim. Additionally, respondent on October 27, 1969, moved for a waiver of page limitation so as to permit one extra page for its request to appeal as to the scheduling of hearings which motion will be granted.

respondent filed suit in Federal district court against the Federal Trade Commission and its Commissioners seeking declaratory and injunctive relief, claiming that the Commission was violating its constitutional and statutory rights. On November 4, 1969, the U.S. District Court for the Northern District of Illinois, Eastern Division issued an order restraining the Commission from conducting hearings or otherwise going forward with this proceeding until further order of the Court; *Maremont Corporation v. Federal Trade Commission, et al.*, Civil Action No. 69 C 2266. The Commission thereupon on November 6, 1969, issued its order cancelling the hearings then set to begin November 12, 1969, "pending the district court's disposition of the Commission's motion to dismiss * * *, and pending the Commission's decisions on the interlocutory matters in this proceeding which are now before the Commission."

The district court thereafter on January 5, 1970, dismissed the complaint filed by respondent and respondent appealed. Pending appeal, the district court entered an order restraining the Commission from holding any further hearings.

The Circuit Court of Appeals for the Seventh Circuit rendered its decision on such appeal on September 3, 1970, and affirmed the decision of the district court. *Maremont Corporation v. Federal Trade Commission, et al.*, 431 F.2d 124 (7th Cir. 1970); 1970 Trade Cases, ¶73310 [8 S. & D. 1233]. It also ordered on September 22, 1970, that the district court's order of January 16, 1970 restraining the Commission from further proceeding pending the appeal be vacated.

Thus, the Commission is now free to continue with the interrupted proceedings in this matter.

I

Respondent's appeal under Section 3.35(b) of the Commission's rules is from the examiner's order issued October 16, 1969 denying its application for issuance of subpoenas *duces tecum*. This appeal is cross referenced to respondent's other request filed contemporaneously with the appeal which seeks leave to file interlocutory appeal from the same order of the examiner insofar as it denies other discovery motions made by respondent. The other motions denied were (a) respondent's motion for access to special industry survey and (b) its motion for renewed consideration of certain discovery requests.

On the appeal from the order denying subpoenas, respondent generally challenges the appropriateness of the examiner's ruling and contends his action is arbitrary. Similarly as to the requests to appeal involving the special industry survey and other discovery matters discussed below, respondent's challenge is chiefly directed to the ex-

aminer's exercise of his discretion in denying their requests. In connection with the subpoenas the hearing examiner ruled as follows:

Respondent's third application was made *ex parte*, for the issuance of discovery subpoenas *duces tecum* to 13 manufacturers of automotive parts. The specifications for said subpoenas call for a vast array of sales data, broken down by nine customer classifications and multiple geographic areas, and considerable other data and documents, including names of customers and financing of customers. The data requested cover a minimum period of three years and, in some instances, five years. Based on extensive experience in similar cases, the examiner would estimate that it will take over six months to accomplish even minimal compliance with said subpoenas, assuming no motions to quash, limit or for protective orders were filed. Were such motions to be filed, and typical interlocutory appeals taken, a delay of at least one year would ensue. The vast bulk of the data and documents sought by respondent are either plainly irrelevant, or their relevance has not been adequately demonstrated in its application. Considering the lateness of the hour and the dubious relevance of much of what is sought, the examiner is not disposed to issue the requested subpoenas *duces tecum*, and await the filing of the usual third-party motions. Should the relevance of any of the data be demonstrated after the start of hearings, respondent may renew its application on a more limited basis, and appropriate arrangements can be made to recess the hearings to permit discovery necessarily deferred. (Order Denying Discovery Applications, filed October 16, 1969, Pgs. 4 and 5)

The hearing examiner has broad discretion in the discovery area. There has been no showing here of any abuse of his discretion. Moreover, the examiner has indicated that if the relevance of the data should later be demonstrated, respondent may renew its application, albeit on a more limited basis. We do not believe that this appeal has been justified under the Commission's Rule Section 3.35(b) and it will, accordingly, be denied.

II

The request to appeal from the examiner's order filed October 16, 1969, so far as it denies respondent's other two motions, in effect raises for reconsideration matters previously presented to the Commission. On the "motion for renewed consideration of certain discovery requests," the examiner notes that he previously denied such requested discovery by his order of April 7, 1969; that a request for permission to appeal such order of denial was denied by the Commission; and that respondent has presented no substantial reason for modifying his prior order. The examiner notes that the type of discovery sought would only result in protracted delay and serve no constructive purpose.

The respondent's second motion denied seeks "access to special industry survey." The examiner concluded that this request was actually a motion for reconsideration of his order of April 2, 1969, denying such request, and as to which a request to appeal was also denied. The

examiner states that respondent has advanced no substantial new reason not previously considered by him and that were he to grant the request, it would result in a delay of from six months to a year or more. Finally, the examiner suggested that to the extent any of such material may be relevant for defense purposes, respondent may renew its application at the end of complaint counsel's case-in-chief.

On both these matters involving pretrial discovery, the examiner, as stated, has broad discretion and no showing is made that he abused his discretion. There has been no adequate showing here as required by Commission Rule Section 3.23 to justify an interlocutory appeal. Such requests will therefore be denied.

III

The respondent, in its remaining document filed October 27, 1969, requests leave to file an appeal from the examiner's order scheduling hearings filed October 17, 1969. Respondent raises two main points in this request.

The first relates to the examiner's conclusion that the proceeding is ready for trial. Respondent's argument under this point concerns details of the availability to respondent of complaint counsel's evidence including "basic statistical evidence." A part of respondent's complaint seems to be that there have been delays in the turning over of this material particularly in its final form, and that it therefore needs more time to prepare its defense. This point was, of course, made about one year ago. The intervening period has assuredly given respondent ample time to review the materials and prepare its defense. We recognize that respondent's argument goes somewhat beyond merely seeking additional time, *i.e.*, it seems to be suggesting that it is not receiving the production of certain of the documents to which it is entitled for the purpose of preparing its defense. It claims for instance it has not been furnished "summaries" of the expected testimony of some 40 out of 75 witnesses which complaint counsel has indicated they will call, allegedly in defiance of the hearing examiner's order.

The question on the completeness of the production ordered seems to us to be quite clearly a matter concerning procedure and the conduct of the trial which should be left to the hearing examiner's discretion. We do not believe there has been a showing he has abused his discretion in scheduling the formal hearings to begin especially since as indicated above respondent has now had an additional year for preparation.

The second point respondent raises on this request is the assertion that the examiner erred in selecting Washington, D.C. as the appro-

priate place for trial. On this issue of venue the examiner held as follows: "In the considered judgment of the examiner hearings will proceed with far more expedition, and will cause much less overall inconvenience if they are held in Washington, D.C." He also indicated that should it become necessary to recess at the end of complaint counsel's case-in-chief he would give further consideration to a request from respondent as to the necessity for setting *defense hearings* in Chicago.

We are of the view that the examiner here appropriately exercised his discretion in balancing the various interests on this matter of place of trial. See also the court's discussion of this issue in *Maremont Corporation v. Federal Trade Commission*, *supra*. There has been no showing here to justify an appeal under Section 3.23 of the Commission's rules; therefore, respondent's request will be denied.

IV

Finally, respondent on November 10, 1969, subsequent to the day the Commission was restrained in the interim from further proceedings filed a request titled as follows:

Respondent's Request for Leave to File Interlocutory Appeal from Order Denying Request for Certification to the Commission of "Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications."

Respondent claims that it was error for the hearing examiner not to certify its motion concerning alleged *ex parte* activities asserting that the motion was addressed to the Commission's administrative discretion. Respondent attached to its request a copy of its motion entitled:

Motion to Dismiss or, in the Alternative, for Plenary Hearing on Commingling of Functions and Ex Parte Communications.

Since the motion is in fact before us as if it had been certified, we believe it is unnecessary in the circumstances here to consider the assertion of error for failure to certify. We will go immediately to consideration of the motion.

Respondent in its motion, bases its claim of *ex parte* communications on the statements made by complaint counsel relative to the role in this proceeding of Steven Nelson, an economist employed by the Commission. It is averred that complaint counsel stated among other things in their motion filed September 16, 1969, contending for Washington, D.C. as the place of trial that Mr. Nelson "is frequently consulted by the Commission and senior staff members regarding factual background and policy in the automotive parts industry. * * *" It claims that this admission constitutes an acknowledgement of a violation of

the Commission's own rules, the Administrative Procedure Act and the constitutional guarantees of due process.

Complaint counsel in their response filed November 12, 1969, attached their response to the examiner on this issue and an affidavit of Mr. Nelson. In the latter document, Mr. Nelson states, among other things:

Since my participation in helping to prepare the staff recommendation to the Commission that a proposed complaint should issue against Maremont Corporation, I have had no *ex parte* communications of any kind, written or verbal, by way of advice or otherwise, concerning the Maremont complaint (D. 8763) or any aspect thereof with the Hearing Examiner, the Commission, any Commissioner or any member of any Commissioner's personal staff.

The court in *Maremont v. Federal Trade Commission, supra* in considering this issue held that the facts outlined to them "do not constitute a violation of the doctrine of separation of functions." The Commission concludes on the basis of Mr. Nelson's affidavit and on the basis of the knowledge of the Commissioners that Mr. Nelson since the issuance of the complaint here under Part 3 of the Commission's rules has not engaged in *ex parte* communications concerning the Maremont matter of any kind with the Commission, with any Commissioner or any officer or employee of the Commission connected with the decisional process. Furthermore, there will be no such communications. We believe there has been a complete separation of functions in this matter fully in accord with the letter and the spirit of Sec. 5(c) of the Administrative Procedure Act and the Commission's rules. Respondent's requests in its motion to dismiss or in the alternative for plenary hearing on alleged commingling of functions and *ex parte* communications filed October 23, 1969, will be denied. Accordingly,

It is ordered, That respondent's motion for a waiver of page limitation on its request to appeal as to the scheduling of hearings be, and it hereby is, granted.

It is further ordered, That respondent's appeal filed October 27, 1969, from the order denying applications for the issuance of subpoenas *duces tecum* be, and it hereby is, denied.

It is further ordered, That respondent's request filed October 27, 1969, for leave to file interlocutory appeal from order denying discovery applications be, and it hereby is, denied.

It is further ordered, That respondent's request filed October 27, 1969, for leave to file interlocutory appeal from order scheduling hearings be, and it hereby is, denied.

It is further ordered, That respondent's motion to dismiss or, in the alternative for plenary hearing on commingling of functions and *ex parte* communications filed with the hearing examiner and treated

as having been certified to the Commissioner on November 10, 1969, be, and it hereby is, denied.

It is further ordered, That this matter be, and it hereby is, returned to the hearing examiner for further proceedings in accordance with the Commission's Rules of Practice.

ASH GROVE CEMENT CO.

Docket 8785. Order and Opinion, Oct. 22, 1970

Order granting appeals of respondent from hearing examiner's order granting motions to quash subpoenas directed to two concrete companies, striking the hearing examiner's orders relative thereto, denying respondent's motion for issuance of subpoena to Acting Director of Bureau of Mines, and returning case to examiner.

OPINION AND ORDER RULING ON INTERLOCUTORY APPEALS AND MOTION
CERTIFIED TO THE COMMISSION

This matter is before the Commission upon two separate interlocutory appeals filed by the respondent on September 21, 1970, and upon the hearing examiner's certification to the Commission of a motion by respondent for the issuance of a subpoena *duces tecum* to a government official, filed September 25, 1970. Each of the appeals deal with an order of the hearing examiner granting (one conditionally and the other without prejudice) the motion of a third party to quash a subpoena *duces tecum* issued to it at the instance of respondent.

I

The first appeal we will consider is that filed on September 21, 1970, from the hearing examiner's order conditionally granting the motion of Denny Concrete Company (Denny) to quash a subpoena *duces tecum* served upon its president, J. Gilbert Denny, at the instance of respondent. In its motion filed September 3, 1970, Denny states among other things that "the scope of the Subpoena is unreasonable in that much, if not all, of the requested data has no relation to Respondent's business and to require Denny Concrete Company to compile and produce the data would place an onerous burden, physically and economically, on the company."

The hearing examiner conditionally granted Denny's motion in an order filed September 11, 1970. He held that Denny had not carried its burden of showing that its various allegations should be granted, with the apparent exception of that above quoted. Stating that the Commission's rules are silent on the question posed by the claim of onerous burden, the hearing examiner applied Rule 45(b)(2) of the

Federal Rules of Civil Procedure. Rule 45(b) in its entirety reads as follows:

(b) For Production of Documentary Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

Respondent in appealing from such ruling argues principally (1) that Denny did not ask for the relief granted; (2) that a mere claim of economic burden with no specification of expense would not support a motion to quash and (3) that respondent is unaware of any precedent of applying Federal Rule 45(b) (2) in Commission practice.

Commission adjudicative proceedings are not governed by the Federal Rules of Civil Procedure; rather they are conducted under the Commission's own duly promulgated Rules of Practice. We would add however, that while the Federal rules are not applicable, the standards developed by the courts in interpreting such rules are frequently informative and useful in applying the Commission's rules to specific situations. *L. G. Balfour Company*, Docket No. 8435, 62 FTC 1541, 1546, footnote 14 (order on interlocutory appeal issued May 10, 1963).

As to the appeal in issue we hold that, not as a general rule but in a particular instance where justice and fairness so demands, the examiner's powers are sufficiently broad to require the payment by a respondent of appropriate and determinable expenses connected with compliance by a third person with a subpoena issued at the instance of a respondent. Additionally, if fairness so demands, it is further within the examiner's authority to require that such payment be made in advance.¹

Such relief should not be given automatically on a mere claim of economic burden. Moreover, we believe the expenses claimed should be of an unusual nature, *i.e.*, something more for example than the costs of routinely pulling records from files in the ordinary situation. In this instance, Denny has not specified the expenses which it will allegedly incur. It seems to us therefore that it would be difficult if not impossible at least without negotiations for respondent to tender in advance the cost of the production. Where no specific costs are men-

¹ Cf. *Miller v. Sun Chemical Corp.* (D.C. N.J. 1952), 12 F.R.D. 181; *Fox v. House*, 29 F. Supp. 673, 677 (D.C.E.D. Okla. 1939); *State Theatre Co. v. Tri-State Theatre Corp.* (D.C. Neb. 1951), 11 F.R.D. 381; *Ulrich v. Ethyl Gasoline Corp.* (D.C.W.D. Ky. 1942), 2 F.R.D. 357.

tioned, and the examiner nevertheless determines that there are or might be unusual expenses for which compensation should be made by respondent in advance, it seems to us that as a practical matter some determination should be made of the amount of such unusual expenses or at least an approximation thereof so that the tender can be made by the respondent. We leave it to the examiner to work out the best procedure for accomplishing the result we have outlined.

In the circumstances, we will grant the appeal, strike the examiner's order conditionally granting Denny's motion to quash and return the matter to the examiner for further consideration in light of our views expressed herein.

II

The second appeal for our consideration is that filed by respondent September 21, 1970, from the hearing examiner's order granting the motion of Olathe Ready-Mix Co. (Olathe) to quash subpoena *duces tecum*. Olathe moved on August 31, 1970, to quash subpoena *duces tecum* served upon its president, Delton E. Davis, at the instance of respondent. The hearing examiner in his order filed September 11, 1970, granted the motion to quash without prejudice to the reissuance of a new subpoena *duces tecum* subject to its conformity with the legal requirements described in his order. In such order he refers to the Rule 45 (b) and (c) of the Federal Rules of Civil Procedure, and the requirements thereof.

Olathe, in its motion to quash, claimed that the specifications of the subpoena 1 through 10 would require it to transport virtually every corporate record that it has maintained for the years specified, which it asserts "would be unduly burdensome, oppressive and unreasonable." Olathe further asserts that respondent has not tendered to it "the necessary witness fees nor the necessary costs of transporting the records requested in the specifications to Washington, D.C."

The examiner in his order granting Olathe's motion states as he did in the Denny matter that the Commission's rules are silent on the questions posed thereby and that therefore he would resort to Rule 45 of the Federal Rules of Civil Procedure. While he states that the subpoena is subject to Rule 45(b)(2) of the Federal rules, he apparently specifically applied Rule 45(c), the relevant part of which states as follows:

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law.

Respondent argues in this connection among other things (a) that Rule 45(c) is inapplicable to Commission proceedings, (b) that the question is in fact covered by Commission Rule 4.5 (a) and (c), (c)

that Olathe's motion does not ask for the relief granted and (d) that if Rule 45(b) (2) governs, it was improperly applied.

We have previously stated that the Federal Rules of Civil Procedure do not govern Federal Trade Commission adjudicative proceedings. The Commission's rules on the payment of fees and mileage provide that: "Any person compelled to appear in person in response to subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States." (Section 4.5(a)) and that "The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear." (Section 4.5(c)) Such provisions, as we construe them, are not explicit on the question of advance payments. Normally, in Commission proceedings, fees and mileage are paid at the time the witness actually appears. However, the examiner has discretion in such matters and he has sufficient authority in particular circumstances where justice and fairness so require to direct that the payment of such fees and costs be made in advance. On the question of transportation costs, if these are found to be unusually burdensome and fairness requires that a respondent at whose instance the material is being transported pay such costs, the examiner in such circumstances also has the authority to require the payments be made in advance. However, as in the Denny matter above, a determination should be made on the amount of such costs so that an advance tender can as a practical matter be provided. To the extent that the examiner is requiring in this instance advance payment for other production costs, whatever they may be, the same considerations apply here as in the Denny matter for a determination of such costs.

Accordingly, we will grant the appeal as to the Olathe matter, strike the hearing examiner's order quashing the subpoena directed to Olathe and return the matter to the hearing examiner for his further consideration in light of the views expressed herein.

III

The final issue before us in this proceeding concerns the certification to the Commission by the examiner on September 25, 1970, of the motion by respondent for the issuance of a subpoena *duces tecum* to a government official with the examiner's recommendation of denial. Respondent on September 8, 1970, moved pursuant to Rules 3.37 and 3.22(a) of the Commission's Rules of Practice for the issuance of a subpoena *duces tecum* to Dr. Earl T. Hayes, Acting Director of the Bureau of Mines, United States Department of Interior. The specification for the requested subpoena was attached to the application. The subpoena seeks the production of source material from which the

statistical tables and summaries from Bureau of Mines publications specified were prepared. The tables in issue, were offered and received in evidence as Commission Exhibits 49 through 55 and 68 and 69. Respondent claims that it has been denied the chance to inspect the basic data from which the tables were drawn and that it has been denied the opportunity for cross-examination of complaint counsel's evidence due to the fact that complaint counsel assertedly did not call a witness familiar with the data. It asserts that the information it seeks is necessary in order to afford it the right of cross-examination regarding the referred to exhibits.

Complaint counsel answered on September 18, 1970, contending that respondent has not shown the necessity for and the relevancy of the specified material as required by 3.37(b) of the Commission's rules. Further, complaint counsel state they do not intend to ask Dr. Hayes or any other official of the Bureau of Mines to testify concerning the exhibits. They assert the exhibits were offered pursuant to 28 U.S.C. 1733, which they argue exists to prevent officials of the government from frequent appearances to testify about official documents.

The hearing examiner in recommending that the motion be denied observes that among other things the request would appear to require a lengthy and burdensome production task not necessary to any appropriate discovery purpose in the case and would lead in his opinion to delay in the trial of the matter on the merits.

It appears that the issue here relating to the receiving into the record of the Bureau of Mines statistical tables and the purpose for which such were received has been previously considered in some form by the hearing examiner and the Commission on two occasions. The first was in connection with the examiner's order of June 15, 1970, denying respondent's application for a subpoena to produce documents from the Commission's files. An appeal from that order was denied by the Commission by its order issued July 15, 1970, upon the ground, among others, that no showing had been made that the hearing examiner had abused his discretion. The second occasion was that of the hearing examiner's order of August 19, 1970 in which he denied some of the specifications of subpoenas including those which called for the underlying statistical information submitted to the Bureau of Mines by the ten companies to whom the subpoenas were directed. The Commission in its order and opinion of September 18, 1970, denied respondent's appeal from that order.

In the last referred to Commission order and opinion we stated that the record shows the hearing examiner has considered the substance of respondent's request, heard substantial arguments thereon in pre-trial proceedings and that his order suggests a careful weighing of

the interests in the matter. We refrained however from deciding the correctness of his order one way or another. We ruled only that he did not abuse his discretion and that the merits of the issue would not be reviewed by the Commission at such stage of the proceeding.

It seems to us that what is involved here on the merits as suggested above is a question which again concerns the correctness of the hearing examiner's rulings respecting the receipt of and the purpose of the offering of the Bureau of Mines tables. He in effect has held that respondent's inquiry into the source material is unnecessary because the exhibits were offered only for a limited purpose and that "no proof would be offered or findings of fact proposed as to the competitive effect of the challenged Kansas City vertical mergers as respects the alternative relevant geographic market alleged in the complaint as being the United States as a whole." (Hearing examiner's order filed June 16, 1970, Pgs. 7 and 8)

It is clear that the examiner holds to the same view since in his certification he states that the purpose of respondent's request in various different forms has been previously presented to the examiner and rejected by him and he recommends the denial of the certification for the reasons so stated as well as the other grounds referred to.

The Commission held in the prior orders mentioned that this is a discovery area in which the hearing examiner has broad discretion. To allow the subpoena here sought would have a direct bearing on the examiner's prior rulings and his control of discovery and conduct of the proceedings. We do not reach the question therefore as to whether or not respondent has shown "necessity" and "relevancy" as required by Section 3.37. We hold merely that this matter concerns the hearing examiner's discretion in the discovery area, and that no showing has been made to justify overruling him in effect in his rulings on the question. We do not address ourselves to the correctness of his rulings; we hold only that he has not abused his discretion. Respondent's motion will therefore be denied. Accordingly,

It is ordered, That the respective appeals from the hearing examiner's order conditionally granting the motion of Denny Concrete Company to quash subpoena *duces tecum* and the hearing examiner's order granting the motion of Olathe Ready-Mix Co. to quash subpoena *duces tecum* be, and they hereby are, granted.

It is further ordered, That the respective orders of the hearing examiner filed September 11, 1970, conditionally granting the motion of Denny Concrete Company to quash subpoena *duces tecum* and the motion of Olathe Ready-Mix Co. to quash subpoena *duces tecum* be, and they hereby are, stricken.

It is further ordered, That respondent's motion filed September 8, 1970, for the issuance of a subpoena *duces tecum* to Dr. Earl T. Hayes,