

On December 11, 2007, Mr. Graham requested in writing all records and information regarding consideration paid to any witness. The government did not respond.

On July 18, 2008, Mr. Graham made a second written request for disclosure. Mr. Graham specifically asked for “any and all documentation of the amount of money paid to Serle Chapman or his wife or to Kamook Nichols, relative to their work in this case and/or Arlo Looking Cloud’s case.”

On July 28, 2008, the government responded that the FBI made “expense reimbursements” of \$69,065.70 to Serle Chapman and \$49,083.44 to Kamook Nichols. The government did not provide any documents or other information. Thus, Mr. Graham has no information setting forth what alleged expenses were reimbursed, whether those alleged expenses were legitimate, or the dates that payments were made to the informants.

The government may not withhold evidence favorable to Mr. Graham if that evidence is material either to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963). This includes disclosure of evidence related to paid informants. See United States v. Hoelscher, 914 F.2d 1527, 1536 (8th Cir. 1990).

In this case, the government should be required to disclose more than the base amount paid to informants Chapman and Nichols. The government alleges

that this money was paid to reimburse the informants for expenses. Yet, the government refuses to provide the documents showing what alleged expenses were being reimbursed. This is a material and valid area of impeachment inquiry by Mr. Graham. Further, Chapman has repeatedly demanded payment, and has suggested that his informant services were contingent upon payment. Thus, the timing of the payments made by the FBI to Chapman is material impeachment evidence reflecting his bias and credibility.

Mr. Graham asks that the Court order the government to provide all documents relative to payments made by the FBI or other government agents to Chapman and Nichols.

2. Payment demand letters:

The government has provided to Mr. Graham an undated letter from Sarah Chapman, Serle Chapman's wife, to government counsel Mr. Mandel and others. Graham Doc. 04374. In that letter, Sarah Chapman asks for \$70,000.00 for her husband's informant services. She also asks for assistance in getting work visas. At some point immediately thereafter, Serle Chapman followed up on his wife's letter with a letter to Mr. Mandel re-iterating many of his wife's statements. That document, Graham Doc. 04378, has been redacted. It appears that the date of the document is one of the things redacted from the correspondence.

On July 7, 2008 and July 18, 2008, Mr. Graham made a written request to identify the date Mr. Mandel received the un-dated correspondence from Sarah Chapman. On July 28, 2008, Mr. Mandel responded that “it is not our obligation under the discovery rules to provide information regarding it.”

The documents are not complete without a date. And, the dates these letters were sent or received has exculpatory value. The dates are likely to correspond with payments made to the informant and the release of information from Chapman to the FBI. The government should not be able to unilaterally determine that there is no exculpatory benefit in this information and withhold it. Dennis v. United States, 384 U.S. 855, 875 (1966).

The government has this information in its possession, and has taken steps to prevent Mr. Graham from learning this information. The government should be required to disclose when it received the correspondence in Graham Doc. 04374, and should be required to un-redact the date in Graham Doc. 04378. This places no burden on the government and is not a request for the government to explain the document. Rather, it is a request for the government to make disclosure complete and accurate.

3. February 18, 1976 FBI report:

On February 18, 1976, FBI Agent David Price prepared a memorandum in

which he reported that Anna Mae Pictou Aquash was seen in Allen, South Dakota on February 12, 1976. This is two months after the government now alleges she was killed. The witness providing information to Price gave specific information as to the car Aquash was in and the clothes she was wearing. Graham Doc. 04092.

On July 7, 2008 and July 18, 2008, Mr. Graham requested in writing a non-redacted versions of this report so that he could locate, interview, and subpoena the witness. On July 28, 2008, the government responded that the redacted area of the report contained the number of an FBI informant, and that it would not provide the informant's identity to Mr. Graham.

The name of a witness who saw Aquash alive after the government asserts she was dead is material, exculpatory, and subject to disclosure. The government can not refuse to provide the name based on privilege: An informant's privilege to remain confidential is not absolute. Roviaro v. United States, 353 U.S. 53, 60-61(1957). If the informant's testimony will be material to the determination of the case, the informant's identity should be disclosed. United States v. Lindsey, 284 F.3d 874, 877 (8th Cir. 2002) (citations omitted).

The government and FBI should not be able to hide the name of a witness who says s/he saw Aquash alive months after she was allegedly killed. The name of that witness, even if that witness is a government informant, should be

disclosed so that Mr. Graham can fully investigate his defense. Without such disclosure, Mr. Graham is prevented from fully investigating and defending his case, and he will be denied due process.

Dated August 12, 2008.

/s/ John R. Murphy
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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 by electronic delivery:

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Dated August 12, 2008.

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