

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. 08-50079

DEFENDANT MARSHALL'S  
MEMORANDUM OF LAW  
IN SUPPORT OF HIS  
MOTION TO COMPEL DISCOVERY

Defendant Richard Marshall seeks an order from the Court directing the government to locate and produce investigative reports, records, and court documents relating to the federal prosecution of Anna Mae Aquash, Dennis Banks, Kamook Banks, Leonard Peltier, Russell Redner, and Kenneth Loud Hawk in the United States District Court for the District of Oregon in 1975, in the case of *United States v. Loud Hawk, et al.*, 75-CR-296-RE. Defendant Marshall represents that such materials would provide evidence that the prosecution of Aquash and her co-defendants is directly relevant to Aquash's murder: information relating to the Oregon prosecution provides evidence of a motive for Aquash's killing. Defendant Marshall also represents that he has sought this material through other means, including making a request of the United States Attorney, and has been unsuccessful.

The Supreme Court held in *Brady v. Maryland*, 373 US 83, 83 S.Ct. 1194 (1963), that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The Supreme Court stated in *Kyles v. Whitley*, 514 US 419, 115 S.Ct. 1555 (1995), that evidence which can be used attack the reliability of the investigation itself and which can be used

to discredit the caliber of the investigation is Brady material which the government has a duty to disclose. See: Kyles v. Whitley, 115 S. Ct. At 1571-1572.

Here, the information requested will provide evidence that will allow the defendant to argue that the government has essentially failed to conduct a professional investigation into the murder of Anna Mae Aquash, and that obvious investigative leads have been ignored, resulting in the indictment of an innocent man. The prosecution of Anna Mae Aquash and her co-defendants provides evidence of motive that has been ignored or misunderstood by the government. The facts and legal history relating to the Loud Hawk case, including the government's use of informants who were part of the American Indian Movement, is relevant to defendant Marshall's theory of defense and favorable for the defendant.

The United States Attorney's office in South Dakota may not physically have these files in their office, but that is of no matter. In order to comply with Brady, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf, including other government agencies and investigators. Strickler v. Greene, 527 US 265, 281, 119 S.Ct. 1936 (1999); Kyles v. Whitley, 514 US at 437, 115 S.Ct. 1555.

If they contain any evidence that is favorable to the defendant as to the issue of guilt or impeachment purposes, the government has a duty to acquire records and information that is in the possession of other government agencies, including other United States Attorneys' offices and to disclose that information to the defendant so that he may use it in the preparation and presentation of his defense. In this case the government is likely to present evidence, as they did in the trial of Arlo Looking Cloud, of the arrest and prosecution of Anna Mae Aquash, Leonard Peltier, Kamook Banks, and others in Oregon in 1975.

Defendant Marshall has a constitutional right to be able to confront that evidence and to use it to present his theory of defense. This evidence is relevant to the motive of the murder of Anna Mae Aquash and lack of motive for this defendant; therefore it is favorable Brady evidence and the government has an obligation to disclose it to the defendant. This Court should order the government to do so.

Dated this 20<sup>th</sup> day of January, 2009.

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VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Compel Discovery upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney  
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Robert Mandel, Assistant United States Attorney  
robert.mandel@usdoj.gov

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

Dated this 20<sup>th</sup> day of January, 2008.

/s/ Dana L. Hanna  
Dana L. Hanna