

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

VINE RICHARD MARSHALL, a.k.a.  
RICHARD VINE MARSHALL, a.k.a.  
DICK MARSHALL,  
Defendant.

Case No. CR 08-50079

DEFENDANT'S OPPOSITION TO MOTION  
TO QUASH SUBPOENA

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby submits these affirmations in opposition to the witness Theda Clarke's motion to quash subpoena. As grounds for the defendant's opposition, Dana L. Hanna, attorney for the Defendant hereby affirms:

1. The witness Theda Clark has filed a Motion to Quash the Subpoena served on her on the grounds that she is incompetent to testify.

2. In January 2009, I directed private investigator Stan Zakinsky, who has been appointed by to Court work as an investigator for Mr. Marshall, to go to Crawford, Nebraska to interview Theda Clarke.

3. Mr. Zakinsky has informed me that on January 8, 2009, Mr. Zakinsky went to the nursing home in Crawford, Nebraska where Theda Clarke resides. On arrival, he met with nursing home staff and introduced himself as an investigator for Mr. Marshall, working under my supervision, and requested that he be allowed to speak with Ms. Clarke. The staff person delivered his request to Ms. Clarke. Mr. Zakinsky was then informed that Ms. Clarke would speak with him, if Jaynelle Hinegan,

director of nursing at the nursing home, be present. Mr. Zakinsky spoke with Theda Carke for about 45 minutes. He asked her about various individuals who will testify in this case, including Arlo Looking Cloud, Darlene “Kamook” Nichols., and Robert Ecoffey.

Mr. Zakinsky reported to me that he had a rational, pleasant and informative conversation with Theda Clark. He states that although Ms. Clark’s ability to speak has been impaired by a stroke, she was able to converse with him, and that she was rational and responsive, at all times during their conversation. During their conversation she expressed various opinions and answered questions about individuals involved in this case, and did so in a rational manner. Mr. Zakinsky has specifically stated to me that he saw absolutely no signs of dementia or irrationality in her conversation. Nor did she appear to be confused. She understood what he was asking her and her answers were responsive to his questions.

2. Furthermore, I have been personally informed by individuals whom I believe to be reliable, about a month ago, Theda Clark attended a funeral of a relative on the Pine Ridge Sioux Indian Reservation. An individual who was present at that funeral advised me that he witnessed Theda Clark there, in the company of a care giver, in her wheel chair, greeting and conversing with friends and relatives. For these reasons, it appears that Ms. Clark can in fact travel some distance from her rest home in Crawford, Nebraska; that she can communicate meaningfully when she wants to do so; and she is competent to give testimony.

WHEREFORE, Defendant Marshall opposes the motion to quash the subpoena.

Dated this 28<sup>th</sup> day of January, 2010.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
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### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Opposition to Motion was electronically served upon the other parties in the case via the electronic mail addresses listed below:

Robert Mandel, Assistant United States Attorney  
[Robert.Mandel@usdoj.gov](mailto:Robert.Mandel@usdoj.gov)

John Murphy, Attorney for Defendant Graham  
[jmurphysd@hotmail.com](mailto:jmurphysd@hotmail.com)

Dated this 28<sup>th</sup> day of January, 2010.

/s/ Dana L. Hanna  
Dana L. Hanna