

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	DEFENDANT GRAHAM'S
vs.)	MOTION TO COMPEL
)	DISCLOSURE OF DEFENDANT'S
JOHN GRAHAM, a/k/a)	STATEMENTS
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL)	
Defendant.)	

Pursuant to Federal Rule of Criminal Procedure 16, Defendant John Graham moves this Court for its Order requiring the government to immediately comply with Rule 16. Specifically, Mr. Graham asks that this Court order the government to immediately provide him with complete, un-redacted copies of every written or recorded statement made by him that is within the government's custody, or that the government knows of or could know of through the exercise of due diligence. Fed.R.Crim.P. 16(a)(1)(B)(I). This motion is based on the arguments and authority set forth below.

Federal Rule of Criminal Procedure 16(a)(1)(B)(I) is unequivocal. It mandates that, upon a defendant's request, the government disclose all relevant written or recorded statements by the defendant if the statement is within the

government's possession, custody or control. The government is also mandated to disclose all relevant written or recorded statements by the defendant if the attorney for the government knows, or through due diligence could know, that the statement exists.

Numerous written and recorded press interviews with Mr. Graham are alleged to exist. Since September of 2008, the government has stated its intention of admitting at trial all or parts of these interviews. Mr. Graham has repeatedly requested production of these alleged interviews, and has specified that he wants the exact version of the interview that the government seeks to admit.

This request was made because there are various versions of Mr. Graham's alleged statements circulating in the public domain. Portions of alleged interviews have been redacted and reconstituted in various publications. Mr. Graham needed to know which version of the alleged statements that the government was going to admit at trial through the witness who allegedly received the statement. The government knows which version they are relying on as the real version, as it is their witnesses who will be introducing the statements at trial.

Immediately prior to trial in the previous Graham murder case, File 03-50020, the government said it was in the process of compiling all of the interviews and that it would disclose them to defense counsel. On or about October 1, 2008,

the government allowed the defense to view one interview with Mr. Graham that the government had redacted, and one internet video that it planned to redact. The government claimed that it was not able to release the other interviews with Mr. Graham at that time as it had not reviewed and/or compiled them. The government said it would have them ready for the defense by October 3, 2008, the last court day before trial.

The government did not produce the materials on October 3, 2008. The government stated that it was awaiting the Court's decision on Graham's motion to dismiss prior to releasing the materials. Once the matter was dismissed, the government refused to provide the materials, even though the government immediately re-filed the charges on the same date as they were dismissed.

Mr. Graham has twice requested production of these materials since Graham was indicted in this file. On October 14, 2008, in a letter addressed and sent to both of the government's attorneys, Mr. Graham specifically asked for all of Mr. Graham's oral, written and/or recorded statements subject to disclosure under Fed.R.Crim.P. 16(a)(1)(A) and (B). On November 24, 2008, in a letter addressed and sent to both of the government's attorneys, Mr. Graham again specifically requested Mr. Graham's statements. In that letter, Mr. Graham referenced the case history set forth above, and asked for immediate production of the un-redacted

version of all interviews or statements allegedly made by him. The government has not responded.

There is no basis for further delay in producing these materials. This case was first indicted in 2003. It has been investigated for thirty years. It was on the eve of trial two months ago. There is no valid legal or factual basis for the government's persistent delay in producing these obviously discoverable materials.

Therefore, Mr. Graham asks that this Court order that the government immediately provide him with copies of complete, un-redacted versions of every written, recorded or oral statement that is subject to disclosure under Fed.R.Crim.P. 16. The government should not be permitted to provide its redacted versions of the interviews. Mr. Graham has a right to know the complete contents of the interview so he can place statements introduced by the government in context. Moreover, Rule 16 does not give the government the discretion to provide only excerpts of statements.

Dated December 9, 2008.

/s/ John R. Murphy
John R. Murphy
328 East New York Street, Suite 1
Rapid City, SD 57701
(605) 342-2909

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

- | | | |
|------------------|-------------------------------------|----------------------------|
| MARTY J. JACKLEY | <input type="checkbox"/> | U.S. Mail, postage prepaid |
| | <input type="checkbox"/> | Hand Delivery |
| | <input type="checkbox"/> | Federal Express |
| | <input type="checkbox"/> | Facsimile at |
| | <input checked="" type="checkbox"/> | Electronic Case Filing |
| ROBERT A. MANDEL | <input type="checkbox"/> | U.S. Mail, postage prepaid |
| | <input type="checkbox"/> | Hand Delivery |
| | <input type="checkbox"/> | Federal Express |
| | <input type="checkbox"/> | Facsimile at |
| | <input checked="" type="checkbox"/> | Electronic Case Filing |
| DANA HANNA | <input type="checkbox"/> | U.S. Mail, postage prepaid |
| | <input type="checkbox"/> | Hand Delivery |
| | <input type="checkbox"/> | Federal Express |
| | <input type="checkbox"/> | Facsimile at |
| | <input checked="" type="checkbox"/> | Electronic Case Filing |

Dated December 9, 2008.

/s/ John R. Murphy
John R. Murphy