UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

JOHN GRAHAM, a/k/a
JOHN BOY PATTON and
VINE RICHARD MARSHALL a/k/a
RICHARD VINE MARSHALL a/k/a
DICK MARSHALL,

Defendants.

CR 08-50079

GOVERNMENT'S RESPONSE TO DEFENDANT MARSHALL'S MOTION FOR DISCLOSURE AND PRODUCTION OF EVIDENCE

COMES NOW the United States of America, through its attorneys, United States Attorney Marty J. Jackley, and Assistant United States Attorney Robert A. Mandel, and respectfully responds to Defendant Marshall's Motion for Disclosure and Production of Evidence and states as follows:

1. Regarding any recordings of statements of the defendant, Fed. R. Crim. P. 16 provides that the United States is required to make it "available for inspection [or] copying." The United States has made these tapes available for defense counsel to listen to in the U. S. Attorney's Office. Defense counsel has not done so. The rule does not require that the United States make a copy of these tapes for defense counsel. While the United States did have an extra set

of copies that were given to co-defendant's counsel, the United States is not required to create another set. Defendant Marshall has not been provided copies of all of the taped conversations based in part upon continuing concerns raised by Defendant Graham that copy of tapes results in reduced quality. See Exhibit 1 (Defendant Graham's correspondence of December 31, 2008) and Exhibit 2 (the United States' response dated January 8, 2009). The United States notes from defendant's pleading that he did on one occasion borrow one of the copies of a tape from co-defendant's counsel to listen to. As long as the Court's order regarding discovery is complied with, the United States does not object to any arrangements between defense counsel to work out an arrangement whereby they can both listen to those copies of the tapes.

2. Regarding any other recordings in the possession of the United States, again there is no legal obligation for the United States to make copies for the defendant. Again, these tapes are available for defense counsel to listen to but he has not done so. Again, the United States does not object to an arrangement between defense counsel.

3. While it is the position of the United States that while a number of the tapes referred to by the defendant are probably not even discoverable under federal law, nonetheless, all are being made available to defense counsel to listen to in the U. S. Attorney's Office. If defense counsel chooses to copy these tapes, the United States is agreeable to working out arrangements if proper procedures and assurances are put in place to protect sensitive discovery

materials. The United States is not required to make copies of these tapes for the defendant under any rule or law and therefore resists the defendant's motion in its entirety.

Respectfully submitted this 30th day of January, 2009.

/s/ Robert A. Mandel

ROBERT A. MANDEL
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2009, I served by electronic transmission, a true and correct copy of the foregoing Government's Response to Defendant Marshall's Motion for Disclosure and Production of Evidence on:

Dana Hanna
Attorney at Law

John Murphy
Attorney at law

/s/ Robert A. Mandel

Robert A. Mandel

MURPHY LAW OFFICE, P.C.
JOHN R. MURPHY - ATTORNEY AT LAW
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December 31, 2008

Marty J. Jackley
United States Attorney
P.O. Box 3303
Sioux Falls, SD 57101

Robert Mandel
Assistant United States Attorney
515 9th Street, Room 201
Rapid City, SD 57701

RE: United States v. John Graham; File No. 08-50079-01

Dear Mr. Jackley and Mr. Mandel:

I am in receipt of an audio tape labeled, "198A-MP-47472; 1 of 1; DATE UNKNOWN; COPY." The exterior of the tape does not indicate who the parties on the tape are that are speaking. The tape is inaudible. Please produce an audible version of the tape and indicate who the parties are that are speaking. Thank you.

Sincerely,

John R. Murphy

Cc: Client

EXHIBIT 1

U.S. Department of Justice

Marty J. Jackley
United States Attorney
District of South Dakota

515 Ninth Street, Room 201
Rapid City, South Dakota 57701

(605)342-7822
FAX:(605)342-1108

January 8, 2009

John R. Murphy
Attorney at Law
328 E. New York St. #1
Rapid City, SD 57701

RE: United States v. John Graham

Dear John:

I am returning the tape you sent to us on January 6, 2009 as per our discussion. This tape is a recording of [redacted]. I was not able to detect any audibility problems with this tape on our player of any significant nature and it is no different from the copy we have. If you are still unable to hear it on your equipment, you can bring it over here and we can play it for you on ours.

Best regards,

MARTY J. JACKLEY
United States Attorney
By:

ROBERT A. MANDEL
Assistant U.S. Attorney

RAM/lc
Enc.
cc: Marty Jackley

EXHIBIT 2