

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	
vs.)	
)	NOTICE OF INTENT TO ADMIT
JOHN GRAHAM, a/k/a)	HEARSAY EVIDENCE
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Defendant Graham provides notice to the Court and to the United States that he intends to offer an out of court statement by Anna Mae Pictou Aquash to FBI Agent David Price on September 8, 1975, at trial. Mr. Graham also intends to admit other statements by Aquash relating to her enrollment and affiliation with a tribal nation or “band” in Canada. This hearsay will be admitted under Fed.R.Evid. 804(b)(4), as well as other applicable exceptions to the rule against hearsay.

On September 8, 1975, Anna Mae Aquash was interviewed by FBI Agent Price and other FBI agents. Ms. Aquash initially refused to answer whether she was a Canadian or United States citizen. Then, Ms. Aquash told the agents that she was a Native American, a Canadian citizen, and that she did not know whether

she was in the United States legally. In other interviews, Aquash advised others that she was a member of a Canadian Indian tribe or band in Nova Scotia, Canada.

This evidence is admissible as Aquash is unavailable and the statements relate to her ancestry, her personal and family history, and concerns her birth and legitimacy. Fed.R.Evid. 804(b)(4). Statements that relate to immigration status and clan/tribal affiliation are admissible under Fed.R.Evid. 804(b)(4). See United States v. Farah, 2007 WL 2309749, *8, 74 Fed.R.Evid.Serv. 192 (4th Cir. 2007) (not selected for publication), cert. denied, 128 S.Ct. 1259 (2008) (deceased declarant's statements about his Somalian clan membership admissible under Fed.R.Evid. 804(b)(4)); United States v. Hernandez, 105 F.3d 1330, 1332 (9th Cir. 1997) (unavailable defendant's statements regarding place of his birth admissible in illegal re-entry case under 804(b)(4)).

These statements are probative to a material issue: whether Aquash is an Indian as that term is defined by federal law. These statements go to whether she was recognized by a Canadian tribe or by a tribe within the United States. These statements also go to whether she was recognized by the Canadian government or the United States government. These statements raise the issue of whether an illegal alien can enjoy formal recognition by the United States.

For these reasons, Defendant notifies the Court and counsel of his intent to admit these statements, and others similar to them, at trial.

Dated January 27, 2010.

/s/ John R. Murphy
John R. Murphy
328 East New York Street, Suite 1
Rapid City, SD 57701
(605) 342-2909

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

ROBERT A. MANDEL

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

DANA HANNA

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

Dated January 27, 2010.

/s/ John R. Murphy
John R. Murphy