

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50079-01, -02
)	
Plaintiff,)	
)	
vs.)	ORDER ON
)	DEFENDANT MARSHALL'S
)	MOTION FOR PRODUCTION
JOHN GRAHAM, aka)	OF HANDWRITTEN NOTES
JOHN BOY PATTON, and)	[Docket 110]
VINE RICHARD MARSHALL, aka)	
RICHARD VINE MARSHALL, aka)	
DICK MARSHALL,)	
)	
Defendants.)	

Defendant Richard Marshall filed a motion seeking an order compelling the government to provide directly to him, or to the court for *in camera* inspection, the handwritten notes of persons present during an interview of Arlo Looking Cloud in Denver, Colorado, on November 17, 1994. The motion was necessitated because, although the interview of Mr. Looking Cloud was tape-recorded, and the tape recording as well as a transcript of the tape was provided to defendants in discovery, part of an answer Mr. Looking Cloud gave to an important question was not recorded because the tape came to an end.

The government responded to Mr. Marshall's motion indicating its willingness to submit any such notes of non-lawyers present at the interview to the court for *in camera* inspection. The court then issued an order directing the

government to submit any hand-written notes to the court by January 5, 2009, for *in camera* review.

The government did not submit any notes to the court. Instead, the government filed a written response indicating that it had contacted the non-lawyers present at the interview and inquired about the existence of any hand-written notes. Specifically, the government contacted James Graf, Robert Ecoffey, Mitch Pourier, Rick Iannucci, and Abe Alonzo, all of whom indicated to the government that they do not recall taking, have no, and are not aware of any hand-written notes from the interview. Accordingly, it is hereby

ORDERED that Mr. Marshall's motion to compel the production of hand-written notes from the November 17, 1994, law enforcement interview of Arlo Looking Cloud [Docket No. 110] is denied as moot because there are no such notes of any non-lawyers in existence.

As to the notes from any lawyers, those notes would presumably be protected by attorney-client privilege or the work product doctrine. If Mr. Marshall believes that he can demonstrate grounds for obtaining attorney notes, this order is without prejudice to his ability to refile this motion and make whatever showing is necessary to obtain notes from any attorney in attendance at the interview. Any subsequent motion on this subject should first demonstrate the existence of any attorney notes, identifying who took such

notes and who currently possess the notes. The motion should also specifically address the attorney-client privilege and work product doctrine.

NOTICE OF RIGHT TO APPEAL

Pursuant to 28 U.S.C. § 636(b)(1)(A), any party may seek reconsideration of this order before the district court upon a showing that the order is clearly erroneous or contrary to law. The parties have ten (10) days after service of this order to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. See Fed. R. Crim. P. 58(g)(2). Failure to file timely objections will result in the waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require review by the district court.

Dated January 7, 2009.

BY THE COURT:

/s/ Veronica L. Duffy _____

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE