

Dated this 20th day of July, 2009.

UNITED STATES DISTRICT COURT
FOR THE 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.

Case No. CR 08-50079

DEFENDANT MARSHALL'S
MEMORANDUM OF LAW
IN SUPPORT OF
RENEWED MOTION TO SEVER TRIALS

For reasons of economy, there is a preference in the federal system for joint trials of defendants who are indicted together. Richardson v. Marsh, 481 US 200, 107 S.Ct. 1702, 95 Law Ed. 2d 176 (1987). However, Rule 14 of the Federal Rules of Criminal Procedure provides: "if it appears that a defendant or the government is prejudiced by a joinder of ... defendants ... for trial together, the Court may order an election or separate trials of counts, grant a severance of defendants, or provide other relief justice requires."

Here, the government's interest in judicial economy can no longer outweigh Defendant Marshall's right to a speedy trial. Unless the Court of Appeals eventually rules that this Court erred in its ruling, then Marshall will likely have a separate trial. Recognizing that there are no guarantees, the most likely outcome is that the government will not prevail in its interlocutory appeal, and then the government will choose not to try a case that this court has already indicated

will be dismissed. Therefore, it is unfair and unreasonable to leave Defendant Marshall in a legal limbo, detained without bond in jail without a trial date, on the off chance that the Court of Appeals will reverse this court, in the interests of an entirely speculative judicial economy.

Richard Marshall is suffering serious prejudice—lengthy detention without trial—to the detriment of his constitutional and statutory federal speedy trial rights. If this Court grants this motion to proceed in a timely way with a separate trial for Richard Marshall, and then the Court of Appeals should reverse this court’s order on the jurisdiction issue, before Richard Marshall’s new trial date, the Court can always reconsider the severance issue if the government were to then move to re-join the defendants.

Therefore, this Court should exercise its discretion under Rule 14 to order and schedule a separate trial for Richard Marshall.

Dated this 20th day of July, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna
Dana L. Hanna
HANNA LAW OFFICE, P.C.
PO Box 3080
816 Sixth Street
Rapid City, SD 57709
(605) 791-1832
dhanna@midconetwork.com

Attorney for Defendant Richard Marshall

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of Renewed Motion to Sever Trials was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham
jmurphysd@hotmail.com

Dated this 20th day of July, 2009.

/s/ Dana L. Hanna

Dana L. Hanna