

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

MAY 05 2010


CLERK

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	DEFENDANT GRAHAM'S
vs.)	REPLY TO GOVERNMENT'S
)	RESPONSE TO MOTION TO HAVE
JOHN GRAHAM, a/k/a)	COUNSEL APPOINTED
JOHN BOY PATTON and)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL)	
Defendant.)	

Defendant John Graham replies the government's response (Doc. 732) to his motion to have counsel re-appointed to represent him in this matter.

The government alleges that Mr. Graham did not accurately convey the facts by not quoting Mr. Holmes' statement that the letter constituted his personal opinion. Doc. 732, ¶ 2. Paragraph 13 of Graham's motion clearly states that Holmes claimed the contents of his letter were his personal opinions. Graham did not hide or fail to acknowledge this fact as alleged by the government.

It is ironic that the government's primary point of opposition to Graham's motion is that Graham allegedly failed to fully disclose the facts contained within the letter. It is the government who hid the very existence of this letter from Graham, co-defendant Marshal, and, presumably, co-defendant Looking Cloud,

since 1998.

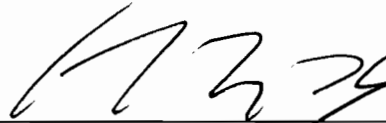
Moreover, Holmes' personal opinions are insignificant to the real issue presented by the discovery of this letter. Holmes states that it is the Department of Justice's policy to consider Canadian Indians not Indians for federal jurisdictional purposes. The existence of DOJ policy contrary to the position taken by the prosecutors in this case is not a matter of opinion. It is a fact, and one which Mr. Mandel never disclosed to the Court or to counsel during the time the Canadian Indian issue was being litigated. The failure to disclose the letter or the DOJ policy is a violation of the United States' Attorney's duty of candor to the Court, as well as a Brady violation.

Similarly, the government claims that the reason the letter was not disclosed is because there are "differences of opinion" on the issue. That point is self-evident. However, it is also irrelevant. In the letter, Mr. Holmes discusses case law that contradicted the position taken by the United States Attorney's Office in Graham's case. That precedent was not acknowledged by the government in its briefs or arguments on the issue. Citation to adverse case authority is ethically required. The government violated that obligation and cannot claim that this is excused because of a "difference of opinion" on the legal issue.

The government also claims as an excuse for not disclosing the letter that this is not a well settled legal issue. That statement is not really true. The defense provided the Court with substantial, un-rebutted case law that clearly establishes the issue. So convincing is the law on this point that the Court, prior to trial, stated in a written order that it would probably dismiss the case if it went to trial. Even the government's own research into the issue back in 1998 established for Mr. Holmes and the DOJ that the issue was well settled as a matter of law. Moreover, defense counsel has just discovered another letter on the issue from Attorney General Larry Long dated November 16, 1998. Exh. A. In that letter, Mr. Long states the fact that Graham and Aquash were Canadian "puts United States jurisdiction into question." Thus, ten years before the 2008 indictment was brought, even State prosecutors were well enough versed in the law to doubt federal jurisdiction.

There is no reason to delay appointing Graham counsel to litigate this matter. He stands in jeopardy now of federal prosecution. He had no control over the way the government acted throughout this litigation, up to the point when it moved to dismiss the case without prejudice. He should be able to challenge the matter at this time, rather than possibly have to wait – while in custody – at some time down the line to raise the issue.

Dated April 7, 2010.



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:

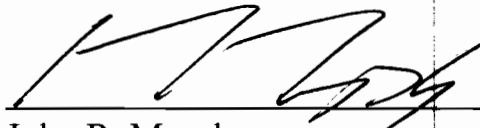
BRENDAN V. JOHNSON,
U.S. ATTORNEY
P.O. BOX 2638
SIOUX FALLS, SD 57101

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

ROBERT A. MANDEL,
ASSISTANT U.S. ATTORNEY
515 NINTH STREET #201
RAPID CITY, SD 57701

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

Dated April 7, 2010.



John R. Murphy