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GENERAL SERVICES ADMINISTRATION

Robert J. Whitley
Chief Deputy District Attorney
Second Judicial Circuit
303 W. Colfax Ave., Suite 1300
Denver, CO 80204

Re: In the Matter of the Investigation of the Death of Anna Mae Aquash

Dear Mr. Whitley:

You had asked that I provide you with a letter indicating the reasons surrounding this office's decision not to pursue criminal charges in this investigation. In order to properly do so, I have had to retrieve the old investigative file so that I could review the reports in the case. I must stress that this letter constitutes my personal perspective on the case and is not an official statement by the United States Attorney or the Department of Justice.

This case was declined in September of 1996 when Robert A. Mandel, First Assistant United States Attorney for this District, informed the Supervisory Senior Resident Agent of the FBI that the matter was being declined at that time, subject to review should any additional information develop. In order to understand this office's decision, it is necessary to do a brief historic review.

In February of 1976, Anna Mae Aquash's body was found near Wanblee, South Dakota on the Pine Ridge Indian Reservation. Initially the body was unidentified and it was not until a fingerprint analysis was done on the hands of the corpse that it was determined that the body found was that of Anna Mae Aquash. The first autopsy resulted in the pathologist concluding that the victim had died of exposure. A subsequent autopsy revealed that Ms. Aquash had been killed by a gunshot wound to the back of the head. At the time, all investigative efforts into determining who was responsible for Ms. Aquash's death were unsuccessful. Some information



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was developed regarding possible suspects and leads were checked out, but in essence the case was placed on unsolved status.

Throughout the years following Ms. Aquash's death, the investigation was worked by various FBI agents who developed leads in one form or another. An active revitalization of the case took place in the mid-1990s, spurred primarily through the efforts of then United States Marshal Robert Ecoffey. Marshal Ecoffey had been a police officer for the Bureau of Indian Affairs in 1974 when Ms. Aquash's body was found.

I was asked to assist in the investigation in 1994. As part of these efforts, witnesses were subpoenaed to appear before several sessions of sitting grand juries for the United States District Court of the District of South Dakota. These sessions continued through November of 1995. The investigation did develop some very relevant information. However, it was the decision of this office that there was insufficient evidence to request the grand jury to return an indictment. In the remainder of this letter, I will attempt to summarize some of the potential problems with federal prosecution of the case.

Because of the federal statute of limitations (18 U.S.C. §§ 3281-3282), the only viable charge that could be prosecuted in United States District Court for this offense was first degree murder (18 U.S.C. § 1111). Federal jurisdiction would be based upon the Indian status of either the defendant or the victim. One significant legal impediment to the federal prosecution of this case arises from the fact that the victim and one of the suspects are members of Canadian Indian tribes. Under the provisions of 18 U.S.C. § 1153, the United States is authorized to prosecute crimes constituting one of the listed major crimes committed by Indians within Indian Country. Under the provisions of 18 U.S.C. § 1152, the United States can prosecute an offense where the victim is an Indian and where the offense was committed in Indian Country. Ms. Aquash's body was found within the exterior boundaries of the Pine Ridge Indian Reservation, which would constitute Indian Country.

The difficulty in proceeding under either of these two statutes arises from the fact that generally the Justice Department has taken the position that Canadian Indians may not be considered "Indians" within the meaning of the federal criminal statutes. A United States District Court in the State of Washington dismissed a criminal indictment brought against a Canadian Indian in 1991, and the Solicitor General determined that no appeal should be taken from that matter.

Ms. Aquash was a Canadian Indian and therefore a jurisdictional basis could not be found under 18 U.S.C. § 1152. One of the three persons believed to be involved in the actual commission of the homicide is also a Canadian Indian. The other two are members of South

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Dakota tribes. Criminal charges cannot be brought under 18 U.S.C. § 1153 against the Canadian Indian. Potentially, charges could be brought against the other two suspects. However, because of the evidence available in this situation, it is apparent that the individuals involved, if proven to be present at the scene, would blame each other for committing the homicide. The case, in my opinion, would be very difficult to prosecute unless all three individuals were charged and tried together.

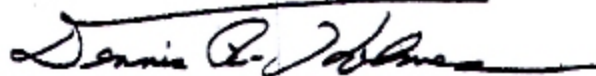
Another potential downside to federal prosecution of the case is that it may be seen as a coverup. Over the years, numerous individuals have alleged that the victim was either killed by the FBI or was killed as a result of FBI actions. Prosecution of members of the American Indian Movement for the homicide could be seen as an effort on the part of the federal government to hide the role of the FBI in Aquash's death.

The primary reason for declination of this matter in this office, however, was simply insufficiency of the evidence. Although the investigation developed sufficient information to allow an individual to generally decide what took place in this matter, it did not rise to the level of evidence supporting proof beyond a reasonable doubt. Several witnesses can testify regarding what took place when Ms. Aquash was removed from the residence in Denver in late 1975. The evidentiary trail breaks down considerably from that point on. There simply is not enough evidence to proceed in charging anybody with homicide at this point in time in United States District Court for this murder.

If you have any questions regarding this case, I am available to answer them within the limits of Department of Justice policy and the provisions of Rule 6(e) of the Federal Rules of Criminal Procedure.

Yours sincerely,

KAREN E. SCHREIER
United States Attorney



DENNIS R. HOLMES
Assistant United States Attorney

DRH:plh

bcc: Bob Ecoffey ✓