

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN RE: GRAND JURY SUBPOENA TO)
DRAKE UNIVERSITY)

No. M-1-39

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MOTION TO INTERVENE
AND MOTION TO QUASH
GRAND JURY SUBPOENA
DUCES TECUM

Petitioners National Lawyers Guild and Drake University Chapter of the National Lawyers Guild, by counsel Bruce D. Nestor of Minneapolis, Minnesota, file this Motion to Intervene pursuant to Fed. Rule. Civ.Pro. 24(a) and Motion to Quash pursuant to Fed. Rule. Crim.Pro. 17, and state as follows:

1. The National Lawyers Guild is a non-profit corporation organized under the laws of the State of New York. It is a national membership organization, active throughout the United States. It carries out its activities through chartered affiliates, with membership in its affiliates equivalent to membership in the national organization.
2. The Drake University Law School Chapter of the National Lawyers Guild is a duly chartered affiliate of the National Lawyers Guild and is an autonomous, unincorporated association. It is also an officially recognized student organization operating at Drake University in Des Moines, Iowa.
3. Petitioners assert that the issuance by the grand jury of a subpoena duces tecum to Drake University, seeking the production to the grand jury on February 10, 2004, at 11:00 a.m., of various records relating to the Drake University Chapter of the National Lawyers Guild, impinges on the legitimate interests of the Petitioners

and their members. Compliance with the subpoena by Drake University would substantially interfere with the Petitioners' rights of freedom of association and freedom of expression as protected by the First and Fourteenth Amendments to the Constitution of the United States. Intervention by the Petitioners pursuant to Rule 24(a) of the Fed. Rules of Civ.Pro., therefore, is appropriate to allow Petitioners to assert their interests in this matter.

4. The Petitioners' interests in this matter are not adequately represented by Drake University or any other party to this proceeding.
5. Petitioners further move to quash the subpoena duces tecum pursuant to Rule 17(c), Federal Rules of Crim.Pro., as compliance with the subpoena would be unreasonable or oppressive and would violate Petitioners' rights under the First and Fourteenth Amendments to the Constitution of the United States.
6. Because compliance with the subpoena duces tecum by Drake University would infringe on Petitioners' protected rights, the government must demonstrate a compelling need to obtain the requested records, that the records sought bear a substantial relationship to this compelling interest, and that the government can not obtain the required information through alternative means. Absent such a showing, the Motion to Quash must be granted.
7. Petitioners further request that the Court grant a continuance to Drake University of the date and time set for compliance with the subpoena to allow time for evidentiary hearing on this Motion to Intervene and Motion to Quash.

WHEREFORE, Petitioners request that this matter be set for hearing, that the time for Drake University to comply with the subpoena is extended until after the date set for hearing,

and that upon hearing, the Motion to Intervene and Motion to Quash be granted. This motion is made in good faith and is supported by the attached Memorandum of Law, Declaration of the National Lawyers Guild, as well as such other points and authorities as may be developed at the time of hearing on this Motion.

Date: _____

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ATTORNEY FOR PETITIONERS

Certificate of Service

I, Bruce D. Nestor, certify that on the 9th day of February, 2004, I caused the foregoing Motion to Quash and associated documents to be served on the U.S. Attorney's Office, Southern District of Iowa, by mailing a copy of the documents by First Class U.S. mail. In addition, faxed copies of all documents were sent to the U.S. Attorney's office on the 9th day of February, 2004, at 515-284-6281.

Bruce D. Nestor