UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN GRAHAM aka JOHN BOY PATTON, and VINE RICHARD MARSHALL aka RICHARD VINE MARSHALL aka DICK MARSHALL,

Defendants.

CR08-50079-01

UNITED STATES' MEMORANDUM IN OPPOSITION TO DEFENDANT MARSHALL'S MOTION FOR CONTINUANCE

COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and AUSA Robert A. Mandel and respectfully files its Memorandum in Opposition to Defendant Marshall's Motion for Continuance.

On August 20, 2008, Defendant Dick Marshall was indicted for aiding and abetting in the unlawful killing of Anna Mae Aquash pursuant to 18 U.S.C. §§ 1111, 1153, and 2. On September 9, 2008, Defendant Marshall filed a Motion for Continuance of the October 28, 2008, trial date citing the need for additional time to review discovery and conduct an investigation. On October 7, 2008, a Superseding Indictment was issued by the Grand Jury. At the same time, the United States filed a Motion for Expedited Trial Date necessitated by

the age of the case, the preparations that had been made for trial, and that both Defendants remain in pretrial custody.

On October 8, 2008, this Court issued an Order requesting all counsel to advise it of their readiness for a December 9, 2008, trial. On that same date the United States advised the Court of its readiness, and of the discovery it had provided to Defendant Marshall on September 2, 2008, September 22, 2008, and October 6, 2008. The United States further advised that all physical evidence was available to both Defendants for inspection at a mutually convenient time. On October 14, 2008, Defendant Marshall responded in opposition to an expedited trial, citing again the need to review discovery and conduct his investigation. On October 16, 2008, this Court scheduled the trial in this matter to commence February 24, 2009.

On January 9, 2009, Defendant Marshall once again filed a Motion for Continuance citing the need for an investigation and to listen to witness tapes. Based upon Defendant Marshall's failure to demonstrate a sufficient basis for a continuance, combined with compelling witness reasons, the United States is requesting denial of Defendant Marshall's motion and to commence trial on February 24, 2009.

The initial discovery specific to Defendant Marshall was produced on September 2, 2008, and September 22, 2008. Substantially all discovery documentation previously provided to Defendant Graham was provided to Defendant Marshall, in electronic format on October 6, 2008. Defendant

Marshall's Motion indicates he anticipates filing additional discovery motions as a basis for continuance. Any such motion, however, would be well-beyond the December 22, 2008, deadline established by the Court's Order of October 16, 2008, and would lack proper justification. It should be noted that these Defendants have collectively made approximately seventy-five specific discovery requests. See generally United States' Response to Defendant Graham's Motion to Compel Discovery (CR03-50020, DE 254 at ¶2; Marshall discovery requests of November 11, 2008; November 24, 2008; and December 18, 2008). Many of the requests have sought information that had already been provided to Defendants in original discovery, or sought discovery contrary to clearly established Eighth Circuit precedent.

Defendant's concerns associated with not receiving copies of all tapes of conversations also does not necessitate a continuance. These tapes have been produced and available for Defendant to review since the Court's discovery order of October 7, 2008. Defendant Marshall has not been provided copies of all of the taped conversations based in part upon continuing concerns raised by Defendant Graham that copying of tapes results in reduced quality. See Exhibit 1 (Defendant Graham's correspondence of December 31, 2008) and Exhibit 2 (the United States' response dated January 8, 2009). Furthermore, Defendant Marshall has been provided what transcripts of the taped conversations in the United States' possession.

Further delays raise serious witness safety concerns brought about by the motion practice of this case. Specific and detailed information has been set forth concerning two cooperating witnesses. See Defendant Graham's Motion to Compel Discovery and Memorandum in Support of Motion (CR03-50020, DE 250, 250-2 and 251). Similar type challenges have arisen with respect to Arlo Looking Cloud and Theda Clarke. See Defendant Graham's Motion and Memorandum for PSR (Looking Cloud) (DE 73 and 74); Defendant Marshall's Motion and Memorandum to Dismiss for Selective Prosecution (Theda Clarke) (DE 108 and 109); and Defendant Marshall's Affidavit of Counsel (DE 81). Defendant Marshall has recently created a MySpace account directly naming and targeting a potential witness. See Richard V. Dick Marshall Defense Committee (Exhibit 3). Additional serious witness safety concerns arise in the documents attached as Exhibits 4 and 5.[1] See Defendant Graham's Motion to Compel Discovery (CR03-50020, DE 250, 250-2, and 251).

Accordingly, the United States believes that Defendant Marshall has had sufficient time to review the discovery provided and conduct the investigation he deems necessary to present an adequate defense and that trial is necessitated based upon continuing concerns for witnesses in this case. The United States believes it is entitled in the interest of justice to commence trial on all three counts of the Indictment on February 24, 2009.

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[1]Exhibits 4 and 5 are being provided for in camera review only and not to the Defendants in that they involve a separate ongoing criminal investigation.

Date: January 16, 2009

MARTY J. JACKLEY
United States Attorney

PO Box 2638
Sioux Falls, SD 57101-2638
605.357.2330

CERTIFICATE OF SERVICE

The undersigned hereby certifies on January 16, 2009, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy
Dana Hanna

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile at
☐ Federal Express
☒ Electronic Case Filing

Marty J. Jackley
United States Attorney

This document has been filed electronically.

MURPHY LAW OFFICE, P.C.
JOHN R. MURPHY - ATTORNEY AT LAW
ERIN E. DUCHENEAUX - LEGAL ASSISTANT

AT THE HISTORIC FEIGEL HOUSE
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December 31, 2008

Marty J. Jackley
United States Attorney
P.O. Box 3303
Sioux Falls, SD 57101

RECEIVED
JAN 02 2009
United States Attorney
Sioux Falls, SD

Robert Mandel
Assistant United States Attorney
515 9th Street, Room 201
Rapid City, SD 57701

RE: United States v. John Graham; File No. 08-50079-01

Dear Mr. Jackley and Mr. Mandel:

I am in receipt of an audio tape labeled, "198A-MP-47472; 1 of 1; DATE UNKNOWN; COPY." The exterior of the tape does not indicate who the parties on the tape are that are speaking. The tape is inaudible. Please produce an audible version of the tape and indicate who the parties are that are speaking. Thank you.

Sincerely,

John R. Murphy

Cc: Client

EXHIBIT 1

U.S. Department of Justice

Marty J. Jackley
United States Attorney
District of South Dakota

515 Ninth Street, Room 201
Rapid City, South Dakota 57701

(605)342-7822
FAX:(605)342-1108

January 8, 2009

John R. Murphy
Attorney at Law
328 E. New York St. #1
Rapid City, SD 57701

RE: United States v. John Graham

Dear John:

I am returning the tape you sent to us on January 6, 2009 as per our discussion. This tape is a recording of [redacted]. I was not able to detect any audibility problems with this tape on our player of any significant nature and it is no different from the copy we have. If you are still unable to hear it on your equipment, you can bring it over here and we can play it for you on ours.

Best regards,

MARTY J. JACKLEY
United States Attorney
By:

ROBERT A. MANDEL
Assistant U.S. Attorney

RAM/lc
Enc.
cc: Marty Jackley

EXHIBIT 2

Richard V. Dick Marshall Defense Committee

Standing for Honesty & Equity of a Common Man

The **Richard V. Dick Marshall Defense Committee** is a newly founded Committee which purposes is to reveal the truth, seek justice and support the innocence of Richard "Dick" Marshall who is accused of aiding and abetting the murder of Anna Mae Pictou Aquash of 1975.

Dick is a Common Man who had been living in the Thunder Valley SD area before his incarceration. He is a person who people in the community could lean on for guidance and direction in their lives, he lived our traditional values by providing his wisdom to those seeking guidance and generosisty to those who were in need. He had dreams and ideas on how to access sustainability for the Lakota people and to improve the economics and environment of the Pine Ridge Indian Reservation, he is a man of vision for our Lakota youth. However, in August 2008 unexpectedly he was taken from those he loved and charged for a crime that he professes innocense, therefore it is the Defense Committee's charge to ***Standing for Honesty & Equity of a Common Man.***

The future intent of the Committee is to provide updated information on Dick's legal status to his supporters through his newly Defense Committee website, emails and other public relations materials. To rally supporters together and discuss future strategies of support: support letters, fund raising events, public relations, and moral support on behalf of our friend Dick.

The Defense Committee is interesting in talking with or cooresponding with people who have been interviewed by Serle L. Chapman or know how to contact Serle L. Chapman. Please contact Dick's attorney if you been interviewed, know someone who has been interviewed or have contact information for Mr. Chapman, Attorney Dana Hanna at dhanna@midconetwork.com or by phone (605) 791-1832

The Richard V. Dick Marshall Defense Committee is seeking support on his behalf, letters of support can be sent directly to Dick at: Richard Vine Marshall Pennington County Jail 307 Saint Joseph St. Rapid City SD 57701 or to the **Richard Dick Marshall Defense Committee** at HCR 49 Box 113 Porcupine SD 57772.

EXHIBIT 3

If you are interested in becoming a member of this worthwhile cause, please contact us by phone, mail or web coorespondence through the webiste:

Contact Information:
Richard V. Dick Marshall Defense Committee
HCR 49 Box 113
Porcupine SD 57772
605-441-9051 cell
supportricharddickmarshall@live.com - email
www.myspace.com/richarddickmarshall - website

Send e-mail faster without improving your typing skills. **Get your Hotmail® account.**