

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 FOR ADDITIONAL
)	PEREMPTORY CHALLENGES
JOHN GRAHAM, a/k/a)	
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL)	
Defendant.)	

Pursuant to D.S.D. Crim. LR 24.1, Defendant John Graham requests additional peremptory challenges during jury selection.

Pursuant to Fed.R.Crim.P. 24(b)(2), if both defendants are tried together they will share ten (10) peremptory challenges during jury selection. That is an insufficient number of peremptory challenges in this case.

This case has been followed by the public and covered by the media extensively. The crime alleged has been the subject of several books, many newspaper articles, widespread internet coverage, several television shows and at least two movies. There has already been one trial in this case, United States v. Fritz Arlo Looking Cloud, that was tried in this community and received substantial press and public attention.

Matters of great local notoriety will be presented during trial. The occupation of Wounded Knee, the killing of two FBI agents, the Custer County Courthouse riots, the bombings at Mount Rushmore, and other infamous incidents will be presented to the jury. Potential jurors are likely to have strong reactions to any case or any person involved in these incidents.

Both defendants and the decedent are alleged to have been members in the American Indian Movement (A.I.M.). That organization that is viewed unfavorably by many in the community. Further, references to A.I.M. membership is likely to cause jurors to be predisposed against the defendants.

The defendants are not aligned in interest. See File Docs. 75, 81, and 87. Because they have separate and inconsistent theories of defense, they will not be sharing or pooling peremptory challenges. Instead, they will each be utilizing half of the peremptory challenges allotted.

Both defendants face a mandatory life sentence if convicted.

The amount of pretrial publicity, the past history of political and social unrest surrounding this case, the negative associations created by A.I.M. membership, and the inconsistent defense theories, all strongly suggest a need for more peremptory challenges. Defendant Graham asks that each defendant be entitled to fifteen (15) peremptory challenges.

Dated December 10, 2008.

/s/ John R. Murphy
John R. Murphy
328 East New York Street, Suite 1
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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:

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Dated December 10, 2008.

/s/ John R. Murphy
John R. Murphy