

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' RESPONSE TO
DEFENDANT MARSHALL'S
MOTION FOR SUBPOENA
DUCES TECUM (DE #678)

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, to respond to defendant's motion for subpoena *duces tecum* (DE #678) as follows:

1. Serle Chapman is expected to be a witness against defendant, Vine Richard Marshall. Contrary to defense counsel's suggestion, Chapman was not acting as a "government informant" nor was he "paid" for his services by the United States.

2. Defendant claims that a manuscript exists of a book entitled *Blood, Sweat and Tears: Inside the American Indian Movement*. He further claims that publication of this work was halted at the government's request "because the book would devalue his worth as a government witness." Defendant's Motion, p. 3. No such

request was ever made. In reality, defendant seeks to go on a general fishing expedition of precisely the sort prohibited by *United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

3. Defense counsel states it is a “reasonable inference” that the manuscript discusses “his involvement in the investigation of this case as a secret government informant” and that it “will certainly contain his own conclusions as to how, why and by whom Anna Mae Aquash was killed.” Defendant’s Motion, p. 4. These statements are incorrect and outline the fact that this constitutes a fishing expedition as is prohibited under the law. *United States v. Bueno*, 443 F.3d 1017, 1026 (8th Cir. 2006).

4. Contrary to the suggestions made by defense counsel, no arrangement was ever made with Mountain Press Publishing Co. for it to publish such a book.

5. Getting to the specific documents sought by defense counsel emphasizes that this is indeed a total fishing expedition as prohibited. First, no such manuscript exists or was ever written. Second, there was never a book proposal written by Chapman to the Mountain Press Publishing Co. Third, there was no correspondence between Chapman and the “publisher.”

6. It is the position of the United States that were the items sought by defense counsel in existence, the subpoena should be denied in that this is precisely the sort of use of a subpoena *duces tecum* that would be unreasonable and oppressive and would greatly outweigh any relevance that would exist. *United States v. Hardy*, 224 F.3d 752, 754-755, (8th Cir. 2000). As the records sought do

not even exist, the issuance of a subpoena *duces tecum* would be pointless for that reason as well.

Accordingly, defendant's motion for a subpoena *duces tecum* should be in all respects denied.

Respectfully submitted this 23rd 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 23rd day of March, 2010, I served by electronic transmission, a true and correct copy of the foregoing United States' Response to Defendant Marshall's Motion for Subpoena *Duces Tecum* on:

Dana Hanna
Attorney at Law

/s/ Robert A. Mandel

Robert A. Mandel