

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  
MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION FOR PRODUCTION OF  
HANDWRITTEN NOTES  
FOR IN CAMERA INSPECTION

Defendant Richard Marshall moves the Court to order the government to produce the handwritten notes of government agents and attorneys present during the proffer session questioning of Arlo Looking Cloud, on August 19, 2008, for the Court's in-camera inspection. The Defendant requests the court to inspect the handwritten notes to determine whether exculpatory statements were made by Looking Cloud and omitted from the investigative report.

The Defendant contends that there is a realistic likelihood that Looking Cloud, told agents that he was innocent of the murder for which he was convicted, and that he had no intent to help murder Aquash or any knowledge that she was going to be murdered until the moment of her death. These statements have been proven to be false by reason of his conviction for first degree murder. False exculpatory statements are evidence that can be used to impeach the credibility of this witness, and Mr. Marshall is entitled to disclosure of those statements by the Due Process Clause. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

Moreover, in his Motion to Prohibit Use of False Testimony, which is being filed today, the Defendant Marshall contends that the government knows or should know that Looking Cloud will give false exculpatory testimony, in the trial of Richard Marshall. Any such statements made to government investigators at the proffer session would be highly probative as to the factual

issues raised in that motion.

Therefore, the court should order the government to produce the handwritten notes taken during the proffer session for an in-camera inspection by the court, so that the court may determine whether there were material omissions from the written investigative report—specifically, statements made by Looking Cloud in which he claimed innocence or lack of prior knowledge or intent to help murder Aquash. United States v. Greatwalker, 356 F.3d 908 (8<sup>th</sup> Cir., 2004); United States v. Grunewald, 987 F.2d 531 (8<sup>th</sup> Cir. 1993).

DATED: 19 JANUARY 2010

Respectfully submitted,

/s/ Dana L. Hanna

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

**CERTIFICATE OF SERVICE**

I hereby certify that I a true and correct copy of the foregoing Memorandum of Law was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Robert Mandel, Assistant United States Attorney  
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham  
jmurphysd@hotmail.com

Dated this 19<sup>th</sup> day of July, 2010.

*/s/ Dana L. Hanna*

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Dana L. Hanna