

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN GRAHAM, a.k.a.
JOHN BOY PATTON, and
VINE RICHARD MARSHALL, a.k.a.
RICHARD VINE MARSHALL, a.k.a.
DICK MARSHALL,
Defendants.

Case No. CR 08-50079

DEFENDANT MARSHALL'S
MOTION TO DISMISS FOR
SELECTIVE PROSECUTION

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, pursuant to his constitutional right to equal protection of the law, and hereby moves the Court to dismiss the indictment on the grounds of selective prosecution.

In support of the motion, Dana L. Hanna, attorney for the defendant, hereby affirms:

1. I am make these affirmations on the basis of information and belief based on the discovery materials provided by the government and upon the trial record of the case of United States vs. Arlo Looking Cloud.

2. It is the theory of the prosecution that defendant Richard Marshall aided and abetted Theda Clarke, John Graham, and Arlo Looking Cloud in the murder of Anna Mae Aquash in December 1975. The government indicted and has convicted Arlo Looking Cloud of murder. The government indicted John Graham and Richard Marshall and their trials are pending. The government has never sought an indictment against Theda Clarke, in spite of compelling evidence of her guilt.

3. The government's theory is that Theda Clarke was an active participant in the abduction and murder Aquash. The evidence of Clarke's guilt is far more compelling than the evidence the government intends to offer against Richard Marshall. In fact, the government has

given notice of its intent to offer the testimony of a cooperating witness, who will testify that Theda Clarke admitted to her that she, Graham, and Looking Cloud killed Aquash because they believed her to be a government informant.

4. According to the testimony of the government's cooperating witness, Arlo Looking Cloud, and other witnesses, Clarke was the organizer and driving force of the group that kidnapped and killed Aquash.

5. Theda Clarke is not being prosecuted in spite of strong evidence of her guilt and greater culpability in the crime. Richard Marshall submits that the government's decision to prosecute Richard Marshall and to not prosecute Theda Clarke is disparate treatment and selective prosecution. If there is any basis for the government's decision to prosecute Richard Marshall and to forego prosecution of Theda Clarke, it would appear to be an arbitrary classification based on age. The defendant submits that the government's decision to prosecute Richard Marshall and to forego prosecution of Theda Clarke deprives him of his constitutional right to equal protection of the law and that the defendant should be given an opportunity to prove selective prosecution in a pre-trial hearing.

WHEREFORE defendant Richard Marshall moves the Court to dismiss the indictment with prejudice, and for an evidentiary hearing on this motion.

Dated this 22nd day of December, 2008.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
Attorney for Defendant Marshall
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CERTIFICATE OF SERVICE

I hereby certify that I a true and correct copy of the foregoing Motion to Dismiss for Selective Prosecution was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 22nd day of December, 2008.

/s/ Dana L. Hanna _____

Dana L. Hanna