

The Matter of Justice for John Graham

Prepared by the John Graham Defense Committee November 30, 2011

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Summary

John Graham, a Canadian Southern Tutchone Aboriginal from the Champagne and Asihihik First Nation in Yukon, was extradited to the United States in 2007, charged with the 35-year-old murder of Anna Mae Aquash, a Canadian Mi'kmaq Aboriginal from Nova Scotia. Though the US Federal charges were dropped against Graham for lack of jurisdiction, he was not returned to Canada, but instead, was handed over to the State of South Dakota, where charges, not on his extradition order, were added. Though Graham was acquitted of the charge for which he was originally extradited, he was sentenced to life without parole for the added controversial charge.

Issues

The Graham case has a long and complicated history, raising multiple issues that would be alarming to your average Canadian if they became aware of them. For example, violation of the rights to the protections enshrined in Canada's *Charter of Rights and Freedoms*, such as the right to due process of law, that extend to every citizen of Canada. Arguably, John Graham was not protected by these rights. Moreover, what happened to John Graham could happen to any Canadian citizen. How can we turn a blind eye and remain silent in the face of this injustice? We draw your attention to following issues:

- Knowing that, under the US law *18 U.S.C & 1153*, criminal charges could not be brought against a Canadian Indian, the United States of America failed to act in good faith.
- The US government was aware that federal prosecution of this case could be seen as a way to hide the role of the FBI in Aquash's death.
- The Canadian Minister of Justice wrongly assumed Graham would receive a fair trial by the Federal Government of the United States of America, when, in fact, Graham was instead tried and convicted in a county court in the State of South Dakota, a jurisdiction where US Civil Rights-commissioned Reports have consistently found prejudice against American Native Indians to be deeply ingrained, significantly decreasing an aboriginal's chances of receiving a fair trial.
- The Canadian Minister of Justice's decision to extradite Mr. Graham ignored numerous letters, from national and international sources, warning Canadian authorities of misconduct by US law enforcement in using fabricated evidence to extradite persons in the past. (Numerous US Government commissioned-reports have documented and proven such allegations of misconduct.)
- The Canadian *Extradition Treaty* is flawed, in that it denies Canadians the right, "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal", as protected under Section 11, d of the *Canadian Charter of Rights and Freedom*. Hearsay evidence provided to Canada in the Certified Record of the Case for the prosecution was insufficient—"beyond a reasonable doubt"—to convict Graham in a Canadian court of Law:

- Although, under Section 15.1 of the Canadian Charter of Rights and Freedom, “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability,” the US Federal government, by dropping its charge against John Graham, left him in the custody, and at the mercy, of the State of South Dakota, where prejudice against Native Indians has been well documented. The period in history of the Aquash murder has been described as the “reign of terror in South Dakota.”
- According to International Law and the Principle of Specialty, John Graham should have been returned to Canada after the US federal government dropped its charge against him, and he was acquitted of the murder of Anna Mae Aquash.

Background

Summarized here are the key points in the 35-year history of the controversial murder of Anna Mae Aquash:

- Anna Mae Aquash told her family and friends (corroborated in sworn court testimony) that she had been threatened by an FBI agent, whom, she claimed, told her she would not live out the year if she did not cooperate with the Bureau.
- Aquash’s body was discovered in February of 1976, within a year of the alleged threat to her life.
- The FBI was present at the scene where Aquash’s body was discovered. The autopsy performed by the FBI’s own pathologist reported her death to be from exposure. Subsequently, though the FBI ordered Aquash’s hands cut off and sent to their laboratory for identification, they did not wait for that identification and the remains were buried as an unidentified “Jane Doe.”
- After Aquash had been officially identified, her family requested a second autopsy. This autopsy revealed that she had died, not from exposure as the FBI pathologist stated, but as the result of a gunshot wound to the head.
- The FBI proposed the theory that Aquash had been ordered executed by AIM leaders, who, the agency theorized, had suspected Aquash of being an FBI informant.
- Robert Ecoffey, the US Marshall who reopened the Aquash case, theorized a kidnapping, claiming, based on his analysis of a 20-year-old Polaroid photo of Aquash’s body, he could identify ligature marks on her wrists.
- Ecoffey visited Graham in the Yukon, offering Graham “immunity” if he would identify the AIM leaders who, the FBI theorized, had ordered Aquash’s execution. AIM has denied issuing such an order.
- In 2007, Graham was ultimately charged with the Aquash murder and, on that basis, was extradited to the United States.
- In December of 2010, Graham was acquitted of the Aquash murder, but was found guilty of aiding and abetting her kidnapping, and sentenced to life in prison without parole.

Rationale

From the perspective of traditional Native Indian culture, the prosecution's acceptance of the FBI's theory that Aquash had been ordered executed by AIM leaders is highly implausible. Canadian Justice LaForme wrote in his report, "Aboriginal people believe justice is about restoration of peace and equilibrium within the community, and reconciling the wrongdoer with his or her own conscience and with the individual or family who has been wronged." The participation of AIM in the US Civil Rights movement was part of its mandate to help restore traditional Native Indian culture. The prosecution's argument as to why Aquash was murdered remains an unproven theory, totally discredited by Graham's lawyer during his trial.

Several prosecution witnesses were called for the purpose of establishing a timeline to fit the date of December 12, 1975 as the alleged date of Aquash's murder. Under cross-examination, however, the testimony of prosecution witnesses proved that Aquash had actually been alive after the alleged date of the murder. The FBI autopsy, performed on February 25, 1976, reported that, at the time of the discovery of the body on February 24th, "it is estimated that the body had been dead about 7 to 10 days" —two months after what the prosecution alleged to be the date of Aquash's death. (Johanna Brand, in her 1978 book "The Life and Death of Anna Mae Aquash," cites December 20, 1975 as being the date of the last known contact between Aquash and friends in the Midwest, a date well after the prosecution's alleged date of Aquash's murder.)

In the trial, several prosecution witnesses testified that Aquash had been tied up and taken against her will. The prosecution failed to provide any material evidence, such as a rope or board, to support these allegations. Under cross-examination, Arlo Looking Cloud, the prosecution's key witness, admitted that in his initial interviews in 1994 and 1995 he reported, "Anna Mae was not tied up." Looking Cloud admitted under cross-examination that he was a drug user at the time of the first interviews and that the police were "messing" with his mind, to "break" him down. The "inconsistent" statements made by Arlo Looking Cloud over the years of being interviewed has shown that Looking Cloud's allegation of Aquash being tied up was a later addition to the prosecution's case.

The prosecution used witness testimony to create an impression that Aquash feared AIM leadership because AIM leaders had suspected her of being an informant. Cross-examination of these witnesses revealed that just about everyone connected with AIM during that period was "suspected" of being an informant. The prosecution's contention flies in the face of the fact that a known informant, who had been revealed at the time by Aquash, was not executed, when Aquash, who was only suspected to be an informant was. Cross-examination revealed that Aquash did not fear AIM, but rather feared law enforcement, because of the threat made to her by an FBI agent that she would not live out the year.

Another prosecution witness's testimony was to suggest AIM would treat informants in the same way as did the Chicano movement, implying, by drawing his finger across his neck, that the Chicano movement dealt with informants by killing them. Under cross-

examination, the witness clarified his testimony in reference to Native Americans killing informers, saying, “That’s not our way. We don’t do that kind of stuff”.

Key prosecution witnesses against Graham are certainly impeachable. During cross-examination many of these witnesses revealed a close relationship with Robert Ecoffey, either through marriage, blood relations, working relations or close friendship. Witness Kamook Banks, who is currently married to Robert Ecoffey, was previously married to Dennis Banks, with whom Aquash had had an affair. Kamook Banks/Ecoffey is also connected to Arlo Looking Cloud through family connections. Witness Troy Lynn Irving testified she is a close friend of Arlo Looking Cloud.

Arlo Looking Cloud, with over 40 convictions, including 12 for perjury, is a career criminal, well known to the criminal justice system. In 1994, Looking Cloud made a jail house deal with the District attorney to cooperate in the Aquash investigation, in return for dropping a felony charge against him for assaulting a police officer. In 2000, Kamook Banks/Ecoffey, a paid FBI informant who secretly recorded an interview with Looking Cloud in the presence of Troy Lynn Irving, visited Arlo Looking Cloud. Cross-examination revealed that during this interview Kamook and Troy Lynn did most of the talking. Cross-examination also revealed that Kamook instructed Arlo Looking Cloud to implicate only Graham (aka “John Boy”) with Aquash’s murder.

To the reasonable person, it is evident the prosecution has not proven it’s case against Graham “beyond a reasonable doubt”. To understand why a county court judge and jury in the State of South Dakota would find Graham “guilty”, the following support documentation is provided below.

Supporting Documentation and Conclusion

Background documents obtained through the *Freedom of Information Act* revealed that the FBI “develop witnesses” and “develop information.” In 1975, the US Government commissioned a Select Committee to study governmental operations with respect to intelligence activities. The findings of the Select Committee, commonly referred to as the “Church Report”, revealed the enormous powers of the FBI and the illegal activities engaged in by the Bureau in its intelligence gathering activities (COINTELPRO). The Select Committee stated, “The Bureau also used its control over the information-gathering process to shape the views of government officials and the public on the threats it perceived to the social order.” The Select Committee’s finding revealed that even politicians feared FBI actions against them. Though COINTELPRO was supposed to have ended in 1971, the Church Report found evidence the Bureau might still be operating it as “aggressive investigations.”

The history of injustice against American Indians in South Dakota is well documented in numerous reports to the United States Commission on Civil Rights. In 2007, it was found that “Racism against Indians is still pervasive today and is manifested daily in areas such as voting rights, education, law enforcement, and housing.” Reports of the United States Commissions on Civil Rights have also revealed the justifiable fear Native Indians feel for the FBI and law enforcement in general. One report found, “Most Indian

defendants plead guilty, even if innocent, because they are afraid of the way they might be treated by the court in a jury trial.” Another report found, “At the State level, there is also a long history of distrust and a widespread perception that State and local law enforcement agencies, prosecutors, and the courts have not treated Native Americans in an equitable manner.” It is easy to understand how the prosecution was able to “develop” so many cooperative witnesses against John Graham, and why John Graham, with clear justification, feared the FBI when it came to his home in the Yukon on several occasions.

Many irregularities with the FBI investigation of the murder of Anna Mae Aquash have occurred since the discovery of her body on February 24, 1975. The Graham trial revealed that although the Bureau of Indian Affairs suspected Aquash’s death as a homicide at the scene when her corpse was discovered, that suspicion was never included in the FBI report made by FBI agents present at the scene. It was highly irregular to have severed Aquash’s hands at the wrists in order to send her fingerprints for analysis. An FBI document requesting the fingerprint analysis, on dated February 26, 1976, revealed the FBI already suspected her death as a possible manslaughter, and not from exposure as was reported by their pathologist. Without waiting for proper identification, the over-hasty burial of Aquash’s body as a “Jane Doe” cast suspicion on the FBI involvement in the murder. Transcripts of the Graham trial reveal that the FBI misrepresented the facts concerning the discovery and autopsies of Aquash’s body.

The “reign of terror in South Dakota” against Native Americans continues today in subtle ways. Many Native Indians fear incarceration should they not “cooperate” with law enforcement. John Graham certainly and justifiably feared the justice system of South Dakota, when he refused to cooperate by blaming AIM leaders for the murder of Anna Mae Aquash. A well respected member of AIM, Aquash had been devoted to helping establish education centers. She first befriended John Graham at such a center. Aquash taught Graham about Native values and culture, an education that had been denied Graham when he had been sequestered in Canadian Residential schools. When her life was threatened, Aquash, a Canadian, trusted John Graham, a fellow Canadian. Graham claims he helped Aquash to a “safe house” in late November of 1975, and that this was the last time he saw Aquash alive.

Graham put his trust and faith in a justice system that failed him. A family man with grandchildren, John Graham had never before been convicted of a crime. Convicted now, he sits in a US prison, serving a life sentence without parole for a crime he continues to maintain he did not commit. Ironically, Arlo Looking Cloud, the career criminal and key witness against John Graham, was also convicted of the Aquash murder in 2004, and was sentenced, like Graham, to life in prison without parole. For his cooperation in the Graham trial, Arlo Looking Cloud, however, is expected to be released in the very near future.

Recommendations

We recommend that Canada request the immediate release and return of John Graham for the following reasons:

- The US Federal government did not act in good faith in requesting the extradition of John Graham.
- The US Federal government should have returned Graham to Canada, when its charge against Graham was dropped.
- It is a reasonable contention, supported by the trial transcripts, that the prosecution did not prove its case against John Graham beyond a reasonable doubt.
- John Graham was charged with crimes not on the extradition order, in contravention of the Principle of Specialty, which avers, "A state which has received a criminal defendant pursuant to an extradition treaty may try the defendant *only* for those offenses for which he or she was extradited."
- As a consequence the violation of the *Extradition Treaty*, Canada, as the "surrendering state," has the right to object to the Graham trial and to request the US government release and return John Graham to Canada.
- Canada should amend its *Extradition Treaty* to protect Canadian citizens against extraditions based on hearsay evidence, or when the evidence provided by the requesting state is not *essential* evidence to be heard at the trial of the person extradited, or when the extraditing state has a demonstrable history of prejudice against the ethnicity or race of the person being extradited.

For more detailed information

Visit www.grahamdefense.org, where this brief has been prepared and posted, to accompany a petition to the Government of Canada requesting the United States Government to release and return John Graham to Canada. Please show your support by signing this petition and forwarding it to the address provided.

