

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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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.

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CR 08-50079

UNITED STATES' RESPONSE TO  
DEFENDANT MARSHALL'S MOTION  
FOR PRODUCTION OF HANDWRITTEN  
NOTES FOR *IN CAMERA* INSPECTION

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson, and Assistant United States Attorney Robert A. Mandel, and responds to Defendant Marshall's motion for production of handwritten notes for *in camera* inspection (DE #571) as follows:

1. Attorney for Defendant claims in his motion that he "has good reason to believe and I do in fact believe" that in a proffer session which occurred on August 19, 2008, false statements were made which were not included in the FBI 302 which has already been provided to defense. In fact, he has no reason to believe that and states no actual reason that he thinks such statements were withheld from him. The United States understands its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and has complied with them in all respects.

2. The statements made during the proffer session do not constitute Jencks Act material, 18 U.S.C. § 3500, and are not discoverable as such. *United States v. Wright*, 540 F.3d 833, 841-842 (2008). In addition, *Wright* holds that the Court is under no obligation to review any notes taken at the time of the interview *in camera*. *Id.* at 842. See, also, *United States v. Grunewald*, 987 F.2d 531, 535 (1993); *United States v. Greatwalker*, 356 F.3d 908, 911-912 (2004).

3. The United States notes that Defendant seeks not only the agent's notes but the notes of any attorneys present representing the United States. In that regard, in addition to the other objections the United States has to the provision of this material, the United States believes this would also be an improper invasion into the United States' Attorney's work product.

Respectfully submitted this 28th day of January, 2010.

/s/ Robert A. Mandel

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CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of January, 2010, I served by electronic transmission a true and correct copy of the foregoing United States' Response to Defendant Marshall's Motion for Production of Handwritten Notes for In Camera Inspection on:

Dana Hanna  
Attorney at Law

John Murphy  
Attorney at law

/s/ Robert A. Mandel

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Robert A. Mandel