

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
)	THIRD SET OF PROPOSED JURY
JOHN GRAHAM, a/k/a)	INSTRUCTIONS
JOHN BOY PATTON,)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Attorney for Plaintiff: Marty J. Jackley, United States Attorney
Robert A. Mandel, Assistant United States Attorney
515 9th Street, 2nd Floor
Rapid City, SD 57701
605-342-7822

Attorney for Defendant: John R. Murphy
328 E. New York Street
Suite 1
Rapid City, SD 57701
605-342-2909

Defendant John Graham files his proposed jury instruction number 7.

Dated March 31, 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 March 31, 2009.

/s/ John R. Murphy
John R. Murphy

Defendant's Proposed Jury Instruction No. _____

During this trial, you have been told that defendant John Graham allegedly made statements to various people. You must determine whether Mr. Graham actually made these statements, and, if so, how much weight you should give them.

You have also heard evidence that the witnesses to these statements, specifically Serle Chapman and Robert Ecoffey, did not record their conversations with Mr. Graham although they had the ability to do so. You have heard evidence that Mr. Chapman deliberately turned off his recording device, and that Mr. Ecoffey never utilized a recording device although such devices are generally available to law enforcement officers for recording such interviews.

When deciding whether Mr. Graham made the alleged statements, you may take into consideration the fact that the witnesses failed to record the interviews. You may also take this fact into consideration when determining whether the conversation occurred as the witness relayed it, or whether the witnesses could be mistaken as to their recollection of Mr. Graham's exact words on the dates in question.