

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

VINE RICHARD MARSHALL a/k/a
RICHARD VINE MARSHALL a/k/a
DICK MARSHALL,

Defendant.

CR 08-50079

UNITED STATES' SUPPLEMENTAL
RESPONSE TO DEFENDANT
MARSHALL'S SUPPLEMENTAL
AFFIRMATION IN SUPPORT OF
MOTION FOR DISMISSAL OF
INDICTMENT FOR DESTRUCTION
OF EVIDENCE

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and respectfully files its Supplemental Response to Defendant Marshall's Supplemental Affirmation in Support of Motion for Dismissal of Indictment for Destruction of Evidence (DE #687) as follows:

1. The United States maintains its position that it did not engage in a "joint investigation" with the Denver Police Department. The nature of the assistance provided to the United States by the Denver Police Department is outlined in the attached affidavits of Robert Ecoffey, Abel Alonzo and Rick Iannucci. The United States had no control over the evidence in the possession of the Denver Police Department except to the extent it was provided to them by Detective Alonzo.

2. At the core of Defendant's motion is the request to dismiss the indictment or exclude witness testimony due to the destruction of evidence by the Denver Police Department. At the outset, it is the position of the United States that no evidence was destroyed in any fashion showing bad faith on the part of the Denver Police Department. In order to amount to a denial of due process, the destruction of evidence had to have been in bad faith, the evidence had to have had exculpatory value, and there was no comparable evidence available to Defendant. *United States v. Clark*, 980 F.2d 1143, 1147 (8th Cir. 1992); *United States v. Einfeldt*, 138 F.3d 373, 377 (8th Cir. 1998) .

3. There has been no showing that the destruction of the evidence was in any way accomplished in bad faith. While there may have been some error regarding the destruction, it was not done in any way to negatively affect any defendant, let alone Defendant Marshall, who was not even considered a prospective defendant at that point. Even assuming, *arguendo*, that there was some sort of bad faith, it was certainly not bad faith of the United States, nor was the United States involved in any decision of the Denver Police Department to destroy evidence. Absent bad faith, Defendant's motion should fail. *United States v. Fisher*, 540 U.S. 544, 546-48 (2004); *United States v. Youngblood*, 488 U.S. 51, 53-59 (1988).

4. The United States does not believe that any of the material that was destroyed would in any way provide substantial exculpatory material that could be used to impeach witnesses of the United States in any fashion which is not already available to Defendant. There is already significant evidence

which has been provided to Defendant regarding these matters. Even if any cumulative impeachment evidence was destroyed, this would not meet the legal standard constituting a denial of due process.

Accordingly, the United States asks that Defendant's motion to dismiss be in all respects denied.

Respectfully submitted this 30th day of March, 2010.

BRENDAN V. JOHNSON
United States Attorney
By:

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2010, I served by electronic transmission, a true and correct copy of the foregoing on:

Dana Hanna
Attorney at Law

/s/ Robert A. Mandel

Robert A. Mandel

City of Denver and as a courtesy informed him of the investigation we were working on. Because of our need to make contacts within the Native American community in Denver, the Chief, in an effort to assist us, assigned Detective Abe Alonzo of the Intelligence Division, to help us since he was knowledgeable regarding the Native American community in Denver. No agreement was ever made with the Denver Police Department as to conducting any type of joint investigation, nor was any such arrangement ever discussed in our meeting with the Chief.

3. Detective Alonzo was very helpful in offering his assistance. He did make contact with Fritz Arlo Looking Cloud, which resulted in a debriefing of Looking Cloud by the federal authorities in Denver in November, 1994. Detective Alonzo also assisted us in interviews that we conducted in Denver and conducted interviews on our behalf. Again, this was solely to assist us in our investigation.

4. As we continued to investigate this case, Detective Alonzo developed an interest in pursuing a state case regarding the kidnaping of Annie Mae Pictou Aquash, which occurred in Denver. I know that at various times, Detective Alonzo provided us with certain materials that he obtained and we provided him with certain materials during the course of the federal investigation. My understanding is that the City of Denver decided not to pursue any charges based upon their investigation.

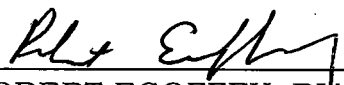
5. In 1995, Detective Alonzo and Rick Iannucci transported Looking Cloud to South Dakota to identify various locations relevant to our investigation. At no

time when we were together on this trip did I take any notes or prepare any statement. I did not observe Alonzo or Iannucci do so either.

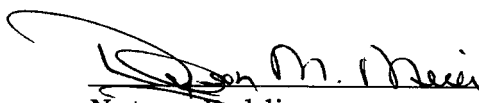
6. In 1996, I began working in the office of the BIA Superintendent of the Pine Ridge Agency and as such was less involved in the investigation. In 2001, I obtained employment as the Bureau of Indian Affairs Director of Law Enforcement and was initially stationed in Albuquerque, New Mexico. While there, I continued to work on this investigation and remained actively involved, culminating in an interview of Looking Cloud that took place in Denver, Colorado, with the assistance of Detective Alonzo, shortly after Looking Cloud was arrested on March 27, 2003. Subsequent to that, beginning in 2004, I became Superintendent of the Pine Ridge Indian Reservation and have not been actively involved in the investigation.

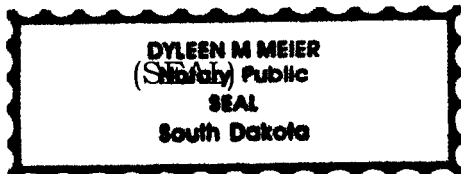
7. At no time during the course of this investigation was any arrangement reached with the City of Denver Police Department to actively pursue this investigation as a joint investigation; however, Detective Alonzo did provide substantial assistance to the United States in its investigation.

Dated: March 25, 2010.


ROBERT ECOFFEY, BIA Superintendent
Pine Ridge Indian Reservation

SUBSCRIBED and SWORN to before me
this 25 day of March, 2010.


Notary Public



My Commission expires: 12.10.2013

a small number of occasions I did so on their behalf without them being present. All of the duties that I performed were at their request.

4. During the course of the investigation, I was made a Special Deputy USM and traveled to South Dakota and Atlanta to assist the USMS. I had been a Special Deputy when assisting in other matters and did not find it in any way unusual. My understanding is that one of the reasons for the deputation was to eliminate any question regarding my ability to carry a gun when we were traveling interstate.

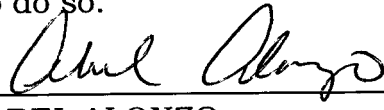
5. In 1995, we transported Fritz Arlo Looking Cloud to the District of South Dakota for the purpose of having him identify various locations that were involved in the murder of Annie Mae Pictou Aquash. I did not take any notes of any conversations that were had with Looking Cloud as this was not conducted for the purpose of obtaining any kind of a statement from him. Based on my observation, I have no recollection of either Mr. Iannucci or Mr. Ecoffey doing so either.

6. During the course of the assistance that I provided to the USMS, I also considered whether or not there was any possibility of pursuing any local investigation regarding this matter. In that regard, we met with the District Attorney in the City of Denver and was informed that the City was not interested in pursuing any criminal charges in any fashion.

7. I personally did not direct the destruction of any evidence in this case.

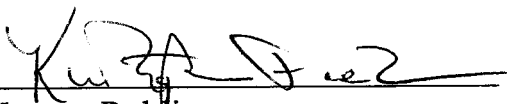
In my opinion, to the extent that any such destruction took place, it was a mistake by the Denver Police Department to do so.

Dated: March 25, 2010.

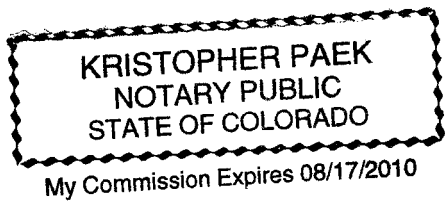


ABEL ALONZO

SUBSCRIBED and SWORN to before me
this ___ day of March, 2010.



Notary Public



My Commission expires: 8/17/2010

(SEAL)

AFFIDAVIT

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF PENNINGTON)

I, Rick Iannucci, having been sworn, do hereby state and depose as follows:

1. I began working in law enforcement in 1985 as an employee of the United States Marshal's Service (USMS). I have held various jobs as an employee of the USMS. Beginning in 1993, I began working as the Regional Coordinator of the Organized Crime and Drug Enforcement Task Force (OCDETF) in Denver, Colorado, and was responsible for coordinating investigations in an area comprising eight states. In addition to those duties, it was one of my responsibilities to assist the local USMS offices from those states. I retired from the USMS in 2005.

2. In 1994, I began assisting USM Robert Ecoffey from the District of South Dakota in a multi-state investigation regarding the death of Annie Mae Pictou Aquash. Prior to my meeting with USM Ecoffey regarding this matter, he had already had contact with the Denver Police Department and they had provided Detective Abe Alonzo to assist with our investigation. Detective Alonzo was chosen, at least in part, due to previous investigations he had been involved in which concerned the Native American community in Denver. Since neither USM Ecoffey nor I were originally from Denver, Detective Alonzo's

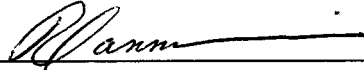
assistance was important in helping us locate various people and places in the area as we conducted our investigation. It should be noted that the City of Denver had no active investigation and the United States was never involved in a joint investigation with the City of Denver in this matter. As coordinator of the OCDETF for the region, I was very familiar with joint investigations which we on occasion took part in. While there was not a joint investigation in this case, Detective Alonzo provided substantial assistance to the United States in its investigation. Some of the assistance provided by Detective Alonzo involved his travel outside of Colorado, for example to the District of South Dakota. It was a routine practice to deputize individuals assisting us when traveling out of their jurisdiction to allow them to carry firearms in interstate commerce based on the state of the law at that time. Detective Alonzo was designated a Special Deputy USM for that purpose.

3. In 1995, Detective Alonzo and I did transport Fritz Arlo Looking Cloud into the District of South Dakota, including the Pine Ridge Indian Reservation. Looking Cloud was in custody at that time and agreed to this transportation. During the time he was in my custody, neither Detective Alonzo nor I debriefed Looking Cloud nor took any notes of any statements or comments that he made. I did not observe USM Ecoffey do so either.

4. I am aware that during the course of our investigation, Detective Alonzo considered whether it would be appropriate to file any charges in the City of Denver. No such decision was ever made to do so. Detective Alonzo

provided substantial assistance in this matter but was never under our authority in so doing.

Dated: March 26, 2010.



RICK IANNUCCI

SUBSCRIBED and SWORN to before me this 26 day of March, 2010.



Notary Public

My Commission expires: 6/8/2011

