

UNITED STATES DISTRICT COURT
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.

CR 08-50079

UNITED STATES' MOTION FOR
RECONSIDERATION OF ORDER
FOR SUBPOENA DUCES TECUM
(DE #707)

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and moves this Court for reconsideration of its order requiring production of records (DE #707). As noted in the attached declaration, no such records are in the possession of Serle Chapman and, therefore, cannot be produced.

Respectfully submitted this 30th day of March, 2010.

BRENDAN V. JOHNSON
United States Attorney
By:

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2010, I served by electronic transmission, a true and correct copy of the foregoing on:

Dana Hanna
Attorney at Law

/s/ Robert A. Mandel

Robert A. Mandel

**UNITED STATES DISTRICT COURT
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(s).)

Case No. CR 08-50079-02

***DECLARATION OF SERLE L. CHAPMAN REGARDING SUBPOENA
DUCES TECUM FOR ALLEGED MATERIALS PERTAINING
TO NON-EXISTENT BOOK***

Pursuant to 28 U.S.C. § 1746, **SERLE L. CHAPMAN** hereby declares the following under penalty of perjury:

1. I am making this declaration freely and voluntarily.
2. The statements set out in this declaration are based on my *personal* knowledge unless otherwise indicated.
3. I have never been convicted of *any* offense more serious than a speeding ticket.

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 2 of 10*

4. I am a witness in the case entitled *United States of America vs. Vine Richard Marshall*, Case No. CR-08-50079-02 in the United States District Court for the District of South Dakota (the "*Marshall Case*"), *not* the accused, an aider and abettor, an accessory after the fact or a co-conspirator.

5. I am an author, wildlife photographer and tour guide by profession. I have written and/or photographed seven books that have been published in different languages. My books have received national and international critical acclaim, and I have received commendations from across the political spectrum, nationally and internationally; in the United States, among those who have recognized my work are President William J. Clinton, who wrote a foreword to one of my books and later commented that he was "honored" to have been able to do so. Across the political aisle, Vice President Dick Cheney described my last book as "a wonderful book of photographs and history." My photography has won me recognition as one of the top wildlife photographers in the world, and has been exhibited in the United States and Europe. Moreover, some tours I conduct have been listed in the National Geographic Society's Top 50 Tours, which is *very* prestigious in the tour guide field.

6. The relative success of my first book led my wife and me to found our tour company, which was, to the best of my knowledge, the first "fair trade" tour company that focused on tribal tourism and bring tourist dollars to reservations.

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 3 of 10*

At its height, before being crippled through my involvement in the Aquash murder matters – the criminal prosecutions of Marshall and John Graham – our tour company engaged some fifty (50) indigenous guides, with representatives from numerous reservations. Among others, we employed Marshall’s cousin, Wilmer Mesteth, as our principal guide for the Pine Ridge Reservation and the Black Hills for approximately nine (9) years. Our tours and my books enabled us to pursue various philanthropic endeavors in Indian Country, including the following: financing a Lakota language initiative at a Head Start program in Martin; providing computers for Lame Deer High School; finding sponsors for twenty-five percent (25%) of the children enrolled with the Cheyenne Children Services on the Northern Cheyenne Reservation; conducting a tour that raised funds for the Sitting Bull College when the new campus was under construction; introducing sponsors to the American Indian College Fund; and providing royalties from my books to the American Indian College Fund.

7. I do *not* have any financial interest in the outcome of the *Marshall Case*. My only interest in the *Marshall Case* is seeing that justice is served with respect to the brutal abduction, torture, interrogation, rape and murder of Anna Mae Pictou Aquash.

8. My involvement as a witness in the *Marshall Case* and related proceedings against defendant John Graham (“Graham”) has *not* produced any income or

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 4 of 10*

gain for me; *quite the contrary*. My involvement as a witness in the *Marshall Case* and Graham proceedings has come at severe financial and personal loss to me. Financially, it has cost me hundreds of thousands of dollars, as, among other things, it has prevented me from promoting nationally, coast-to-coast, and internationally, the works of mine that have been published during this period. I have been unable to attend my own exhibitions, and a very significant international book launch and festival. Similarly, it has prevented me from leading certain tours, or being able to adequately advertise and promote our tours generally. As early as 2003, some of these losses were documented and estimated at over \$100,000, such documentation being in the possession of the United States Attorney's Office for the District of South Dakota. My wife is in the process of commissioning an updated accounting. For several years my liberty and that of my wife has been severely impinged upon as we have been denied freedom of movement, internationally, as we have been unable to leave the United States due, we were told by the F.B.I. and United States Attorney's Office for the District of South Dakota, to myriad changes in United States immigration law that impacted us. Prior to my involvement with the United States Government (the "Government") regarding the murder of Anna Mae Pictou Aquash, the immigration status I had enabled me to pursue my professional and personal life unhindered.

9. I have *never* met or talked to Dana L. Hanna, Esq., the lawyer for Vine Richard Marshall ("Marshall") in the *Marshall Case*. Moreover, I have never

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 5 of 10*

been interviewed by anyone who identified himself to me as one of Mr. Hanna's investigators.

10. I am aware that Mr. Hanna filed a Motion for Subpoenas *Duces Tecum* on behalf of Marshall (the "*Subpoenas Motion*"). Mr. Hanna did *not* interview me before filing the *Subpoenas Motion*. Furthermore, the *Subpoenas Motion* is based on Mr. Hanna's "information and belief," speculation, and *numerous* false statements, false suppositions and errors, not Mr. Hanna's personal knowledge.

11. *Contrary to Mr. Hanna's contentions and suppositions, which are based on Mr. Hanna's information and belief, I never did any of the following:*

- A. Wrote an outline, draft or manuscript for a book to be entitled *Blood, Sweat and Tears: Inside the American Indian Movement ("BS&T")*. Indeed, *BS&T* was merely a concept in development. In 2000, when *We, The People* was being completed, and in 2001 when it was published, it had been my intention to write and illustrate such a book.
- B. Made an official or detailed proposal to the Mountain Press Company or any other publishing company for a book to be entitled *BS&T*.

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 6 of 10*

- C. Corresponded with the Mountain Press Company about a manuscript for *BS&T*.
- D. Wrote a letter to Mr. John Rimel regarding my reasons for not writing a book to be entitled *BS&T*.
- E. Stopped publication of *BS&T* in 2002 or 2003, as there was no publication to stop.
- F. Signed a contract with any publishing company to produce a manuscript for the nonexistent book *BS&T*.
- G. Signed a contract for the distribution of the nonexistent book, *BS&T*.
- H. Engaged a literary agent to seek a publishing contract for, or to promote, the nonexistent book *BS&T*.
- I. Functioned as an F.B.I. "informant" or "paid informant." Indeed, even John Murphy, Esq., Graham's lawyer, has admitted in correspondence with the United States Attorney's Office for the District of South Dakota that I am not an "informant." And to my knowledge, neither the United States Attorney's Office for the District of South Dakota nor the F.B.I. has ever designated me as an "informant" with respect to the *Marshall Case*.

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 7 of 10*

J. Received compensation from the United States Government (the “Government”) for alleged service as an “informant.” Indeed, the Government merely reimbursed me for expenses during the period that I agreed to cooperate with it, and subsequently provided partial funding assistance to install security measures at my home, or to assist in re-locating me, my wife and my daughter (now six years old) because of endangerments to our safety arising out of my involvement in the *Marshall and Graham Cases* as a potential witness against the accused, and financial losses resultant from that.

12. The proposed book, *BS&T*, was going to focus on the American Indian Movement. Although I intended to cover the Aquash murder in *BS&T*, that murder was *not* the centerpiece of the unwritten and unpublished work.

13. I interviewed Marshall in the summer of 2000, *which was before I ever had contact with either the United States Attorney’s Office for the District of South Dakota or the F.B.I.* concerning the brutal abduction, torture, interrogation, rape and murder of Anna Mae Pictou Aquash. In the fall of 2000, Assistant U.S. Attorney (“AUSA”) Dennis Holmes and Special Agent (“SA”) Jim Graf of the F.B.I. interviewed me at the airport in Minneapolis about the Aquash murder; and at that time AUSA Holmes told me that I could either hand over the tapes that I had made for the proposed book, *BS&T*, or the United States Attorney’s Office for the District of South Dakota could just subpoena them; so I

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 8 of 10*

later surrendered the tapes that I had to SA Graf. Neither the United States Attorney's Office for the District of South Dakota nor the F.B.I. has returned the original tapes, or copies of them, to me.

14. Contrary to Mr. Hanna's contention that I made two tape recordings of Marshall in 2001, I only made one recording of an interview of Marshall in 2001, at the Alex Johnson Hotel on July 27, 2001. The United States Attorney's Office for the District of South Dakota and the F.B.I. have that tape recording. In fact, the United States Attorney's Office for the District of South Dakota did *not* furnish me with a copy of that tape recording until February 2009. After speaking with Marshall at the Alex Johnson Hotel on July 27, 2001, I spoke to Marshall on the telephone later in 2001.

15. I have already furnished to the Government the information that I had about the Aquash murder and the information that I had specifically pertaining to Marshall.

16. The *Subpoenas Motion* distorts the issuance of an ISBN number. Although an ISBN can be obtained by anyone, it does *not* mean that a book has, in fact, been published. An ISBN number was obtained for *BS&T*, but *BS&T* was never outlined or written, let alone published. The ISBN number was *not* assigned to Mountain Press.

*Declaration of Serle L. Chapman Regarding Subpoena
Duces Tecum For Alleged Materials Pertaining to
Non-existent Book
Page 10 of 10*

materials DeMain compiled *prior* to his association with me. I have never examined DeMain's materials and do not have possession of them.

20. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MARCH 29 2010.

A handwritten signature in cursive script, appearing to read "Serle L. Chapman", is written over a solid horizontal line.

SERLE L. CHAPMAN