

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
	)	REPLY TO GOVERNMENT'S
JOHN GRAHAM, a/k/a	)	RESPONSE FOR DISCLOSURE AND
JOHN BOY PATTON and	)	PRODUCTION OF EVIDENCE
VINE RICHARD MARSHALL, a/k/a)	)	
RICHARD VINE MARSHALL, a/k/a)	)	
DICK MARSHALL	)	
Defendants.	)	

John R. Murphy, defense counsel for John Graham replies to the Government's Response to Defendant Marshall's Motion for Disclosure and Production of Evidence (File Doc. 170).

In recent pleadings, the government has claimed that its decision not to provide copies of audio tapes to Mr. Marshall is supported by a letter I wrote to the government on December 31, 2008. File Doc. 170, Exhibit 1. The government asserts that my letter supports its assertion that copying the tapes for Mr. Marshall may lead to the tapes becoming inaudible. File Doc. 170, p. 2.

My letter to the government was poorly drafted. And, it is being used out of context by the government to justify not providing Mr. Marshall with copies of the audio tapes.

In my letter to the government, I said that one tape was “inaudible.” That was not the proper way to describe the tape. The audio quality of the tape is fine. This is verified by Mr. Mandel’s responsive letter dated January 8, 2009. File Doc. 170, Exhibit 2. However, the tape was not labeled, and there was no indication of who made the tape, who was being recorded, and when the tape was made. File Doc. 170, Exhibit 1. Of the several people recorded on the tape, none appeared to be connected with this case.

The government knows that the audio quality of the tape was fine. File Doc. 170, Exhibit 2. There is no basis for its continuing assertion that its refusal to provide Mr. Marshall with audio tapes is based “upon continuing concerns raised by Defendant Graham that copy of tapes (sic) results in reduced quality.” File Doc. 170, p. 2.

Defense counsel wants to make sure that the Court does not resolve Mr. Marshall’s motion for production of these tapes based on the government’s misrepresentation that copying the tapes is likely to lead to audibility problems when such has not been the case in the past. Defense counsel regrets any

confusion caused by his imprudent use of the word “inaudible” in his letter to the government, as that was not an accurate way to describe the situation.

Dated January 30, 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 30, 2009.

/s/ John R. Murphy  
John R. Murphy