

In the U.S. District Court  
for the District of South Dakota

JOHN GRAHAM,	)	
	)	
Petitioner	)	
	)	No. 13-cv-04100-RAL
v.	)	The Honorable Lawrence L. Piersol
	)	
DARIN YOUNG,	)	
	)	
Respondent.	)	

**Petitioner's Motion for Order to Restrict Publicity**

COMES NOW, the Petitioner, John Graham, to move the Court for an Temporary Restraining Order restricting pre-trial publicity pursuant to F.R.C.P. 65(b), Rule 3.6(a) of the Rules of Professional Conduct of the bar of South Dakota, and the inherent power of the Court. In support of his motion, the Pettitioner offers the following points and authorities:

1. On March 20, 2014, while running for re-election as Attorney General for South Dakoka, counsel for the Respondant, Marty Jackley, gave a talk at the Black Hills State University entitled "South Dakota Cold Case Study - the Murder of Annie Mae Aquash." See Exhibit 1, attached hereto. An announcement for the talk, promoted by Lee Enterprises, states that "Prosecutors say Graham and two other AIM activists, Arlo Looking Cloud and Theda Clarke, killed Aquash in December 1975 because they suspected she was a government informant."
2. Graham was convicted of felony murder, on the basis of a finding of guilt for kidnapping Ms. Aquash. It is false and defamatory to claim that Graham killed Ms. Aquash.

3. On March 24, 2014, undersigned counsel wrote to Mr. Jackley asking him to refrain from publicly speaking about the case, and asking his consent for a motion for 'gag order' from the Court to restrict counsel from publicly commenting on the case. In the letter, undersigned counsel reminded Mr. Jackley of his ethical obligations under Rule 3.6(a) of the Rules of Professional Conduct of the bar of South Dakota, which prohibits this kind activity when there is a "substantial likelihood it may materially prejudice an adjudicative proceeding." See Exhibit 2, attached hereto. Mr. Jackley responded that his public speaking engagements were not improper.

4. On November 4, 2014, Mr. Jackley was re-elected as Attorney General of South Dakota. Mr. Jackley has used his prosecution of AIM activists to promote his own career, seeking the support of people who don't like Native Americans or the American Indian Movement.

5. On about March 2, 2015, Mr. Jackley spoke to a group of about 40 people at the Casey Tibbs Rodeo Center Museum in Fort Pierre. This was reported in the Capital Journal. See Exhibit 3, attached hereto.

6. According to the reporter, Stephen Lee, Mr. Jackley told this group of people that John Graham raped Ms. Aquash. Mr. Jackley knows that Graham wasn't convicted of this spurious charge. The rape charge was dropped early in the criminal case, since it wasn't supported by any evidence, and was only used to prejudice the public against Graham. This defamatory statement was made with actual malice.

7. In the same meeting, Mr. Jackley allegedly "also expressed frustration with federal judges to decided [sic] to drop the case because Graham was a Canadian Indian and therefore, according to the judges, not under the jurisdiction of the federal

government." This is a reference to this Court, which is also presiding over Graham's habeas corpus petition.

8. Mr. Jackley also claimed that another AIM member, Ray Robinson, was murdered. See Exhibit 3, attached hereto. Jackley told his audience that "he said he suspects that John Graham might have information about Robinson's death." Mr. Jackley went on say that he wouldn't cooperate with cutting Graham any deals for the supposed murder of Mr. Robinson:

Graham, who is serving life in prison, will never get out unless a governor pardons him or unless Graham himself decides to cooperate with law enforcement in solving other crimes of which he has knowledge, Jackley said. He said he's promised Aquash's two daughters, one of whom is "a Mouny," an officer in the Canadian RCMP, that he won't cooperate with cutting Graham any deals unless the daughters agree.

See Exhibit 3, attached hereto. This is defamatory because Graham has no knowledge about this crime and no interest in presenting false testimony to the Court, as Mr. Looking Cloud obviously did. Graham will not lie to the Court in order to reduce his sentence. Graham was only 17 years old at the time of the alleged murder of Ray Robinson, and was living in Canada.

9. Mr. Jackley has no legitimate reason to make these false and unsupportable statements to the press. Unlike many cases in which prosecutors have been held to have absolute immunity from liability for defamation, see e.g. Imbler v. Pachtman, 424 U.S. 409 (1976), Mr. Jackley's defamatory statements are not an "integral part of the judicial process," 424 U.S. at 417, and are not privileged in any way.

10. Graham's habeas corpus petition seeks, as an alternative remedy, a new trial. Mr. Jackley's public statements - that Graham raped Anna Mae Aquash and that Graham is

knowledgable about the alleged murder of Ray Robinson - are intended to prejudice Graham in the eyes of the public.

11. Undersigned counsel is in Colombia, South America, working on a case in filed in the Southern District of Florida, and is unable to research the standards for prosecutorial immunity or for an injunction. However, it is clear that unless a "gag order" is imposed on the parties, Graham will suffer further irreparable harm.

12. The Court may issue a temporary restraining order, for a period not to exceed 14 days, without holding a hearing. F.R.C.P. 65 (b). Undersigned counsel is returning to the United States on March 12, 2015, and can attend a hearing in Rapid City, SD, to make arguments in support of a preliminary injunction, should the Court wish to schedule a hearing.

### **Conclusion**

For the forgoing reasons, the Court should find that publicizing this case with inflammatory accusations is not in the interest of justice, and enter a Temporary Restraining Order on all parties and their counsel, prohibiting them from commenting on this matter until either a new trial has been held, or until the petition for a new trial has been denied.

Respectfully submitted,

/s/ Paul Wolf

---

Paul Wolf  
*Attorney for John Graham*  
PO Box 46213  
Denver, CO 80201  
(202) 431-6986  
fax n/a  
paulwolf@yahoo.com

**Certification of Conferral**

I hereby certify that, on March 24, 2014, I wrote a letter to Respondant's counsel, Marty Jackley, which is reproduced as Exhibit 2, asking him to refrain from publicizing Mr. Graham's case. Although I do not have a copy of Mr. Jackley's response with me at this moment, I recall that he disagreed as to his speaking engagements were improper. This is further evidenced by Mr. Jackley's recent public speaking event at the Casey Tibbs Rodeo Center Museum in Fort Pierre.

/s/ Paul Wolf

\_\_\_\_\_  
Paul Wolf

**Certificate of Service**

I hereby certify that on the \_\_\_ th day of March, 2015, I filed the foregoing document with the clerk of the court through the Court's Electronic Case Filing (ECF) system, which will send notification to the attorneys of record for all other parties in this litigation.



3/9/15

\_\_\_\_\_  
Chase Iron Eyes  
*Local counsel for John Graham*  
PO Box 70  
Port Yates, ND 58538  
(303) 968-7904  
chaseironeyes@gmail.com