

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DIANE BOND,)	
)	
Plaintiff,)	
)	No. 04 C 2617
v.)	
)	Judge Lefkow
CHICAGO POLICE OFFICER)	
EDWIN UTRERAS, et al.,)	
)	
Defendants.)	

PETITION FOR THE ISSUANCE OF A RULE TO SHOW CAUSE
AND TO COMPEL PRODUCTION OF ANY AND ALL
DOCUMENTS SOUGHT IN THE SUBPOENA

Defendants City of Chicago, by Mara S. Georges, Corporation Counsel, and Chicago Police Officers Christ Savickas, Robert Stegmiller, Joseph Seinitz, Edwin Utreras and Andrew Schoeff, by Mary McDonald, Assistant Corporation Counsel, petition this Court, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rules 37.1 and 37.2 of the Local Rules of this Court, for the issuance of a rule to show cause why witness Jamie Kalven should not be held in contempt of court for failing to produce copies of any and all documents, notes, reports, writings, computer files, audio tapes, video tapes, or any written or recorded item in your possession regarding or relating to the following persons or subjects: Diane Bond, Willie Murphy, Mike Fuller, Demetrius Miller, Robert Travis, Barbara White, Ben Harris, Billie Johnson, Clyde Johnson, Dorothy Oliver, Gerri Williams, Princess Streeter, Andre Williams, Vera Miles, Severta Showers, Lorel A. Greene, Ph.D., Craig Futterman, Officer Andrew Schoeff, Officer Christ Savickas, Officer Joseph Seinitz, Officer Robert Stegmiller, Officer Edwin Utreras, Officer Schmidt, Officer Macintosh, and/or any allegations of misconduct by any

police officer at the Stateway Gardens in Chicago, IL. In support of this motion, defendants attach the affidavit of Mary McDonald, as Exhibit A, their attorney, and states:

1. The plaintiff has commenced a civil rights action for damages and injunctive relief brought pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S. C. §§ 1983 and 1988, 28 U.S.C. § 2201 et seq., the Illinois Hate Crimes Act, and Illinois common law for the torts of assault and battery, false arrest and imprisonment, and intentional infliction of emotional distress.

2. Subsequent to the defendants appearing in this matter, the defendants took the deposition of journalist, Jamie Kalven (“Kalven”). Kalven is the author and copyright holder of the article *Kicking the Pigeon*. This article supposedly details the alleged civil rights violations Ms. Bond has been subjected to by the defendants and has been continually updated during the course of this litigation. See Exhibit B.

3. At Kalven’s deposition of April 12, 2005, Kalven refused to answer questions and refused to produce any of his notes, tape recordings, videotapes, etc regarding his meetings and/or interviews with Ms. Bond and any witnesses to the alleged events. A true and correct copy of the relevant portions of the deposition are attached hereto as Exhibit C.

4. On June 13, 2005, defendants served a subpoena on Kalven, to obtain copies of all notes, tape recordings, videotapes, etc. that were being held by Kalven. The subpoena was returnable on June 24, 2005. A true and correct copy of the subpoena and the accompanying letter is attached as Exhibit D.

_____ 5. As of the date of the filing of this motion, defendants’ counsel still has not received any documents responsive to the subpoena other than the Mike Fuller statement. As reflected in

the McDonald affidavit, to date Jamie Kalven has produced one sheet of notes relating to witness Mike Fuller. To date, no other documents, recordings, etc. responsive to defendant's subpoena have been produced. Rather, Kalven's has written a self-serving letter in response to defendants' subpoena raising objections such as relevance, over broad, embarrassment, confidential research, journalistic privilege etc. A copy of Kalven's response letter to defendants' subpoena is attached as Exhibit E.

6. Kalvan's claim that a journalistic privilege exists is not grounded in law. To begin with, Kalven fails to explain under what law he is invoking his privilege under. However, even if he did, this Court has clearly held that *First Amendment* concerns are not implicated when the information is obtained from a non-confidential source. In this case each of Kalven's sources are non-confidential. See *Solaia Technology, LLC, v. Rockwell Automation, Inc.*, 2003 WL 22597611, *2 (N.D.Ill)(Judge Lefkow)(this Court denied "the claim that the *First Amendment* is grounds to quash a subpoena duces tecum as it relates to any information from a non-confidential source)(quoting *McKevitt v. Pallash*, 339 F. 3d 530 (7th Cir. 2003)). Furthermore, this Court has clearly denied the applicability of the Illinois reporter's privilege in federal question cases. *Id.*

7. The Seventh Circuit has held that in determining the propriety of the reporter's privilege a court should determine whether a request is "reasonable in the circumstances." *McKevitt*, 339 F.3d at 533 (citations omitted). In this regard, the trial court should look to the established discovery procedures set forth in Federal Rule of Civil Procedure 45(c). *Patterson v. Burge*, 2005 WL 43240, *1 (N.D.Ill.)(Judge Gottschall). Thus, the Seventh Circuit has established a court must then engage in a balancing process and consider the the burden of compliance with the subpoena against the benefits of the requested production. *Northwestern*

Memorial Hospital v. Ashcroft, 362 F.3d 923, 927 (7th Cir.2004).

8. The production of Kalven's notes, reports, writings, etc. are clearly relevant for purposes of establishing what plaintiff and/or plaintiff's witnesses have been saying as to what transpired on the dates of the alleged events stated in plaintiff's complaint. Kalven has been listed as a witness by plaintiff in her 26(a)(1) disclosures and his failure to produce documents responsive to defendants' subpoena could possibly compromise defendants' defense. Furthermore, Defendants' Subpoena would not create an undue burden under Fed. R. Civ. P. 45(c)(3)(A)(iv).

9. On March 13, 2006, Ms. McDonald and Mr. Platt again wrote to Mr. Kalven requesting that he respond to the subpoena. See Exhibit F.

10. Despite the defendant's good faith attempts to resolve differences regarding the production of the notes and recordings in questions, the parties and unable to reach an accord since Kalven is refusing to produce the notes and recordings in question.

WHEREFORE, defendants request that this Court grant their petition and enter a rule to show cause as to why Kalven should not be held in contempt of court for his deliberate and intentional refusal to produce the notes and recordings in question, that this Court order Kalven to immediately produce all notes, recordings and other information responsive to defendants' subpoena, award defendants sanctions, including attorneys' fees and costs incurred in order to procure these notes and recordings, and for such other relief as this Court may deem appropriate.

Respectfully submitted,

/s/ Mary Sara McDonald
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