

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. 08-50079

DEFENDANT MARSHALL'S  
MOTION TO COMPEL DISCOVERY

NOW COMES defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby moves the Court to order the government to disclose to the defendant all records, investigative reports, witness statements, court records and transcripts in the government's possession concerning the arrest and prosecution of defendants Anna Mae Aquash, Kamook Banks, a.k.a. Darlene Nichols, Dennis Banks, Leonard Peltier, Russell Redner, and Kenneth Loud Hawk in the United States District Court, District of Oregon, 1975. Grounds for the motion are that the evidence and information contains favorable evidence for the defendant.

In support of this motion, Dana L. Hanna, attorney for defendant Richard Marshall, hereby affirms:

1. I am court-appointed counsel for defendant Richard Marshall. I have been provided with approximately five thousands pages of discovery by the government, and in addition I have conducted my own investigation into the facts of this case. I make the following affirmations upon information and belief, the source of which are the discovery that has been provided to me, official court records, and my own investigation.

2. Defendant Richard Marshall is accused of aiding and abetting co-defendant John Graham, Arlo Looking Cloud, and Theda Clarke in the murder of Anna Mae Aquash, in

December 1975. It is the government's theory that Anna Mae Aquash was murdered because she was suspected of cooperating with law enforcement officials in the investigation and prosecution of one or more individuals in the American Indian Movement (AIM).

3. On November 24, 1975, near Ontario, Oregon, Anna Mae Aquash, cooperating witness Kamook Banks, a.k.a. Darlene Nichols, Dennis Banks, Leonard Peltier, Russell Redner, and Kenneth Loud Hawk were traveling in two vehicles transporting explosives and fire arms. Dennis Banks, Kamook Banks, Anna Mae Aquash, and Leonard Peltier were all fugitives from justice who were being sought by federal and state law enforcement officers. Dennis Banks had been convicted of riot in state court in South Dakota and had failed to appear at his sentencing. Kamook Banks had been indicted on firearms and explosives charges in federal court in Kansas. She had failed to appear for a court appearance and a warrant had been issued for her arrest. Leonard Peltier was wanted as a suspect in the murder of FBI Agents Coler and Williams, who were shot to death on the Pine Ridge Indian Reservation on June 26, 1975. Anna Mae Aquash had been arrested at Crow Dog's Paradise on the Rosebud Reservation in September 1975 and had been indicted on federal firearms and explosives charges. She had failed to appear for a court appearance in Pierre and a warrant had been issued for her arrest. The vehicles in which the fugitives were traveling were stopped by an Oregon Highway Patrolman. After firing shots at the patrolman, Dennis Banks and Leonard Peltier escaped. Kamook Banks, Anna Mae Aquash, Russell Redner, and Kenneth Loud Hawk were arrested and taken into custody. Soon thereafter, Dennis Banks, Leonard Peltier (both still at large), Kamook Banks, Anna Mae Aquash, Russell Redner, and Kenneth Loud Hawk were all indicted on federal explosives and firearm charges.

4. Shortly after their indictment, the defendants were provided with an affidavit in support of a search warrant. From the affidavit, they learned that two individuals, who were identified as "Informant A" and "Informant B" had provided detailed information to federal law enforcement authorities as to the vehicles that were being driven by the defendants, the identities of the defendants, and the fact that the defendants were transporting explosives and illegal firearms. The affidavit stated that both Informants A and B had provided information to law enforcement authorities regarding illegal activities of AIM on dozens of previous occasions and had been serving as informants for some time.

5. There was a general fear among the defendants in the Oregon case and their supporters in AIM that either Informant A or Informant B, or both, were either very close to the defendants or actually one of the defendants. Suspicion fell upon people close to Dennis Banks and Leonard Peltier, including Anna Mae Aquash.

6. Less than thirty days after Anna Mae Aquash and her co-defendants were arrested in Oregon, and a few weeks after it was learned that Informants A and B had given information to federal authorities, Anna Mae Aquash was murdered.

7. Based upon these facts and other facts that have become known to me during my investigation, there is a sound evidentiary basis to support the argument that Anna Mae Aquash's murder was directly related to her arrest in 1975 and prosecution as a defendant in the case of United States v. Loud Hawk, et al., 75-CR-296-RE, in the United States District Court for the District of Oregon; and that Anna Mae Aquash was murdered because she was suspected of being one of the informants who were referred to in the affidavit for a search warrant.

8. On information and belief, the investigators' reports and other materials requested from the Loud Hawk case contain evidence relevant to the question of motive, as well as evidence that can be used to impeach the credibility of government witnesses and the professionalism of the investigation that led to the indictment of defendant Richard Marshall. Moreover, there is a substantial likelihood that the evidence and information contained in these records would provide further sources of investigative information.

9. I have previously made a specific written request for this evidence and these materials to government prosecutors and my request was refused. I have attempted to acquire court records from the Clerk of the United States District Court in Oregon and was informed that the Court file could not be located. Police reports cannot be subpoenaed under F.R.Cr.Pro. Rule 17. Therefore, the only source of this evidence that is presently available to me is the United States Attorney's office.

WHEREFORE the defendant moves the Court to order the government to provide the defendant forthwith with all records in the government's possession concerning the arrest, prosecution, and investigation of Anna Mae Aquash and her co-defendants in the case of United States v. Loud Hawk, et al., including but not limited to state and federal investigators' reports,

court records and transcripts, witness interviews, and particularly any defendants' statements, reports, or records that refer to Anna Mae Aquash, Kamook Banks, Dennis Banks, or Leonard Peltier.

Dated this 20<sup>th</sup> day of January, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
Attorney for Defendant Marshall  
PO Box 3080  
Rapid City, SD 57709  
(605) 791-1832  
dhanna@midconetwork.com

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Motion to Compel Discovery 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 20<sup>th</sup> day of January, 2008.

/s/ Dana L. Hanna  
Dana L. Hanna