

STATE OF MINNESOTA

DISTRICT COURT

RAMSEY COUNTY

FILED
JAN 26 2010

STATE OF MINNESOTA,

RAMSEY DISTRICT COURT Case No. 62-CR-08-10335

Plaintiff,

-vs-

**MOTION TO COMPEL
DISCOVERY**

GARRETT S. FITZGERALD,

Defendant.

To: Heidi Westby, Assistant Ramsey County Attorney

Pursuant to Rule 9.01, Minnesota Rules of Criminal Procedure, the defendant's previously filed Demand for Disclosure, Discovery, and Inspection, Brady v Maryland, 373 U.S. 83 (1963), and the 5th, 6th, and 14th Amendments to the United States Constitution, Garrett S. Fitzgerald by his attorney, John C. Bachman, demands the Court order the State to produce the following:

All written and recorded statements, notes, writings, surveillance tapes, photographs, tangible objects, audio and videotapes, discs, and computer entries concerning "Indy TACT" and, second, the memorandum in the possession of the Frederick, MD police alleging Mr. Fitzgerald was a "terrorist."

Upon information and belief, "Indy TACT" was a pseudo-activist group wholly controlled and created by the Bloomington, MN Police Department. The purpose of "Indy TACT" was to spy on Mr. Fitzgerald

and his codefendants, to disrupt their lawful activities and to incite others to commit illegal activities.

August 14, 2008 "Indy TACT" posted a press release on Infoshop entitled: "DNC/RNC: Sector 2 Adopted by Indiana." "Indy TACT" claimed to be a Fort Wayne, Indiana based group of anti-capitalist activists who were planning to commit "actions" on the streets during the Republican National Convention.

In Cop Book a Bloomington, MN police officer working undercover against the RNC Welcoming Committee and other legal protest groups admits he was responsible for creating "Indy TACT." In his book he quotes extensively from activist comments about the August 14 press release attributed to "Indy TACT." In essence, this officer takes ownership of "Indy TACT".

Moreover, in August, 2008 Mr. Fitzgerald received several emails from someone calling himself "James Hayden." We believe "James Hayden" to be a member of the Bloomington, MN Police Department or someone working on their behest. This Mr. Hayden claimed to be from Bloomington, MN and stated he was a spokesperson for "Indy TACT." He told Mr. Fitzgerald that "Indy TACT" would "adopt" "sector two", the Shepard Road area of St. Paul, as a demonstration site during the Republican National Convention. In emails this Mr. Hayden stated he would meet Mr. Fitzgerald at the convergence center the weekend before the Republican National Convention to discuss "Indy TACT's" plans for demonstrating at the Republican National Convention. On August 21 Mr. Hayden wrote to Mr. Fitzgerald that "Indy TACT" had "come up with a very good plan for some really diverse tactics in sector 2."

If fact, no one from "Indy TACT" ever met with Mr. Fitzgerald. No one in the general left-wing activist community had ever heard of "Indy TACT." No one claiming to be a member of "Indy TACT" ever appeared at any demonstration during the Republican National Convention. Therefore, it appears "Indy TACT" was a police scam.

The requested information, if not already in the possession of the State, is easily obtainable by it though a de minimus exercise of due diligence and effort.

Moreover, the requested information may tend to negate or reduce the guilt of the accused, may lead to exculpatory material, or may offer the defendant a heretofore unavailable defense, entrapment. It appears from the contact between Mr. Fitzgerald and this Mr. Hayden that the latter was attempting to goad Mr. Fitzgerald and others to engage in illegal acts against their wishes and best judgment. In addition, this Mr. Hayden, a la Cointelpro, clearly attempted to disrupt the lawful exercise of free expression, assembly and petition for redress of grievances of Mr. Fitzgerald and others.

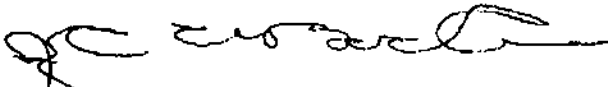
Second, in 2008 Mr. Fitzgerald was at a public meeting in Frederick, MD to inform local residents of plans for housing, food, activities, and demonstrations at the Republican National Convention. As is evident in the discovery materials we have been given, in Frederick and in all other places Mr. Fitzgerald visited in his preparation for peaceable and lawful activities at the Republican National Convention he was spied on and trailed by law enforcement. Previously disclosed discovery materials allude to a memorandum in the possession of the Frederick, MD police alleging Mr.

Fitzgerald was a "terrorist" or on some type of "terrorism watch list." We demand the Court order the State to produce this memorandum.

As with information on "Indy TACT", this memorandum is easily obtainable by the State. Second, it may contain previously unknown information that may be useful in Mr. Fitzgerald's defense or lead to the discovery of information useful in his defense. That is, based on the known Frederick, MD police surveillance of Mr. Fitzgerald this memorandum and the reports on which it is based probably contain information on additional police spying on Mr. Fitzgerald, attempts by the police to disrupt preparations for lawful forms of dissent at the Republican National Convention and the names of and references to reports by heretofore unknown police informants.

Therefore, Mr. Fitzgerald demands the Court order the State to disclose all of the above-requested information no later than 60 days before trial.

Dated: January 22, 2010



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