

UNITED STATES DISTRICT COURT
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.

CR 08-50079

UNITED STATES' RESPONSE TO
DEFENDANT MARSHALL'S
FOURTH MOTION FOR SEVERANCE;
REQUEST FOR SPEEDY TRIAL

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and responds to defendant Marshall's fourth motion for severance; request for speedy trial as follows:

1. The trial of this case will be both extensive in terms of its length and a significant burden to many of the witnesses that will have to travel to Rapid City to testify. Based on the estimates of time made by counsel to the Court, this trial could last as long as three weeks. Defendant Marshall now seeks severance, which the United States resists.

2. As defense counsel noted, on November 4, 2009, the United States Court of Appeals for the Eighth Circuit denied the petition in which the United States sought a rehearing on the dismissal of the charges against co-defendant John Graham, in which he was charged as an aider and abettor. The United States has 90 days in which to file a petition for certiorari in this case, in the event that it chooses to do so.

3. Defendant claims that this Court has given clear notice to the United States that it would grant a motion for a judgment of acquittal if the United States were to proceed to trial against Graham on the remaining counts. The United States takes issue with that and believes that there is evidence both that Graham could be considered an Indian for the purposes of jurisdiction under 18 U.S.C. § 1153 and also that the victim, Annie Mae Pictou Aquash, could be considered an Indian for the purposes of jurisdiction under 18 U.S.C. § 1152. While recognizing that a difference of opinion can exist as to these issues, the United States disagrees with the suggestion made by defense counsel that it could not ethically proceed with a trial of Graham in federal court.

4. It is the position of the United States that to grant severance at this time would be inappropriate. Once various issues regarding Graham are resolved, the United States agrees that it would be appropriate to revisit the matters raised by defendant.

Therefore, the United States requests defendant's motion be denied.

Respectfully submitted this 14th day of December, 2009.

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2009, I served by electronic transmission, a true and correct copy of the foregoing United States' Response to Defendant Marshall's Fourth Motion for Severance; Request for Speedy Trial on:

Dana Hanna
Attorney at Law

John Murphy
Attorney at law

/s/ Robert A. Mandel

Robert A. Mandel