


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,	*	CR. 08-50079-01, -02
	*	
Plaintiff,	*	
	*	
vs.	*	DEFENDANT MARSHALL'S
	*	RESPONSE TO GOVERNMENT MOTION
RICHARD MARSHALL,	*	FOR RETURN OF TAPES
	*	
Defendant,	*	

NOW COMES the defendant Richard Marshall, by and through his attorney Dana L. Hanna, and hereby opposes the government's motion for return of copies of tapes provided to the defendant pursuant to Court order.

As grounds for the defendant's opposition to the government's motion, attorney Dana L. Hanna hereby affirms:

1. The government has in its possession over 40 audio cassette tape recordings of interviews conducted by law enforcement with murder suspect Arlo Looking Cloud and conversations secretly recorded by government informants with various individuals who were supporters of the American Indian Movement 34 years ago. The government provided copies of those tapes for the co-defendant Graham, but refused to make or provide copies of the tape-recordings for Mr. Marshall. Mr. Marshall moved for an order directing the government to "produce and provide to the defendant copies of all tape recordings of witnesses in this case". [Doc. 162].

2. In her order of February 24, 2008 [Doc. 179], the United States Magistrate Judge gave the government the choice between two options: the government could provide counsel for Mr.

Marshall with the original tapes, in which case counsel for the defendant was ordered to make copies and return “the original tapes” to the government within six weeks or, “[a]lternatively, if the government reconsiders its position and agrees to make copies of the tapes itself, the government must make such copies and deliver them to Mr. Marshall within 10 days of the date of this order.” The court did not order counsel for Mr. Marshall to make or return any *copies* of the tapes, if the government opted to make and provide copies, rather than the original tapes, for Mr. Marshall.

3. In a letter dated February 25, 2008, I wrote a letter to the prosecutor, asking that he provide me with the original tapes so that I could make digital copies. The government declined to grant that request. Instead, the government opted to comply with the court’s order by making copies of their tapes and providing Mr. Marshall with those copies. The identifying label on each and every tape provided by the government to Mr. Marshall has the word “copy” written on it.

4. In a letter dated September 30, 2009, and written to me, AUSA Mandel mistakenly asserted that the government had provided me with the original tapes, and inquired as to why I had not returned the original tapes, in view of the court’s order.

5. In a letter dated October 6, 2009, I informed Mr. Mandel of his mistake of fact: I informed him that the government had not provided me with any original tapes, as he had affirmed in his letter of September 30; the government had provided me with copies, which, under the court’s order, I was not obligated to return to the government (until after trial). I pointed out that all tapes that I had received from the government were marked “copy”.

6. I then received a phone call on October 7, 2009, from Mr. Mandel, who informed me that, even if I had been given copies of the original tapes, he wanted me to return the government-made copies of the original tape-recordings. I responded to that request with a

letter dated October 14, 2009, calling the prosecutor's attention to the court order directing me to return originals, if the government provided me with the original tapes, but which did not direct me to make copies of copies, if the government chose to make and provide Mr. Marshall with copies. I declined to undergo the unnecessary expense and inconvenience of making copies of copies for the government, since the order did not require me to do so and since the government had the originals, in any case.

7. In preparing for trial, I frequently listen to the tape-recordings provided to me. They are necessary for my trial preparation, and I intend to offer some of the tape-recordings, or portions thereof, into evidence. Since the government opted to make and provide copies for Mr. Marshall, rather than grant my request for original tapes, and since the return of any copies of tape-recordings to the government prior to trial was neither contemplated or ordered by the Magistrate, the government has shown no good cause to order Mr. Marshall to return the copies of the tapes he received from the government.

WHEREFORE, defendant Marshall urges the Court to deny the government's motion for return of the copies of tapes provided to the defendant pursuant to the Court's order, Document 179.

DATED: October 19, 2009.

RICHARD MARSHALL, Defendant

By



Dana L. Hanna
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the defendant's response to the Government Motion on the government by mailing a copy of the same to AUSA Robert Mandel, 515 9th St., #201, Rapid City, SD 57701, on the 20th day of October, 2009.

A handwritten signature in black ink, appearing to read 'Dana L. Hanna', written over a horizontal line.

Dana L. Hanna