

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,	*	CR. 08-50079-01, -02
	*	
Plaintiff,	*	
	*	DEFENDANT’S MOTION FOR
vs.	*	
	*	SUBPOENA <i>DUCES TECUM</i>
RICHARD MARSHALL,	*	
	*	
Defendant,	*	
	*	

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, pursuant to Rule 17 of the Federal Rules of Criminal Procedure, and moves the Court to issue a subpoena directing the following witness to appear for the trial of this case on April 13, 2010, and to bring with him the documents in his custody that are listed herein, or to produce the requested documents to counsel for the defendant prior to that date.

The following witness and the documents in his custody are necessary for Defendant to present a defense at trial to the charge in the indictment. The defendant Richard Marshall is indigent and seeks service of this subpoena by the United States Marshall or Deputy Marshall, pursuant to Federal Rule of Criminal Procedure Rule 17(b), along with payment of costs.

The defendant is seeking a subpoena duces tecum that orders **Jim Kroll, Manager, Western History / Genealogy Department, Denver Public Library, 10 West 14th Avenue Parkway, Denver, Colorado 80204**, to be present in court on April 13, 2010, with the documents described herein, or to provide the materials to undersigned counsel before that date, in which

case he will not have to personally appear.

The defendant is seeking the contents of certain documents contained in a file or files on “Fritz Lookingcloud” or Fritz Arlo Looking Cloud gathered by the Denver Police Department (DPD) Intelligence Bureau, which are secured by Mr. Kroll, the custodian of records, pursuant to court order in the law suit filed in the United States District Court, District of Colorado, entitled American Friends Service Committee, et al., v. City and County of Denver, Civil action # 02-N-0740. Specifically, the defendant seeks a subpoena directing the custodian of records to produce copies of all documents and writings of any kind in the DPD Intelligence Bureau file on “Fritz Lookingcloud”, a.k.a. Fritz Arlo Looking Cloud, a.k.a. Arlo Looking Cloud.

In support of the motion, Dana L. Hanna, attorney for the defendant Marshall, hereby affirms:

1. I make these affirmations on the basis of information and documents that were provided to me by Ryan Ross, private investigator, of Denver, Colorado.

2. In 2002, a civil rights lawsuit was filed in federal court by plaintiffs who were seeking an injunction against the Denver Police Department Intelligence Bureau’s practice of gathering information and maintaining files against people whose politics the Intelligence Bureau found to be questionable. The law suit was filed in the United States District Court, District of Colorado, Civil action # 02-N-0740, entitled American Friends Service Committee, et al., v. City and County of Denver. In the media coverage and public discussions about the case, the DPD Intelligence Bureau files containing documents and information on the individuals were described as the “spy files.” That lawsuit resulted in an order directing that the police practice cease and that the “spy files” be secured at the Denver Public Library. People who were identified as the subject

of a file can view their files; for all others, a court order is required.

3. I have seen what appears to be an Exhibit in the court papers in that lawsuit that lists by name the individuals whose files are in the custody of the Denver Public Library. Various individuals who were associated with the American Indian Movement in Denver in the 1970s are named as the subject of “spy files,” including the government’s cooperating witness in this case, “Fritz Lookingcloud” [sic].

4. On information and belief, the documents and information contained in those files contain material evidence that is necessary and helpful for the defense of Richard Marshall in his trial. These files were compiled by the Intelligence Bureau of the DPD, the same Bureau that Detective Abel Alonzo worked for when he investigated Fritz Arlo Looking Cloud and others in the murder of Anna Mae Aquash in 1975. “Fritz Lookingcloud” is Fritz Arlo Looking Cloud, the government’s key witness against Richard Marshall. Since the DPD Intelligence Bureau’s stated primary purpose for gathering and maintaining the “spy files” was to gather information about criminal activities of people who might engage in politically motivated criminal activities, the evidenced contained in Looking Cloud’s “spy file” is likely to contain evidence that can be used to impeach his testimony at trial. Moreover, especially in view of the fact that Detective Alonzo of the Intelligence Bureau was the lead DPD investigator in the Aquash murder investigation and one of the investigators gathering information on Looking Cloud and other AIM members for the “spy files”, there is a very significant likelihood that Looking Cloud’s file will contain information and material evidence relating to the murder of Aquash.

5. The custodian of records for those files is :

Jim Kroll, Manager

Western History / Genealogy Department
Denver Public Library
10 West 14th Avenue Parkway
Denver, Colorado 80204

WHEREFORE, Defendant Richard Marshal moves the court to order the US Marshall's office to serve a subpoena *duces tecum* on the above named witness, pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure, along with payment of costs, directing the witness to be present in court on April 13, 2010, with the documents described herein, or to provide the materials to undersigned counsel before that date, in which case he will not have to personally appear.

Dated this 19th day of March, 2010.

RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
P.O. Box 3080
Rapid City, SD 57709
(605) 791-1832
dhanna@midconetwork.com
Attorney for Defendant Marshall

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

Dated this 19th of March, 2010.

/s/ Dana L. Hanna
Dana L. Hanna