

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

CR08-50079

Plaintiff,

v.

**UNITED STATES' RESPONSE IN
OPPOSITION TO DEFENDANT
GRAHAM'S MOTION TO
COMPEL DISCOVERY**

JOHN GRAHAM aka JOHN BOY
PATTON, and VINE RICHARD
MARSHALL aka RICHARD VINE
MARSHALL aka DICK MARSHALL,

Defendants.

COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and Assistant US Attorney Robert A. Mandel and respectfully files this Memorandum in Opposition to Defendant Graham's Motion to Compel Disclosure of Defendant's statements.

The United States does not dispute that Defendant Graham is legally entitled to oral, written, or recorded statements made by him as set forth in Fed. R. Crim. P. 16(a)(1)(A) and (B). However, all of Defendant's statements in their entirety that the United States has in its possession or control have been produced in accordance with Rule 16.

The disconnect appears to be that Defendant Graham believes he is entitled to have the United States further identify the exact excerpts of his statements it intends to

introduce at trial. While this is not a requirement of Rule 16(a), for purposes of trial efficiency, the United States intended to provide Defendant Graham the excerpts during the previous October trial exhibit exchange process that it would likely seek to introduce. In any event, Defendant Graham has, in part, accomplished his discovery request of identifying specific excerpts through his severance motion.¹

The United States produced Defendant Graham's statements as follows:

1. January 15, January 18, and February 28, 2008, discovery responses providing documents 1-4865. Defendant Graham's statements to law enforcement, cooperating witnesses, and other public domain-type statements were provided, including the following 01139; 01159-01189; 01140-01147; 01188 -01189; and 04721-04727. See Exhibits 1-3.
2. September 23, 2008, correspondence from US Attorney Jackley to ensure, out of an abundance of caution, that the listed public domain interviews were provided to Defendant in their entirety. See Exhibit 4. As identified in Defendant Graham's filings, Defendant Graham's counsel was invited to the US Attorney's Office to review this public domain information and to attempt to reach a stipulation on admissibility and as to excerpts of statements to be used at trial. The United States has identified, at least preliminarily, the excerpts it intends to use in its case-in-chief at trial in its response to Defendant Graham's severance motion.

To the extent Defendant Graham does not have any of this documentation for whatever reason, the United States has no objection to providing it again. Accordingly, Defendant Graham's Motion to Compel should be denied in full.

¹The United States has reserved the right to utilize additional statements of Defendant Graham, that have been produced, for impeachment and other proper evidentiary grounds.

Date: December 18, 2008

MARTY J. JACKLEY
United States Attorney



PO Box 2638
Sioux Falls, SD 57101-2638
605.357.2330

CERTIFICATE OF SERVICE

The undersigned hereby certifies on December 18, 2008, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy
Dana Hanna

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



Marty J. Jackley
United States Attorney

This document has been filed electronically.



U.S. Department of Justice

Marty J. Jackley
United States Attorney
District of South Dakota

515 Ninth Street, Room 201
Rapid City, South Dakota 57701

(605)342-7822
FAX:(605)342-1108

January 15, 2008

John Murphy
Attorney at Law
328 E. New York #1
Rapid City, SD 57701

RE: United States v. John Graham

Dear John:

Enclosed as discovery in the above-entitled matter are a CD containing the trial and sentencing hearing transcripts and a CD containing discovery documents 1-1311. I am also enclosing instructions on how to access these documents through IPRO, our electronic discovery software program. I anticipate providing you with another CD with approximately 3,200 additional documents within the next few days.

If you have any questions, please don't hesitate to contact me.

Best regards,

MARTY J. JACKLEY
United States Attorney
By:

ROBERT A. MANDEL
Assistant U.S. Attorney

RAM/lc
Encs.



U.S. Department of Justice

Marty J. Jackley
United States Attorney
District of South Dakota

515 Ninth Street, Room 201
Rapid City, South Dakota 57701

(605)342-7822
FAX:(605)342-1108

January 18, 2008

John Murphy
Attorney at Law
328 E. New York #1
Rapid City, SD 57701

RE: United States v. John Graham

Dear John:

Enclosed as additional discovery in the above-entitled matter is a DVD containing discovery documents 1312-4263.

If you have any questions, please don't hesitate to contact me.

Best regards,

MARTY J. JACKLEY
United States Attorney
By:

ROBERT A. MANDEL
Assistant U.S. Attorney

RAM/lc
Enc.



U.S. Department of Justice

Marty J. Jackley
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District of South Dakota

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February 28, 2008

John Murphy
Attorney at Law
328 E. New York #1
Rapid City, SD 57701

RE: United States v. John Graham

Dear John:

Enclosed as additional discovery in the above-entitled matter is a CD containing documents 4264-4865. If you have any questions, please don't hesitate to contact me.

Best regards,

MARTY J. JACKLEY
United States Attorney
By:

ROBERT A. MANDEL
Assistant U.S. Attorney

RAM/lc
Encs.



U.S. Department of Justice

*Marty J. Jackley
United States Attorney
District of South Dakota*

*Post Office Box 2638 (605)357.2330
Sioux Falls, South Dakota 57101-2638 FAX:(605)33.4405*

September 23, 2008

John R. Murphy
Attorney at Law
328 E. New York Street #1
Rapid City, SD 57701

RE: United States v. Graham

Dear John:

I am enclosing additional discovery in relation to statements and admissions pursuant to Fed. R. Crim. P. 16(a). While I believe you already have been provided some of this information, out of an abundance of caution, it is being provided at this time:

1. Transcript of interview of Defendant from Native Youth Movement, Vancouver, BC;
2. Transcript of Anna Maria Tremonti-CTV, Fifth Estate, on November 8, 2000; and
3. Transcript of Defendant's interview by Antoinette Nora Claypoole on March 30-31, 2004.

John, I am requesting that a foundation stipulation be entered with respect to Mrs. Claypoole's interview and request that you please advise us as to your position with respect to the same. The DVDs of the interviews for items 1 and 2 are available at the U.S. Attorney's Office for viewing, if you so desire.

To the extent that you have any questions whatsoever, please do not hesitate to contact me. I would again remind you that the United States has requested rule 16(b) disclosure.

Sincerely,

MARTY J. JACKLEY
United States Attorney

MJJ/lc
Encs.
cc: AUSA Robert Mandel