

UNITED STATES DISTRICT COURT
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.

CR 08-50079

UNITED STATES' RESPONSE TO
DEFENDANT MARSHALL'S
MOTION FOR PRELIMINARY
INSTRUCTION ON READ BACK
OF TESTIMONY

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 preliminary instruction on read back of testimony as follows:

1. The United States agrees that the question of allowing the court reporter to read back trial testimony to the jury if there is such a request from the jury during deliberations is within the discretion of the trial court.
2. The United States does not agree that it is appropriate to instruct the trial jury that it will be allowed to hear testimony read back to it during its deliberations.

Whether or not such a request of the trial jury should be granted is something for the trial court to decide on the basis of what it seeks and the availability of such testimony. In general, it is fairly unusual for the trial jury to have trial testimony read back and the jurors are told to rely on their memories.

3. Defendant cites the potential length of the trial as a reason to instruct the jury that it will be allowed to have testimony read back. Counsel for the United States is unaware of any case in which the jury has been instructed as Defendant seeks in this case, including cases of great complexity lasting several weeks. If the jury of its own volition seeks a read back of some testimony, it is the position of the United States that the court should consider and make its appropriate ruling at that time.

Respectfully submitted this 22nd day of January, 2010.

/s/ Robert A. Mandel

ROBERT A. MANDEL
Assistant United States Attorney
515 9th Street #201
Rapid City, SD 57701
605.342..7822
FAX: 605.342.1108
Robert.Mandel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd 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 Preliminary Instruction on Read Back of Testimony on:

Dana Hanna
Attorney at Law

John Murphy
Attorney at law

/s/ Robert A. Mandel

Robert A. Mandel