

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 REPLY TO  
THE GOVERNMENT'S RESPONSE TO  
MOTION TO COMPEL DISCOVERY

NOW COMES defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby replies to the government's response to the defendant's motion to compel discovery (doc. 175).

The defendant requested an order for discovery of documents pertaining to the prosecution of Anna Mae Aquash, Kamook Banks, Dennis Banks, Leonard Peltier, and others in the case of United States vs. Loud Hawk, et al, 75-CR-296-RE, in the United States District of Oregon. The government opposes the defendant's motion for discovery on the grounds that the requested material is not relevant to the defendant's argument in response to the prosecution's case in chief. The government argues that the requested evidence is not discoverable because it does not "refute the government's arguments that the defendant committed the crime charged." United States v. Armstrong, 517 US 456 at 462, 116 S.Ct. 1480 (1996).

The government recognizes that under Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure, a defendant may examine documents material to his defense, but the government contends that these documents are not material to Richard Marshall's defense. The defendant represents and argues that the documents contained in the files and reports concerning the Oregon prosecution are in fact material to his defense, that they go to the question of whether in fact the defendant committed the crime charged. The defendant represents that the documents

and information in the Oregon file can and will be used to refute the government's argument that the defendant committed the crime charged. The defendant requires these documents for the purpose of discovering and presenting evidence that the defendant will use to respond to the government's case in chief.

The defendant should not be required to explain his theory of defense in detail to the government. The defendant sets forth his theory as to how this evidence is relevant to refute the charge against him in the defendant's *ex parte* application for a subpoena, which is being filed along with this reply.

The defendant also points out that under Brady v. Maryland, and its progeny, any evidence that can be used to impeach the credibility of a prosecution witness is Brady material.

One of the defendants in United States v. Loud Hawk, et al is a government witness in this case. Kamook Banks, a.k.a. Darlene Nichols-Eccofey, was arrested and indicted in the Loud Hawk case in 1975. She is a government witness who will testify in the government's case in chief, as she did in the Looking Cloud trial, that she, her then-husband Dennis Banks, Leonard Peltier, and Anna Mae Aquash, and the other defendants were all prosecuted on federal explosives and firearms charges, after their arrest on November 14, 1975. Evidence contained in the government's files, reports, and records concerning her prosecution in Oregon is clearly evidence that the defendant can use to impeach her.

The Court should grant the defendant's motion to compel discovery of the records and documents in the case of United States vs. Loud Hawk, et al.

Dated this 17<sup>th</sup> day of February, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of Defendant Marshall's foregoing Reply to the Government's Response to Motion to Compel Discovery 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 17<sup>th</sup> day of February, 2008.

*/s/ Dana L. Hanna*

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Dana L. Hanna