

September 2020

The Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, ON, K1A 0A2

Dear Prime Minister Trudeau;

We address this Open Letter to you to express our deep concern about the unjust situation of John Graham, an Indigenous First Nations Canadian citizen who was extradited to and has been imprisoned in South Dakota, since December 2007, for a crime he did not commit. John Graham put his trust and faith in the justice system and yet 'justice' both in Canada and the United States has failed him even though he was acquitted by a jury of premeditated murder. Yet he was convicted of being a party to the kidnapping under a State law that made *that* a murder offence. Canada has held such laws to violate our Charter and he could not be extradited for that. Graham continues to have faith in Canadian justice because he knows that Truth will win in the end.

The John Graham case ¹ has a long and complicated history where factual information ² has been replaced by misinformation ³ perpetrated publicly and over the internet for over twenty years. Even the Aquash daughters believe the misinformation and ignore the true facts of the case, which makes the Graham case more tragic both for him and for Anna Mae Aquash.

The treatment of Graham by American law enforcement ⁴, prosecutors ⁵ and both Canadian and American ⁶ justice systems raise multiple issues that would alarm all Canadians were they to become aware of them. Major Canadian issues involve violation of Graham's rights which are enshrined in Canada's *Charter of Rights and Freedoms* ⁷, which, as you know, extend to every citizen of Canada. Other issues involve Canada's *Extradition Act* ⁸ and *Canada's Extradition Treaty between the United States* ⁹, where political comity is placed above the protection of Canadian citizens.

The current *Black Lives Matter* movement in the USA has publicly revealed the decades of fear minority groups had to face from systemic abusive powers within law enforcement and the justice system. Such systemic prejudice against the American Indians in South Dakota is not as well known publicly but has been known by government officials as it has been reported in several United States commissioned reports on Civil Rights ¹⁰. Hundreds of Graham supporters from around the world made the then Canadian Minister of Justice aware of such prejudice and that it is against an International Principle of Extradition to extradite a person to a foreign state which has prejudice against the ethnicity of the extradited. However, the reasons to extradite Graham were based on political comity between Canada and the USA with the assumption Graham would receive a fair trial. John Graham did not receive a fair trial as detailed reading of his trial transcripts point out ¹¹.

John Graham is a Canadian Southern Tutchone Aboriginal from the *Champagne and Asihihik First Nation in Yukon*. As a child, he was separated from his family to attend Residential School. When John finished school and was of legal age, he went to the United States in search of a sister who was also separated from their home to attend Residential School. It was in 1974, at the Red Schoolhouse in St. Paul, Minn., when John first met Anna Mae Aquash, another Canadian Indigenous person. There she taught him Indian culture, introduced him to the American Indian Movement (AIM) and became his friend and mentor. Anna Mae Aquash, and her 1976 controversial murder ¹² is central to the John Graham case.

The controversy about Aquash's 1976 murder involves suspicions of an FBI coverup ¹³ from the day her body was discovered, autopsied ¹⁴ and buried, now the miscarriages of justice brought against John Graham only add to the previous controversy. Had the Canadian government applied their own recommendations according to *The 2005 Report on the Prevention of Miscarriages of Justice* ¹⁵, Graham would not have been extradited. If the investigation had been performed in Canada, no charges would ever have been brought against him since the original facts ¹⁶ of the case do not agree with the American prosecution's re-created 'facts' of the murder. John Graham is innocent and was *not proven guilty beyond a reasonable doubt* as his trial transcripts reveal, however, the State of South Dakota disagreed.

This Aquash controversy is historically documented in numerous books, articles, and documentary films ¹⁷ and will never go away, even with an attempt to 'solve' the case by blaming the murder on an outsider, like John Graham, a Canadian. The manipulation of witnesses creating hearsay evidence could only be accomplished through corrupt and abusive authoritative powers ingrained within the South Dakota law enforcement and prosecution departments. The foundation for these accusations are based on a detailed study of the *Graham trial transcripts* ¹⁸, American Federal Law concerning *Major Crimes and American Indians*, principles of International Extradition, several reports of *The South Dakota Advisory Committee to the*

United States Commission on Civil Rights ¹⁹, and the *Church Report*, which reveals the *COINTELPRO* ²⁰ tactics used to disseminate mis-information.

In 1999 Canada introduced its *Extradition Act* which essentially lowered the standard of evidence a foreign country needed to present in order to extradite a person. In other words the foreign country's evidence no longer needed to meet Canadian evidentiary standards. The chief investigator ²¹ that re-opened the Aquash case in 1994 had known since 1998 ²² that criminal charges could not be laid against a Canadian Indian and that there was insufficient evidence to prosecute. However, in 2000, he took advantage of Canada's weakened extradition law and began manufacturing more hearsay evidence ²³.

The body of Aquash was discovered February 24, 1976 with factual evidence overwhelmingly supporting the time of death in February 1976 and not December 1975 which disproves the allegations against Graham. However, this evidence was not allowed at Graham's trial. Had John Graham been provided with adequate legal council and obtained a Forensic Pathologist as an Expert Witness, the prosecutions alleged time of death of December 12 1975 would have been proven unlikely, therefore negating claims of kidnapping and murder by Graham. Instead, the chief investigator acted as the 'expert witness' to re-create an alleged time of death along with an alleged kidnapping.

(It is important to note that Major Crimes in Indian Country, such as the Aquash murder, falls under Federal jurisdiction, as does kidnapping. The Canadian government should not have allowed the principle of 'comity' influence their decision to allow the State of South Dakota prosecute John Graham under State laws).

John Graham was Anna Mae Aquash's trusted Canadian friend during a dangerous and violent time ²⁴ in South Dakota where no one could be trusted. The FBI knew and was following the movements of Anna Mae Aquash due to her involvement with AIM leaders ²⁵. An FBI agent had threatened her life if she did not become an informant. Since she would not comply, the FBI used a COINTELPRO tactic which was used to make Aquash a 'snitch jacket'²⁶. This created the rumour that she was an informant which endangered her life with AIM members who would then suspect her of being an informant. The only person Aquash could really trust was a friend, someone she knew from teaching at the Red School House, another Canadian. That friend was John Graham.

Anna Mae Aquash was John Graham's friend, teacher and mentor who had a tremendous impact on his life. When Graham returned to Canada he became involved in many public events as an organizer, speaker, and resource person. These events included: *The Anne Mae Aquash Survival Camp*, near Pinehouse, Saskatchewan (Summer 1981); *The Red People's Long Walk from Victoria, B.C. to Ottawa and Akwesasne* (1983-84) and; *A European Speaking Tour* (1984). Such events focused on native rights and environmental issues ²⁷. The injustices against Graham is also a continued injustice against Anna Mae Aquash whose murder remains unsolved.

Prime Minister Trudeau, we urge you to use the full force of your office to restore Justice for John Graham, a Canadian citizen unjustly imprisoned abroad, and have him returned home to Canada. John Graham's predicament stems from the actions of a previous government and the prejudices of a foreign government. Your government has the power to ultimately mitigate and bring an end to the harm and suffering of John Graham, an innocent Canadian. Justice cannot prevail when Truth is distorted and mislead as it was in the Aquash murder investigation.

Due to the current COVID-19 situation, immediate government action is necessary to prevent another tragedy from happening to the Graham family.



Lyla Yip, member of Graham Defense Committee

End Notes

1 Since 2010, John Graham is serving a life sentence without parole, for felony-murder kidnapping of Anna Mae Aquash. The 1976 controversial murder of Aquash and the equally controversial nature of the charges and conviction against Graham are central to this open letter.

2 Factual evidence derived from the Aquash autopsy report of February 25, 1976 and other photographic evidence, indicate the time of death occurred in February 1976, not December 1975 as alleged by the prosecution.

3 Mis-information about the Aquash case has existed since they found her body. However, mis-information concerning time of death and rape and kidnapping, is created by a man who has severe conflicts of interests with this case and hearsay witnesses against Graham. This man, Robert Ecoffey, is responsible for re-opening the Aquash investigation.

4 Robert Ecoffey, as chief investigator, has extreme conflicts of interest with witnesses. Also, without expert credentials, Ecoffey acts as an 'expert' witness to re-establish a time of death around December 12, 1975 and he also creates a 'kidnapping' scenario in 1984 based on Polaroid pictures of the body. Transcripts of Ecoffey's interrogation with Arlo Looking Cloud, a co-accused, indicate he used leading questions while Looking Cloud was under the influence of drugs.

5 Prosecutors knew they could not bring Federal criminal charges against Graham (refer to Endnote 13). Knowing the Federal case would be dismissed (which it was), the prosecutors brought State criminal charges against Graham, knowing full well that Major Crimes by Indians in Indian Country are under Federal Jurisdiction.

6 The South Dakota Court found Graham guilty of felony-murder kidnapping even though the prosecution did not prove their case 'beyond a reasonable doubt'. Obvious conflicts were pointed out in witness testimony and the theorized kidnap time line showed periods of time Graham was not even present. Several areas of Reasonable Doubt were pointed out by the Defense, and yet Graham was still found 'guilty of felony murder' and sentenced to life without parole.

7 The Supreme Court of Canada held in R v Martineau that it is a principle of fundamental justice under sections 7 and 11(d) of the Canadian Charter of Rights and Freedoms that a conviction for murder requires proof beyond a reasonable doubt of a subjective foresight of death, which is why Canada considers felony-murder to be unconstitutional. After being extradited for first degree murder, which he was found not guilty for, Graham was convicted of felony-murder in South Dakota according to State laws, not Federal laws.

8 Problems with The Extradition Act:

(<https://commentary.canlii.org/w/canlii/2019CanLIIDocs2795.pdf>)

The 1999 Canada Extradition Act prevents individuals like John Graham from making any meaningful challenge to a foreign state's extradition request even if reasonable doubt exists and the hearsay evidence presented by the requesting state is not credible. Similar to the argument Robert J. Currie (Professor of Law at Dalhousie University) put forward regarding Hassan Diab, John Graham should be repatriated and our extradition law should be reformed.

9 The principles of international law and comity of nations do not extend to participation in processes that violate Canada's binding human right obligations. With John Graham's present and future liberty at stake, Canada is bound by the principles of fundamental justice and is under a duty of disclosure pursuant to s. 7 of the Charter. The content of this duty is defined by the nature of Canada's participation in the process that violated its 1) international human rights obligations by denying Graham the protection provided under the international extradition principle of Specialty and 2) violating the condition of Dual Criminality under the Extradition Treaty article 12(I)(iii). In 2009 the then Canadian Minister of Justice provided a Consent to Waiver of Specialty and allowed the Americans to prosecute Graham under State, not Federal laws, and also added a crime which is considered unconstitutional in Canada (also see End note # 7) (Canada v. Khadr <https://www.amnesty.ca/legal-brief/canada-v-khadr>)

10 Liberty and Justice For All (October 1977), a report of the South Dakota Advisory Committee to the United States Commission on Civil Rights plus other similar reports over decades have revealed the difficulty for American Indians to receive a fair trial from the justice system in South Dakota. These Reports show American Indians are willing to plead guilty even though they are innocent of a crime, as they have learned that they can spend less time in jail by doing so. This is how SD law enforcement managed to get Arlo Looking Cloud to confess to a crime and also accuse John Graham. Refer to end note #20 for more Civil Rights Reports concerning Native Indians.

11 Trial transcripts posted at grahamdefense.org reveal Graham did not receive a fair trial. Several sources of reasonable doubt existed and yet Graham was still sentenced to life with no chance of parole. 'Guilt' is supposed to be found 'beyond a Reasonable Doubt', yet this was not the case for Graham.

12 The conduct of the FBI investigation of the Aquash murder was so controversial that Special Hearings before the United States Commission on Civil Rights were conducted regarding police abuse on Indian Reservations in May 1979.

13 Karen Schreier, a US State Attorney in a 1998 letter, mentions the main reasons why they can not re-open the Aquash investigation was due to insufficient evidence and the appearance of an FBI coverup. She also points out 'Criminal charges cannot be brought under 18 U.S.C. & 1153 against the Canadian Indian.' A copy of this letter was sent to Robert Ecoffey, the chief investigator who had re-opened this investigation in 1994. Karen Schrier also sat on several Grand Jury testimonies in 1994-1995 of witnesses used against John Graham in 2010. (Copy of this letter can be made available upon request.)

14 Copy of the autopsy report can be made upon request.

15 The Report: <https://www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/ptj-spj-eng.pdf>

Canada used Tunnel Vision in accepting the ROC hearsay evidence against Graham. Canada should have been aware of the concerns of an FBI coverup and other female jealousy motives, since Canada did it's own investigation of the Aquash murder in the 1980's with Dr. Edward VanDyke. It is important to note that Robert Ecoffey (refer to endnote 21 below), as junior BIA officer, accompanies VanDyke with his investigation.

16 Graham was accused of murdering Aquash in December 1975, when actual facts of the case indicate she was murdered in the month of February 1976.

17 The Life and Death of Anna Mae Aquash (1978), In the spirit of Crazy Horse (1980) and, Incident at Oglala (1988) and are well known books and documentary of the controversial murder of Anna Mae Aquash. (Note: the information in these materials are before mis-information began to involve John Graham.)

18 John Graham trial transcripts are all posted at: <http://www.grahamdefense.org/courtdocs/index.htm>

19 The Farmington Report: Civil Rights and Native Americans 30 Years Later (2005); Native Americans in South Dakota: An Erosion of Confidence in the Justice System (1999); Discrimination Against Native Americans in Border Towns (2007); A Quiet Crisis (2003); Ten-Year check up: Have Federal Agencies Responded to Civil Rights Recommendations? (2002); Indian Tribes: A Continuing Quest for Survival (1981); Also refer to End Note # 10 : Liberty and Justice for All (1977)

20 The Church committee wrote a series of reports on investigations into intelligence abuses in 1975.

21 Robert Ecoffey : <http://www.dickshovel.com/invest.html>

22 Refer to End note # 13 regarding Karen Schrier's 1998 letter.

23 Kamook Banks helps create more hearsay evidence which all stem from Robert Ecoffey's initial interview with Arlo Looking Cloud when he is under the influence of drugs. Kamook Banks was the school sweet heart of Robert Ecoffey (the Chief Investigator), but left him to become Dennis Banks' common-law wife; Aquash's affair with Dennis Banks provided a jealousy motive for Kamook Banks to harm Aquash; Kamook also manufactures more hearsay evidence in 2000 against Graham as a paid informant and recorded interviews; transcripts of her interviews reveal she instructs Arlo Looking Cloud (a co-accused) to only implicated Graham in the Aquash murder; Kamook marries Ecoffey after Looking Cloud is convicted; Kamook was a key witness against Graham where she claimed to be Aquash's friend.

24 The Reign of Terror in South Dakota, is the infamous time period of the early 1970's. Over 60 unsolved murders happened in this period, Anna Mae Aquash remains one of them. Similar to the Black civil rights movement led by Martin Luther King, the American Indian Movement was a civil rights movement for Native American Indian. They attempted to help the Traditional Native Indians during those terrible times.

25 Aquash's organizational skills helped fund raise for the AIM movement. However, she became involved with AIM leaders such as Dennis Banks, with whom she had an affair with. She also assisted with Leonard Peltier's escape when he was sought by the FBI.

26 Refer above to The Church Committee report on investigations into intelligence abuses in 1975.

27 refer to www.grahamdefense.org