

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  
MOTION FOR PRODUCTION OF  
HANDWRITTEN NOTES

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, pursuant to his constitutional rights to due process of law and the right to present evidence in his defense, and hereby moves the Court to order the government to disclose all handwritten notes and writings of all government agents who were present at the interview of Arlo Looking Cloud in the United States Attorney's Office in Denver, Colorado on November 17, 1994. Defendant Marshall makes this motion on the grounds that the evidence requested constitutes exculpatory impeachment evidence, and such evidence is not available through any other source.

In support of this motion, Dana L. Hanna, attorney for the Defendant, hereby affirms:

1. I make this motion on the basis of information and belief, the sources of which are pages 1859-1882 in the Graham discovery materials that have been provided to me by the government.

2. On November 17, 1994, in the office of the United States Attorney in Denver, Colorado under a grant of use immunity, Arlo Looking Cloud answered questions about the kidnapping and murder of Anna Mae Aquash that were presented to him by government agents. Present at the interview/proffer session were Robert Ecofoey, FBI Agent James Graf, Deputy Marshal Rick Ianucci, BIA Federal Investigator Mitchell Pourier, and attorney for Looking

Cloud, Henry Mulvihill, and at least one other person whose identity is not known to defense counsel.

3. Arlo Looking Cloud told the investigators that he had participated in taking Anna Mae Aquash from Denver, Colorado to South Dakota and that he was present, along with Theda Clarke, when John Graham shot and killed Anna Mae Aquash. Looking Cloud repeatedly denied having any knowledge that Graham or Clarke intended to kill Anna Mae Aquash before she was actually shot.

4. Looking Cloud is now a cooperating witness for the prosecution, and he is expected to testify that sometime before Anna Mae Aquash was murdered that he, Graham, and Clarke went to the home of Richard Marshall and his then wife, Cleo, in Allen, South Dakota; and that while there, he observed Richard Marshall hand a gun to Theda Clarke. It is the government's theory that that was the gun that Graham used to kill Anna Mae Aquash.

5. According to the transcript prepared by the government, during his interview in Denver in 1994, Looking Cloud was asked this question by FBI Agent Graf: "Uh, do you remember, uh, at what point, uh, you first became aware that John Boy had that gun? Was it when he pulled it out to shoot her or did you know he had it before that?" On the transcript, it shows that Looking Cloud gave an answer, in which he started to say "Uh, I think when after (TAPE ENDS-END TAPE NUMBER ONE)." When transcription of tape number two begins, it makes no reference to Looking Cloud's answer to the previously quoted question. However, from the context and the words of his partial answer, it appears that Looking Cloud's answer was that the first time he saw anyone with a gun that night was when Graham shot Anna Mae Aquash. If he did give such an answer, it is directly contradictory to accusatory statements he has made and will testify to regarding Richard Marshall having given a gun to Theda Clarke. It is impeachment evidence on a critical contested fact.

6. In a letter dated November 10, 2008, I made a specific request to United States Attorneys prosecuting this case for copies of the handwritten notes of those who were present at Looking Cloud's interview. In a response letter from Robert Mandel, the government declined to provide those notes to me.

7. Looking Cloud's full answer to that particular question was not recorded in any

agent's investigative reports that have been provided to me. Therefore, the only written source of such potential exculpatory information would be the handwritten notes of those present.

WHEREFORE the Defendant moves the Court to order the government to seek the handwritten notes and any other writings prepared by any person who was present at the interview of Arlo Looking Cloud on November 17, 1994, to acquire such handwritten notes and writings, and to disclose them to defense counsel, or in the alternative, to produce them to the Court for an in-camera inspection, and if the Court determines that there is exculpatory impeachment evidence contained in the notes, to disclose such notes to defense counsel.

Dated this 22<sup>nd</sup> day of December, 2008.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
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**CERTIFICATE OF SERVICE**

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

Marty Jackley, United States Attorney  
kim.nelson@usdoj.gov

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

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

Dated this 22<sup>nd</sup> day of December, 2008.

/s/ Dana L. Hanna

Dana L. Hanna