

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

---

UNITED STATES OF AMERICA,

CR08-50079

Plaintiff,

v.

**UNITED STATES' REPLY TO  
DEFENDANT GRAHAM'S  
RESPONSE TO SCHEDULING  
ORDER**

JOHN GRAHAM aka JOHN BOY  
PATTON, and VINE RICHARD  
MARSHALL aka RICHARD VINE  
MARSHALL aka DICK MARSHALL,

Defendants.

---

COMES NOW the United States, by and through United States Attorney Marty J. Jackley and Assistant United States Attorney Robert A. Mandel, and respectfully files its Reply to Defendant Graham's Response to the Court's Order of October 8, 2008:

1. The United States believes that there is sufficient time to try the case before the Christmas holiday. The United States anticipates its case-in-chief to take approximately four days, based upon the identification of approximately twenty-nine witnesses.

2. As the Court is aware, Fed. R. Crim. P. 6 governs grand jury proceedings and this particular instance of misinformation on Marshall's statements presents an example of the dangerousness of speculation as to such

proceedings. Defendant Graham has repeatedly been advised verbally and in writing that it is a longstanding practice in this District to provide Jencks Act/grand jury material the Friday before trial. This general practice is utilized in the interest of witnesses' protection, and is more beneficial to defense than a strict application of 18 U.S.C. § 3500's requirement which mandates disclosure only after the witness' direct examination. Based upon recent information brought to the attention of the United States Attorney with specific reference to witness safety issues, the United States Attorney may request additional assurances before any Jencks Act/grand jury material is provided in this case prior to the witnesses' direct testimony.<sup>1</sup>

3. As for the discovery concerns associated with Defendant Marshall's statements, on January 28, 2008, Defendant Graham was provided the taped statements, and has further been provided the handwritten notes associated with Marshall's statements. In addition, Marshall's statements were specifically addressed in the United States' Trial Memorandum Re: Crawford filed on September 23, 2008, in preparation for the trial scheduled to begin on October 6, 2008. The United States does not believe that statements made by either Defendant give rise to any Bruton issues, and to the extent either Defendant

---

<sup>1</sup>To the extent the Court desires to review the witness safety material, the United States Attorney requests to do the same *in camera*.

believes otherwise, there is ample opportunity to address any redaction issues prior to December 9, 2008.

4 & 5. Defendant Graham has filed his pre-trial motions, the United States has responded, and in many instances, Defendant Graham has filed his reply memoranda. With respect to Defendant Graham, jury instructions have already been filed, including the United States' instruction 10, with element four specifically addressing the matters outlined in the Superseding Indictment with respect to "Indian status." In short, but for the indictment sufficiency issue in relation to "Indian status," this matter was ready for trial to commence on October 6, 2008. To the extent any of the previous motion practice pertains to Defendant Marshall, there exists ample time for him to file responses by a December 9, 2008, trial date.

Date: October 9, 2008

MARTY J. JACKLEY  
United States Attorney



---

MARTY J. JACKLEY  
ROBERT A. MANDEL  
Assistant United States Attorney  
PO Box 2638  
Sioux Falls, SD 57101-2638  
Phone: 605.357.2330  
Fax: 605.330.4405

## CERTIFICATE OF SERVICE

The undersigned hereby certifies on October 9, 2008, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy  
Dana L. Hanna

- U.S. Mail, postage prepaid
- Hand Delivery
- Facsimile at
- Federal Express
- Electronic Case Filing



---

Marty J. Jackley  
United States Attorney

*This document was filed electronically.*