

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 COMPEL DISCLOSURE OF  
FAVORABLE BRADY AND GIGLIO  
IMPEACHMENT MATERIAL

NOW COMES the Defendant Richard Marshall, by and through his attorney Dana L. Hanna, pursuant to his constitutional right to due process of law and his right to confront his accusers, and hereby moves the Court to order the government to search for, gather, and disclose to the defendant the following exculpatory and favorable Brady and Giglio material:

(1) any and all information and evidence relating to any inducements, rewards, agreements or expectations of government witness Arlo Looking Cloud, whereby he may hope for or expect some benefit from his cooperation with and testimony for the government;

(2) Arlo Looking Cloud's Bureau of Prisons central inmate file, including all records relating to treatment, diagnosis, or testing for psychiatric, psychological, or mental disorders;

(3) any and all information and evidence contained in any records of the Bureau of Indian Affairs (BIA), the U.S. Marshall's Service or any federal agency relating to any investigation,

complaints or sanctions concerning alleged misconduct, unprofessional conduct, or breach of ethical standards related to the personal relationship between federal investigator Robert Eccoffey and the government's cooperating informant known as "Maverick" during the course of the investigation of the murder of Anna Mae Aquash.

In the alternative, defendant moves for an in camera inspection of such materials by the Court to determine if they contain information that could be used by the defendant to impeach the credibility of any witness or to attack the government's investigation of the case.

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

1. I make these affirmations on information and belief, the sources of which are the discovery materials provided to me, the communications I have had with government attorneys and my own investigation into the facts of the case.

2. I have previously communicated with counsel for the government and have made written requests for all the materials I am requesting in this motion. The government has declined to provide me with these materials and information. Therefore, I have made good faith but unsuccessful efforts to acquire this material, all of which I believe to be exculpatory within the meaning of Brady v. Maryland, before asking this Court to order the government to acquire and disclose this information to me.

3. The defendant makes these requests pursuant his due process right to disclosure of any impeachment evidence, which includes information relating to any agreement between the government and a prosecution witness, or information concerning any hope or expectation of any possible benefit that a prosecution witness may have. Here, the government's main prosecution

witness is Arlo Looking Cloud, who is presently serving a life sentence for his involvement in the murder of Anna Mae Aquash. The government claims that Looking Cloud has not been given any agreement, promise, inducement, nor does he enjoy any hope or expectation of possible benefit as a result of his cooperation and testimony. That claim is not credible. Every witness who is serving a sentence and who testifies for the government expects to get something in return for his cooperation: that is why they testify. The government's claim that Looking Cloud has not been given some reason to expect something of benefit in return for his cooperation and testimony is simply not so contrary to the practices of the government in its dealings with cooperating convicted criminals that it cannot be an accurate statement of fact.

4. Arlo Looking Cloud, although he is serving a federal sentence, has been removed from Bureau of Prisons custody by the government. Thus, he is already enjoying a benefit from his cooperation. Moreover, as is set forth more fully in Defendant's Motion to Dismiss for Denial of Due Process and the memorandum of law in support of that motion [see: documents 172 and 173], Arlo Looking Cloud enjoys a reasonable hope or expectation of having his conviction set aside as a result of his cooperation and testimony with the government.

5. A federal prisoner's Bureau of Prisons central file contains information about that prisoner's criminal history, his diagnoses and treatments for psychiatric and mental disorders, his drug addiction history and treatment, and many other facts of potential. On information and belief, based on his Pre-sentence investigation report, Arlo Looking Cloud's central inmate file contains information related to his treatment and diagnoses for mental disorders, chronic drug abuse and alcohol addiction, as well as other facts and information that can be used to impeach his credibility as a witness.

6. On information and belief, based on my own investigation of the facts and conversations I have had with knowledgeable sources of information, while Robert Ecoffey was a federal investigator with the BIA, supervising and conducting the investigation of the murder of Anna Mae Aquash, he was responsible for supervising the activities of a female cooperating informant, who was given the code-name "Maverick", and while he was supervising the investigation of the Aquash murder, he entered into an intimate and professionally improper and unethical personal relationship with that informant. Intimate personal relationships between law enforcement investigators and their cooperating informants are universally considered unprofessional and unethical conduct by federal law enforcement officials, and is considered to be a violation of the BIA Law Enforcement Code of Ethics because they are likely to undermine the objectivity of the investigator and the integrity of the investigation. "Maverick" has a felony criminal record and deep involvement in the events leading to the murder of Anna Mae Aquash; she participated in crimes with Aquash and other individuals who were close to her in the American Indian Movement. On information and belief, the personal relationship between Ecoffey and "Maverick" may have been one of the reasons for Ecoffey's demotion from Director of BIA Law Enforcement Services to Deputy Director in 2004. Had that relationship been known by federal law enforcement authorities, it certainly would have called for investigation and reprimands. Both Ecoffey and "Maverick" are government witnesses in the trial of Marshall and Graham. The defendant seeks all information, including any evidence of any internal investigation or sanctions directed against Ecoffey, related to the improper relationship between a supervising investigator and a cooperating informant in this case to impeach the credibility of Ecoffey and the integrity of the government's investigation of the facts of this case.

WHEREFORE, the defendant Richard Marshall moves the Court to order the government to search for, gather and disclose the above-requested information and evidence to the defendant forthwith; or, in the alternative, to produce such materials for in camera inspection by the court to allow the court to determine if such materials contain information that may be favorable and useful to the defendant.

DATED: MARCH 31, 2009

RICHARD MARSHALL, defendant

By:

/s/ Dana L. Hanna

Dana L. Hanna  
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**CERTIFICATE OF SERVICE**

I hereby certify that I a true and correct copy of the foregoing Defendant Marshall's Motion to Compel Disclosure of Favorable Brady and Giglio Impeachment Material 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 31<sup>st</sup> day of March, 2009.

*/s/ Dana L. Hanna* \_\_\_\_\_

Dana L. Hanna