

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'S MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION FOR ORDER TO COMPEL  
DISCLOSURE

The individual prosecutor has a duty to learn of any evidence favorable to the defense that known to others acting on the government's behalf in the case, including the police. Strickler v. Greene, 527 US 263, 119 S. Ct. 1936 (1999).

Evidence that the defendant can use to show that the government was grossly negligent in failure to supervise and monitor local police investigators who had gathered valuable evidence in a federal murder case, and that the government's failure to supervise resulted in the destruction of potentially exculpatory evidence is itself, Brady evidence that the government is obligated to disclose to the defendant. Kyles v. Whitley, 415 U.S. 419, 445. "[I]ndications of conscientious police work will enhance probative force and slovenly work will diminish it." Kyles v. Whitley, at footnote 15. Certainly no evidence could be more probative of sloppy and unprofessional police work than evidence that the police destroyed tape recorded interviews of witnesses in a high-profile ongoing federal murder investigation. The defendant is entitled to that information, so that he may

present evidence in his own defense in a pre-trial evidentiary hearing and in trial.

This Court directing the government to disclose to the defendant the specific information it has gathered as to what evidence was destroyed, what evidence was retrieved and what evidence has been irretrievably lost to the defendant. The prosecutor's failure to disclose the information it has or should have in its possession violates both the spirit and the letter of the court's order.

Therefore, the court should order immediate disclosure of the evidence and information requested, and should hold a pre-trial evidentiary hearing, after disclosure has been made, to determine whether the destruction of evidence has substantially prejudice the defendant's constitutional trial rights.

DATED: 29 JANUARY 2010

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna

Dana L. Hanna

Attorney for Defendant Marshall

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Motion 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 29<sup>th</sup> day of January, 2010.

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

Dana L. Hanna