

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.)	SUPPLEMENT TO MEMORANDUM
)	IN SUPPORT OF PROPOSED
JOHN GRAHAM, a/k/a)	JURY INSTRUCTIONS
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Defendant Graham filed proposed jury instructions, Doc. 154, and a supporting memorandum, Doc. 151. In those instructions, Graham asks the Court to instruct the jury that the terms “Indian” and “Indian blood” refer to persons who have blood ties to Indian tribes inside the United States that are recognized by the United States government and with whom the United States shares a guardian-ward relationship. In those instructions, Graham asks the Court to instruct the jury that if it finds that Graham or Aquash do not have direct blood ties to an American Indian tribe located within the United States and with whom the United States government has a guardian-ward relationship, then the jury is obligated to find Graham not guilty of Counts I and II as they are charged in the superceding indictment.

In further support of Graham's position, Graham cites to Federal Rule of Criminal Procedure 6(I). This rule narrowly and deliberately defines the term "Indian Tribe" to only include Indian tribes "recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 479a-1."

This rule is consistent with, and reinforces the, arguments made by Graham in support of his proposed jury instructions. It supports Graham's argument that the terms used in 18 U.S.C. §§ 1152 & 1153 are to be defined narrowly and held only applicable to American Indians from Indian tribes within the United States and which are recognized by the federal government.

Graham did not previously cite to Fed.R.Crim.P. 6(I). His counsel came across the provision when researching another issue and brought it to the Court's attention on the same day as he became aware of the authority.

Dated April 29, 2009.

/s/ John R. Murphy
John R. Murphy
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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:

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Dated April 29, 2009.

/s/ John R. Murphy
John R. Murphy