

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

CR08-50079-01

Plaintiff,

v.

JOHN GRAHAM aka JOHN BOY
PATTON, and VINE RICHARD
MARSHALL aka RICHARD VINE
MARSHALL aka DICK MARSHALL,

Defendants.

**UNITED STATES MEMORANDUM
OPPOSING DEFENDANT
GRAHAM'S MOTION IN LIMINE
RE: GRAHAM'S MEDIA
INTERVIEWS**

COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and Assistant United States Attorney Robert A. Mandel, and respectfully files its Memorandum Opposing Defendant Graham's Motion in Limine Re: Graham's Media Interviews based upon both legal and factual grounds.

On or about December 9, 2008, Defendant Graham filed his Motion to Compel Disclosure of Defendants' Statements [DE 91] presenting the same and similar arguments. On December 18, 2008, the United States filed a detailed Response in Opposition to Defendant Graham's Motion to Compel Discovery demonstrating full compliance with Fed. R. Crim. P. 16. Based upon Defendant Graham's own concession of the mootness of his discovery motion, the Magistrate Court denied Defendant Graham's Motion to Compel the United

States to produce statements. See DE 129. The attempts to limit or exclude Defendant Graham's non-testimonial statements to the media were further raised in severance motions and denied by the Magistrate Court's Severance Order. See, Magistrate Court Order, DE 116, pp.26-28 (b. Interviews with Media). Defendant Graham now seeks to reintroduce his positions to limit his own media interviews in the present motion practice forum.

Both Defendant Marshall's statements and Defendant Graham's statements presently known to the United States and within its possession and control have been disclosed, including within the United States' Memorandum in Opposition to Defendant Graham's and Marshall's Motion for Severance and supplemental filings. See DE 95. Prior to the October 2008 trial date, Defendant Graham's counsel was invited to the United States Attorney's Office to review the public domain information and to attempt to reach a stipulation on admissibility of excerpts of the statements to be used at trial.¹

Significantly, Defendant Graham's interviews with the media constitute non-testimonial statements probative of his actions and involvement in the Aquash murder. See, Fed. R. Evid. 801(d)(2). It is further anticipated that independent evidence at trial will demonstrate Defendant Graham sought to

¹See correspondence of September 23, 2008, from US Attorney Jackley to ensure, out of an abundance of caution, that the listed public domain interviews were provided to Defendants in their entirety. See Exh. A attached hereto.

take advantage of the media to create false alibis with respect to his involvement in the Aquash murder.

The United States has preliminarily identified excerpts it intends to use during its case-in-chief at trial of Defendant Graham's interviews with media sources.² One previously identified excerpt is from Defendant Graham's statement in Fifth Estate interview, scene #2, November 8, 2000, Exhibit 8 to DE 95, namely:

GRAHAM: No, she was not kidnapped from Denver. We left Denver together.

TREMONTI: Just the two of you?

GRAHAM: Well, that's all I'm going to say on that. Like if other people want to put themselves there, let them put themselves there.

DE 95, Exh. 8.

In the event Defendant Graham does not wish to stipulate that he is referring to Annie Mae Aquash, it is the United States' position that additional statements from the interview will need to be included.

With respect to Defendant Graham's statement of October 18, 2006, filmed by Native Youth Movement, Vancouver, British Columbia, Exh. 9 to DE 95, the United States will exclude Defendant Graham's references to our former

²Throughout its filings, the United States has been cautious to reserve the right to utilize additional statements of Defendant Graham, that have been produced, for impeachment and other proper evidentiary grounds. See, DE91, fn.1.

governor. See Exh. B (proposed redaction). Defendant Graham's other statements contained therein go directly to his involvement in the criminal venture including the following excerpt:

Question: When's the last time that you saw her?

Graham: When I drove her from Denver to Pine Ridge and she asked me to drive, drive with her and travel with her and when I dropped her off at a safe house in Pine Ridge. That's the last time I seen her. Um, since the, I guess, there has been a lot of speculation, a lot of rumors as to what happened or what could have happened.

DE 95, Exh. 9; Exh. B (redacted).

In this media interview, Defendant Graham made statements that are further probative to the issue of his Indian status, included among these are Graham's claims that "Indian people" cannot receive a fair trial in South Dakota made in the context of discussing his own Indictment. Id. In addition, Graham refers to the American Indian Movement and its "insistence on **our** sovereignty. **Our** rights to **our** lands, **our** resources, and **our** rights to protect what's rightfully **ours.**" Id. (emphasis added). In the event Defendant Graham wishes to stipulate to his Indian status, the United States would agree further redactions of his statement may be warranted. The interview contains additional statements by Defendant Graham pertaining to the issue relating to his avoidance and flight from authorities. Id.

The United States only intends to introduce the video segments of the direct statements of Defendant Graham. To the extent Defendant Graham

would like to stipulate to certain redactions, in addition to references to our former governor, the United States remains willing to further discuss the same. Otherwise, it remains the United States' position that it has disclosed all of Defendant Graham's statements; his interviews on video are probative and admissible pursuant to Fed. R. Evid. 801(d)(2).

Accordingly, the United States respectfully requests that Defendant Graham's Motion in Limine Re: Graham's Media Interviews be denied.

Dated and electronically filed this 30th day of March 2009.

MARTY J. JACKLEY
United States Attorney



PO Box 2638
Sioux Falls, SD 57101-2638
605.357.2330

CERTIFICATE OF SERVICE

The undersigned hereby certifies on March 30, 2009, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy
Dana Hanna

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



Marty J. Jackley



U.S. Department of Justice

Marty J. Jackley
United States Attorney
District of South Dakota

Post Office Box 2638 (605)357.2330
Sioux Falls, South Dakota 57101-2638 FAX:(605)33.4405

September 23, 2008

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

RE: United States v. Graham

Dear John:

I am enclosing additional discovery in relation to statements and admissions pursuant to Fed. R. Crim. P. 16(a). While I believe you already have been provided some of this information, out of an abundance of caution, it is being provided at this time:

1. Transcript of interview of Defendant from Native Youth Movement, Vancouver, BC;
2. Transcript of Anna Maria Tremonti-CTV, Fifth Estate, on November 8, 2000; and
3. Transcript of Defendant's interview by Antoinette Nora Claypoole on March 30-31, 2004.

John, I am requesting that a foundation stipulation be entered with respect to Mrs. Claypoole's interview and request that you please advise us as to your position with respect to the same. The DVDs of the interviews for items 1 and 2 are available at the U.S. Attorney's Office for viewing, if you so desire.

To the extent that you have any questions whatsoever, please do not hesitate to contact me. I would again remind you that the United States has requested rule 16(b) disclosure.

Sincerely,

MARTY J. JACKLEY
United States Attorney

MJJ/lc
Encs.
cc: AUSA Robert Mandel

00:00:06 Exclusive John Graham Interview from Myspace.com,
00:00:08 [http://myspacetv.com/index.cfm?fuseaction=vids.individual&](http://myspacetv.com/index.cfm?fuseaction=vids.individual&videoid=3144354)
00:00:10 [videoid=3144354](http://myspacetv.com/index.cfm?fuseaction=vids.individual&videoid=3144354)
00:00:12 Added on October 18, 2006, by Peacepipe Films
00:00:14 Filmed by Native Youth Movement Vancouver BC
00:00:16 Graham: It was 1985. I guess I moved up to the Yukon
00:00:20 with my family and there .. Well, my family
00:00:22 became my movement. I began, ah, you
00:00:25 know, I didn't bring my children up and, ah, to
00:00:28 do that properly I had to let down a lot of my
00:00:32 political activities I guess and concentrate on,
00:00:36 on bringing my children up.
00:00:46 Graham: Question's asked what have I been doing since
00:00:51 last March, uh, when South Dakota federal
00:00:55 indictments have been, have been laid against,
00:00:58 ah, myself and Arlo Looking Cloud in, uh, the
00:01:02 murder of Anna Mae Aquash. Um, I just, while
00:01:10 these indictments came out in March, I first
00:01:12 heard about them coming home from work one
00:01:14 day. Uh, I was told that the media, CBC, or
00:01:20 CTV, or different media stations were waiting
00:01:24 at my apartment for me to get home. I guess,
00:01:27 so I never went home. Ah, went to a friend's. I
00:01:31 realized, uh, from the news that night that, it
00:01:34 was quite possible that I was being indicted for
00:01:37 the murder of Anna Mae. So, from March until
00:01:41 December, I, ah, I avoided, uh, I avoided the
00:01:47 media. I avoided, uh, uh, I guess, uh, the police. I
00:01:54 wasn't on the run. I wasn't on the lam. I
00:01:57 wasn't hiding. I was pretty, I always out in the
00:02:00 open. I've always worked through all this time.
00:02:04 Um, but I was avoiding the media because the
00:02:09 media had been, had been dogging me over
00:02:10 this for years. And, uh, everything that has been
00:02:15 coming out over the media to date, uh, just
00:02:19 refuses to, uh, deal with all the facts, deal with all
00:02:22 the truths around this case. Instead they want
00:02:25 to, uh, continue, uh, uh, continue ongoing
00:02:31 disinformation campaign that the US federal
00:02:34 government has been waging against AIM, uh,
00:02:38 going back into the early '70's. So, uh, bringing it
00:02:43 up to December. Uh, December 1st, I was arrested
00:02:49 in East Vancouver by, uh, Vancouver City Police. I
00:02:54 was, uh, walking through a park when I heard my
00:02:58 name being called, um, by a person, Kelly
00:03:03 White, who works in the community, uh, claims to

00:03:06 be a representative of Leonard, uh, does a
00:03:10 radio show on coop radio. She has made it a
00:03:15 personal vendetta of her's to see me in prison
00:03:18 or to see me killed. Um, case or
00:03:23 anything at all she can try to put on me I
00:03:28 guess. But anyway, she came running up to
00:03:31 me with the police in tow and, ah, kinda, right
00:03:37 up, you know, in my face and said yes, there
00:03:39 he is. That's John Graham.

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Redacted

00:05:50 Question: When did they first bring up, ah, the murder of
00:05:53 Anna Mae Aquash? Like . . . (unaudible)
00:05:56 Graham: To me, they first brought it up to me, I think it
00:05:58 was in 1988 when the FBI came to my home
00:06:01 up in the Yukon, and, ah, said that they wanted
00:06:05 to, ah, talk about this, at that time it was a 12-
00:06:08 year-old case, ah, Anna Mae Aquash,

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Redacted

Question: When's the last time that you saw her?

Graham: When I drove her from Denver to Pine Ridge.

And she asked me to drive, drive with her and travel with her and when I dropped her off at a safe house in Pine Ridge. That's the last time I seen her. Um, since then, I guess, there has been a lot of speculation, a lot of rumors as to what happened or what could have happened to her, um.

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00:10:55 Question: So that's pretty much the situation, most of the
00:10:57
00:10:58 Graham: I don't think the situation has changed in South
00:11:00 Dakota at all, the attitude or the mentality
00:11:03 toward, toward Indian people and I, ah, I
00:11:07 believe that a fair trial in South Dakota is
00:11:09 impossible, totally impossible. They don't
00:11:12 know the meaning of the word fairness,
00:11:15 equality under the law. They don't know, ah that meaning.
00:11:17 There's a lot of things being done that the, ah,
00:11:21 um, by people in the community. People who
00:11:24 have been put into key places, ah, in the
00:11:26 community, as far as, ah, in the, in, ah,
00:11:31 powerful places in media. Um, people
00:11:36 throughout the States and in Canada here,
00:11:40 operating, ah, with the federal, with the feds in
00:11:45 an ongoing continuous disinformation
00:11:48 campaigning against AIM, against Leonard
00:11:50 Peltier. Ah, against myself and Arlo. Um,
00:11:55 hopefully, you know, their ideas is that, you
00:11:57 know to, as you rub out the American Indian
00:11:59 Movement, our ideas, our thoughts, our
00:12:02 feelings, um, our insistence on our sovereignty.
00:12:08 Um, they want to a, they want to, um, stop any kind of
00:12:14 appeal Leonard might have for his parole. Ah,
00:12:18 anytime a campaign starts going for Leonard
00:12:22 for his clemency campaign or his parole
00:12:23 campaign. Ah, the people in the state of South
00:12:26 Dakota, the FBI are actively, have been
00:12:30 actively lobbying to keep Leonard in prison and
00:12:33 not to let, not to allow him a parole date; ah, not to,
00:12:36 allow him a fair, fair hearing. And they've been
00:12:39 managing to do this all the way through the
00:12:41 Peltier case. And, uh, they, gonna, they are
00:12:46 continuing this campaign with, uh, presently,
00:12:49 uh, through, uh, through Indian newspapers in
00:12:53 the States, ah, through radio programs, uh, TV
00:12:56 programs, uh, media outlets. They're active,
00:13:00 very active on the Internet. Uh, under different
00:13:04 names, um, slandering anybody involved with
00:13:08 AIM, uh, anybody particularly myself and Arlo.
00:13:12 Um, they've, ah, created, um, um, in ah, trying
00:13:21 to generate hate toward Leonard, or toward
00:13:24 Arlo and myself in this case and um, by doing
00:13:28 this while they're not doing the community any
00:13:31 good. They're not doing the family any good;

00:13:33 they're not doing this case any good. Ah, we
00:13:36 wanna get to the bottom of this as much as
00:13:38 anybody. But we can't do that by, uh, you
00:13:42 know, half-truths, innuendos, speculation,
00:13:45 rumors, ah, that doesn't, that, that doesn't get
00:13:49 to the truth. So, these people that are out
00:13:52 there, like the Paul DeMains, Richard Two Elk,
00:13:54 Kelly White, uh, there's a few others, that have
00:13:58 been running the rumor mill for the feds around
00:14:01 this case and people who are exposed to this
00:14:05 type of a media, uh, I just would like to ask
00:14:08 them to keep an open mind; keep an open
00:14:11 heart about it, about what they are hearing;
00:14:13 about what they are seeing and, uh, through
00:14:17 facts, not rumors. I hope that people can
00:14:20 come to their own, own, um, decision as to
00:14:24 what they believe is right and wrong, what they
00:14:27 believe to be truths and what they believe to be
00:14:28 rumors. And, uh, divide them so that we can
00:14:33 get to the bottom of this. They're hoping, I
00:14:38 think, to, uh, to clear themselves in this whole
00:14:41 Anna Mae murder issue. They're hoping to
00:14:46 weld the door shut, maybe, on Leonard, to
00:14:48 stop any of his, any more of his like, parole
00:14:51 campaigns, uh, any, uh, possibility of a
00:14:55 clemency campaign. Ah, I think we come very
00:14:58 close to getting Leonard out during the Clinton-
00:15:01 era and, uh, I think they got really threatened
00:15:05 by that. They wanna stop the whole idea of
00:15:08 AIM, our insistence on our sovereignty. Our
00:15:12 rights to our lands, our resources, and our
00:15:14 rights to protect what's rightfully our's. That
00:15:19 insistence within AIM, they, that's what they
00:15:23 want to stop and that's what I believe that, you
00:15:25 know, that they are hoping that they can
00:15:27 squash all three, maybe by setting me up,
00:15:31 setting Arlo up, as a scapegoat in this charge.