

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
MOTION FOR DISCLOSURE AND
PRODUCTION OF EVIDENCE

NOW COMES defendant Richard Marshall, by and through counsel, and hereby moves the Court to order the government to produce and provide to the defendant copies of all tape recordings of witnesses in this case, including but not limited to all tape recorded conversations with any cooperating witness or potential witness in this case. The defendant makes this motion on the grounds that these tapes are necessary to prepare an effective defense at trial.

In support of this motion, Dana L. Hanna, attorney for defendant Marshall, hereby affirms:

1. On information and belief, the government has in its possession over 100 tapes of recorded conversations made by cooperating witnesses in this case. Many of the tapes involve recordings of conversations with other witnesses and potential witnesses. These tape recordings were made by, and record statements by cooperating witnesses who will testify in the trial.

2. I have previously requested these tapes in writing and in telephone conversations with the government prosecutor and I have been told that I cannot have copies of those tapes, and that if I wanted to hear them, I would have to make arrangements to hear them at the United States Attorney's office. There are probably 100 hours of taped conversations. I have received transcripts of some of the tapes. The vast majority of those tapes have not been transcribed.

3. On January 18, 2009, I heard for the first time the tape recording of a conversation secretly recorded by “Kamook” Darlene Nichols in July 2001 with Cleo Gates, the defendant’s ex-wife. Cleo Gates was a government witness in the trial of Arlo Looking Cloud and she is expected to be a government witness in the trial of Richard Marshall. In Looking Cloud’s trial, she testified that Arlo Looking Cloud, co-defendant Graham, Theda Clarke, and Anna Mae Aquash went to the home of her and defendant Marshall one night in 1975 and she testified to what transpired during their visit. The events discussed are the very essence of the government’s case regarding Richard Marshall and I have never been provided with either that tape nor a transcript of that tape by the government. I borrowed that tape from counsel for the co-defendant.

4. The government has provided these tapes to the co-defendant’s attorney. It is impractical and burdensome for me to have to listen to 100 hours of tapes at the United States Attorney’s office. Moreover, I need to review the transcripts of some of the tapes that were made for accuracy. It may very well be necessary to seek electronic enhancement of some of the more important tapes, and I may offer some of the tape recordings as evidence.

5. These tapes are necessary for me to prepare an effective defense at trial. They contain Jencks Act material and if the government has not provided the tapes before trial, the government will have an obligation to provide them to me after these witnesses have testified. Therefore, it is economic for the Court in terms of time to order the government to provide me with those tapes before trial and not during trial.

WHEREFORE the defendant moves the Court to direct the government to provide the defendant with copies of all taped recorded conversations involving witnesses or potential witnesses in this case to the defendant forthwith.

Dated this 20th day of January, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
Attorney for Defendant Marshall
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Motion for Disclosure and Production of Evidence upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
kim.nelson@usdoj.gov

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

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

Dated this 20th day of January, 2008.

/s/ Dana L. Hanna

Dana L. Hanna