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STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
COUNTY OF PENNINGTON) SEVENTH JUDICIAL DISTRICT

FILE NO. CRI 09-3953

THE STATE OF SOUTH DAKOTA)

Plaintiff,)

VS.)

JOHN GRAHAM,)

Defendant.)

TRANSCRIPT OF
SENTENCING HEARING

* * * * *

BEFORE: THE HONORABLE JOHN J. DELANEY,
Circuit Court Judge
Pennington County Courthouse
Rapid City, South Dakota
JANUARY 24, 2011

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* * A P P E A R A N C E S * *

MR. MARTY JACKLEY
Attorney General
MR. ROD OSWALD
Assistant Attorney General
MR. ROBERT MANDEL
Assistant U.S. Attorney
Representing the State of South Dakota

MR. JOHN MURPHY
Attorney at Law
Representing John Graham

* * I N D E X * *

WITNESS (ES) : DIRECT CROSS REDIRECT RECROSS

 (None.)

1 * * P R O C E E D I N G S * *

2 **THE COURT:** Okay.

3 We're here in the matter of the State of
4 South Dakota versus John Graham, file number 09-3953.
5 This is the time and place set for sentencing in this
6 matter.

7 There has been a bunch of attachments to the
8 presentence report, but it's my understanding there
9 has been no input from Mr. Graham.

10 Have you gone over whatever there is here
11 with your client, Mr. Murphy?

12 **MR. MURPHY:** I have, Your Honor.

13 **THE COURT:** Any additions or corrections?

14 **MR. MURPHY:** We do have a number of
15 objections, Your Honor, and one addition. In addition
16 to the time served that's indicated -- I wasn't able
17 to get this information to Ms. Horner in time. But it
18 appears my client was in Canada -- in custody in
19 Canada. Not house arrest, but actual custody for 220
20 days additional.

21 The objections we have with the PSR aren't
22 actually to the PSR but to the attachments so I will
23 go through those one by one if I could?

24 **THE COURT:** If you would.

25 **MR. MURPHY:** The first is, attached to the

1 presentence was the interview between Serle Chapman
2 and John Graham. That transcript is not even the
3 official transcript that the Court finally endorsed.
4 It's a previous version. There were a number of
5 versions of various redactions.

6 If the Court looks at page 4 and 6 of that
7 transcript, you can see right away there is the
8 parentheticals interpreting. Not only is it not the
9 official version that was ultimately adopted by the
10 Court, or approved by the Court, but the transcript
11 itself was never admitted into evidence; and neither
12 Mr. Chapman nor Mr. Graham testified authenticating
13 the transcript or the recording thereof.

14 And so I believe that it's not only
15 inadmissible here, but it's also completely irrelevant
16 to any issue before the Court.

17 **THE COURT:** I agree with that.

18 **MR. MURPHY:** The next is the transcript of
19 Denise Maloney's testimony during the Arlo Looking
20 Cloud trial. That wasn't even part of the record in
21 this case. Both Denise Maloney and Arlo Looking Cloud
22 provided sworn testimony in this case. So how a
23 transcript from Arlo Looking Cloud's trial is relevant
24 at this proceeding is beside me. I can't figure that
25 out.

1 But frankly for, that to be part of this
2 sentencing record appears to be completely
3 inappropriate. And I don't know to -- who offered it
4 or how it got into the record.

5 The third item is -- attached to the
6 presentence is the state's motion and notice to
7 clarify Theda Clarke's statement. Now, the Court
8 ruled against the state on that motion; found that it
9 wasn't co-conspirator testimony and it wasn't reliable
10 enough to be admitted. And how a pleading by the
11 state that wasn't granted is relevant to sentencing
12 here is against something I don't see the significance
13 of.

14 I can't see how that's relevant or why it was
15 submitted in support of any recommendation to the
16 Court. We ask that that, like the others, be
17 excluded. We don't want it part of the record that
18 goes up to the Supreme Court or follows my client to
19 the penitentiary.

20 Similarly, attached to the presentence is FBI
21 Agent McRoden's August 28, 2008 FBI 302, which was a
22 summary of his interview with Arlo Looking Cloud.
23 Mr. Looking Cloud testified, provided sworn testimony.
24 Mr. McRoden did not. So Mr. McRoden's unsworn
25 statement as to Arlo Looking Cloud's unsworn statement

1 in August of 2008, again, is not relevant. It's
2 certainly not the best evidence on any point that
3 could be gleaned from it because we had Arlo Looking
4 Cloud on the stand for hours, so the Court knows what
5 he has to say and his level of credibility. So we ask
6 that that be stricken from the record as well.

7 The last issue is an objection to the
8 assertion in the presentence that my client is facing
9 life without parole. We discussed this with the
10 Court. If I could, I will just summarize my arguments
11 so we have an appellate record on that issue.

12 Essentially, our position is this: In 1975,
13 South Dakota Codified Law 22-16-12 provided the Court
14 with two options for sentencing, death or life at hard
15 labor. Death is not an issue in this case because
16 this happened post Furman vs. Georgia. So the only
17 sentence provided by statute was life with hard labor.

18 In 1975, at the time this crime allegedly
19 occurred, the legislature had not defined what life
20 meant and whether that was a parolable or non
21 parolable offense.

22 But what we do know is in 1975, South Dakota
23 Codified Law 24-15-3 said that all inmates -- it did
24 not make an exception -- all inmates upon their entry
25 at the penitentiary should be given a parole date.

1 So it appears there that the legislature or
2 the legislation in effect in 75 anticipated for all
3 inmates a parole date being set.

4 We also know that in the case of Bush vs.
5 Canary, that, although it doesn't address this issue,
6 we know that the defendant in that case, who was
7 serving a life sentence, was granted parole. So there
8 were instances of lifers, prior to 1978, being granted
9 parole.

10 The fair inference from that structure is
11 that life sentences prior to 1978 were parolable.

12 In 1978 -- and this is the distinction -- the
13 legislature enacted 22-15-4 and at that point the
14 legislature specifically said life sentences are not
15 parolable.

16 The ex post facto law would prohibit the
17 Court from going backwards retroactively and imposing
18 a harsher sentence for crimes pre enactment of that
19 legislation.

20 It wouldn't make sense for the legislature in
21 78 to say life sentences are non parolable if that was
22 the previous state of the law. They wouldn't enact a
23 statute to reiterate the status quo.

24 The only inference that can be drawn from the
25 1978 legislation is that the legislature knew that

1 prior to 78 life sentences anticipated parole
2 eligibility. So statutorily, I believe Mr. Graham is
3 eligible for parole.

4 Constitutionally, under the Eighth amendment,
5 I believe he should be considered eligible for parole.

6 What we know is at the time of the events
7 alleged he was 19 years old. He was not convicted of
8 first degree murder by premeditation. And so the
9 cruel and unusual clause of the constitution -- both
10 of the state and the federal constitution in my view
11 should be read to prohibit the imposition of a non
12 parolable life offense.

13 Now, I would cite as further authority, the
14 dissent by Sabers and Amundson in Brim vs. South
15 Dakota Board of Pardons and Paroles. The citation is
16 1997 South Dakota 48. I understand, and I have
17 acknowledged before, that that is not the majority
18 decision. That the majority decision in that case
19 found after 1913 life sentences were not parolable,
20 but I believe that was not a well-reasoned decision
21 and it was certainly -- but the arguments made in the
22 dissent are better supported by the legislation than
23 that of the majority.

24 So those are the objections I would have to
25 the attachments and the finding.

1 **THE COURT:** All right.

2 I would listen to the state.

3 **MR. JACKLEY:** With the exception of the last
4 objection dealing with parole, Your Honor, we don't
5 object to excluding those matters from the presentence
6 report. They were included to provide background
7 information. And I agree with counsel that this
8 record is sufficient without those items. The Court,
9 having gone through the trial, having viewed the
10 evidence, I don't believe they are necessary. So we
11 would not object to those first items.

12 However, with respect to the life without
13 parole, it is the state's position that the law is
14 well settled in South Dakota with the Brim decision at
15 563 N.W.2d 812. It's a 1997 case, Your Honor, which
16 makes it clear, Your Honor, that life sentences after
17 July of 1913 do not have parole eligibility.

18 Furthermore, with respect to the
19 constitutional arguments set forth, the United States
20 Supreme Court has made it crystal clear that parole is
21 a privilege and not a right; and therefore, there are
22 no constitutional concerns. So we simply ask this
23 court follow the binding precedence of Brim.

24 **THE COURT:** Pursuant to the statements of
25 counsel, the objections to the addendums to the

1 presentence report will be stricken and removed from
2 the record as it goes up.

3 As to the question of parole --

4 **COURT REPORTER:** Is your mic on?

5 **THE COURT:** Appears not to be.

6 Addressing the issue of parole, in terms of
7 statutory construction, I think Mr. Murphy's analysis
8 is what statutory construction has routinely been.

9 However, I also have to state that I am
10 assuming the majority decision was aware of those
11 rules and have declared -- and I believe I am bound by
12 that decision that I have -- even were I to do so --
13 and this is not to say I would adopt that -- I think I
14 am prohibited from doing so by what appears to me to
15 be controlling law in the State of South Dakota.

16 On the basis of the statutory construction
17 and the usual premise that if the legislature makes a
18 change or passes a -- amends a law or passes a law, it
19 suggests that the preceding law was different. And I
20 acknowledge that as well, but the Supreme Court
21 decision takes that away.

22 I am not sure of the interpretation of the
23 parole being a right versus a privilege, but in the
24 absence of frankly having looked at the decision,
25 would I be correct in assuming that means that, for

1 instance, in South Dakota someone eligible for parole
2 under our routine rules is not entitled to parole
3 simply because he or she has served the requisite
4 time?

5 I think the argument addressed by Mr. Murphy
6 is basically a cruel and unusual punishment argument
7 under the Eighth Amendment, which would suggest a
8 conviction for felony murder is different than a
9 conviction for premeditated murder.

10 And given the circumstances of Mr. Graham's
11 life and the events occurring at that time, the
12 mandatory life imprisonment without parole sentence,
13 which is required, given my previous ruling on parole
14 eligibility, to be imposed in this case, might violate
15 the Eighth Amendment of the United States Constitution
16 and it would appear -- and perhaps of the South Dakota
17 Constitution as well.

18 Given some decisions of the U.S. Supreme
19 Court in recent time pertaining to life and life
20 without parole, Sullivan -- Sullivan -- Florida vs.
21 Sullivan, and the like, I am not -- I am not -- I
22 think the argument has some merit.

23 I am going to deny the motion. And I think
24 it's in the record for the Supreme Court to address.
25 Circumstances giving rise to the crime have made life

1 imprisonment sentences held unconstitutional in a
2 number of circumstances. I am not prepared to make
3 that ruling at this time, and deny the motion. I
4 think that is left for higher courts than I to decide.

5 At that point does the state have additions
6 or corrections to the presentence report?

7 **MR. JACKLEY:** Your Honor, we would simply
8 have two additional victim impact statements. One
9 from the grandchild of Annie Mae Aquash and the other
10 from Dr. Mark Aquash. They have been provided to
11 counsel.

12 May I provide them to the Court?

13 **MR. MURPHY:** And Your Honor, similarly, I
14 have reviewed them. We have some additional letters
15 that we attached to the 16 that we previously
16 provided. And copies of those have been provided to
17 counsel, as well.

18 **THE COURT:** Okay.

19 These matters will be amended to the
20 presentence report.

21 Does the state have anything to say?

22 **MR. JACKLEY:** Your Honor, if it would be
23 appropriate, the state would like to call two
24 witnesses, the daughters of Annie Mae Aquash.

25 **THE COURT:** Please.

1 **MR. JACKLEY:** The state would call Denise
2 Maloney.

3 Denise, for purposes of the record, can you
4 please state your name.

5 **DENISE MALONEY:** My name is Denise Maloney
6 Pictou.

7 **MR. JACKLEY:** How are you related to the
8 victim in this case, Annie Mae Aquash?

9 **DENISE MALONEY:** She was my mother.

10 **MR. JACKLEY:** Now is the time for you to
11 address the Court of anything you would like to say
12 regarding an appropriate sentence.

13 **DENISE MALONEY:** Thank you.

14 Your Honor, there is not a day in the past 35
15 years that I have not thought about my mother, Annie
16 Mae Pictou Aquash. Every morning when I wake and
17 every evening before I drift off to sleep, I think of
18 my mother. My mother of the center of my universe and
19 we were almost always with her.

20 The last time I saw my mother alive she got
21 down on her knees, rested her hands on my shoulders,
22 and looked straight into my eyes and said three things
23 to me: Don't ever let anyone tell you they are better
24 than you are. We are all equals, each and every one
25 of us. Then she said, don't lie. Not matter what

1 always tell the truth. And the most telling and
2 haunting, look after your sister, you are the oldest,
3 and I am counting on you to look out for her.

4 To my ten-year-old ears those words, though
5 curious to some, was how my mother always spoke to me.
6 So I did not think it strange or understand the impact
7 of those words until I realized they would be the last
8 words I would hear her speak.

9 Nor did I know that I would spend 35 years
10 defending those words and desperately clinging to them
11 to give me strength during this nightmare that has
12 become my life.

13 It was always so important to my mother to
14 impress upon our rights as human beings and instill in
15 us pride in embracing our heritage as first nation's
16 people. As a parent I struggled daily to impress
17 those same values upon my own children explaining the
18 rules and consequences of not knowing the rules of our
19 society and that by telling the truth, justice will
20 prevail.

21 That the truth is always unconditional and
22 that the taking of a human life is never to be
23 outweighed by anything including loyalty to social
24 groups or causes.

25 This was not something that was always easy

1 for me to have faith in during these last 35 years.
2 Thirty-five years is an incomprehensible amount of
3 time to wait for justice.

4 I questioned many times if my mother's ideals
5 and mine in retrospect were a little too utopian and
6 unrealistic for our world; and I still question if I
7 am setting my children up for a lifetime of
8 disappointment.

9 I would like to tell you a little bit about
10 my mother, not as an activist or a martyr as she was
11 often portrayed, but who she was as a human being.

12 My mother loved children and she could always
13 be found entertaining some little people as she called
14 them; treating them with the same dignity and respect
15 as any adult. She could be found teaching any of them
16 to bead or sew ribbon shirts or moccasins at any given
17 time.

18 People still talk about how my mother spoke
19 about us and interacted with us and I am filled with
20 regret when I hear these stories knowing she had so
21 many plans with us upon her return.

22 There was never any finality in her life.
23 Everything was always changing and evolving and we
24 believed her when she said we would see big changes in
25 our time with native rights and the poor lifestyles

1 and living conditions she had to endure as a child.

2 She had so much promise and was decades ahead
3 of her time in knowing the solutions that would bring
4 our nation's healing through education and the revival
5 of our culture and traditions.

6 This is something that we still to this day
7 are reminded of and mourn when we witness the levels
8 of poverty and violence that plague our communities.

9 I remember my mother being as protective as a
10 momma bear, and she loved us so fiercely and with so
11 much emotion I often cry when I think about it. If
12 there was one thing I knew for sure about my mother it
13 was how important we were to her and how much she
14 cared for us.

15 She explained to us the state of affairs in
16 our world at a very young age and as an avid supporter
17 of not just women's rights, but human rights as well.
18 It was not difficult for us to understand her passion
19 and why her leaving us for a short time would mean
20 that she would make a better future for us.

21 She was torn between leaving us and a chance
22 to help make a difference. Never in a million years
23 did she imagine that would mean she would never see us
24 again or she would have never left.

25 It is hard enough to try to accept the

1 senseless death of my mother, let alone the immense
2 feeling of betrayal I was left struggling with and
3 leaning that it was the lies and actions of her own
4 people and certain members of the American Indian
5 Movement, people my other trusted that participated
6 and delivered this death sentence upon her, delaying
7 her justice for 35 years with their oath of silence.

8 Thankfully I was able to cling to my mothers
9 perseverance in keeping the faith that the truth would
10 prevail, as difficult and hopeless as it seemed
11 sometimes. If not for any other reason, but for the
12 sake of her grandchildren. How was I to give them
13 hope for a future? In my mother's words, if the basic
14 fundamental lessons we base our humanity on could not
15 be adhered to above and beyond all justices even if it
16 included people closer to home than most wanted to
17 admit.

18 While writing this impact statement it
19 occurred to me that my children have not known their
20 grandmother as anything else but a murder victim. And
21 my heart aches with this realization and I will spend
22 the rest of my life trying to erase that from their
23 memories.

24 It tortures me that they had to live this
25 horror most of their lives, and it should come as no

1 surprise that for years I questioned my own quest for
2 justice for my mother. Worrying about how my
3 children's lives are being impacted and scarred to
4 know that a horrible event had touched their mother's
5 and Auntie's lives. My worst fear is that they will
6 carry that scar with them for the rest of their lives.

7 It is one of the last things I can do for my
8 mother and my children in helping them to learn the
9 wonderful humanitarian and human being she was and
10 that she had a rich and full life before it was stolen
11 from her.

12 My daughter fears living through what I had
13 to endure as a child. Having your mother ripped from
14 your life so unceremoniously. She often worries when
15 I have to travel and that weighs heavily on my because
16 I know she should be living her life as any
17 well-balanced 13 year old; not worrying about the
18 actions of a handful of immoral individuals from 35
19 years ago. I pray daily that she is able to move past
20 that.

21 The senseless act of having my mother stolen
22 from me left me confused and full of pain. Often over
23 the years, in attempts to try to push down some of my
24 own pain, I try to imagine what my mother's pain was.
25 More often than I would like to admit, while making

1 snow angles with her grandchildren, I was compelled to
2 lay down in the snow for a little while longer staring
3 up at the ski imaging the life slipping away from me
4 as I froze to death thinking of my children.

5 It still breaks my heart to think how along
6 she must have felt in those last few moments of her
7 life. I was left for 35 years imaging what happened
8 to my mother, dying in the snow, beaten and batter,
9 shot in the head, thinking of her pain and fear and
10 betrayal, and knowing who she was as a woman,
11 understanding how difficult and horrible that must
12 have been to be violated by people she trusted.
13 Especially after she had sacrificed her time with her
14 children for a short while to dedicate her life to an
15 organization that clearly viewed her as having no
16 value or importance.

17 The task of putting into words one of the
18 most painful events in my life and having to live that
19 day over and over again for the last 35 years with
20 little consequence to those who took her life has been
21 almost unbearable. To try and deny and explain what
22 my personal loss was has been difficult and has
23 brought to the surface many painful feelings and anger
24 that I had thought I had overcome.

25 It occurred to me how twisted my perception

1 of my own existence had become over the years
2 remembering as a young adult thinking that because I
3 hadn't been taken out to a bluff and shot in the head
4 that I was doing pretty good. Things could always be
5 worse and that left me with little incentive to think
6 that I could demand justice and exercise my right to
7 live my life the way it should have been had this
8 horrible event not have occurred.

9 Three of the most important events in my
10 life, should have been euphoric and were shadowed with
11 sadness and regret. The first being when I walked
12 down the aisle on my wedding day and turned to look
13 back at the back of the church hoping to see my mother
14 standing there.

15 And the second and third were the birth of my
16 two children, knowing and mourning the relationship my
17 children would denied by not having her in their
18 lives.

19 For me the most difficult thing to overcome
20 was being robbed of remembering my mother when I saw
21 her last. Being forced to live my mother's last few
22 day repeatedly, publicly through the media and the
23 internet for 35 years, at times threated the existence
24 and retention of my childhood memories of how a child
25 should remember their parent.

1 For 35 years the lies and conspiracies spun
2 by her murders prevented me from mourning her and
3 memorializing her in a way that would have allowed me
4 to begin to heal. Instead, I was denied that and left
5 for all these years with a gaping wound in my heart
6 knowing her murderers still walked free. I was forced
7 to live my mother's nightmare over and over again
8 while defending her right to live.

9 I wanted to be able to remember my mother the
10 way I saw her last, smiling, laughing, and smelling
11 the sweet grass. I still replay that image in my head
12 over and over again trying to etch it into my memory,
13 for fear of forgetting how she walked, talked,
14 laughed, and smelled. A child never forgets the
15 warmth and security of their parent's embrace and the
16 look of pride and admiration as they gaze upon them.
17 My mother made me feel safe and secure and that was
18 stolen from me.

19 Another result of losing my mother was the
20 inability to embrace my own culture for many years.
21 In our culture it is your mother who teaches you your
22 language and traditions. With her gone that journey
23 was made all that difficult. It was just too painful
24 to embrace it knowing that she would have been right
25 next to me learning and teaching had she been given

1 that opportunity to live.

2 After hearing whispers and rumors that her
3 own group had a hand in her murder, it prevented me
4 from feeling comfortable in exploring my heritage
5 through social events.

6 I still remember at the age of 25 stopping
7 dead in my tracks frozen with fear when I saw someone
8 walk by with an AIM patch on the jacket at a local Pow
9 Wow wondering if they knew about my mother's death.

10 I became resentful after listening to reports
11 that those who had knowledge and involvement in my
12 mother's death claimed traditional status. As a
13 result, I refused any traditional teachings, thinking
14 that if those who murdered my mother could be part of
15 that world, that was not something I wanted to be part
16 of. I remained spiritually scared and still recoil in
17 disgust from the hypocrisy of their claims to this
18 day.

19 It is difficult knowing that one of the most
20 important things to my mother was the learning
21 embracing of our traditional ways and this weighs
22 heavily on my heart as I feel I have let her down.

23 It is my hope one day with all of this behind
24 me that I will find the strength in outwardly
25 expressing my spirituality and confidence and pride so

1 that I may teach and share her legacy with her
2 grandchildren. For now I keep my spirituality locked
3 safe in my heart with my mother to protect and hold.

4 I now live my life battling bouts of
5 cynicism, paranoia and over-protectiveness trying to
6 cherish each and every moment I have with my children.
7 Most times stung with regret that I will never get to
8 experience those moments with my mother.

9 Sometimes moments of fear overcome me as I
10 think of the individuals who had knowledge and
11 involvement in my mother's murder but still walk free
12 and point fingers accusing others in this horrific
13 act. They continue to be feel justified because they
14 cannot hear the silent protests emanating from members
15 within their own community. Too gripped in fear of
16 retaliation to vocalize their truth and feelings on
17 this unconscionable act brought upon not just not
18 another human being, but one of their own women.

19 Woman are sacred in our culture and are to be
20 protected as life givers, not treated like trash and
21 dumped on the side of the road. No human being
22 deserves to be treated like. I have lived most of my
23 life not expressing my true anguish and pain over the
24 loss of my mother because I have had to be the strong
25 one for all these years. After all, my mother put me

1 in charge of looking after my sister. I have denied
2 myself that emotional cleansing, and I fear now after
3 35 years that I will not be able to have that because
4 I have lived this way most of my life.

5 There are days when I am exhausted from
6 having to put up a front when what I really want to do
7 is fall to the floor and stay there for a very long
8 time. But I go forward for my mother for her
9 grandchildren and for all who suffered during this
10 35-year ordeal.

11 I have spent the last ten years actively
12 campaigning for justice, not just through the courts,
13 but within our own community. And became subject to
14 public ridicule and name calling by supporters by my
15 mother's murderers who called me informant, FBI pawn,
16 vindictive, grief stricken because I dared to demand
17 justice to go through the white man's court for my
18 mother's justice.

19 I was thrust into living a life. I never
20 imagined feeling like an outcaste amongst my own
21 people because I dared to question the sanctity of the
22 brotherhood. I was always left feeling like I had to
23 justice my mother's basic rights as a human being to
24 my own people, an absorb thought, but something I know
25 my mother ended up having to do. And I only have to

1 remember what she had to endure to give me the
2 strength to continue to stand my ground.

3 For her family, grandchildren, nieces,
4 nephews and nation her murder will forever be a scar
5 on their memories. So much silence surrounded their
6 lives for so long that they have a hard time
7 discussing with me the details of my mother's murder
8 in fear of bringing me more pain.

9 So we continue suffer in silence and accept
10 that an injustice has been delivered to us and hope
11 for the ability to be free of this pain brought on by
12 our own people.

13 I have often left to marvel at the irony that
14 has now become my mother's legacy and that the
15 injustice she fought so hard against in our
16 communities would be the very injustices adopted and
17 delivered by her own people, not to mention the
18 addition of the ultimate insult of blaming the
19 government for their actions. This is a slap in the
20 face to all those who strive to make our world a
21 better place and a mockery to what my mother stood and
22 ultimately died for. Her right to exist in this
23 universe undisturbed.

24 The senseless murder of a family member means
25 more than just devastating grief. It leaves the

1 family reliving the horror and tears at your
2 anonymity. I would like to think one today that I
3 will be known over than the victim's daughter or the
4 daughter of Annie Mae who was murdered by her own
5 people 35 years ago.

6 To live through three trials has been one of
7 the most stressful events in our lives. For almost
8 ten years now this has consumed a quarter of my life,
9 the entire lives of my grandchildren, and for 35 years
10 half of her sister's lives.

11 I am especially concerned and pained by the
12 suffering of certain individuals who suffered along
13 with us during this whole process. Individuals
14 involved behind the scenes who had the courage to step
15 forward and speak the truth. The pain and guilt I
16 feel for those who dedicated so much of their lives
17 over the last 15 years to help my mother, and suffered
18 irreparable damages to their personal and financial
19 lives will be carried with me for the rest of my life
20 and they will never be forgotten. It is their undying
21 efforts and commitment that gave me hope and the
22 courage over the years to keep looking forward to
23 ensuring those that murdered my mother will never harm
24 another human being.

25 I get angry when I am forced daily to deal

1 with not only the betrayal my mother must have felt
2 and the realization her captures and murderers were
3 her own people, but who now claim they were her
4 friends. Not one of those so-called friends ever
5 contacted us in 35 years. And I unequivocally state
6 for the record that they were no friends of my mother.

7 Forgiveness is something that I still have
8 difficulty entertaining because her murderers and
9 their supporters show little remorse and still think
10 that the historical injustices and the importance of a
11 man sitting in prison outweighs the value of a woman's
12 life and that was stolen from her to protect the
13 sanctity of the brotherhood. A brotherhood that still
14 continues to bring injustices upon a sister who was
15 held hostage in their own community. This makes it
16 difficult for me to dream of a day when I can find
17 peace and remember my mother for the beautiful person
18 she was and not the horrible indignity she suffered in
19 the last few days of her life.

20 It is my hope through these proceedings that
21 others who are suffering from injustices delivered
22 upon them by family and members of their own community
23 will have faith in the justice system and know that
24 the truth will prevail, no matter how much silence or
25 how many years pass by that someone with courage one

1 day will step forward and speak the truth. My mother
2 did not have that opportunity to use her voice and
3 bring to light the injustices she witnessed condemned
4 and then suffered within her own community and our
5 nations and family will mourn that what could have
6 been for a very long time knowing that members of her
7 own group supposedly created to fight injustices such
8 as these made a judgment they did not have the right
9 to make, and sealed their fate when they decided she
10 did not have the right to live.

11 If my mother had lived, John Graham, I would
12 have spoken this to you in my Native American language
13 so that your spirit will hear and our grandmothers and
14 grandfathers will know what you have done. Until you
15 tell the truth, you deserve what you get. Forgiveness
16 will only come with remorse and ownership of your
17 actions.

18 This, John Graham, is what you stole from me.

19 I have one more from my 13-year-old daughter.
20 She states, I know a victim impact statement is
21 supposed to be about what you lost, but mine is about
22 what I never had. I never met my grandmother. I
23 still don't know what she looks like or even smells
24 like. I never even felt comfortable even saying her
25 name until this last peer.

1 I also never met anyone who had a family
2 member murdered. My grandmother is what a lot of
3 people lost, but my grandmother is what I never had.
4 Christine. Annie Mae's granddaughter.

5 Thank you, Your Honor.

6 **THE COURT:** I have read those letters.

7 **MR. JACKLEY:** The state would call it's last
8 witness, Debbie Maloney.

9 **DEBBIE MALONEY:** My name is Debra Jean
10 Maloney. I am Annie Mae's youngest daughter.

11 Your Honor, on behalf of the Mi'k Maq First
12 Nation, I want to give thanks for allowing us to come
13 here today and speak. Today I am going to be speaking
14 to you from my heart. In Mi'k Maq tradition, when we
15 speak from the heart it means we speak the truth.

16 I also want to give thanks, before I read my
17 letter, for the Lakota people that did support my mom,
18 and did love my mom, and did treat her respectfully.
19 Thank you for allowing us to be in your territory once
20 again today.

21 As I wrote out my statement, my 13-year-old
22 daughter sat next to me and asked what I was doing.
23 She could see the pain in my eyes. A familiar look
24 for me since I started this trial process seven years
25 ago. I told her that I was writing an important

1 report telling the judge about the pain that was
2 caused by John Graham when he killed my mom. My
3 daughter bowed her said and said softly, momma, can
4 you tell them about the pain that I have knowing I
5 will never meet my grandmother, and she began to cry.

6 You see, I'd often talked so proudly of my
7 mother that my children actually feel that they know
8 her. We celebrate her birthday. On her birthday
9 every year I make a cake. And we sing happy birthday
10 to my mother. And they do know her in their hearts.

11 I often wonder how much heartache we must
12 endure, my family and I. I didn't think it was
13 possible that my heart could break so many times or
14 that the pain within me would continue as long as it
15 has.

16 I was hesitant in telling the Court today how
17 vulnerable I have felt over the years as I know Graham
18 will receive a life sentence, regardless. And I
19 refuse to allow anyone's actions to victimize me.

20 However, today, with the hopes of creating a
21 sense of healing and on behalf of my children, my
22 family, friends, and nation, I humbly submit the
23 following.

24 In a previous statement given at Arlo Looking
25 Cloud's trial, I spoke about the loss through the eyes

1 of a child. I spoke about the loss of childhood my
2 sister had in having to fill a void for me as her
3 younger sister. I spoke about the cultural,
4 traditional, and language loss the Mi'k Maq Nation and
5 my sister and I experienced in not having my mother as
6 one of our leaders. All of that is still true due to
7 the actions of John Graham, as well.

8 However, today I will be talking about what
9 has happened since the onset of these trials seven
10 years ago. Less than two months ago I had the
11 opportunity to look at John Graham in the eyes for the
12 first time. I have to admit I was terribly anxious
13 because of the commitment I bestowed on myself at a
14 very young age. I vowed that some day, somehow, I
15 would look into the eyes of the person who killed my
16 mother.

17 I was nervous because I didn't know how I
18 would react when I saw you for the first time. In my
19 mind, I envisioned rage, due to the emptiness of not
20 having my mother there for all the times that I needed
21 her the most. And if it were not rage, it was the
22 deepest sadness that you can't possibly imagine. I
23 can't even find the words to describe it.

24 I entered the courtroom on December 1, 2010,
25 fearful of the reaction I would have after waiting 35

1 years to look at you. Shockingly, I found myself
2 looking at a shell of a man. Someone who has never
3 taken responsibility for their actions. Surprisingly,
4 I wasn't filled with rage or fear or feel vulnerable.
5 Instead, I looked at you and I pitied you -- I pitied
6 you -- because you appear empty to me; and you will
7 never know forgiveness. Because of your lack of
8 accountability, your family will never have peace.

9 Your Honor, I don't want my pity and
10 compassion for others to be mistaken for forgiveness.
11 I cannot forgive this man because he does not deserve
12 it nor does he want it. I have suffered greatly at
13 the hands of this man since my childhood, right
14 through into the court processes that started in 2003.

15 Thirty-five years ago this man silenced my
16 mother. And in 2004, I was silenced because of this
17 man as well. Prior to the trial two months ago I have
18 never spoken publicly about my mother's death because
19 early on in the investigation in 2004, Graham's legal
20 team in BC publically announced they had concerns that
21 one of Annie Mae's daughters was a police officer and
22 may be capable of influencing the case.

23 So for nearly seven years I have kept all my
24 thoughts, all my feelings and opinions, to myself with
25 only my spiritually as comfort. In turn, my sister,

1 Denise, has had to face the public on her own and deal
2 with the daily barrage of insults, lies, half truths,
3 and misinformed supporters.

4 For nearly 35 years I, myself, have been part
5 of the justice system in Canada. My experience in law
6 enforcement had prepared me for the crime scene
7 photographs and horrific detail of the last few hours
8 of my mother's life. I didn't flinch when I saw my
9 mother's decomposing body laying on the ground with
10 her blackened skin when they showed those pictures on
11 the wall. I was even able to get through hearing how
12 she was bound and interrogated. And even when I heard
13 of how you were allegedly having sex with my mom, I
14 knew she was doing everything possible to stay alive.
15 I knew she was fighting hard every step of the way to
16 try and convince her murderers that she deserved to
17 live; that she wasn't an informant.

18 What I wasn't prepared to hear was how, in
19 those last few minutes, she suddenly stopped crying,
20 stood defiantly, and began to pray in Mi'k Maq. On
21 one hand it broke my heart to know that she had
22 finally conceded. Yet in my mind, I knew in those
23 last few moments she became a warrior.

24 Bringing my mother home was another difficult
25 event for me. I was happy to return her to our

1 community to rest. But the images of her remains will
2 stay with me forever.

3 While my mother was buried 35 years ago here
4 in South Dakota, without a coffin the second time, the
5 soil here preserved her very well. I arranged for
6 another examination of her remains when we returned
7 back to Nova Scotia and I was present when this took
8 place.

9 Because of you I have held my mother's skull
10 in my hands. I have seen that bullet hole in her
11 skull because of your actions.

12 Financially, the costs of this has also had
13 an impact on me. Travel costs, lawyer fees, with
14 limited victim services' funds on both sides of the
15 border. Often times I paid for tickets and meals and
16 accommodations for us or family friends.

17 On April 22, 2004, I obtained a loan to have
18 my mother's body returned back to Nova Scotia. And
19 despite the attempt to stop us with an injunction, we
20 were granted permission to return home with her. In
21 the next eight weeks I incurred financial costs to
22 conduct DNA analysis and plan a funeral. This was
23 followed by having to hire a lawyer to deal with a
24 second injunction. This time in Canada. Prohibiting
25 us from burying my mother, once again led by your

1 legal team.

2 I have to say this last event was like one of
3 the most devastating events for me. Eight weeks after
4 I exhumed my mother's body from South Dakota, and
5 planned, extensively, a traditional funeral, which
6 would bring in family and friends from across North
7 America, we received an injunction prohibiting us from
8 carrying on with the barrier on the day that we began
9 our waking ceremony. Four days before the funeral.

10 If there was ever a time I felt most violated
11 it was this time. I could not understand why your
12 defense team would wait until the day we started our
13 sacred ceremonies to place an injunction on us when
14 they clearly had eight weeks. They had eight weeks
15 prior, and knew the funeral date to be Canada's
16 National Aboriginal day.

17 Through hiring a lawyer and working
18 throughout the weekend, the injunction was rescinded
19 two hours prior to the funeral start time. What
20 should have been four days of sacred ceremonies and
21 celebration turned out to be four days of desperation.

22 Years of silence around this case initially
23 lead my family to believe we didn't own the right to
24 learn the truth or circumstances surrounding our
25 mother's death. This case began 35 years ago with my

1 mother's sister, Mary Laffert and Becky Julian,
2 attempting to find justice. My sister and I began our
3 journey pushing for justice in 1997 when a distant
4 relative named Robert Branscomb brought to our
5 attention the three individuals responsible for our
6 mother's death.

7 Branscomb was our catalyst which started a
8 journey where many friends of our mothers would be
9 found along the way. And while we recently lost
10 Robert Branscomb, I am comforted to know he knew of
11 your conviction prior to his passing.

12 Bob Mandel, Rod Oswald, Marty Jackley are all
13 great prosecutors and have done a great job based on
14 the dynamics of this case. They continually pushed
15 through delays and obstacles and brought us to a place
16 that shown a light of truth to who was responsible for
17 my mother's death.

18 I feel like I have lost seven years of my
19 life like they were stolen from me. I know now I will
20 never be the same person prior to this long drawn-out
21 process.

22 My two children have been impacted by this
23 and it has taken away years from them that I'll never
24 get back. The strain both physically and emotionally
25 has been hard to bear at times.

1 Whether the people involved in my mother's
2 death walk outside the walls of prison or within the
3 confines of it, they will never be free.

4 What you have done will follow you the rest
5 of your life. Through accountability comes
6 forgiveness, but not freedom. You spending the rest
7 of your life in prison will not change the loss that
8 my family or community feel. But if you miss your
9 children and your grandchildren growing up, their
10 birthdays, their holidays, celebrations, then maybe
11 you will know and you will better understand what you
12 took from us. At the end of the day, you will still
13 be able to celebrate from your cell. And you will
14 still be able to have your memories. That we will
15 never have because you have stolen our memories.

16 When all of this started I wrote a poem. I
17 wrote a poem to you. Have you ever thought of me.
18 Take a moment to reflect. Think of someone you really
19 love and need in your life. Someone who was there for
20 you to share all your triumphs, hold your hand when
21 you have fallen, was there for all the important
22 events smiling proudly by your side. You really love
23 this person, don't you? But suddenly this person is
24 gone. What would your life be like without them? Can
25 you go on living? What kind of life would it be? It

1 would never be the same. At least you would have your
2 memories, memories to cherish. You murdered my mother
3 before we could make our memories. Have you ever
4 thought of me? Do you ever think of how you changed
5 my life, let alone yours? Do you ever think of how my
6 children's life has changed? You may have taken my
7 mother's body, but in turn you set her spirit free and
8 it lives on in many people including me. The truth
9 shall set your own spirit free. Come forth and be
10 forgiven.

11 Today, Your Honor, you will hear today how
12 this man has been a good father, a good friend, a good
13 partner or husband. For that, I'm glad your family
14 hasn't suffered. I'm glad they haven't experienced
15 the same pain that we have had for 35 years. But
16 those good things that others recognize in you, and
17 they cherish in you, does not change the fact that you
18 were responsible for my mother's death.

19 I have had a life sentence. My sister and I
20 and our family has had more than a life sentence.

21 And I want to tell you one last thing, Your
22 Honor. Despite all the pain and suffering we have
23 endured through three-and-a-half decades, I am
24 confident now more than ever that my mother did not
25 die in vain. Because of who she was as a Mi'k Maq

1 woman, the strength she carried in her body, mind, and
2 sole, the convictions she had in exposing the truth on
3 injustices done to Native American people, and the
4 foresight she spoke of in bringing back our language,
5 our culture, and spirituality. For all of that, we
6 are all better people.

7 My mother's blood runs through my sister and
8 I, and because of that, we are strong Mi'k Maq woman.
9 The loss of our mother makes us love our children
10 fiercely and has made us formidable mothers, sisters,
11 and friends to one another and those around us.

12 Annie Mae Pictou Aquash stood for
13 preservation, preservation of a nation of people. She
14 stood for all North American Indians, for equality,
15 for education, for the right of women, and for the
16 truth.

17 Signoqua (phonetic).

18 **THE COURT:** Thank you.

19 I have read that letter, too, as before.

20 **MR. JACKLEY:** Your Honor, I only have yet a
21 brief argument with respect to sentencing. I don't
22 know if the Court wants to hear it now or wants to
23 hear the other witnesses?

24 **THE COURT:** Argument -- say again -- in
25 support of what?

1 **MR. JACKLEY:** I just have a brief statement
2 to make based primarily upon the statements earlier
3 made regarding the Eighth Amendment. I don't --

4 **THE COURT:** Well, I have already ruled on
5 that.

6 **MR. JACKLEY:** I just want -- would like to
7 have a record in reference to the Eighth Amendment.

8 **THE COURT:** I see no point in it, but all
9 right.

10 The Supreme Court will decide the issue, not
11 I, other than what I have said.

12 **MR. JACKLEY:** Okay.

13 **THE COURT:** Feel free.

14 **MR. JACKLEY:** In the Brim decision, there is
15 a reference to the United States Supreme Court case of
16 Board of Pardons v. Allen 482 US 369, wherein it
17 states, quote, an inmate has no constitutional right
18 to parole, end quote. And indeed when you look at a
19 case of this nature, while I, as a prosecutor, cannot
20 express as well as the victim impact statements that
21 we have heard, would indicate that this case is one of
22 the most severe cases of callous disregard for human
23 life that I have seen. It began with the tying up of
24 a victim, placing her in the trunk area of a Ford
25 Pinto, bringing her to Rapid City, South Dakota, to be

1 further held to be interrogated, and then ultimately
2 to be shot execution style.

3 It is based upon those reasons that the State
4 of South Dakota respectfully requests that John Graham
5 be sentenced to mandatory life without parole.

6 **THE COURT:** Do I have any option other than
7 that?

8 **MR. JACKLEY:** It's the state's position that
9 you do not.

10 **THE COURT:** Mr. Murphy?

11 **MR. MURPHY:** Your Honor, the state has argued
12 now twice that parole is a privilege, not a right.
13 That may be unless the legislature speaks to the
14 issue.

15 We've cited 24-15-3, which was in effect in
16 1975 which uses the language shall; that inmates shall
17 be given a parole date. So we believe that in regard
18 to the Eighth Amendment claim as well as the statutory
19 claim, our legislature spoke. And in 1975 they said
20 that parole in each instance was a right, not a
21 privilege. Whether you are actually paroled may be a
22 privilege, but whether you are given a parole date or
23 made parole eligible was a right.

24 **THE COURT:** I thought we were addressing the
25 Eighth Amendment.

1 The Supreme Court -- the U.S Supreme Court
2 has ruled on a number of occasions that life sentences
3 in and of themselves without a possibility of parole
4 in some cases or categories of people are
5 unconstitutional. The cases cited aren't particularly
6 on point of that, but I have read those decisions.
7 And in classes I have taught, I have discussed them
8 with students. I am well aware of those decisions.

9 I believe the issue -- none of them have
10 addressed this posture squarely on and I leave that to
11 the Supreme Court, the State of South Dakota, and the
12 United States Supreme Court should it go that far.

13 But I don't believe that it is my position
14 nor prerogative under the circumstances to design
15 circumstances not yet addressed; and the result of
16 those addressing those by higher courts is beyond me.

17 And at this point the motion is, again, in
18 case there was doubt about it, denied.

19 Mr. Murphy, anything further?

20 **MR. MURPHY:** I have one witness, my client's
21 brother, Harold Johnson, would like to address the
22 Court and then my client's statement.

23 **THE COURT:** Please come forward, sir.

24 If you would take the witness stand, as well,
25 sir.

1 Thank you.

2 **MR. MURPHY:** Mr. Johnson, you can go ahead
3 and address the Court as to your thoughts about your
4 brother and the sentence that should be imposed.

5 **MR. JOHNSON:** Okay.

6 John has a huge family in the Yukon. And we
7 all know you are innocent, John. Like all the
8 grandchildren, we tell them what kind of injustice is
9 going on here all the time.

10 Mom -- our mother died knowing this injustice
11 and this was -- she carried to the grave, you know,
12 the fight for truth that we've been going through
13 since the 80s. Like there is only about 30,000 people
14 in the Yukon. So everybody knows each other
15 indirectly or directly. And everybody that's been --
16 that I have been in contact with and has been in
17 contact with me over the few years, you know, no one
18 can believe this is really going on. You know, how
19 could this be happening.

20 Because like -- you know, wherever you've
21 lived throughout your life, your home has always
22 been -- has become like a friendship center, a drop-in
23 center for all walks of life that have come through
24 your doors, and you are like a counselor. People,
25 like, look up to you.

1 And we never -- no one is ever going to stop
2 praying for God's truth. That's all we have ever
3 asked for is God's truth. And I don't really have too
4 much to say other than, you know, we're not going to
5 stop going after God's truth.

6 And like the old people are phoning me today,
7 and you know, they are saying, you know, maybe towards
8 the end, the righteous will be prosecuted. Maybe this
9 is what's going on. But we're not going to give up
10 and we're not going to ever stop believing in the
11 truth. And that's really about all I have.

12 **MR. MURPHY:** All right.

13 Thank you.

14 **THE COURT:** Thank you, sir.

15 **MR. MURPHY:** We have no other witnesses to
16 present, Your Honor.

17 You've gotten the 20 some letters?

18 **THE COURT:** I have. I have read them.

19 **MR. MURPHY:** All right.

20 **THE COURT:** Anything further?

21 **MR. MURPHY:** Your Honor, I don't know if you
22 want to take comments from counsel at this point. My
23 client will make a statement as well.

24 What order would you like to go in?

25 **THE COURT:** If comments are to be made,

1 Mr. Graham's would be of interest.

2 Counsel can speak, but I don't see that I
3 have any options. The sentence is preordained at this
4 point, but you are welcome. I don't want to cut
5 anybody off.

6 **MR. MURPHY:** I understand the sentence is
7 preordained, but you have received 20 letters from
8 people who have known him since he was born through
9 the present. And you heard the testimony of the
10 witnesses who knew John back in the 1970s. Without
11 exception everybody who has had contact with this man
12 over the last 55 years has pointed him out to be a
13 gentle, kind, and decent man.

14 He has no criminal record to speak of,
15 certainly nothing involving violence. So we just
16 wanted the Court and the people present to recognize
17 that this is a man who has been widely regarded in his
18 community as a leader and advocate of his people.

19 **THE COURT:** I believe that I have a pretty
20 good grasp on the loss suffered by Anna Mae's family
21 and friends over time.

22 I think I also have a pretty good feeling for
23 the life that Mr. Graham has led for a long number of
24 years. And he has made friends and supported people
25 and done, through the course of time, many good

1 things.

2 None of that changes what happened 35 years
3 ago. Understanding the circumstances of those times
4 and events puts a context to what happened for
5 everybody involved, but it doesn't change what
6 happened for anybody.

7 There is no way to erase the pain of Anna
8 Mae's family and friends. There is no way that Anna
9 Mae comes back to life. And there is nothing -- I
10 think at this point there is nothing that can be done
11 about any of that.

12 I would hear from Mr. Graham if you wish to
13 speak, sir.

14 **THE DEFENDANT:** I would just like to say
15 that -- to the people here in this court and to the
16 family, that the truth hasn't come out here. You
17 know, I'd like to tell your family that Anna Mae was
18 never kidnapped; she was never ever tied up, never in
19 my presence. She was not murdered in my presence.
20 And that's what I know for sure. That just did not
21 happen.

22 And when we got people that can come in here
23 and take the stand and every one of them just about
24 admitted that they are lying. They are holding back
25 truths, telling half truths, they are not saying the

1 whole story, and you haven't heard the whole story. I
2 didn't mean years of being silent. I stayed silent
3 because it seemed like everything I say and everything
4 I do, I am just lying. Nothing I say is the truth.

5 I knew Anna Mae. I never ever denied riding
6 with her from Denver to here to Pine Ridge where we
7 dropped her at a safe house where she was safe and
8 well. And she came out and told me she was safe
9 there. I was free to go. That was the last time I
10 seen her.

11 At no time ever was she kidnapped, tied up in
12 any way, shape, or form. And what's been going on,
13 like 35 years of rumors, innuendoes, speculation,
14 that's about all it was and all it is. And people
15 taking the stand one after the other, like I said,
16 admitting that they were lying, didn't ever tell the
17 truth, and then they could sit here and watch this
18 carry on.

19 You are going to do what you are going to do.
20 You are going to believe what you are going to
21 believe. I did not kill Anna Mae and I did not ever
22 kidnap her, and that's just the way it is. And I've
23 never ever been given orders from anybody or taken
24 orders from anybody to ever do this to her. I would
25 never do that.

1 **THE COURT:** Having been said, I have a
2 verdict entered by a jury after a fairly lengthy,
3 complex trial. And it is my duty at this point to
4 impose a sentence unless there is some reason I should
5 not do so at this time.

6 **MR. MURPHY:** There is not.

7 **THE COURT:** Mr. Graham, as you are well
8 aware, I have no option whatsoever under the law and
9 the ruling that I have made but to sentence you to
10 life in the South Dakota Penitentiary without parole.

11 You have 30 days in which you may appeal this
12 sentence from and after my signing and filing of the
13 judgment.

14 Need I do anything else, gentlemen?

15 **MR. JACKLEY:** Your Honor, none other than we
16 would request the Grand Jury costs and the costs that
17 have been submitted to be part of the judgment.

18 **MR. MURPHY:** We ask that those be hardshipped
19 in light of the fact my client has been in custody for
20 three years and will remain so there is no realistic
21 way those will ever be paid. So we ask that they be
22 hardshipped or liened.

23 **THE COURT:** I don't know how I can run a
24 lien. I will include them in the judgment. They
25 certainly are hardship costs. Although they are

1 hardship costs, I don't think you can lien them. I
2 think they have been incurred. The judgment should
3 reflect that.

4 Thank you.

5 **MR. JACKLEY:** Has the Court ruled just for
6 purposes of the judgment on the time served aspect
7 that came up initially on the extradition?

8 It would be the state's position on the 220
9 days that he's not entitled to that because it's on
10 the premise of an extradition.

11 **THE COURT:** This becomes relevant if and when
12 the parole issue is addressed and overturned.

13 It has been my practice over the years to
14 allow credit for all time served except that in
15 resisting extradition. But once extradition is
16 granted, the time served from that point forward is
17 credited. Once the decision on extradition has been
18 made.

19 Any further questions or issues?

20 **MR. MURPHY:** No, Your Honor.

21 **MR. JACKLEY:** No, Your Honor.

22 **THE COURT:** If not, we are in recess.

23 Thank you.

24 (Whereupon, the proceedings in this matter
25 were then concluded.)

1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)

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I, TINA RAE PRUSS, Official Court Reporter
 and Notary Public in and for the County of Pennington,
 State of South Dakota,

DO HEREBY CERTIFY that the foregoing
 transcript is a true and accurate transcript of the
 questions asked, the testimony given, and of the
 proceedings had.

I FURTHER CERTIFY that I am not of kin or in
 any way associated with any of the parties to said
 cause of action, or their counsel; and that I am not
 interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my
 hand this 3rd day of May, 2011.

COPY

Tina Rae Pruss
 Official Court Reporter and
 Notary Public
 Pennington County, South Dakota
 My Commission expires: 10-04-2012