

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  
FOR IN CAMERA INSPECTION

NOW COMES Defendant Richard Marshall, by and through his attorney Dana L. Hanna, and hereby moves the Court to order the government to produce the handwritten notes of government agents and attorneys present during the proffer session questioning of Arlo Looking Cloud, on August 19, 2008, for this Court's in-camera inspection.

As grounds for this motion, Dana L. Hanna, attorney for the Defendant, hereby affirms:

1. I have good reason to believe and I do in fact believe that in an interview with agents and prosecutors on or about August 19, 2008, in a proffer session, government cooperating witness Fritz Arlo Looking Cloud testimony made statements to the prosecutors that are false, and which the government knew or should have known were false, including false exculpatory statements in which he claimed to have had no prior knowledge or any intent to help murder Anna Mae Pictou Aquash in 1975.

2. The reasons for my belief that Looking Cloud made false exculpatory statements in his proffer session are set forth in the Defendant's Motion to Prohibit Use of False Testimony and the memorandum of law in support of that motion, both of which are being filed with this court today.

3. An FBI agent wrote a "302" report summarizing Looking Cloud's statements in the

proffer session. The proffer session evidently was not recorded, and there is no verbatim record of the interview, to my knowledge. Therefore, not all statements made by Looking Cloud were referred to in the 302 report. The report made no mention of any exculpatory statements by Looking Cloud.

4. I know from the discovery provided to me that every time Looking Cloud has been questioned about Aquash's murder by government agents or attorneys, since his first proffer session in 1994, he has sought to persuade them that he is innocent of Aquash's murder. Therefore, it is entirely predictable and foreseeable that he would have made exculpatory statements claiming lack of prior knowledge or intent when he proffered his potential testimony to the government in 2008. On information and belief, therefore, it is probable that false exculpatory statements were made by Looking Cloud at his proffer session in August 2008, but were not included in the investigative report.

5. False exculpatory statements can be used to impeach the credibility of the government's key witness in trial .

WHEREFORE the Defendant Marshall moves the Court to direct the federal prosecutors and agents to turn over their own handwritten notes, as well as the handwritten notes of agents, that were taken during the proffer session with Arlo Looking Cloud in August 2008, for the Court's in-camera review to determine whether such notes contain evidence that the Defendant can use to impeach the credibility of Looking Cloud.

DATED: 19 JANUARY, 2010.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
Attorney for Defendant Marshall  
PO Box 3080  
Rapid City, SD 57709  
(605) 791-1832  
dhanna@midconetwork.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have served 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:

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

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

Dated this 19<sup>th</sup> day of July, 2010.

*/s/ Dana L. Hanna*

\_\_\_\_\_  
Dana L. Hanna