

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR08-50079-01

Plaintiff,

v.

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

Defendants.

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**UNITED STATES' RESPONSE  
OPPOSING DEFENDANT  
GRAHAM'S MOTION IN LIMINE  
RE: GRAND JURY TESTIMONY**

COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and Assistant United States Attorney Robert A. Mandel, and respectfully files its Response Opposing Defendant Graham's Motion in Limine Re: Grand Jury Testimony.

Defendant Graham's filing is another misguided attempt by the Defendants to seek discovery for which they are not entitled through motion practice. This prosecution is the result of a lengthy investigation that commenced on February 24, 1976, after the discovery of Annie Mae Aquash's body. The investigation of the rape and execution-style murder of Annie Mae Aquash remains open for the purpose of holding all aiders and abettors accountable for their actions in the criminal venture.

The good faith basis of this continuing investigation to hold members of the criminal venture accountable for the death of Annie Mae Aquash is supported with the grand jury's Indictment of Defendant Dick Marshall on August 20, 2008, as well as the Superseding Indictment issued by the grand jury for both John Graham and Dick Marshall on October 7, 2008.

Defendant Graham has failed to state an appropriate objection to the grand jury pursuant to Fed. R. Crim. P. 6(b). Furthermore, there is clearly no evidence that any post-Indictment grand jury [October 7, 2008] was convened for the sole or dominant purpose to gather evidence strengthening the United States' case against either Defendant Graham or Marshall. United States v. Wadlington, 233 F.3d 1067, 1073-74 (8th Cir. 2000). It is a fundamental principle of law that any collateral fruits from bona fide inquiries before a grand jury may be utilized by the government where the purpose of the grand jury proceeding is directed to other offenses and parties. Id. (quoting United States v. Sellaro, 514 F.2d 114, 122 (8th Cir. 1973)). To this end, the United States is submitting Exhibit A, *in camera*, which includes all post-Indictment grand jury materials.

Accordingly, the United States respectfully requests denial of Defendant Graham's Motion in Limine Re: Grand Jury Testimony.

Dated and electronically filed this 30th day of April 2009.

MARTY J. JACKLEY  
United States Attorney



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on April 30, 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



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Marty J. Jackley