

FILED

JAN 12 2009


CLERK

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

UNITED STATES OF AMERICA,
Plaintiff,

Case No. CR 08-50079

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.

MOTION FOR CONTINUANCE

NOW COMES defendant Richard Marshall, by and through attorney Dana L. Hanna, and hereby moves the Court to order a continuance of the trial and an extension of all deadlines in the trial schedule. Grounds for this motion are that more time for trial preparation is required in order to provide the defendant with his constitutional right to effective assistance of counsel.

In support of this motion, Dana L. Hanna, an attorney licensed to practice before this Honorable Court, hereby affirms:

1. I am court-appointed counsel for defendant Richard Marshall. Defendant Marshall was indicted approximately four and a half months ago, on August 20th, 2008. Trial in this matter is presently scheduled for February 24th, 2009.

2. This is a complex and unique case, involving extensive pre-trial preparation, investigation, and research on questions of law. The crime charged in the indictment occurred 33 years ago in 1975. The government has provided me with over 5,000 pages of discovery relating to the investigation into the murder of Anna Mae Aquash. The discovery includes investigative reports, interviews of witnesses, confidential informants' conversations with witnesses, transcripts of taped conversations, and Grand Jury testimony, compiled over a period of more than three decades. I have completed the reading the documents myself, but I have not completed

the process of reviewing all the discovery documents with my client Mr. Marshall.

3. At trial, in addition to presentation of evidence that relates directly to the killing of Anna Mae Aquash, it is foreseeable that the government will also seek to offer extensive evidence concerning violent events in the history of the American Indian Movement, as it did in the trial of Arlo Looking Cloud. In Looking Cloud's trial, for the purpose of proving motive and background, the government presented evidence about the murder of two FBI agents on the Pine Ridge Reservation on June 26, 1975, the 71-day occupation of the village of Wounded Knee in 1973, the arrest and prosecution on federal fire arms charges of Anna Mae Aquash, Kamook Banks a.k.a. Darlene Nichols and others in Oregon in November 1975 and other violent episodes, beyond the facts directly related to the murder of Anna Mae Aquash in December 1975. Although such evidence will not relate directly to Richard Marshall, since it is entirely foreseeable that the government will offer such evidence in the defendant's trial, the defendant must be prepared to confront that evidence.

4. The government has failed and refused to provide requested discovery of records and information related to the aforementioned "background" evidence regarding American Indian Movement activities, even though such evidence will likely to form an important part of the government's evidence in this trial, and even though government witnesses, including Darlene Nichols Ecoffey, a.k.a. Kamook Banks, participated directly in those events.

5. Based upon my investigation and analysis of the facts, I believe that a thorough understanding of the involvement of Anna Mae Aquash and other witnesses who will be testifying in this case in the AIM-related events of 1975, events that are likely to be the subject matter of testimony in Richard Marshall's trial, is essential to the defense of Richard Marshall. To cite one important example, I believe that the facts concerning the arrest and prosecution of Anna Mae Aquash, Kamook Banks, Leonard Peltier, Dennis Banks, and others on federal firearms and explosives charges in Oregon in November 1975 are directly relevant to factual issues in the murder of Anna Mae Aquash, and therefore, evidence relating to the Oregon prosecution and other federal prosecutions of AIM members in 1975 is important and necessary to the presentation of Richard Marshall's defense.

6. I have requested the government to provide me with all court records, writings and

information in the government's possession concerning the case of United States v. Loud Hawk, et al., the case in the District of Oregon that began in 1975, in which Anna Mae Aquash, government witness Kamook Banks (now Darlene Nichols Ecoffey) and others were indicted. I have also requested the government to provide me with records concerning the 1975 federal prosecution of government witness Kamook Banks a.k.a. Darlene Nichols Ecoffey on federal explosives charges in Kansas, also from 1975. Both those requests for production were refused by the government. I have made an independent attempt to get court records on that case from the Clerk of the Court of the United States District Court in Oregon. I have been informed that the court file cannot be located. I intend to prepare a motion for a subpoena duces tecum to seek the court file. I have a good faith reason to believe and do in fact believe that the court file is necessary for the preparation and presentation of Richard Marshall's defense in this trial.

7. More than 100 audio cassette tapes have been prepared by the government or its informants in the investigation of this case. Most of the tapes recorded conversations were recorded by cooperating witnesses in this case and many are tapes of conversations with witnesses and potential witnesses in this case. The subject matter of many of the conversations deals directly with the subject matter of evidence in this case. I have transcripts of some, but not all, of the conversations, but I have only been given a few tapes or compact discs of the conversations or interviews. I need to listen to the tapes to determine whether they contain information or evidence that is useful to defendant Marshall in his trial. Copies of those tapes (approximately 109 of them) were made by the government and provided to John Murphy, attorney for co-defendant John Graham. However, when I requested the government to make copies of those same tapes and provide them to me, that request was refused; the government will only allow me to hear the tapes at the office of the United States Attorney. I intend to make a motion to compel the government to provide me with copies of the tapes, which I believe are necessary to my client's defense.

8. I am in the process of preparing make motions to compel the government to provide me with Brady and Giglio material that I have requested, and which I believe the defendant is entitled to have, and which the government has refused or failed to disclose.

9. I require more time to locate and interview witnesses, gather records, subpoena

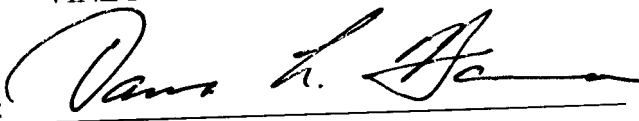
evidence, research legal issues and to investigate the case. I require more than the six weeks that are left between now and February 24 to prepare for the trial. Accordingly, I am requesting a continuance of two months.

10. I have conferred with my client Richard Marshall on this matter. He agrees with and consents to this request for a continuance and he has personally signed a waiver of his speedy trial rights, which is being filed along with this motion.

WHEREFORE defendant Richard Marshall respectfully requests the Court to continue his trial and to extend all deadlines in this case for at least two months beyond the current trial date and to extend the case schedule accordingly.

Dated this 9th day of January, 2009.

VINE RICHARD MARSHALL, Defendant

BY: 

Dana L. Hanna
Attorney for Defendant Marshall
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CERTIFICATE OF SERVICE

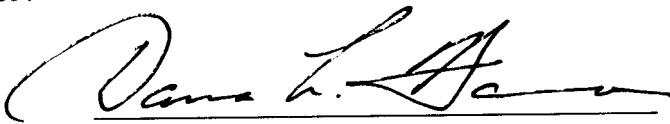
I hereby that I have served a true and correct copy of the foregoing Motion for Continuance on the other parties in this case by mailing the same, postage prepaid, the attorneys of record at the addresses listed below:

Marty J. Jackley
United States Attorney
PO Box 2638
Sioux Falls, SD 57101

Robert Mandel
Assistant United States Attorney
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Rapid City, SD 57701

John Murphy
Murphy Law Office
328 E. New York St., #1
Rapid City, SD 57701

Dated this 27 day of January, 2009.


Dana L. Hanna