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UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

The Court has reviewed the United States' Trial Memorandum Re: Crawford, doc. 64, Defendant Graham's Response, doc. 86. The government lists four out-of-court statements it anticipates introducing at trial and indicates that it may introduce other similar types of conversations during trial. In his response, Graham points out that the government fails to specify the statements it seeks to admit. For example, at page 2 of Graham's Response, he indicates that one recorded conversation fills nine audio tapes, and the transcript of the conversation is 257 pages long. Whether these out-of-court statements are admissible is a significant issue in the trial of this case. Thus the Court will order the government to specify the out-of-court statements it intends to introduce at trial by submitting copies of the transcripts of the four out-of-court statements listed in its Trial Memorandum, doc. 64, as well as any other out-of-court statements it intends to introduce at trial. The portion of the transcript that the government intends to introduce shall be highlighted.

In addition, Judge Duffy directed the government to submit to the court in camera any out-of-court statements of either defendant that it intended to introduce at trial. (Doc. 77.) The government submitted nine separate statements by defendants. The nine statements were filed under seal

concurrently with Judge Duffy's Order on Defendants' Motions to Sever. (Doc. 116.) The Court will order the government to submit copies of those transcripts, such copies to include highlighted sections it intends to introduce at trial.

This case involves difficult evidentiary questions requiring considerable time and thought by counsel and the Court. Setting a deadline for the government to advise the Court whether it intends to proceed against defendant Graham will assist the Court with evidentiary rulings, trial procedure and scheduling issues. Accordingly,

IT IS ORDERED:

- 1. That, on or before Wednesday, February 3, 2010, the government shall advise the Court whether or not it intends to proceed against Defendant John Graham in this case.
- 2. That, on or before Wednesday, February 3, 2010, the government shall provide counsel and the Court with highlighted transcripts of all out-of-court statements it intends to introduce at trial.
- 3. That defendants may submit any objections to the admission of the out-of-court statements, including argument and authority, on or before Wednesday, February 10, 2010.

Dated this 15th day of January, 2010.

BY THE COURT

awrence L. Piersol

United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

DEPUTY