

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

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	
vs.)	DEFENDANT GRAHAM'S
)	OBJECTION TO SUBMISSION
JOHN GRAHAM, a/k/a)	OF IN CAMERA MATERIALS
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL)	
Defendant.)	

Defendant, John Graham, through his attorney, John R. Murphy, objects to the government's ex parte filing of exhibits 4 & 5 in support of its opposition to Defendant Marshall's motion to continue. File Doc. 158, n. 1.

The government has not made a sufficient showing that there is a basis for filing documents for in camera review by the Court. The government has not sought a protective order that could address both defense counsel's need to be informed as to the materials supposedly supporting the government's opposition and the government's desire to have certain matters kept confidential. The government has not provided any legal authority supporting the procedures it is utilizing in this case. At minimum, prior to submitting these secret documents to

the Court, the government should have sought permission to do so and given the defense an opportunity to respond.

The government makes generic assertions about “witness safety concerns” as being sufficient to deny Marshall’s request for a continuance. The concerns addressed in its Opposition relate to two witnesses who have deliberately put themselves at the epicenter of this case.

One of these witnesses has made it well known that he is writing a book about this matter, and the other has testified in the Looking Cloud case. Their involvement in this case has been well known and well publicized for several years, predating Mr. Graham’s deportation or Mr. Marshall’s indictment. Further, they have not been shy about expressing their views on the matter and continue to post matters relating to this case. E.g. “It’s murderers who make headlines and devastate families” by Serle Chapman (links to Aquash case added in 2008) (http://indiancountrynews.net/index2.php?option=com_content&do_pdf=1&id=46).

Moreover, the government has taken inconsistent positions on these witnesses in order to meet its needs. The government criticizes the defense from identifying the witnesses by name, citing their need to remain confidential. Yet, when the witnesses were identified by defense counsel as confidential informants,

the government claimed they were merely concerned citizens being reimbursed for their expenses. And the witnesses themselves have not maintained any sense of meaningful secrecy about their conduct. They openly advised subjects that they were recording interviews with them about AIM and Aquash. Interviews were conducted in public places such as local restaurants. And, subjects were often notified that their information was going to be published in a book.

Graham's concern is that the government will attempt to persuade the Court to deny Marshall's request for a continuance based on false allegations. The government had consistently made the inflammatory allegations against the defendants. For instance, the government has alleged that Graham raped Aquash as a means of persuasion. In a recent filing by the government before the Eighth Circuit Court of Appeals, the government stated this untested allegation in its statement of facts. It was an allegation not relevant to any issue before the Court. And, though referenced as a fact, the source cited by the government supporting it was one of its own pleadings, not sworn testimony.

Graham has a right to have his counsel review all such materials and either attempt to dispute them, disprove them, or put them in their proper context. The

methods used by the government in this case are not fair, and the secrecy does nothing to instill confidence in the integrity of the proceeding.

Dated January 20, 2009.

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

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

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

Dated January 20, 2009.

/s/ John R. Murphy
John R. Murphy