

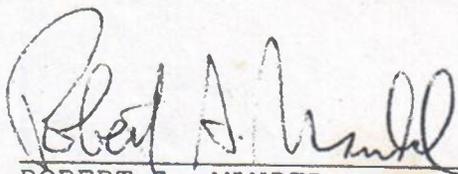
Certification of Record of the Case for Prosecution

In the Matter of a request by the United States for the extradition of John Graham, a/k/a John Boy Patton, from Canada for prosecution.

The United States requests the extradition of John Graham, a/k/a John Boy Patton, from Canada for prosecution.

In relation to that request, I, Robert A. Mandel, Assistant United States Attorney, certify that the evidence summarized or contained in the attached document is available for trial and is sufficient under the laws of the United States to justify prosecution.

Jan 26, 2004
Date



ROBERT A. MANDEL
Assistant U.S. Attorney
District of South Dakota

RECORD OF THE CASE FOR PROSECUTIONI. INTRODUCTION/SYNOPSIS

This case arose out of activities of the American Indian Movement ("AIM") in the early and mid 1970's. At that time, AIM was extremely active in many places, including the Pine Ridge Indian Reservation. AIM was primarily responsible for the occupation of Wounded Knee, South Dakota, in 1973. During this period of time, there was a high level of hostility on the part of AIM members towards the tribal government on the Pine Ridge Indian Reservation and the United States government, most particularly, the U.S. Federal Bureau of Investigation ("FBI"). On September 5, 1975, a raid was conducted at the residence of Leonard Crow Dog at Rosebud, South Dakota, on the Rosebud Indian Reservation. At that time, the victim in this case, Annie Mae Aquash, also known as ("a/k/a") Anna Mae Aquash, a/k/a Annie Mae Pictou, was arrested and had federal weapons charges filed against her. After being arraigned and released on bond on September 9, 1975, Aquash fled and failed to appear in court on November 10, 1975. A bench warrant was issued for her arrest.

On November 14, 1975, Aquash was traveling in a motor home with various AIM members when they were apprehended by the Oregon State Highway Patrol. After a shootout that ensued, a number of individuals, including Aquash, were taken into custody. Thereafter, she was transported back to Pierre, South Dakota, where she was released on bond again on November 24, 1975, and was set to go to trial the following day.

The following information is provided as an informational summary, and will be explained further through a summary of the evidence in the next section of this Record.

The night of Aquash's release, she absconded from the jurisdiction and traveled to Denver, Colorado, with Evelyn Bordeaux (deceased) and Ray Handboy. In late November, and early December 1975, in Denver, Colorado, she stayed at the house of Troy Lynn Irving, a/k/a Troy Lynn Yellowwood, whose residence was considered to be an AIM "safe house."

While Aquash was at Irving's house in Denver, a meeting took place involving certain individuals present at the residence, including John GRAHAM, a/k/a John Boy PATTON; Theda Clarke, a/k/a Theda Nelson; Ernesto Vigil; and Corky Gonzalez. There was also a phone call made to Angela Janis (Begay) by Thelma Rios from Rapid City, South Dakota, in which the information was passed on that National AIM leadership wanted Aquash transported to Rapid City to determine whether or not she was an FBI informant.

After the meeting that took place at Irving's house in Denver, Aquash was tied up and placed in the rear cargo area of a Ford Pinto station wagon following which Clarke, Arlo Looking Cloud, and John GRAHAM transported her against her will to Rapid City. In Rapid City, she was held at the Wounded Knee Legal Defense Offense Committee ("WKLDOC") Office and at the residence of Thelma Rios. According to Candy Hamilton, Aquash was questioned while at the WKLDOC office. While there, Aquash was in a room with Lorelei Decora Means, Madonna Gilbert Thunder Hawk and Thelma Rios. Aquash was very upset after coming out of the room and was crying at that time. Aquash then went back into the room and Hamilton never saw her alive again. All three women, at various times, told her that they believed Aquash was an informant.

Thereafter, Aquash was transported by Clarke, GRAHAM, and Looking Cloud to the residence of Dick and Cleo Marshall located at Allen, South Dakota, on the Pine Ridge Indian Reservation. The Marshalls were asked to keep Aquash there at the house as a captive. They refused to do this and Aquash was next transported to the home of Bill Means, a/k/a "Kills," located in Rosebud, South Dakota, on the Rosebud Indian Reservation. It appears that while at this location, a final decision was made or an order handed down to execute Aquash. While at this location, Aquash was held in the car under the control of Arlo Looking Cloud. At this time, she begged for her life and to be allowed to leave, but Looking Cloud refused to do so. Eventually GRAHAM and Clarke came out of the house after which Aquash was transported to a location on the Roger Amiotte ranch near Wanblee, South Dakota, on the Pine Ridge Indian Reservation. Aquash was taken out of the vehicle and walked a distance from the road by Looking Cloud and GRAHAM. She was then shot in the back of the head, most likely by GRAHAM based on Looking Cloud's statement and statements made by GRAHAM to Frank Dillon. Her body was pushed or fell off of a cliff after the shooting and thereafter Looking Cloud, Clarke, and GRAHAM drove back to Denver, Colorado.

Aquash's body was not discovered until February 24, 1976. At that time, it was not possible to identify her visually, nor was there any identification on the body. An autopsy was conducted by Pathologist W.O. Brown, deceased, of Chadron, Nebraska. Brown failed to observe the gunshot wound and concluded that Aquash had died from exposure. Aquash's body had suffered a significant degree of decomposition prior to being found. An FBI agent present at the scene had the pathologist sever the hands from the body since they were too decomposed to obtain fingerprints from them at the time of the autopsy. Aquash's hands were sent to the FBI Laboratory in Washington, D.C., for the purpose of obtaining fingerprints to identify the decedent. The FBI laboratory has the capability of processing

the hands in such a fashion that fingerprints can be obtained even from severely decomposed hands. Tribal authorities were unwilling to postpone burial of Aquash's body because of the advanced state of decomposition and the lack of a suitable storage facility on the reservation so she was buried shortly after the autopsy despite the fact she had not been identified.

After fingerprint identification of Aquash occurred in March 1976, the United States Attorney's Office obtained a court order upon request of the FBI to exhume the body and conduct a second autopsy. That autopsy was conducted by Dr. Garry Peterson, who was, at that time, a pathologist at the Saint Paul-Ramsey Hospital in St. Paul, Minnesota. Dr. Peterson determined that the cause of death was a gunshot to the back of the head. Forensic evidence later determined the bullet to be from a .32 caliber gun. The bullet was not capable of being ballistically compared to another bullet because no suspect weapon was retrieved.

II. SUMMARY OF WITNESS EVIDENCE

Raymond Handboy was an acquaintance of Annie Mae Aquash. He is expected to testify that the day that Annie Mae Aquash was released from custody in Pierre, South Dakota, in November 1975, he and his wife, Evelyn Bordeaux, drove to Pierre to pick Aquash up. Aquash indicated that she wished to be taken to Denver, Colorado, because she knew people there. They drove directly from Pierre down Highway 83 through Mission, South Dakota, and then to Denver, Colorado. Upon arrival in Denver, Aquash knew where she wanted to go and so she directed them to go downtown to an apartment complex that looked like "the projects." They let Aquash off there and then returned to Rapid City, South Dakota.

Troy Lynn Irving was an AIM member living in Denver, Colorado, in 1975. She is expected to testify that in late November of 1975, Aquash came to stay at her house; she had known Aquash for approximately two years at that time. Irving's aunt, Theda Clarke, who lived in Keenesburg, Colorado, brought Aquash to Irving's residence in Denver. Aquash initially came to Irving's understanding it to be a "safe house," a place where she could stay and escape detection from law enforcement since she was a federal fugitive at the time she arrived. Aquash had no suitcases or personal belongings with her. Irving noticed that Aquash had cut off her hair, and she said she did it to change her appearance when she left to come to Denver to escape detection. Aquash was very frightened while staying at her house.

Irving is also expected to testify that at some time after

Aquash came to her house a number of people showed up there and had a meeting regarding Aquash. The people present, whom Irving knew as both AIM members and members of other activist groups, were Corky Gonzalez; Ernesto Vigil; Theda Clarke; Theda's husband, Julian Pokrwyka; and John Boy PATTON, a/k/a GRAHAM. Also present when Aquash was taken from the residence were George Palfy and Angie Begay, a/k/a Angela Janis. Irving had a conversation with Aquash while the meeting was taking place, and Aquash was huddled over and extremely frightened. Aquash stated to Irving that if she (Aquash) were to be taken from the residence that Irving would never see her, that no one would ever see her again. After the meeting was over, Theda came to the back room and told Anna Mae to get her jacket and that she was going to be taken to South Dakota. Irving indicated that Aquash was taken by Clarke, Looking Cloud and GRAHAM against her will; Aquash was crying and stated that she didn't want to go with them and was told by them that she was going one way or another. Irving will testify that Arlo Looking Cloud, John Boy PATTON, and Theda Clarke were for certain in the car that took Aquash. Irving was sick to her stomach because of her fear of what was going to take place and because of Anna Mae's fearfulness. Irving attempted to contact the police and Angie Begay took the phone and put it back on the hook and told her not to do that because it would just cause a lot of problems for Irving and that she should just "let it go."

Irving is also expected to testify that she had conversations with Arlo Looking Cloud after the fact about this and was present when Arlo and John Trudell, another AIM member, discussed what took place. Looking Cloud stated that Theda, John Boy, and he took Anna Mae to a house in Rapid City. He stated that they then went to another house in Rapid City, and finally took her down to a house on the Rosebud Indian Reservation and Arlo and Annie Mae stayed outside while Theda, John Boy, and others were inside the house. Arlo told her that he and John Boy were given the assignment earlier of guarding Aquash and keeping her in the house. Arlo said that he was told to not let her get out of the car and that while waiting in the car, Aquash begged and pleaded with him to let her go, and he told her that he couldn't do that. Arlo told Irving that Aquash stated, they're in there deciding my fate and they're probably gonna make you pull the trigger. Arlo said that after that, Theda and John Boy came out and he, Theda, John Boy and Aquash drove back towards Pine Ridge and to the Badlands. Arlo said that they parked the car on the side of the road and he and John Boy got out of the car with Aquash and walked some distance while Theda remained in the car. Arlo stated that John Boy had a gun and that Anna Mae asked to pray. They let her pray and then John Boy put the gun to her head and pulled the trigger. Arlo also stated that, after that, they drove a distance from where this took place, dug a

hole and buried the gun in the hole.

Mary Johnson was an AIM member living in Denver in the latter part of 1975 and the first part of 1976. She is expected to testify that she first met Aquash in that time frame when Aquash was staying at Troy Lynn Irving's residence. She had contact through AIM with Theda Clarke and John Boy PATTON at the same time. Theda told her that they were going to get rid of Anna Mae because she "knew too much." Johnson saw John Boy, Anna Mae and Theda leave from the Irvings, along with somebody else in the car who she didn't recognize.

Angela Janis (Begay) was an acquaintance of Annie Mae Aquash. She is expected to testify that she lived with John GRAHAM, a/k/a John Boy PATTON, in the mid 1970's. At that time, both of them were involved with the American Indian Movement in Denver, Colorado. Janis was present at Troy Lynn Irving's residence in the late fall of 1975 while Aquash was there. Janis was called by Thelma Rios from South Dakota and told that Aquash needed to be brought to Rapid City and that she was an informant. Janis relayed that information from Rios to someone at Troy Lynn's, possibly John Boy or Theda. Theda, John Boy, and Arlo Looking Cloud then tied Aquash up and then took her from the residence. She did not see Aquash placed in the car, but remembers that Theda used to drive a "little red Pinto." Janis is able to identify GRAHAM from the attached photos of GRAHAM (Exhibits 1 and 2) taken in approximately 1975.

George Palfy was an AIM member in Denver in December 1975. He is expected to testify that he knew John GRAHAM as John Boy PATTON. In late 1975, he received a call from Troy Lynn Irving to come to her residence in Denver. She told him there was a lady at her house that National AIM¹ had told them to keep there and that they wanted to take her to South Dakota because she had been accused of being an FBI informant. Irving asked Palfy to go over there and talk to them and help them decide what to do. Irving said the girl was named Anna Mae Aquash. At Irving's home, a discussion took place between Troy Lynn, Theda Clarke, and two individuals that he knew were from the Chicano movement, Corky Gonzales and Ernesto Vigil. One of these individuals stated that the way they dealt with informers was to take them out in the hills and get rid of them. Theda said Aquash's hands would have to be tied up; Palfy didn't see whether it was Theda

¹ AIM was a loosely organized group, but "National AIM" has generally been described as the AIM leadership, consisting of a group whose members included Vernon Bellecourt, Clyde Bellecourt, Russell Means, and Dennis Banks. On occasion, other individuals were named as part of the AIM leadership on a national basis.

or John Boy who tied up her hands. Aquash's hands were tied behind her back and she was placed in the back of a red Pinto station wagon with wood trim on it. Palfy described Aquash as being mad when she was being taken away. Palfy is able to identify Graham as being the individual in the photograph marked Exhibit 2 attached to this document. This photograph was taken in approximately 1975.

Candy Hamilton was an AIM member in Rapid City in 1975, and a friend of Annie Mae Aquash. She is expected to testify that she saw Aquash at the Wounded Knee Legal Defense Offense Committee [WKLDOC] house in Rapid City in December of 1975. Aquash was obviously upset and was crying. Bruce Ellison, whom she knew as a WKLDOC attorney, came to Thelma Rios's house where Hamilton was staying earlier that day and informed them Aquash was at the WKLDOC house. Hamilton had heard rumors that Aquash was an informant prior to this time, but did not believe that Aquash was an informant. Aquash had cut her hair when Hamilton saw her at the WKLDOC house.

Cleo Gates was an AIM member living on the Pine Ridge Indian Reservation in Allen, South Dakota, in 1975. (Cleo Gates, formerly Cleo Marshall, is not related to Al Gates). She is expected to testify that four individuals came to her house in late November, or early December of 1975. The four persons were Theda Nelson, Arlo Looking Cloud, John Boy GRAHAM, and Annie Mae Aquash. Theda, Arlo and John Boy all went and spoke to her then-husband, Dick Marshall, in a different room. Dick Marshall later told her that Theda, Arlo, and John Boy wished to keep Aquash and hide her at the Marshall's house. Gates refused to allow this, so they left.

Frank Dillon had a relationship with Troy Lynn Irving at the time surrounding this incident and at different times lived at her house. He is expected to testify that John Boy (GRAHAM) would often come over to his house in Denver and visit. In December, 1975, John Boy came over to his house when John Boy had been drinking. At that time, John Boy told him, "We had to move an informant. We had to off her." Dillon was also present when John Boy told Troy Lynn that "they," meaning law enforcement, found the body and he observed Troy Lynn start to cry at that time.

Dillon is further expected to testify that in 1976, GRAHAM told him that he put a gun to the back of Aquash's head and shot her. GRAHAM then told Dillon that the gun was then placed in a plastic bag and hidden under a bridge somewhere in the Wanblee, South Dakota, area. GRAHAM also told Dillon that Theda Clarke was with him when they moved Aquash. When GRAHAM was telling Dillon about what he had done, he seemed to be proud of it.

Dillon is further expected to testify that in February, 1976, he, Clarke and GRAHAM traveled from Denver to the Rosebud Indian Reservation to the house of Bill Means. Dillon overheard Means state to Theda Clarke, "Last time you were here you had a pig with you." Dillon understood this reference to mean Aquash was with her and was as an informant. Dillon will testify that the reason he didn't come forward with this information on previous occasions was because of fear of his personal safety and for the safety of his children.

Richard Two Elk was an AIM member residing in Denver in 1975. He is expected to testify that he knew Graham at that time as John Boy Patton and as being a fellow AIM member. He is able to identify Graham in Exhibits 1 and 2.

Darlene Nichols, a/k/a Kamook Banks, was an AIM member married to AIM leader Dennis Banks at the time of this offense. She is expected to testify that she knew Graham as John Boy Patton, and is able to identify him in Exhibits 1 and 2.

John Trudell was an AIM member at the time of this incident. He is expected to testify that Arlo Looking Cloud told him that he, GRAHAM, and Theda Clarke took Aquash from Troy Lynn Irving's house in Denver. Looking Cloud stated to Trudell that Aquash was then taken to a house by the old Indian hospital in Rosebud. He further stated that Theda and John Boy then went into the house for a short time. Looking Cloud stated that afterwards they drove to the location where Aquash was shot. He stated to Trudell that he and John Boy marched Aquash up to a ravine and that she was crying and praying for her kids and begging them not to do this. Looking Cloud told Trudell that they made Aquash kneel down in front of them and that John Boy shot her in the back of the head. He is able to identify Graham in Exhibits 3 and 4, Exhibit 3 being a photograph taken in 1983, and Exhibit 4 being a photo taken on or about the time of Graham's arrest in Canada in the instant case in December, 2003.

Al Gates currently 80 years old, is an individual considered to be an Indian Medicine Man. A Medicine Man is someone who is considered to be a spiritual guide, and Indian people often seek such individuals out to perform various ceremonies including purification rituals when someone has engaged in a bad act. Gates is expected to testify that John GRAHAM, also known as John Boy PATTON, discussed his knowledge of Anna Mae Aquash's death with him not long after the death became public and indicated that he (GRAHAM) didn't know whether what he did was right or wrong. GRAHAM also stated that he was present when the killing took place, but did not say who ordered the killing. GRAHAM also told Gates that Theda told him "When everything comes up, I'll have a lot of people go with me." This was taken to mean that if

Theda were to face criminal responsibility for the murder, she would implicate others who were involved in the decision to kill Aquash.

Fritz Arlo Looking Cloud is a co-defendant in this case who will be tried separately from GRAHAM. He is expected to testify that in late November or early December of 1975, Aquash was taken from Troy Lynn Irving's residence in Denver, Colorado, in a Ford Pinto station wagon by John GRAHAM, a/k/a John Boy PATTON, Theda Clarke, a/k/a Theda Nelson, and himself, and that Aquash was placed in the back of the station wagon. He is further expected to testify that they drove all night from Denver, Colorado, to Rapid City, South Dakota, and that Aquash was kept at a house in Rapid City until the next evening, when she was placed back in the vehicle and the same individuals then drove down to Pine Ridge. He recalled going to a house and staying outside with Aquash while Clarke and GRAHAM went inside the house. After that, when they were heading towards Kadoka, South Dakota, (just north of Wanblee, South Dakota), they stopped by the side of the road. Looking Cloud recalled that Aquash was praying and then was shot in the back of her head by GRAHAM. The gun used was a small, silver .32 revolver. Looking Cloud then took the gun from GRAHAM and fired the rest of the rounds in it into the ground.

Roger Amiotte is a rancher operating south of Kadoka near Wanblee on the Pine Ridge Indian Reservation in South Dakota. He is expected to testify that on February 24, 1976, while he was out determining a route to build a fence on his property to keep his cattle from getting out onto the Route 73 highway, he discovered the dead body of what appeared to be an Indian female laying at the bottom of a steep bank approximately 100 feet west of Route 73. After discovering the body, he immediately notified the Bureau of Indian Affairs (BIA) police.

John Munis was an FBI Special Agent in 1976. He is expected to testify that the hands of the unidentified female decedent found on Roger Amiotte's ranch on February 24, 1976, were severed from the body, due to their decomposed state, and sent to the FBI laboratory's fingerprint identification section to determine the identity of the decedent.

FBI latent fingerprint examiner **Kimberly Edwards**, employed in the fingerprint section of the FBI laboratory, is expected to testify from FBI records that the fingerprints obtained from the decomposed hands sent in by John Munis were determined to be those of Annie Mae Aquash, a/k/a Annie Mae Pictou, based on the fingerprint database that the FBI maintained. The FBI laboratory report is attached as Exhibit 5.

Dr. Garry Peterson is a pathologist who examined the body of

Annie Mae Aquash, a/k/a Annie Mae Pictou, in March of 1976. He is expected to testify that his autopsy determined that the decedent was shot in the head and that the bullet he extracted from her head was the cause of death. Dr. Peterson's autopsy report is attached as Exhibit 6.

Evan Hodge was employed in the ballistics section of the FBI laboratory. He is expected to testify that the bullet extracted from the body of Annie Mae Aquash, a/k/a Annie Mae Pictou, was fired from a .32 caliber weapon. The FBI laboratory report is attached as Exhibit 7.

III. IDENTIFICATION

John GRAHAM is currently located in Vancouver, British Columbia, Canada. His identifiers are as follows:

Alias:	John Boy PATTON
Date of Birth:	August 13, 1955
Place of Birth:	White Horse, Yukon Territory
Citizenship:	Canadian
Race:	Canadian Native
Eye Color:	Brown
Hair Color:	Brown/Grey
Height:	Approximately 188 cm
Weight:	Approximately 87 kg