VOLUME XVII

{3458}

TUESDAY MORNING SESSION

April 7, 1977

9:00 o'clock, A.M.

(Whereupon, the following proceedings were had and entered of record on Thursday morning, April 7, 1977, at 9:00 o'clock, A.M. without the hearing and presence of the jury, the defendant being present in person:)

THE COURT: The marshal service has informed me that one juror required some minor medical attention this morning and that juror is being taken to the clinic and probably will be 9:30 before they return.

There were some matters when we recessed yesterday evening that were pending. One of the problems we are continually facing in this case is the matter of evidence that is admissible or not admissible, and I'm sure Counsel for both sides are aware that I construe the issues in this case to be as set out in the indictment together with the defendant's plea of not guilty.

Now that the government has completed its presentation of evidence, the Court's position with reference to evidence to be offered by the defense is simply that evidence relative to the issues and the evidence presented by the government will be admitted. I will state, however, that witnesses who have testified will not be impeached by a showing of misconduct of the Federal Bureau of Investigation unless that misconduct relates to the testimony of the individual witnesses {3459} who have testified or unless that misconduct relates to exhibits that have been received in evidence. Under that standard I find no relevance in the Anna Mae Aquash matter.

With reference to Myrtle Poor Bear, she not having testified in the government's case, I can see no relevance in the matter of her testimony in a prior proceeding or her activity in connection with the extradition proceeding. The only thing that's relevant to the extradition proceeding is that they were had and the defendant was returned. Whether or not he should have been extradited is not an issue before this Court.

Some days ago I reserved ruling on Exhibit 166, the last paragraph of 166. The objection to that exhibit is sustained on two grounds. There is no foundation for the exhibit and it is irrelevant. The fact that the

paper may have been received from the government does not establish its authenticity for evidence purposes and as near as I can determine, the purpose of the offer was to impeach Doll and possible Parlane. It's irrelevant for that purpose. Parlane testified and was never questioned on it and it is irrelevant for the impeachment of Doll. I shouldn't say he wasn't questioned on it. He wasn't questioned as to whether or not he had heard such a statement. He was simply questioned as to whether or not he had included that in his report.

Exhibit 185 and 186 will not be received. That's the {3460} list of rifles from which, that would accommodate certain ammunition. In the absence of a showing those rifles were actually found or in the area, those two exhibits have no probative value. Other than that, what is already been presented through the questioning of the witness and the presentation of the information to the jury.

Then we come to the matter of the laboratory report. I have examined those laboratory reports. The reports in their present form are going to be excluded under 403. They appear to be confusing and would be meaningless and cumulative to the jury. Furthermore, in the form that they are in some of them duplicate others. I have particular reference to 134 and 187. However, with reference to those laboratory reports, if the parties can get together and agree on what in those reports might be appropriate to present in evidence under Rule 1006, which is a summary evidence, I would give consideration to that. If the parties cannot get together, I would give consideration to an offer of a summary taken from those exhibits by the defense on those matters which they feel are relevant to their case. In other words, it would have to be relevant to what has been brought out on oral examination or otherwise shows some inconsistency to that which has been presented.

Exhibit 177 because of the discrepancy between it and information contained in 134 and 187 may be relevant but {3461} I'm going to reserve ruling on that at this time because standing alone it would not be particularly helpful and if Counsel can extract a summary from 134 or 187 that would make 177 meaningful to the jury, I would then consider receiving 177 because it may show up an inconsistency.

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MR. LOWE: Of course, your Honor, there is an inconsistency right internally within the document. That by itself has an internal consistency which impeaches one of two witnesses, at least casts doubt on Special Agent Hughes' testimony because Mr. Hodge shows one cartridge and Mr. Hughes shows two.

THE COURT: I have not turned that down. I do recognize an inconsistency. I may admit that, but I want to give you a chance to see if you can get something meaningful out of 134, 135, 187, 188, 189, 190, 191 and 192.

MR. LOWE: I gather what your Honor is saying, you are reserving final decision on those documents which were offered, except that you are indicating that you intend not to receive them as they were offered but to give us an opportunity to work out some summary or some culling of some sort.

THE COURT: That is right.

MR. LOWE: The offer is still pending as far as you are concerned until we come up with some suitable alternative?

THE COURT: Yes. The exhibits in their present form will not be received. I will give you an opportunity to work out something, some summary or something from those exhibits which would have some probative value and would {3463} be presented to the jury and would not be misleading or confusing.

MR. LOWE: We will still try to work something out in view of your ruling to avert having to recall Mr. Hodge. I will get together with Mr. Sikma sometime today or Monday to try to work it out.

MR. HULTMAN: Would you read the last total list? You read off the total list. I don't have copies on all of them, but I know they are reports, so I would like to have it.

THE COURT: The list which I just read was 134, 135, 177 -- 177, of course, I think the Government produced?

MR. HULTMAN: Yes.

THE COURT: 187, 188, 189, 190, 191 and 192.

MR. HULTMAN: Thank you.

THE COURT: Those are the lab reports.

Now, unless counsel has something more to present at this time, we

will recess until the jury can be brought in.

MR. TAIKEFF: There are some matters, your Honor, if you have some time.

THE COURT: Very well, you may proceed.

MR. TAIKEFF: Pursuant to the position taken by the defense yesterday, we wish to notify the Government of two additional witnesses who have been qualified since the time we recessed yesterday afternoon. That is Lavina Deloria -- {3464} (spelling) D-e-l-o-r-i-a -- and Jimmy Durham -- (spelling) J-i-m-m-y D-u-r-h-a-m.

I believe that an application was made which is pending before your Honor, and that is for the Government to reveal the names of the two Special Agents who prepared the Myrtle Poor Bear affidavit.

MR. HULTMAN: Well, your Honor, one, I resist, and two, I think the matter is now moot, and thirdly, I do not know, standing here, but I want, one, the Court to know that I resist that particular motion; and two, I feel that it is a moot matter; and three, if the Court does make such a ruling, I will, of course, proceed accordingly to make inquiry. I don't even know it is a fact that it is two individuals, whether or not it is a lawyer or anyone.

THE COURT: I think that in fairness to the defense you should reveal the names. I don't know that it has any relevancy.

MR. HULTMAN: I will make the search. I am not prepared because I don't --

THE COURT: (Interrupting) Maybe the defense can find some relevancy if you reveal the names.

MR. TAIKEFF: Your Honor, I would like to address myself to what appears to be the articulated basis of your Honor's ruling in connection with the Myrtle Poor Bear matter. I gather from what your Honor says that if {3465} we could produce a witness who would say that he or she was approached by Agents of the Federal Bureau of Investigation and offered an inducement of one kind or another to give knowingly false testimony against Leonard Peltier in order to assist in the successful prosecution of him, such evidence would not be relevant if that person was not called to testify during the Government's case. Do I misunderstand, your Honor?

THE COURT: It depends upon who the person would be -- I mean who

the FBI Agent was.

MR. TAIKEFF: One of the Agents involved in the central part of the investigation of this case.

THE COURT: Did he testify in this case?

MR. HULTMAN: Well, your Honor, might I interpose? Is the statement that counsel is now making that money was given? The postulates that you have just made, counsel, are you postulating that is what with an offer of proof you will be showing as far as Myrtle Poor Bear?

I want to make sure we are on the same track here.

MR. TAIKEFF: Your Honor, if Mr. Hultman would listen to what I say --

MR. HULTMAN: (Interrupting) I am trying to. That's why I am asking.

MR. TAIKEFF: One of the very few talents, if I have any, is to articulate clearly and unambiguously.

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I put a question to your Honor to see whether or not I understood the basis of your Honor's ruling. I put it to your Honor, what I would say is a hypothetical.

MR. HULTMAN: That's what I wanted to know. You are talking first about Myrtle Poor Bear, and then you propose a hypothetical.

MR. TAIKEFF: It seems to me that is what your Honor says.

It also seems to me it doesn't matter which Agent it is if in connection with his official duties, a Special Agent of the FBI went to someone and said -- I am giving your Honor an extreme hypothetical so there won't be any ambiguities -- "We need some extra evidence against Leonard Peltier."

Is your Honor saying we cannot introduce evidence of that through a person so contacted by the FBI because that person was not called?

THE COURT: I am not going to give you a ruling on a hypothetical question. I am simply stating that evidence relevant to the issues and relevant to the evidence which has been presented by the Government will be admitted; and I further stated that witnesses who have testified will not be impeached by a showing of misconduct of the FBI, in other words, general misconduct of the FBI.

MR. TAIKEFF: First of all, we don't intend to offer {3467} general misconduct of the FBI evidence.

Secondly, we don't offer it to impeach a particular witness as to

that particular witness' testimony, except to the extent that any witness may have been asked whether that witness participated in any illegal activities in an effort to convict the Defendant. Other than that we don't offer that as impeachment evidence. We offer that as affirmative proof, evidence in chief, of the effort by certain members of the Federal Bureau of Investigation to falsely and improperly assemble evidence against the Defendant; and we will call two separate witnesses, and I am not talking about Myrtle Poor Bear -- two separate witnesses, one of whom will testify to serious threats in an effort to induce that witness to give false and perjurious testimony; and we will call another witness who will say that he wasn't threatened with physical harm, but he was threatened with a prosecution for which there was no factual basis if that person did not assist the FBI.

Now, the Myrtle Poor Bear episode is one additional episode in the sequence of events which we have uncovered concerning the Government's effort to prosecute Leonard Peltier successfully when otherwise they might not be able to do so or entitled to do so.

I quite frankly, your Honor, with all due respect to {3468} the Court, cannot possibly understand your Honor saying that such evidence is not relevant in this case.

THE COURT: I want to make it clear I did not say that such evidence is not relevant.

MR. TAIKEFF: Myrtle Poor Bear is just one more similar type event. In her case there were, we believe and we have subpoenas out --

THE COURT: (Interrupting) Just a moment. I also did not say it was relevant, I just said I am not going to rule on it at this time until I see specifically what the evidence is.

MR. TAIKEFF: We won't attempt to put on the Myrtle Poor Bear evidence until we produce the evidence in the other matters. It won't come in by a vacuum. Perhaps by then we will have laid a sufficient foundation to satisfy your Honor that there is at least a fact question for the jury to determine whether or not the FBI conducted themselves in an improper and illegal manner in connection with the prosecution of this Defendant for these charges.

THE COURT: Well, let's assume that they did not. How does that bear

on the question as to whether or not this Defendant is innocent or guilty, based on the evidence presented by the Government?

MR. TAIKEFF: That's precisely the point . I assumed your Honor might want to pose this question. Let's {3469} assume that they did not --

THE COURT: I meant to say "did".

MR. TAIKEFF: All right. If you assume that they did, the specific kinds of evidence that they wanted certain witnesses to offer, which the witnesses knew and told the FBI was not true, are identical in certain respects to other items of evidence which the Government has adduced through witnesses similarly situated.

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And it only goes to show that as to certain witness's testimony the FBI succeeded in getting certain witnesses to give that testimony. When someone was in an exact same posture to perceive, to remember and to be a witness to the very same events. Say A it isn't true, and B the FBI pressured me to say those things.

Now, if witness B says I was threatened to say X, and X is not true and I was there with A and we both saw and it couldn't be that, I didn't see X, but A saw X, and the witness A testifies to X it raises a serious question as to both the conduct of the FBI in connection with this prosecution and the veracity of the testimony of A with respect to subject X.

Now, the witness who comes to testify, if that witness has been intimidated, is successfully intimidated; and hence will not say this isn't true. Obviously a witness who has been successfully intimidated isn't going to get up on direct, and give the testimony, and on cross-examination say, "Oh, by the way, it wasn't true, I did it only because the FBI bent my arm." But if someone who was standing next to witness A and who observed the same events, and who says affirmatively X is not true, and the FBI came to me and threatened and said you must X or else, then we prove the nature of the FBI involvement in this case, and we also tend to prove by rebuttal evidence the falsity of X which is the {3471} testimony given by A. It's a very simple proposition.

I just can't understand how Your Honor thinks that it's something that we shouldn't be able to prove, or shouldn't be allowed to prove in

this case.

Indeed one of the witnesses, I'm reminded by Mr. Lowe, testified that he was physically threatened and tied in a chair and kept that way for three hours. And now maintain --

THE COURT: And that was brought out.

MR. TAIKEFF: That was brought out, but another witness will testify that the very same critical testimony that Anderson gave here in his direct was something which isn't true and which the FBI tried to bend his arm to say was true.

Now, in an earlier phase of this case the Government asserted that a certain witness was being coerced by certain forces; and Your Honor's position with respect to that witness's disavowing of the coercion was if there is a coercion the witness who has been successfully coerced is not going to tell the truth about having been coerced. Now, I don't see why it's okay for the Government to take that position, but it's not okay for the defense to take that very same position.

If Your Honor did not believe Angie Long Visitor's unqualified assertion that the Government was having a fantasy about herself being coerced and Your Honor's view of it {3472} therefore must have been based upon the fact that if indeed she was coerced we cannot accept as credible her denial of the coercion. That principle must apply equally in this situation for the defense. Your Honor doesn't have to believe the witness we produce but Your Honor is not the fact finder.

THE COURT: I'm not the fact finder.

MR. TAIKEFF: I understand that. If someone says X and someone says minus X, that by classical definition is a factual dispute that can only be resolved by that jury, providing it's relevant.

Now, it's clearly relevant. If someone says that they saw Leonard Peltier down by the cars and another witness says that the FBI insisted that a certain witness testify to that, even though the witness said that wasn't true, he was never down by the cars, then surely that goes to the question of whether the first witness was telling the truth in that particular sense with respect to that particular fact.

Now, Myrtle Poor Bear may or may not have been threatened. We have an ongoing investigation with respect to the question of whether or not

she was threatened as well as being manipulated. We have concluded our investigation in that regard. But it makes little difference whether you go to somebody who is totally competent and threaten them with physical harm or with an unfounded prosecution, or whether you go to someone who is in one sense or another a mental defective, {3473} and you manipulate them and get them to cooperate with you. I can't imagine that it makes any difference if believed, and at this particular juncture, just as Your Honor takes a certain view of the Government's evidence when deciding a Rule 29 motion, Your Honor doesn't decide whether it's true or not unless it is incredible as a matter of law.

Your Honor need only determine whether if true that testimony will or could influence the jury's decision. Now, I don't think Your Honor can find, with all due respect to Your Honor, that if the jury believe that the FBI did things like this to the three witnesses that we will produce, including Myrtle Poor Bear, that they can have sufficient confidence in the prosecution's evidence. The evidence that concerns the important stuff in this case, not the myriad of window dressing that we heard. I'm astounded at the suggestion, if that's the suggestion Your Honor has made, that we cannot prove conduct like that.

Now, I said to Your Honor yesterday that, and I trust that Your Honor accepted it for what it said, we don't intend to assert any general wrongdoing on the part of the FBI. It is not our purpose here to attack the FBI generally, or to rake up any old episodes of recent United States history. What we're talking about, what we intend to introduce evidence about, is conduct of those agents of the FBI who worked on this case which concerns itself with an effort to convict {3474} Leonard Peltier of the murder of these two agents, and that's all.

And, Your Honor, I am just amazed that Your Honor even suggests that conduct of that kind, if we have evidence of it, is not something that the jury should hear.

MR. HULTMAN: May I respond?

THE COURT: You may. I just want to ask counsel, does the, is it your contention that the Anna, or is it Anne?

MR. TAIKEFF: Anna Mae.

THE COURT: Anna Mae Aquash matter falls in the category you have

described?

MR. TAIKEFF: No, Your Honor. I made that concession yesterday that it does not. I told Your Honor that there are certain members of the defense who strenuously disagree with me and although we usually work as a team and we proceed by consensus, this is one issue where I take individual action and concede to Your Honor that it is not relevant.

If before we rest we develop a sufficient foundation, a sufficient annexus, I will not be ashamed to come to Your Honor and say I've changed my mind and I offer to prove that. But I made that concession yesterday.

The facts of the Anna Mae Aquash episode are not irrelevant in my opinion to this trial. I'm in a minority in the defense team, but my concession is on the record.

THE COURT: Well, I don't want counsel to feel that I {3475} am foreclosing you from bringing in the witnesses of the type that you have suggested. Whether or not that evidence is admissible I have not yet determined in my mind.

MR. TAIKEFF: In apropos, I understand what Your Honor has just said. I do want to address myself to another --

MR. HULTMAN: Could I address?

THE COURT: I have not heard Mr. Hultman.

MR. TAIKEFF: I'm sorry.

MR. HULTMAN: I don't want equal time, I just want a little time.

Your Honor, first of all let us go beyond, and that's all I was trying to get at in asking counsel a specific question or two, let us get beyond hypotheses and get to what an offer of proof would show, because that's what we're really here to talk about. So let us talk specifically I believe for a moment about what counsel, he finally did get to naming a specific piece of testimony and a specific witness.

I will carry that beyond to another specific individual whom I believe he's even going to call. Counsel has referred to two people, to use his words, in a hypotheses standing together, looking at something, one saying one thing and somebody making that person say something different. Now, first of all I don't think when the offer of proof comes there is going to be any showing of any kind that two people were standing observing exactly the same thing at the same time.

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What the proof is going to show and what it has already shown is that Mr. Anderson and Mr. Brown, and if Counsel wants to indicate that it's somebody other than Mr. Brown who is going to be the individual, then I'll be glad to change my hypothesis, that these two individuals stood and observed exactly the same thing. I submit, first of all, that hypothesis is so fantastic that the proof will not conform in any way. They were two people doing different things at different times in different places and observing something at a given time possibly, but in many times not observing the same things at all.

Now secondly I believe that the offer, were it to be an offer, will show we're not talking about iffy, iffy, iffy, but we're talking about specifics, we'll likewise show that the testimony that Mr. Brown has already given on the stand and about the events we're now concerned with on the stand that happen on the 26th, and there was cross-examination about the events that happened on the 26th, what he saw, what he observed and what he did. That is evidence in this case and that is what now Counsel in some way, unless they can attack that testimony that it is dishonest, that it is incorrect, that in some way that testimony is wrong, then I say it's a collateral issue totally and that's the point I wish to make four square, straight out on the record.

If you're going to dredge up things that Mr. Brown {3477} may have testified about, then we're talking about collateral matters. Unless it is something which in fact did happen and Counsel is wishing to take that position from the beginning and thus they had an opportunity by direct examination and cross-examination to get at those matters, I say that is a collateral matter which has no relevancy of any kind in this case.

Now let's deal then with a further specific. The mere facts that an individual sees certain things but does not see other things at other times and places because he doesn't happen to be observing a very given event at that time in no way can then be used as proof that because another person sees something in addition, because he was looking at cars and at the events at a given time when certain things do take place, that we can conjure up at another time and another place some alleged or possible testimony of the witness who has been on the stand to disprove the testimony

of the individual who has been on the stand, who has been cross-examined about the very events and things that he saw as a basis then to impeach him. I say, Your Honor, that's irrelevant, that's the straw man, that's the position that the Court has espoused a little bit ago. That's the very strong position that the government takes.

MR. TAIKEFF: Your Honor, since Mr. Hultman has focused attention on the Norman Brown aspect of the case, I {3478} will address myself to it but not by way of making an offer of proof but rather by trying to show Your Honor the technique, maybe not a conscious one, maybe one of necessity, which was employed in this case and which did not provide a basis Your Honor inhibiting us in our legitimate endeavors.

Norman Brown did not testify on his direct examination in this case to certain matters. He did not testify to those matters because he was not asked. I have no right to inquire of Mr. Hultman as to why he did not ask certain questions but I can tell Your Honor this: that our investigation reveals as to those matters, those particular matters that I've referred to without any specificity that the government did not ask about on this trial, the witness previously testified under oath, and our inquiries of the witness reveals that it is the witness's position that the witness previously perjured himself with respect to those matters, and at the insistence and upon the threats of the FBI.

Your Honor, I think Mr. Crooks is having some sort of a unique medical syndrome. Every time I say something about the FBI he seems to laugh. Now, I would certainly join in application for a recess so he would consult a doctor.

Now, Norman Brown is going to testify that in a previous proceeding under oath he gave certain testimony and that it was knowingly perjured testimony but that he did so under threats and coercion by the FBI, and that finally he decided {3479} to be brave and to be honest and he came into this courtroom and for the first time in connection with any proceeding at which he testified he took his oath upon the sacred pipe and resolved to tell the truth and only the truth. He was not asked those questions by Mr. Hultman. I don't mean to suggest by that so Mr. Hultman will not rise in anger that this is any plot of Mr. Hultman's. It must be clear to any lawyer who is interviewing a witness that if the witness is not

going to say the desired answer to a certain question you don't ask that question. I do that, Mr. Hultman does that and I think any trial lawyer who knows what he's doing does that. The point is that Norman Brown was not prepared to give that testimony in this trial. That doesn't end the matter for defense. That doesn't preclude us because Norman Brown wouldn't say it in this trial because he swore on the sacred pipe this time and hence Mr. Hultman performing his function as lawyer didn't ask him that question. But it turns out that someone else testified that way, someone who did come under the influence of the FBI and who did not testify on the sacred pipe, even though in an interview the day before when asked if he believed in the religion of the pipe he said, "Yes," and when asked if he would then swear on the pipe before he gave his testimony he said, "Yes, I will," but when he came into this courtroom he did not.

Now for the jury not to have the circle closed to {3480} hear Norman Brown's version of what went on at pretrial with respect to that single aspect of the case, surely that's not an unimportant aspect. It may be one of the major reasons why Your Honor denied our Rule 29 Application, because there's prima-facie testimony saying that the defendant was down by the car or cars when the agents were found dead. That's a critical piece of testimony in this case. Surely if we could elicit the five most significant pieces of testimony in this case, that has to be number one or number two.

I don't understand how Mr. Hultman thinks that if a witness is willing to come into this courtroom and swear to the fact that, A, it isn't true and, B, he was threatened by the FBI to give that testimony and in fact fell victim to those threats and gave that testimony under oath perjuriously on an earlier proceeding, how that's not relevant.

I can understand Mr. Hultman not wanting to hear that testimony in this courtroom but that doesn't provide a basis for blocking us legally from doing it.

MR. HULTMAN: Could I respond before you go to another matter?

THE COURT: Before you respond, because of comments which Counsel made, I would like with, with reference to the sacred pipe, I would like to ask you for your interpretation of Rule 610, "evidence of the beliefs or opinions of a witness on mutters of religion is not admissible for the

purpose of {3481} showing that by reason of their nature his credibility is impaired or enhanced." I'd like your interpretation of that rule.

This matter of the distinction has been made by Mr. Lowe I think on a couple of occasions and now you have made it in your comments about a witness having taken the regular oath, a native American witness having taken the regular oath rather than the oath on the pipe and I'm just wondering what your interpretation of this rule of evidence which I just read is with reference to these comments which Mr. Lowe made in the course of the trial and which you have now made out of the presence of the jury.

MR. TAIKEFF: I have a response I want to make. I'll consult with Mr. Englestein so I have the best possible response.

THE COURT: I notice he's bending your ear.

MR. TAIKEFF: Your Honor, I believe that that rule addresses itself to an entirely different proposition. That rule would prevent somebody from cross-examining a witness and saying to that witness, "Isn't it a fact you don't believe in God," and then using that as some basis for arguing to the jury that a person who doesn't believe in God should not be believed.

What we're dealing with is the fact that a certain {3482} person has a certain religion which under the normal course of events would require that person to take his oath in a certain way, a very significant way. In fact, it is believed by those who follow the religion of the pipe that if you take an oath or make a commitment on the pipe and you do not fulfill it in every sense of the word that a terrible thing will happen to you, there will be a death to your family or maybe you yourself will die as a result of that.

Now when a witness believes that way, comes into court already a member of that religious belief and then does not pursue the taking of the oath in the way in which you would expect a person who concededly had those religious beliefs would, then there is some significance to it.

THE COURT: I read the first sentence of the advisory committee's notes: "While the rule forecloses inquiry into his religious beliefs or opinions of a witness for a purpose of showing that his character for truthfulness is affected by their nature and inquiry for the purpose of showing interest or bias because of them is not within the prohibition."

MR. TAIKEFF: Your Honor, the first part of that, the preamble portion

of that I think parallels to what I said to Your Honor was my belief as to the meaning of that rule. That is to say, it is not possible to ask somebody whether they are an atheist as a means of impeaching that person. On the other hand, if there is some aspect of his religiosity {3483} which may in the example given cause bias, let's say a member of a particular church is on trial, that would be appropriate; in other words, total, there is not a total prohibition on any reference to religion or religious beliefs but it is not possible to impeach someone who may be agnostic or atheist.

THE COURT: I think a suggestion that a witness's testimony may be more credible because he took an oath on a pipe or less credible because he didn't take an oath on a pipe or any suggestion to that effect it seems to me is totally in conflict with this rule.

MR. TAIKEFF: As between two witnesses. As between a witness who swears on the bible and then a witness who comes in and swears on the constitution and then a witness who comes in and swears on the sacred pipe, Your Honor, is absolutely correct. But as to a witness who professes a certain kind of belief, suppose a Christian person came in and claimed to be a devout Christian but refused to take an oath an a bible, only wished to affirm to tell the truth, I think that's an area of a legitimate inquiry. "How come you will not swear in the name of the bible if you are a Christian who believes in the bible," is a legitimate inquiry.

THE COURT: I'm not going to pursue this any further. I just wanted to raise the point because, as I say, comments that you made on this dialogue this morning and particularly {3484} because of comments by Mr. Lowe made with reference to his cross-examination of a couple of Indian witnesses.

MR. TAIKEFF: Your Honor, I do not mean to suggest that the defense at any time will either offer testimony or argue that a person who swears on the pipe is more believable than a person who swears on the bible or any other form of acceptable oath, but there is a very special issue here and that is a person who does in fact follow the religion of the pipe and who avoids the confrontation of swearing on the pipe, that is a relevant and significant matter, particularly when that witness says before he testifies, "yes, I'm going to so swear on the pipe," and then does not.

THE COURT: That is not an issue for the jury.

MR. TAIKEFF: If that's Your Honor's ruling, obviously we will abide

by Your Honor's ruling but we accept from Your Honor's ruling.

THE COURT: That is not an issue for the jury. That's an issue between the Court and the witness how he wants to take his oath. Once he takes the oath, he stands in the same position as anyone else who has taken the oath.

MR. TAIKEFF: That's a determination as to the matter of law whether or not the witness has taken an appropriate oath to make the witness a competent witness.

THE COURT: That is right.

MR. TAIKEFF: But as to the witness' credibility, that's {3485} an issue for the jury.

THE COURT: That credibility will not be enhanced under Rule 610. Rule 610 prescribes attempting to enhance or diminish the credibility of that witness by reason of having taken the oath in one form or another but the matter is closed for now.

MR. HULTMAN: Your Honor, on the old matter --

THE COURT: By the way, I'll advise counsel for both sides I have been informed that the juror is back and the jury is ready to proceed.

MR. HULTMAN: This will be brief, Your Honor. First of all, Your Honor, on the last matter, it seems to me, and I only bring it up because it seems to me that Counsel is now trying to take a position which is astounding to me that, one, an individual who has previously said, "I am telling the truth and I will tell the truth," that because he hasn't sworn on a sacred pipe at that particular moment that he's not going to do what he said he's going to do.

Secondly, when he's been given an oath which he has taken to tell the truth that because, again because he hasn't taken on the pipe that there is something automatically concluded that he's going to be a liar and I say that's astounding, that conclusion to me.

But let me go now back to the item I wanted to discuss for a moment in response. Counsel somehow, and I'm going to {3486} approach the exhibit because it will be a little more demonstrative and maybe I'll use less words. Counsel somehow has taken the position that when the government asked Brown what took place on the 26th that it then deprived Counsel because I didn't ask a specific question about something in particular that took

place on the 26th concerning one little shred of the event, that I then closed him out as far as on cross-examination from going into the matter. That appears to me astounding under the Rules.

But let's assume that that is the conclusion that was drawn. There isn't any question and Counsel, learned Counsels know without any question and under Rule 611b that is all he's got to do is just ask a question and unless objection comes he's going to get whatever answer to whatever question concerning whatever events were included on the 26th that he wants to ask, and in fact even if there was objection, the Court under 611b can then indicate, "Counsel, you can go ahead and ask the question because it's very appropriate this time and place." I merely want to make the point, Your Honor, that it seems to me absolutely astounding, the concept and the argument that somehow the matters that we're now going to talk about with reference to Brown were being deprived, that the government by not asking a given question somehow specifically deprived Counsel from attacking whatever that issue was straight on, head on right then {3487} and there when the witness was on the stand and that's the only thing I want to respond to with reference to that particular additional comment by Counsel.

MR. TAIKEFF: Your Honor ruled on numerous occasions that we could not go into anything on cross that was not covered on direct and that we would have to reserve certain witnesses and additional testimony from those witnesses to our own case. That was something that was not gone into and I would surely have been deprived of a proper presentation to the jury assuming that Your Honor allowed me to ask the first question. I think the record is clear that Your Honor would not have allowed me to then pursue the background facts concerning that bit of testimony because of Your Honor's ruling about not going into things on cross that were not covered on direct. So I saved not only the background but that particular bit of evidence for our own case.

{3488}

The only reason I did it that way was because your Honor had ruled on several occasions that we separate the two cases.

There is one point that remains open on topics already covered this morning, and that is concerning the Myrtle Poor Bear matter. We have never

been able to talk to her. As I previously indicated to your Honor, one afternoon about two weeks ago Mr. Crooks notified us that she was about to be released from protective custody. She was presently then and there in the Marshal's office. He said that he did not believe that she would be willing to talk to us, and he thought that we should go in and ask her the one question, that presumably being, "Will you voluntarily speak with us?" and presumably her answer would be "no", and that would be the end of it.

When we went in there, as we previously indicated to your Honor, we found that Chief Deputy Warren and one of his deputies was there, and we asked whether those two people would leave so we could have a chance to speak with this person; and we were told in words or substance, "No, we won't leave, why don't you ask your one question and be done with it?" -- and we have a transcript of that to show it to your Honor, so apparently both Mr. Warren and Mr. Crooks had the same view of the situation. They both seemed to know we were only going to get a chance to ask {3489} one question, and they apparently knew what the answer was going to be; and the answer was, "No, I will not speak with you." That's the only dialogue we have ever had with Myrtle Poor Bear.

Now, if Mr. Hultman wants an offer of proof and if at the time your Honor requires an offer of proof before we can make any presentation to the jury, the only way we can do that is putting Myrtle Poor Bear on the stand. We cannot tell your Honor precisely what the testimony will be because we have never spoken with her. She has refused to speak with us, and that means that Myrtle Poor Bear has to be brought in and that an appropriate effort has to be made to get her here.

Now, as of this time she is apparently unavailable to get, and I understand that the Marshal, Chief Deputy Warren was going to report to your Honor this morning as to the progress of that particular search and the effort to bring her here.

I would assume that if some definite word of her arrival is not available by approximately midday, then we will have to apply to your Honor for appropriate relief in order to get her here, but we are intent on bringing her here, and at the very least having your Honor hear her testimony.

We believe it would be perfectly appropriate to put {3490} her on and ask her questions in the presence of the jury. Quite frankly, we don't know what her answers are going to be. We suspect what they are going to be. We have a good faith belief what they are going to be. We don't know until we put her on the stand, so we are not in a position to make an offer of proof.

MR. CROOKS: Your Honor, could I rise very briefly on this matter?

THE COURT: I would like to terminate this discussion as quickly as possible and get on with the jury. We have kept them waiting since about 3:20 yesterday afternoon.

MR. CROOKS: The only thing I wanted to say, your Honor, counsel apparently inferred or implied that Mr. Warren or myself were guilty of some kind of a misconduct insofar as Myrtle Poor Bear; and I can assure the Court that neither of us were guilty of any kind of misconduct. Miss Poor Bear informed us that she did not wish to speak with defense counsel, and I informed her that she had a right to or not to and it was her decision; and that's exactly what I told defense counsel, and I think it is unfortunate that counsel repeatedly infers that the Government is somehow or other doing something untoward to them and that is not, that is not correct and counsel knows it is not correct. I informed them at the time we came out.

The other thing I would like to touch on very briefly, {3491} I am rather astounded that counsel stood up yesterday and spoke for approximately half an hour about what one could tell at a glance by talking to Myrtle Poor Bear; and here it turns out he has never talked to her other than to ask her if she wants him to and she has responded in the negative.

MR. TAIKEFF: That was the glance.

MR. CROOKS: Apparently counsel is clairvoyant, which would again indicate the sheer fantasy of counsel's argument.

Co-counsel, I believe the record will show, talked to her a year or so ago, and she indicated she did not wish to talk.

MR. LOWE: That was another glance.

MR. CROOKS: So apparently both of them are clairvoyant as to Myrtle Poor Bear.

It seems to me, your Honor, that counsel is indicating that they want to put Myrtle Poor Bear on simply to destroy the poor woman; and it

is very obvious from their presentation that's exactly what they want to do, and that I think is exactly why the Court has already ruled that that is not going to be relevant unless there is a further showing.

As a matter of fact, I think there will be testimony from Myrtle Poor Bear, if she does testify, that she has {3492} been harassed. It has not been the Federal Bureau of Investigation that harassed her, and I leave it to supposition who the parties would be that have done the harassing, but it is not the Federal Bureau of Investigation because, unlike Mr. Taikeff, I have talked to Myrtle Poor Bear, and I have some basis for what I say.

MR. TAIKEFF: Your Honor, I have to ask your Honor a question before the jury is brought in because it will determine how we proceed. I don't mean to prolong this any longer than necessary.

With respect to Defendant's Exhibit 166 -- that's the document from which we offered Paragraph No. 4 -- I believe your Honor said that there was not a sufficient basis, by way of authenticity, establishing who prepared it, what its source was, and that was one of the grounds upon which your Honor rejected it.

I gather then that we would be permitted to offer proof as to where it came it from and how it was prepared, and what its basis is, am I correct in that assumption?

THE COURT: Except that --

MR. HULTMAN: (Interrupting) Your Honor, which exhibit?

THE COURT: 166.

MR. HULTMAN: I don't have a copy.

MR. TAIKEFF: That's the document that purportedly {3493} listed the four separate admissions made by Mr. Peltier.

THE COURT: The second reason was that it was irrelevant.

MR. TAIKEFF: Well, I am mindful of that. That's why I put my question to the Court.

Will the Court allow us to show its authenticity, would that in any way affect the question of the relevance?

Suppose, for instance, a witness was competent to do so was called and said, "This document was prepared by the Government," based upon consultations with either the people who claimed to have received the

admissions or their superiors. Would that then be a sufficient foundation as to its accuracy and authenticity and source as well as affect the relevancy?

I ask that question not out of academic curiosity, because if your Honor answers my question in the affirmative, I want to put on such proof.

THE COURT: And for what purpose would it be offered?

MR. TAIKEFF: To show -- you mean what ultimate purpose?

THE COURT: Yes.

MR. TAIKEFF: To show that an admission -- the Government was at an earlier stage in these proceedings prepared to show an admission by one police officer which was not in that police officer's report although that police officer {3494} wrote a lengthy detailed report purporting to summarize all conversations had with the Defendant; that the absence of that particular alleged admission was particularly significant because it virtually contained an admission of guilt in this case.

Its content is such that it essentially admits the murder or murders, depending on whether you read the singular to mean only the singular, or the singular to mean plural -- of the two FBI Agents.

That admission was something which the Government was told would be made. I am not saying that the Government created that admission. I am saying the Government accepted from a reliable source, a source that they viewed as being reliable, a statement that a police officer had heard such an admission. The proof of the fact that they accepted it as being reliable and that it came from a reliable law enforcement source is that in the course of making information known to the defense at the earlier trial, they prepared that document and listed that admission. Now, the text of that admission --

THE COURT: (Interrupting) I am aware of it.

MR. TAIKEFF: You are aware of it?

THE COURT: I am aware of it.

MR. TAIKEFF: Basically that he would have shot them if he had known they were cops, and he had done it before.

{3495}

THE COURT: It is entirely conceivable that either side may, in the preparation of their case, accumulate what may appear to be evidence and

disclose it to the other side, and then on further investigation find that it has no basis and not offer it. The fact that neither side asked Parlane as to whether he heard that statement, when he was on the witness stand and when they had the opportunity to do so, is the basis for the Court's ruling that it is irrelevant and there is no relevancy, in addition to the fact that the foundation is lacking, but to cure the foundation defect does not cure the relevancy.

MR. TAIKEFF: But your Honor, first of all, it is such a significant admission, if made, that the failure of the Government to adduce it raises serious questions which they certainly could explain in rebuttal, if not on cross examination, during the defense case; but to say that as a threshold matter that is something that the jury cannot consider, when presumably the evidence was there, how did it get there? What was the source of it? Why was it then not brought to the jury's attention? This seems to be a highly significant and relevant matter.

THE COURT: I have ruled.

MR. TAIKEFF: So your Honor is saying that establishing the foundation isn't going to do us any good?

THE COURT: That is right.

{3496}

MR. TAIKEFF: All right.

MR. LOWE: I have a 60 second application. The Clerk can strike me down physically if I go over that time.

In laboratory report, PCM052 -- excuse me -- 0520MM, dated February 10, 1976, there is a reference to laboratory report, PC-M0794MM, dated 12-16-75, which we do not have to the best of our information and belief; and we do not believe we received a copy from the Government. I checked with Mr. Sikma and Mr. Hodge yesterday as relates to firearms, neither of them can produce a copy; and I am confident in good faith that they looked in their files and they didn't have it.

We would call on the Government to produce that laboratory report, or if that is an incorrect identification of the laboratory report in the first cited laboratory report, we would ask for a correct identification of it so we can use it.

We believe it is Brady material. I will give this card to Mr. Hultman.

I want to put it on the record. I realize they have to make a search. Mr. Sikma said he would try to find it, and I will check again. This is the reference (handing).

THE COURT: The jury may be brought in.

MR. HULTMAN: Your Honor, might I ask a question to know the first witness may be so I might have a moment -- {3497} I would like to know.

THE COURT: Are the defense willing to disclose the name of the first witness?

MR. TAIKEFF: Yes. Jean Day. I have given the names to Mr. Hultman yesterday in the order in which we intend to call them.

MR. HULTMAN: I appreciate that, counsel. I did not know that.

(Whereupon, at 10:04 o'clock, a.m., the jury returned to the courtroom; and the following further proceedings were had in the presence and hearing of the jury:)

THE COURT: As the jury is aware, the Government completed the presentation of its evidence yesterday and the defense counsel had indicated that they do intend to present evidence.

Now, I have not repeated my admonition each day because I know that the jury is very much aware of it; and that is that until all of the evidence is in and until the case has been submitted to you for your deliberations under the instructions from the Court on the law, you must continue to keep an open mind and not reach any conclusions in the case and not discuss it with anyone.

There is just one other matter that I should mention to you. It is possible that the defense, in presenting its case, may recall some witnesses that have previously {3498} testified.

As a general rule, when a witness testifies, the cross examination of that witness is limited to the subject matter of the direct examination, and it may be necessary at times for one side or the other to call a witness that the other side has called and question them on some matter that was not brought out the first time the witness was on the stand.

I just offer that as an explanation in case you had any question in your mind relating to it should some witnesses that have already testified be recalled.

You may proceed.

MR. TAIKEFF: Yes, your Honor, before we call our first live witness, we want to introduce certain documents.

I have a stipulation, your Honor, which has been signed by the prosecution and defense. I would like to read it before filing it with the Clerk.

THE COURT: You may.

MR. TAIKEFF: This is a stipulation entered into by Government and defense counsel and reads as follows:

On April 10, 1976, the following vehicles were in a locked enclosure adjacent to the Bureau of Indian Affairs' jail in Pine Ridge, South Dakota:

1. A 1976 Ford, black over green, 1975, South Dakota license, 65-2355. {3499}

2. A red International Scout, four-wheel drive vehicle, 1974, South Dakota license, 65T116.

3. A white over red Chevrolet van which had no license plate.

Secondly, your Honor, Defendant's Exhibit 87 for identification is a 302 by the FBI which, except for its preamble paragraph, copys verbatim a report of the BIA officer by the name of Ecoffey.

When Ecoffey testified, he provided the information which I have just alluded to.

On the basis of the foundation laid during Mr. Ecoffey's testimony, the defense offers Exhibit 87 for identification.

(Counsel examine document.)

MR. HULTMAN: Well, I will object to its introduction on the same grounds that we have stated numerous times before.

THE COURT: This is a matter, I think, that should have been resolved before the jury was called in.

MR. TAIKEFF: Your Honor, I can resolve it very briefly if your Honor wants to hear us at the side bar.

THE COURT: I will.

(Whereupon, the following proceedings were had at the bench:)

MR. TAIKEFF: Actually I have no special interest in {3500} the entire report, your Honor; but knowing that if you offer one part of a report, it usually results in the other side asking for the entire report. I wanted to avoid the possible inference in front of the jury that I tried to conceal

something.

My interest is in the last paragraph on Page 5 which I show to the Court, and I think your Honor will immediately see the significance of it.

(Court examines document.)

MR. TAlKEFF: That, your Honor, is a verbatim quotation of Ecoffey's report which was incorporated in a 302. The entire 302 is Ecoffey's report except that preamble paragraph.

MR. HULTMAN: Your Honor, my basis for objection, without going into all the detail again, is the very reasons that we have stated here many times.

This is a bald attempt now, with the witness not being here -- the witness was here -- counsel had the document that's in front of them in their possession and have had it for a long time. The question, to which anything that's in that material, could have been asked the witness on that particular occasion; and I object to the introduction of the document for all of the grounds we have indicated before.

MR. TAIKEFF: Your Honor, the witness said that it {3501} was his report of his activities of the day; and I offer that paragraph, or the entire report, as the case may be, to prove the inference.

MR. HULTMAN: I object to either and both, your Honor.

THE COURT: Well, this is something additional to what the witness testified to, is that it?

MR. TAIKEFF: No, it is not something additional. He testified -- well, the content of the report he testified -- wasn't in evidence. He testified that he wrote a report that day of all of his official activities, and then I showed him this document and he said, "Yes, that is my report reproduced on the 302," and he authenticated and answered all the questions concerning the foundation that one would lay for a business record and also said that that was in fact his report, and what he wrote that day was accurate as far as he knew it on that particular day.

Now, I want to introduce that paragraph to show on that day, when he made that report -- it is dated June 26th -- he made an utterance.

THE COURT: You had the opportunity to ask him that.

MR. TAIKEFF: He did say that, he did say that.

THE COURT: That he made this evidence?

MR. TAIKEFF: Of course, he did. The record is clear. {3502} I represent to your Honor he said that. I specifically and purposely asked him those questions, knowing full well I would offer that paragraph in our case.

MR. HULTMAN: He asked about the report, the same objected to 302 business.

My basic objection now is an attempt without the witness being here to put things into the record, that counsel got into the general matter but didn't go to the specific matter.

THE COURT: Hold it down.

MR. HULTMAN: He had the opportunity to ask the question. Now, this is a document on the outside he is trying to introduce as being the evidence.

MR. TAIKEFF: Your Honor, he said he wrote every single word in that report.

THE COURT: You are not offering it to affect his credibility and it is not -- a 302 -- admissible as substantive evidence in the case.

MR. TAIKEFF: I am offering it to show that he wrote those words.

THE COURT: You should have asked him that on the stand.

MR. TAIKEFF: I did ask him. He said "Yes".

THE COURT: You asked the specific words?

MR. TAIKEFF: The entire report.

{3503}

THE COURT: No, I am talking about the specific words.

You are attempting to put this in as evidence.

MR. TAIKEFF: That he wrote those words.

THE COURT: All right. He may have some explanation of it at this time. It would go to --

MR. LOWE: (Interrupting) The Government can call him in.

MR. HULTMAN: There is no duty on me.

MR. TAIKEFF: The shoe is on the other foot. The Government didn't ask the question in response to our laying the foundation at the time.

MR. HULTMAN: I don't have to ask any questions.

MR. TAIKEFF: Of course, you don't. The same rule applies to us. Don't criticize us for not asking questions that are not appropriate.

MR. HULTMAN: Don't say I have to recall him.

THE COURT: I am saying you cannot put his testimony in in this way. The best evidence is his testimony from the witness stand.

MR. TAIKEFF: But all I could ask him I call him to the stand right now is essentially the same thing I have already asked him, "Did you write that paragraph on June 26th?" And he would say, "Yes, I did write that paragraph on June 26th." He has already said that because he said he wrote the entire report, and that includes every single {3504} paragraph.

Now, if the Government has some explanation as to why he wrote those words --

THE COURT: (Interrupting) The offer is denied. You had the opportunity to ask him when he was on the stand.

MR. LOWE: I think that the paragraph should be identified.

THE COURT: It should be identified.

MR. LOWE: It is the last full paragraph on Page 5 which begins, "I went back to where Eastman and Glenn Littlebird was," and then continues. {3505}

MR. TAIKEFF: Your Honor, I have before me Defendant's Exhibit 181, two page document. Copy has been previously provided to the Government. Mr. Hultman has indicated to me that he will not challenge the authenticity of this certified document. I offer it in evidence.

MR. HULTMAN: The Government has no objection, Your Honor.

You gave me a copy, Counsel?

MR. TAIKEFF: Yes.

THE COURT: No. 181 is received.

MR. TAIKEFF: Your Honor, I also have a stipulation from the Government that the vehicle described in the second page of this Exhibit 181 is the van, the red and white Chevrolet van.

THE COURT: Does the Government concede that stipulation?

MR. HULTMAN: Yes, Your Honor, the Government does, Your Honor.

THE COURT: Very well.

MR. TAIKEFF: Jean Day to the stand.

JEAN DAY,

being first duly sworn on the sacred pipe, testified as follows:

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. TAIKEFF

Q Your name is Jean Day?

{3506}

A Yes, it is.

Q Could you move the microphone over a little bit so you don't have to turn your head to the left?

A Okay.

Q Maybe move it over a little further so that you can turn your attention towards the jury.

A Okay.

Q How old are you, Miss Day?

A I'm twenty-six.

Q And where do you live?

A Madison, Wisconsin.

Q Married or single?

A Single.

Q Are you a Native American person?

A Yes, I am.

Q Of which tribe or band?

A Wisconsin Winnebago band.

Q Are you a member of the American Indian Movement?

A Yes, I am.

Q Have you worked in connection with the efforts of American Indian Movement?

A Yes, I have.

Q Do you know the defendant, Leonard Peltier?

A Yes, I do.

Q You see him in the courtroom?

{3507}

A Yes.

Q Where is he sitting?

A He's sitting next to John Lowe.

MR. TAIKEFF: May the record reflect that that fact is true.

Q (By Mr. Taikeff) Now, were you on the Pine Ridge Reservation in the spring of 1975?

A Yes, I was.

Q And during what period were you there?

A From March until June, the end of June or July.

Q And while you were there where were you staying?

A Well, when I first got there I was staying, well, I was staying in the community of Oglala.

Q And specifically where were you staying, if you were staying in more than one place tell us where you stayed.

A Okay. When I first got there I stayed at Ted Lame's home and then --

Q Whose home?

A Ted Lame.

Q L-a-m-e?

A Yeah.

Q All right.

A And then we moved to Jumping Bull's.

Q Would you look over your right shoulder and tell me whether you recognize what that chart is? It's designated Government {3508} Exhibit 71 in evidence.

A Yes. That's the area that we, that I lived in at Jumping Bulls'.

Q And can you give us the dates that you were there, approximate dates if you don't have exact dates.

A We moved there in May I think it was, and I left in June.

Q What part of June?

A Well, I left the 22nd of June.

Q Did you return to the reservation after the 22nd of June?

A Yes, I did.

Q And for, when did you return?

A June 27th.

Q And for how long after that did you stay on the reservation?

A Well, I was coming back and forth quite a bit, you know. But I suppose probably left around the first, you know, the first week in July.

Q What was the latest date that you were on the reservation that you can recall?

A July 5th.

Q Is there any particular event that pinpoints that in your mind?

A Yeah. I stayed there because we were going to bury Joe Stuntz, and so I stayed there.

Q And on what date was that burial?

A July 1st, 1975.

{3509}

Q And then you stayed there a few days beyond that?

A Um-hum.

Q Now, was your visit to the Pine Ridge Reservation a social visit?

A I don't think you could call it a social visit, no.

Q What was the purpose of your visit?

A I was, we were asked to come into Pine Ridge, into the Oglala community; and so it was more or less something to do with the Movement, to help the people there.

Q Are you saying that you went there in connection with your activities on behalf of the American Indian Movement?

A Yes.

Q Now, briefly can you summarize for the Court and jury what kind of work you did as an American Indian Movement person. Not specific events, just generally what were the kinds of things that you as an active member of AIM were doing in the name of the organization?

A Well, we went there because we were asked to go to Oglala to help the Oglala people.

Q Who asked you?

A The Oglalas.

Q Can you be more specific? I'm not sure that the people in this courtroom who are not, who are unfamiliar with the reservation would know what you mean by that.

A Well, it was in the White Clay District; and some of the {3510} people from White Clay asked us to come in because there was so much, so many things going on at that district where their homes were being shot up and stuff like that. So they asked us to come in and try to mediate in any way that we could.

Well, that was mostly for the men. And for the women we went there,

well, you know, to take care of their household things that have to be taken care of, and also to help the women in the community in any way that we could.

Q Could you summarize in a relatively short paragraph what were then, and as far as you know now, the purposes for which AIM was organized, and what you were doing in connection with your work as an active AIM member.

A Okay. AIM is an organization, it was organized to help the people, the Native American people throughout the United States to get to know their tradition and to live the traditional way and to teach it to our young.

And also if there was anything that we might be able to help them with in their community, to come in and help them. More or less a supportive group than anything else.

Q You, I think used the traditional people when you were talking before about the White Clay District. Are there different categories, generally accepted different categories of people living on the reservation?

A Yes. Well, they're probably split into two groups: your traditional and your nontraditional.

{3511}

Q And can you briefly summarize what it means, or how one is identified as a "traditional" Native American?

A A traditional Native American would be one who would practice and live the ways that our people did a long time ago.

Q And the others, any special characteristics of the others?

A You could probably characterize a nontraditional as a person who believes in the white ways and goes to -- who are Christian people.

Q Did the American Indian Movement have anything specifically to do with attempting to revive the traditional religious beliefs?

A Yes. That's how I got to know the pipe, through the American Indian Movement.

Q For how many years have you been a follower of the religion of the pipe?

A Fully and everything since maybe January of 1975.

Q Now, it is a fact, or is it not a fact that people of the American

Indian Movement carry weapons?

A Yes, it is a fact.

Q With respect to your actual personal experience on the Pine Ridge Reservation can you explain the necessity for that?

A On Pine Ridge if you are a member of the American Indian Movement you've already got one mark against you, for the main fact that a lot of the people who are, and the tribal or, you know, associated with the tribal council did not like the {3512} American Indian Movement. And so it was more or less a thing where you had to protect yourself because you never knew from one day to the next what could happen to you. And if you didn't have anything to defend yourself with, you know, that somebody could be shot and killed.

Q Do you have occasion to speak with people on the Pine Ridge Reservation in the White Clay District who were not members of AIM?

A Not really because they wouldn't even associate with people who were AIM because the very fact that if the people found out you were even talking to AIM members or anything like that they would also peg you as being a friend of the American Indian Movement and then you're, either your goons or your, even some of your relatives wouldn't even talk to you then.

Q Do you know who made the invitation for the American Indian Movement group to come into the White Clay District?

A It was some of the women of White Clay that lived near Oglala.

Q And do you have any personal knowledge of any official invitation that occurred sometime in the month of June, 1975? When I say "official" I mean from the traditional council of chiefs only. Don't say anything about it unless you have personal knowledge of such an invitation.

A No, I really don't know.

Q Would you tell the jury about some of the specific activities {3513} which you and the other members of the American Indian Movement who were there in White Clay District actually involved yourself in during the months that you were there?

MR. HULTMAN: Your Honor, I haven't objected up to this time, but I would offer an objection that this is irrelevant.

THE COURT: Will the reporter read the question back.

(Question read back: "Question: Would you tell the jury about some of the specific activities which you and the other members of the American Indian Movement who were there in White Clay District actually involved yourselves in during the months that you were there?")

MR. TAIKEFF: I want to withdraw that question to lay in further foundation testimony.

THE COURT: Very well. You can withdraw.

Q (By Mr. Taikeff) Can you name initially the AIM people who came to White Clay District with you?

A There was Dino Butler, Neelock.

Q Who's "Neelock"?

A Neelock Butler.

Q All right.

A Me, Leonard Peltier, Melvin Lee. Let me see, I think Mike Anderson came with us then, too.

Q Anybody else you can remember?

A I can't remember all of the people that were there.

{3514}

Q How about Joe Stuntz?

MR. HULTMAN: Well, now if it please, this is clearly leading, Your Honor. I have no objection, but I think if counsel will ask the question as to who it was I have no objection. But this is clearly leading.

MR. TAIKEFF: Your Honor, the first time and the second time said it he was correct. It is leading. However, the witness says I can't remember, and it's appropriate to ask that leading question in response to a statement that I can't remember.

THE COURT: I'll allow it.

MR. TAIKEFF: Thank you.

A Joe didn't come and move with us until I think it was the end of April, beginning of May, something like that.

Q (By Mr. Taikeff) All right. Have you told us then as far as you can remember the names of all the people who came with you originally?

A Yes. As far as I can remember.

Q All right. Now, can you name any people who joined the group after you first got there up to and including the time you left on June 22nd?

A Yeah. There was Joe Stuntz, Norman Charles, and then Norman Brown, Wish, Jimmy Zimmerman, Lynn and Jeannie Bordeau.

Q Now, can you then tell us of the activities that you know or of your own personal knowledge participated in in the White {3515} Clay District by these people whom you've mentioned?

A Yes. We used to have sweat gatherings with the people and then us girls would go in earlier, you know, to help clean up the home, you know, where the gathering was going to be.

And then we also brought some Oglala people who have come from traditional families but never really got to know what it was like.

Q When you say a "sweat" what are you referring to?

A I am referring to a religion, the sweat lodge.

Q All right.

A And also for the, to have pipe ceremonies and your weepies.

Q That second thing you mentioned is a different kind of religious ceremony?

A Yes.

Q Now, what do you know of the existence of police protection in the White Clay District in the spring of 1975?

A The only kind of police protection that they had was probably the men that were in our group.

Q Well, can you elaborate upon that?

A Well, before we came, there was, you know --

Q First of all, let me interrupt you. Officially as of that time what kind of police protection was supposed to be available there?

A Well, you were supposed to have your BIA police, but they really didn't protect anybody that was there. That is as far as {3516} I knew while I was living there.

Q You mentioned before a category of person called "goons". Can you briefly give the Court and jury some idea of what you meant by that expression?

A Goons is like an organization that lived on the reservation who weren't Native Americans, who came and harassed the people mainly, mostly because of their beliefs that they had.

And so in order to, it was in order to get them away from what they

were working against the tribal council at the time, against Dickey Wilson.

Q Who is "Dickey Wilson"?

A At the time he was the tribal chairman of the Pine Ridge Indian Reservation.

{3517}

Q The entire reservation?

A Uh-huh.

Q What was the relationship, if any, between the goons and the administration of Dickey Wilson in terms of whether they supported him, didn't support him or whether it was an indefinite thing?

A He was, they supported Dickey Wilson more than the American Indian Movement did.

Q And I think we got off on this tangent when I asked you about available police protection. You said the BIA police were supposed to be the police force on the reservation.

A Uh-huh.

Q Did they serve in that capacity, did they act as a police force?

A No. You see, because some of the policemen that were on the BIA force were also goons.

Q How did this reflect itself in the lives of the traditional Indian people on the reservation?

A It would be just like if you went to the city and said these people are supposed to protect me and help me in any way you can, if I get in trouble but yet in turn they really aren't going to help you because they can't stand you, maybe because of what you stand for.

Q As a traditional?

A As a traditional Indian and also as a member of AIM.

{3518}

Q So who provided the, while you were there, the protection for traditional Indians in the White Clay district?

A The men from our group.

Q Do you know the name Myrtle Poor Bear?

A I've heard of it.

Q Was she a member of your AIM group living either at Ted Lame's or later at the Jumping Bull area?

A No.

Q I'm placing before you Defendant's Exhibit 158 for identification which is a copy of a photograph not in evidence so the jury can't see it at this time. Would you tell us whether in your opinion it's a photograph of a female person?

A It's a female.

Q Could you tell what race?

A She looks like she may be native American.

Q Have you ever seen that person in your life?

A No, I haven't.

Q Could you tell us whether during the spring of 1975 Myrtle Poor Bear was --

MR. HULTMAN: May we approach the bench, Your Honor?

THE COURT: You may.

(Whereupon, the following proceedings were had at the bench:)

MR. HULTMAN: Your Honor, I haven't objected up to this point but Counsel has, one, proceeded in view of the {3519} course for this ruling and I made no objection but now --

MR. TAIKEFF: I don't recall any such thing.

MR. HULTMAN: Wait until I get done, Counsel, please.

Now even after he's asked the questions and it's clear he had access to this witness to know whether, what the responses were going to be to the question. He's raised the issue before this jury knowing that, one, a response was going to be exactly what it was, that she doesn't know this person, doesn't know anything about this person, doesn't even recognize. Now he's continuing even after that question to go into proceed with further questions of this kind.

MR. TAIKEFF: Because that was a foundation.

MR. HULTMAN: I object.

MR. TAIKEFF: Next question.

MR. HULTMAN: It's highly prejudicial and I object on the record.

MR. TAIKEFF: I don't see how it's prejudicial. If you would be patient and realize that you can only prove a case in increments, you would see that all of that was a foundation for the next inquiry.

THE COURT: I don't see that --

MR. HULTMAN: What is going to be the next inquiry?

THE COURT: I don't see anything prejudicial at this point. I did construe it as being preliminary. I don't know what might be coming.

{3520}

MR. TAIKEFF: In two questions Your Honor will clearly see it was preliminary and what it was leading up to.

(Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

Q (By Mr. Taikeff) During the period of March, 1975, to the end of June, 1975, did you or did you not see Leonard Peltier every day?

A Yes, I did.

Q And during that period of time could you tell us, I'm asking yes or no, could you tell us whether or not Myrtle Poor Bear was living with Leonard Peltier or was his girlfriend?

A No.

Q You couldn't tell us anything about that subject?

A No.

Q I didn't ask you whether she was, I said you could you tell us anything about that subject?

A She wasn't living with him.

Q How do you know that?

A Because I was.

Q Was there any other woman living with him whose name you didn't know?

A You mean at Jumping Bull's?

Q No. Living with him intimately as his woman while you were living with him?

{3521}

A Yes. There was somebody else.

Q Who was living with him?

A Well, not all the time or anything but there was Audrey Shields.

Q And you knew of her existence?

A Yes, I did.

Q Is that woman depicted in that photograph?

A No. That's not Audrey.

Q Now did you go to Farmington?

A Yes, I did.

Q During that period?

A Yes. In June of '75.

Q And what was, briefly, just by descriptive term what was going on in Farmington?

A There was an American Indian Movement national conference in Farmington.

Q And did the rest of the group, the AIM group go from the Pine Ridge --

A Yes. All of us went.

Q How many people attended that conference or meeting?

A Oh, I'm not really sure but maybe between 500 and 1,000 or a little over that.

Q Did you return from that meeting, that national meeting with any people who then lived with you at Jumping Bull's who had not been there before?

{3522}

A Yes. We brought back some people with us that were, you know, going to be living with us at the camp.

Q If necessary you can refer to that chart behind you again. Where specifically at the Jumping Bull community did you all live?

A We were staying at the place that is marked the log cabin at the time we came back from Farmington.

Q And could you use the pointer, if that's convenient for you and show either exactly or approximately where that was?

A That was right here (indicating).

Q By the way, how many times have you spoken with either me or anybody else connected with the defense concerning your testimony?

A Just once.

Q With whom did you speak?

A I spoke with you and Terry.

Q Terry Gilbert?

A Yeah.

Q Do you recall whether during that conference any question was

put to you about the log cabin?

A No. Never asked.

Q Now where were the other people living?

A We were living, all of us were living there at the house and then we had a tepee that was set up outside the house where Dino and Nilak stayed.

{3523}

Q Was there another area on the premises that was lived in at some time?

A By us you mean?

Q By any of the people who were staying there.

A Well, the Jumping Bulls stayed right next door.

Q Did you have an area that you referred to as tent city or is that just a phrase that we're using here in this case?

A We never called it tent city.

Q Would you turn and look at the chart again and look in the upper right hand corner and you'll notice there is a lot of marking there. Can you tell us something about that area?

A You mean way over here in the corner?

Q Yes. The upper right hand corner.

A Yeah. That's where we set up a camp like.

Q Did you have a sweat lodge?

A Yes, we did.

Q Where did you set up the sweat lodge?

A It was right along the creek not too far from where the main tents were.

Q Is that the area designated up there with the shaded or lined section?

A Yes, it is.

Q Now you said that you returned to the White Clay district on June 27th.

A Yes, I did.

{3524}

Q How was it that you are able to pinpoint the date exactly?

A It was the day after the shoot out on the 26th.

Q How did you know about the shoot out on the 26th?

A I heard it on the radio.

Q Where were you when you heard it on the radio?

A I was in Cedar Rapids, Iowa for the sentencing of Crow Dog.

Q And after the 26th did you hear news about the events of the 26th while you were on the reservation?

A Yes. Well, if you had a radio or television or anything like that you knew. You could hear what happened.

Q Did you have access to radio or television?

A Yes, I did.

Q How would you characterize the amount of news that was coming across concerning that subject?

A There was quite a bit of news going on about Oglala and what was going on and maybe about every hour, sometimes even every half hour.

Q Now after June 26th and specifically directing your attention to the events after Joe Stuntz' funeral, did you have any contact with Leonard Peltier?

A Yes. I saw Leonard after we buried Joe.

Q Do you recall the exact date after the funeral?

A Well, we buried Joe the 1st of July and it had to be within the next few days that I saw him, whether it was the 2nd or 3rd, {3525} I'm not real sure.

Q Where was it that you saw him?

A I saw him at Oscar Bear Runner's place out in the country.

Q How much time did you spend with him?

A Just a little while. I didn't talk to him that long.

Q Now between the time you returned on the 27th and the time that you saw him in early July, you said it was either the 3rd or the 4th?

A Uh-huh.

Q Did you have occasion to be at different places on the reservation?

A Yes. See, I was going around to different homes and things like that because we heard that the FBI were looking for me.

Q Looking for you?

A For questions and stuff like that. So then I would, you know, go to different homes and visit people and find out what was happening because I didn't even know what happened June 26th.

Q Now from your travels around the reservation between June 27th and the day, July 3rd or July 4th that you met with Leonard, did you make any observations about unusual activities on the reservation?

MR. HULTMAN: Your Honor, I'm going to object to this as being incompetent, irrelevant and immaterial.

{3526}

MR. TAIKEFF: Well, if he saw her, Your Honor, it's not incompetent.

MR. HULTMAN: She indicated she didn't know anything about the 26th.

MR. TAIKEFF: I'm not asking her about the 26th.

MR. HULTMAN: With reference to anything from that point on I object on the grounds that general observations, that there is no relevance.

THE COURT: Overruled.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) I asked you whether between the time you returned to the White Clay district on June 27th and the time you saw Leonard on July 3rd or July 4th, in your travels around, as you've already described them, did you make any observations of the things which were happening on the reservation?

A Yes. There's quite a few FBI agents and S.W.A.T. teams and, well, right in Pine Ridge a great big van there. I don't know what it was, like on the corner right across from the post office there was a bunch of guys there in fatigues and some who were carrying rifles and some weren't. Then like if you, on the 27th we were stopped by a bunch of men who carried guns and were in those bullet proof vests or whatever you call them and they stopped us. So there was policemen all over the place .

Q Do you know what an APC is?

{3527}

A Yes, I do.

Q What is it?

A An armored personnel carrier.

Q Did you see any of them there during that period I'm questioning you about?

A Yes, I did.

Q How many?

A I saw one and then I saw, that was the only one I saw. But then

I also saw helicopters and airplanes, too.

Q Now when you saw Leonard on July 3rd or July 4th, could you tell us how much time you spent with him on that occasion?

A I spent only about 15, 20 minutes with him.

Q Did you speak with him?

A Yes, I did.

Q What did you say to him, if anything?

A Well, I was glad to see that everybody was okay and nothing happened to them and that we had buried Joe, and that there were a lot of police around and FBI agents.

Q Did you have any conversation with him concerning his possible whereabouts or whether he should stay on the reservation?

A Well, I knew --

Q Tell us your conversation, not what you knew.

A He had to get, said something about they had to leave the reservation.

{3528}

Q Did he say why?

A See, since they were living, you call it tent city, and they were looking for the people who lived there and since we did live there they knew they had to get off the reservation and that they were also afraid that, this is with other conversations with other people that were there, they knew that they had to get off from there because they were afraid if the FBI agents did come in or, you know, your military personnel that were there did come in and find them they probably shoot them all.

Q Now based on your own personal work with members of the American Indian Movement -- by the way, before I ask you those questions, how much time did you spend on behalf of the American Indian Movement as a full time worker?

A You mean working every day with the movement or how long I have been associated?

Q The first question is the one I want to put to you. How much time did you spend working full time for the American Indian Movement?

A Full time ever since the Abby takeover in 1975 in Wisconsin.

Q Until right now?

A Yeah. Because I'm still working every now and then with the movement.

Q When you were on the Pine Ridge, you got a salary, I assume? {3529}

A No. I wish I did.

Q Leonard got a salary?

A No.

Q Who got a salary?

A None of us did.

Q How did you eat?

A Well, the people would donate food to us and then we would have, you know, bingos and things like that to raise money for our food.

Q Now based on the period of time that you worked with and for the American Indian Movement, would you tell the Court and jury whether in your opinion the people of AIM are violent people?

A No. Because, see, like if you believe in the pipe, and that is your main, the groundwork for the American Indian Movement, if you believe in the pipe, the pipe does not believe in violence; in other words, we don't believe in violence. So the American Indian Movement isn't a violent group.

Q But it's undisputed that at least the group that was in White Clay carried weapons, had weapons, isn't that true?

A You would too if somebody, if you thought somebody was going to be coming after you to shoot and kill you.

Q Did you have occasion during the period that you spent in the White Clay district to speak with people concerning Leonard Peltier?

A Well, mostly with the women and, you know, some of the guys; {3530} yeah.

Q And as a result of speaking with those people, did you have some sense of what his reputation is in that community?

A The people respected Leonard a lot and they would do, do a lot for Leonard and for the group that was there.

Q Specifically, if you know, if you ascertained it, what was the reputation specifically as to certain characteristics amongst the people in that district?

A Leonard was probably thought of like the head of the group or the leader and that. One of his big things was there was no drinking within the group and also, and no hard drugs or anything like that could ever be brought into the group at all and if you did you'd probably have to leave.

{3531}

Q That I think addresses itself to the discipline for the group. I am talking about you learned about his reputation in the community. Specifically how was he viewed in the community as to what kind of a person, if you have such information?

A He was respected a lot. People, you know, listened to what he said, and I don't know more than that because the people, for you to gain respect in the community like that, is one of the highest honors you can have; and they knew Leonard was not a violent man for the mere fact that there was times, you know, when Leonard could have gotten angry at any one of us in the group, and he never really did. He may try to find other means of taking care of things.

MR. HULTMAN: We object. She is not being responsive.

We have gone clear beyond the question itself.

THE COURT: The answer is not responsive.

Q (By Mr. Taikeff) During the period of time that you knew him, to what did Leonard Peltier devote himself?

A He devoted himself towards the people.

Q Which people?

A The native American people.

MR. TAIKEFF: I have no further questions.

MR. LOWE: May we have a word for a moment?

MR. TAIKEFF: Yes. Excuse me, your Honor.

(Counsel confer.)

{3532}

MR. TAIKEFF: I have no further questions on direct, your Honor.

THE COURT: The Court is in recess until 11:15.

(Recess taken.)

{3533}

(Whereupon, the following proceedings were had in the courtroom,

the Defendant being present in person:)

THE COURT: The jury may be brought in.

MR. TAIKEFF: Has the jury been sent for?

THE COURT: Yes.

MR. TAIKEFF: I have some additional witnesses. I am going to give the names to the Government off the record.

THE COURT: Very well.

(Whereupon, at 11:17 o'clock, a.m., the jury returned to the courtroom; and the following further proceedings were had in the presence and hearing of the jury:)

(Witness resumes witness stand.)

MR. HULTMAN: May it please the Court?

THE COURT: You may proceed.

CROSS EXAMINATION

By MR. HULTMAN:

Q Is it Miss Day or Mrs. Day, or how --

A (Interrupting) It is Miss Day.

Q Miss Day, all right.

You indicated that you are 26 years old at this time, Miss Day. You were approximately 24 back at the time of April, May, June of 1975, is that a fair statement?

A Yes, I was.

Q All right. You indicated that you were from the Winnebago {3534} Tribe, is that correct?

A Wisconsin Winnebago.

Q Yes, all right. I would like to go back and attempt to pin down a little closer, if you can, when was it that you first came to the Oglala area?

A It was in March of '75. I can't remember the exact date.

Q All right. Sometime in March, that's the best you can recall?

A Um-hum.

Q All right. Now, why specifically did you go to Oglala?

A Because we were asked to come to Oglala.

Q Well, who asked you to come to Oglala?

A Me personally?

Q Yeah. I am only concerned with you at this particular time.

A Well, the Oglala people did.

Q Well, I am just simply trying to establish who was it that asked you, people is a group of some kind, but they don't speak as a group. They didn't speak as a group to you, did they?

A You mean, come right out and say, you come there?

Q I would like to find out who is it that you talked to that asked you to come to Oglala?

A Somebody came right out and asked me personally to come to Oglala. It was more or less as a group that we were there.

Q Well, how was it that you personally decided that you would go to Oglala?

{3535}

A Because I wanted to go to Oglala.

Q You were living where before you went to Oglala?

A I was staying on Rosebud Indian Reservation in South Dakota.

Q O.k. Well then, let me back up a little more. When was it that you went to Rosebud, approximately?

A It was in February sometime of '75.

Q All right. Where had you been living before February?

A Oh, I was traveling then, but before that I was living out in California for awhile, and then before that I was in -- living in Wisconsin.

Q All right. So it wasn't anybody in particular that asked you to come to the Oglala area then, is that a fair conclusion for me to draw?

A Well, see, I was living with Anna Mae and so she asked me to come along with her too.

Q Where did you come from?

A Originally?

Q Yes.

A From Wisconsin.

Q All right. When did you leave Wisconsin? I am trying to back up and find out a little bit of the sequence of time.

A I left Wisconsin after the Abbey takeover in '75.

Q Were you involved in the Abbey takeover?

A Inside the Abbey, no, but I was involved with the takeover.

{3536}

Q Was there any force used in that matter?

A Mostly from the vigilantes.

Q When you first arrived then at Pine Ridge, or Oglala, where was it that you stayed?

A I stayed at Ted Lame's home. It is outside of Oglala.

Q All right, and where approximately from Oglala does Ted Lame live, or his home?

A Maybe about seven miles from Oglala or something like that. I am not exactly sure how far it is.

Q What direction from Oglala with reference to Pine Ridge, is it toward Pine Ridge or away from Pine Ridge?

A Yes. It is toward Pine Ridge because if you go the other way, you would probably go off the Reservation.

Q Now, about when was it then that you arrived and started living at Ted Lame's?

A I told you in March of '75.

Q All right. I just wanted to get the dates here where you were.

A Um-hum.

Q All right. Now, who was it that lived at Ted Lame's at that time?

A Ted and his wife. You mean besides us?

Q Well, I am trying to just find out who it was totally that lived at Ted Lame's at that time.

A There was me, and then there was Leonard Peltier, Dino {3537} Butler, Neelock Butler. I forgot, Anna Mae was there too; and Melvin Lee and Michael Anderson; and I can't, you know, there was more people, but it has been so long, but I can't remember exactly who was there at the time.

Q All right, and about how long did you live there before you moved to some other spot?

A Well, we stayed there for April, and then in May we moved to Jumping Bull's.

Q And when you moved to Jumping Bull, was it the same people that you have mentioned other than the Lames that moved to Jumping Bull's with you?

A No. Joe Stuntz moved in with us, and so did Norman Charles, so they were two other people that moved in.

Q So in April sometime when you went to Jumping Bull's, would you relate to us who it was that was in your group at that time or living together?

A There was me and Larry and Dino and Neelock, Norman Charles, Joe Stuntz, Lynn; and I am not sure if Jeanie was with us then when we moved over there or not.

Q All right, and you indicated that, I believe, on direct examination that you basically moved into the log house, is that right?

A Yes, um-hum.

Q All right. Now, did you stay then -- about how long was it then that you stayed in the log house, until you moved or {3538} went some other place other than the log house?

A It was after we came back from Farmington.

Q All right.

A And that was in June.

Q All right. So it wasn't until after you came back from Farmington then that you stayed some place other than the log house, right?

A Right.

Q All right. Now --

MR. TAIKEFF: (Interrupting) If that question was intended to summarize the testimony up to that point, I think it misstates it. I think the testimony was she didn't move into the log house until Farmington.

I object to the question and ask to strike it as misleading.

MR. HULTMAN: I am trying to find out.

THE COURT: Are you withdrawing the question?

MR. HULTMAN: Yes, I will withdraw it and ask another question.

Q (By Mr. Hultman) When you went to Jumping Bull's, in whose house or where did you live?

A In the log cabin or the log house.

Q Did you live anywhere other than the log house until you left to go to Farmington?

A No.

{3539}

Q When you came back from Farmington then, where did you live?

A At the log house.

Q All right. At least for some time?

A Yeah, for a few days.

Q All right. When you were in the log house before you were at Farmington, did you see anybody at any time with weapons of any kind?

A Yes.

Q Would you tell the jury what those weapons were and who had them?

A Well, I don't know, you know, that much about weapons so I wouldn't know what kind or anything like that; but they were, you know, handguns and some rifles.

Q All right. Who had them?

A Dino did. This is after we came back from Farmington?

Q First talking about before you went, you first went, you were in the log house at Jumping Bull's before you went to Farmington.

A O.k. Well, Dino had one and Joe, and Leonard.

Q All right. Would you describe to the jury -- you indicate you are familiar by names, would you describe what those weapons looked like that you recall?

A Well, they were long; but you know, I don't know that much about, you know, what they would exactly look like, so that I {3540} could, you know, truthfully tell you.

Q They were long though, you distinctly remember that?

A Yes.

Q Do you remember anything about any color about any of them?

A Well, they had, you know, some of them had -- I don't know -- the beginning of them were brown in color, and then there was a metal one like --

Q Do you remember what color that one was, the metal was?

A It was dark in color.

Q Do you remember who had that particular one?

A Well, it was just there at the house. It was mostly hanging on the wall most of the time.

Q Which weapon -- you stated earlier you had seen, you mentioned Leonard having a weapon. What weapon, if you recall, did he have of those

that you described?

A It was the metal one.

Q All right. The dark one, you also described as being dark.

A Um-hum.

Q All right. Now, you then left and went to Farmington, you indicate, is that right; and about, approximately when was that you went to Farmington?

A Let's see. Probably about the 6th or something like that, of June.

Q And about how long -- who was it that went to Farmington?

A All the people that were at the group.

{3541}

Q Same ones that you have mentioned before?

A Um-hum.

Q All right, and about how long did you stay in Farmington?

A For about a week.

Q And then where did you go from Farmington?

A We came back to Oglala.

Q All right. Back to the log house, is that right?

A Yes.

Q Now, on the way down to Farmington did you see any weapons of any kind?

A No, unh-unh.

Q Did you see any weapons while you were in Farmington?

A No.

Q Did you see any on the way back?

A No.

Q You indicated there were some additional people that came back with you, is that correct?

A Yes, unh-unh.

Q All right. Had you known those people before?

A No, I didn't.

Q Would you tell the jury again, as you best can recall, who those individuals were that joined you and came back with you, the additional or new people?

A There was Jimmy Zimmerman.

Q Now, how old approximately was Jimmy Zimmerman at that time? {3542}

A 10 or 11.

Q All right.

A And Norman Brown.

Q And do you know approximately how old he was at that time?

A He was either 15 or 16.

Q If I were to tell you his birthday was in 1960, he would have been 15 as you have indicated, that is right?

A Yeah.

Q Who else?

A And Wish.

Q And when you refer to "Wish", who are you referring to, do you know him by any other name or did you come to know him by any other name?

A Well, I only knew him by "Wish" then.

Q Have you come to know him by another name since that time?

A Well, since the trial. I knew Dino --

Q (Interrupting) What is his name?

A Wilford Draper.

Q Do you know about how old he was?

A Maybe 17. I don't know. I am not sure.

Q All right, and any other persons?

A I think those are the only three that we brought back. {3543}

Q Why was it that a, how old did you say Zimmerman was? I don't recall specifically.

A He was ten or eleven.

Q Why was a ten or eleven year old coming back with you to join the group for the purposes that you've indicated?

A Well, see, we were learning the ways of the pipe and he was coming there to prepare for his sun dance.

Q Well, didn't you also indicate under cross-examination that this group was the enforcer group, or the group that was going to give you protection?

A Yes. But, see, we were also a group that was there to learn the

ways of the pipe.

Q All right.

A It wasn't, we weren't there just to be policemen or whatever.

Q What about, I assume he didn't come back for the other purpose that you discussed on direct examination?

A No.

Q What about, what about Mr, Brown, the fifteen-year-old, what purposes if you know did he come back with you?

A Norman had danced in the sun dance before and so he was coming back, see, we had sweats at the house or, you know, every now and then, and plus ceremonies that we would go to; and also where us girls learned how to prepare our ceremony where a medicine man would be. And so we had hoped that some day, {3544} you know, more younger people would come into the group where they would learn the traditional ways of the Sioux.

Q And there wasn't any question in your mind that he was not coming with you for the purpose, the other purpose that was discussed, that of the enforcement and protection purposes; is that right?

A Right.

Q Now, what about Wish, was he coming for the purpose, one of the purposes being for protection?

A I really didn't get to know Wish that well.

Q Did you ever see him with a gun at any time?

A Not that I can recall.

Q So that am I fair to conclude, or I ask you which members of the group were in the group for the purpose of giving you protection, or the words, whatever the words were that you used on direct examination?

A Well, if you really come down to it all of us.

Q Well, now you indicated surely that ten or eleven-year-old wasn't there for that purpose?

A Well, see, well of course Jimmy wasn't carrying around a gun or anything like that, and neither were the women because, see, women are not supposed to carry guns.

But if you were there and if you knew what it was like to live on Pine Ridge you would be carrying a gun, whether for your own protection or the protection of the people that were {3545} with you.

Q Well, did you carry one during the time that you were there?

A At times I had to, yes.

Q Did you carry one during the times that we're talking about in, that you were at the Jumping Bull property?

A If I had to go into town or be out, you know, go to a ceremony or anything like that, at times there was a gun in the car. But it was like a .22 pistol or a handgun or whatever you want to call it.

Q Well, now, Miss Day, I want to come back to the question I started with and ask you which members of the group that you've discussed were there for protection purposes? You've ruled out the women, I think you indicated that to me, right?

A Um-hum.

Q And you ruled out Jimmy Zimmerman; isn't that correct?

A Um-hum.

Q Now, I want you to tell me which members of the group were there for one of the purposes that you indicated on direct examination, that of giving you protection?

A The older men.

Q All right. And who were those individuals?

A Joe, who is now dead, Leonard, Dino, Bob and at times the younger men if we needed security, you know, people to look out that we heard that, and maybe the goons or somebody would come in and get us.

{3546}

The younger men at that time would stand on security.

Q All right. Do I conclude from what you are now indicating to me that there were other weapons then at some time other than the three that you've described to the jury in the log house; is that a fair conclusion for me to draw?

A There probably were, yeah. But, see, I don't go looking around all over the place trying to find weapons.

Q Well, I'm going to ask you during the time from whatever time it was in April until the time you left on, did you say the 22nd of June? Was that the date that you recall that you left?

A Yes. I left the 22nd.

Q To go to Cedar Rapids. All right.

And then you came back at sometime after the 26th? Isn't that right?

A The 27th I came in.

Q All right. During the time that you were living on the Jumping Bull property from the time you got there until you left to go to Cedar Rapids I want you to tell the jury what other weapons if any you saw than the three that you've described earlier.

A I saw a few at Harry Jumping Bull's home.

Q All right. Would you describe what weapons it was that you saw at Harry Jumping Bull's home?

A Well, they were, you know, one that he had got from Fools {3547} Crow for his 50th anniversary; and then another one, I don't know what, you know, what it is. It was a rifle, though.

Q Where was it that you saw the revolver or the handgun that you talked about that was in the car when you went places? Where did you see that one for the first time?

A Joe used to have that one.

Q All right.

A And, see, if we went anywhere, you know, he would let us use it.

Q Do you recall seeing any other guns other than those that you have mentioned thus far?

A No.

Q All right. Let's go down to the tent, the area where the tents were down along the creek where the sweat lodge was. Do you ever remember seeing any guns in that area at all?

A No. In the sweat lodge you do not have guns around at all.

Q So that -- I'm not just referring just in the lodge, the sweat lodge itself, understand my question. Is that in that area?

A Well, I told you no, and then I said, "Not, or in the area of the sweat lodge."

Q So you never saw any guns of any kind during the time that you went down to the area long the creek where some tents were located; is that right?

{3548}

A No.

Q All right. Did there come a time that you moved from the log house

at any time and lived down where some tents were along the creek? Did you live down there at any time?

A For a while there, yeah. Before I left.

Q All right. And how long a time was that?

A It wasn't very long because, maybe four or five, maybe four days, five days, I don't know. I don't count the number of days I live someplace.

Q Would that have been just before you left to go to Cedar Rapids?

A Yes.

Q All right. Now, do you know where the guns that you saw came from?

A No, I don't.

Q You indicated that subsequent to coming back that, and subsequent I believe, and you correct me if I'm wrong, to your discussions with Leonard after you came back from Cedar Rapids after the 26th that you were aware that the FBI wanted to visit with you, or words to that effect; is that right?

A Yeah.

Q All right. And in fact I believe you indicated that there was an occasion when they stopped you somewhere; is that right?

A Yes. See, on the 27th when I came back I went into Jumping Bull's because I heard that Harry Jumping Bull was there. And
{3549} so I went in there, you know, more or less to tell him I was really sorry for what had happened because when we moved there we never wanted anything like that to happen. And that was one reason why, too, that Harry let us live there.

Q Well, did you tell him the reasons on that occasion or any time since?

A Pardon?

Q Did you do what you just said you intended to --

A Yes, I did. I saw Harry that day and then -- so when we were coming out, you know, to go into Oglala because his wife was sick and so I was going to go over and see how she was doing, all of a sudden there was a bunch, there was two school vans, and I don't know how many cars, of police and FBI agents and they had flack, those bulletproof vests. They were carrying guns.

Q My question was, I'd like to get back to my question, that is,

did you identify yourself to the FBI at all at that time?

A I didn't give them my real name, though.

Q In fact there have been other occasions when you have not given your real name; isn't that a fact?

A Nope. That's the only time.

Q Have you ever used the name Denise Green Glass?

A Green Glass?

Q Denise Green Glass.

A No.

{3550}

Q Have you ever checked in anywhere during the time period that we're now talking about and used the name Denise Green Glass?

A No.

Q Did you ever check into a hospital in Cedar Rapids during the period that you've testified to, that period?

A No.

Q You never were treated of any kind during the period that you were in Cedar Rapids to which you have been testifying to here?

A No. I never used the name Denise Green Glass.

Q What were the occasions when you gave a different name?

A Just that once, when the agents or whoever, you know, the FBI, or whatever it was, stopped us at the road going out of the Jumping Bull Hall.

Q Is it a part of the things that you were discussing on direct examination concerning the pipe and the things you were going to discuss with Little Jimmy, as well as the other people you came into contact, is a part of that a willingness to come forward and state what the truth is about what you know?

A Yes.

Q Then isn't it a fact that you refused on a previous occasion under oath to discuss any of the things that you've discussed here today?

A There's only one time, and I think you have to clarify yourself on that, because that was at the grand jury hearings and you had {3551} given me immunity for June 26th but no other day.

And so I was -- and then there was no pipe there at the grand jury

hearings. And so if you were going to give me immunity you were going to give me immunity, like going for shopping and riding in a car and that was it.

Q You didn't have any misunderstanding at all as to what the purpose of your appearing there and the immunity received at that time? Is there a mistake?

A You just said June 26th and that's all you gave me immunity for.

Q First of all, let's clarify something. When you are saying "you" you're not talking about me, the one who's asking the questions here, are you? I mean you are using a generic you?

A Mr. Sikma was there.

Q All right, all right. Have you at any time indicated the things that you've told the jury here to anybody who has asked you at any time about them other than those, the instances you've referred to, to the defense team or people that you have discussed to that are related in some way to the defense team?

A I think you better clarify yourself because I really don't understand what you are trying to get at.

Q Have you ever told the things you've told here to anybody from the FBI?

A No, I haven't talked to the FBI.

Q And then they didn't threaten you in any way to get any {3552} particular information out of you then, did they?

A Yes, they did.

Q Well -- -

A They said they were going to take away my kids if I didn't go and talk to them.

{3553}

Q Let's go back and I'll ask you a few more questions. Maybe you'll be responsive to my questions. Do you have any children?

A Yes, I do.

Q How many do you have?

A I have two girls.

Q Were they with you when you came to Jumping Bulls to live?

A No. They were living with my parents in Wisconsin and they tell

me if I didn't talk to them, FBI, they were going to take the children away from my parents. That's when my father came out looking for me.

Q Will you tell me whether it is the FBI specifically that talked to you?

A Well, they tried to talk to me a few days after my father picked me up and that was in July of '75 and I wouldn't talk to them so they said, they sent me home.

Q And you have never talked to any of them or to anyone from the government's standpoint at any time, have you, including a grand jury?

A That's right.

Q You've refused to, have you not?

A I didn't say I was. I did, I did talk to you about things on June 26th and that's all you asked me about. As far as the grand jury is concerned, you gave me interview only that day plus I wasn't going, told you if I was going to testify or {3554} anything like that for you. The things I'm telling you now are the truth because I swore on the pipe when I came in here and if I said something that is wrong I'll be the one to be punished for it not you.

Q If you don't swear on the pipe, are you saying to me then ha any other times that you have had any conversations or discussed any matter unless you're on the pipe that you have no feeling that you're obligated in any way to tell the truth, is that what you're trying to say to me?

A You mean in the white way?

Q Anytime. I'm just talking about in general. Do you have to be on the pipe in order to respond truthfully?

A That's what I believe in.

Q Have you ever seen a rifle that in any way resembles this particular one here?

A Probably. I think so. I'm not sure.

Q Why is it that you think so?

A I've never seen, you know, that thing, the clip or whatever you call it sticking out.

Q You have never seen this clip here sticking out, is that right?

MR. TAIKEFF: Could we have the exhibit number in the record, please.

MR. HULTMAN: I'm sorry. The exhibit number is 69A.

Q (By Mr. Hultman) Why is that except for the clip that's {3555} sticking out, do you think you've seen this before?

A I might have seen it because, see, like even at home we have guns and stuff and most guns look the same to me.

Q Does it look like one of those that you were referring to earlier? Is that why you think what you've just indicated?

A I think so. But I'm not sure. I honestly couldn't tell you.

Q Do you know where this gun came from?

A No.

Q Did anybody while you were there indicate where this gun might have come from?

A No.

Q Have you ever heard the word Rooks before?

A Rooks?

Q Yes.

A No.

Q Do you know where the Rooks live?

A No, I don't.

Q Well, were you generally familiar with the homes in the area of the Jumping Bull property?

A Not all of them. Just like Wallace Little's place.

Q And if I were to tell you that the Rooks lived just across the creek from the area that you have been talking about, you would indicate then, as I understand, that you didn't know who lived across the creek, is that right?

{3556}

A Well, I know there were homes and people live there, but I didn't know everybody that lived right in the immediate area.

Q You didn't go visit them or do any of the things that you talked about?

A No. Mostly the people from Oglala.

Q All right.

Have you ever seen a gun that looked like this generally?

A Yeah.

Q Where did you see one that looked like this generally?

A We had one something like that, I guess, in the house.

Q And when you say "we," to whom are you referring?

A Well, everybody that was there. That one is one that hung on the wall most of the time.

Q And I believe you indicated that this is the one that you'd seen Leonard with, too, isn't that right?

A A few times.

Q One like this?

A Yeah.

MR. HULTMAN: Counsel is holding in his hands Government Exhibit 34AA.

Q (By Mr. Hultman) Now during this period of time, and I'm referring and I want you to respond to my questions not on the basis of something you may have learned since the time that you left Jumping Bull's and went to Cedar Rapids, in other words, not {3557} what you've learned since the 26th of June, 1975 when the events we're concerned about took place but questions I'm going to ask you now I want you to respond to me on the basis of what you knew at the time you left and went to Cedar Rapids. You understand the period I'm talking about?

A Yes, I do.

Q Not what you saw in terms of APCs or FBI a week later or a month later or since that time but I'm talking about up to the time you went to Cedar Rapids now do you understand the basis upon which I'm going to ask you some questions?

A Uh-huh.

Q How many instances during the time from March, or whatever the time was when you came, or April, until the time you left in June to go to Cedar Rapids, how many instances did you have when you had to have protection?

A When I had to have protection?

Q Yes. You yourself.

A When I went into Pine Ridge.

Q Well would you relate the circumstances to the jury on what those occasions were.

A You mean where somebody was going to harm me if I didn't do something

or like that? Because, see, a far as I'm concerned, I needed protection every day that I was there whether it was somebody coming right out to get me or anything like that or do any bodily harm to me. Any one of us needed protection every {3558} day.

Q Well, did there ever come a time in that period when anybody did do bodily harm to you?

A No. But there were times --

Q Was it fair for me to conclude then that this was something that you based upon something, events that you saw or observed, is that right, that you needed personal protection?

A You said --

Q You didn't see any event of any kind, you said, that happened to you that in any way harmed you or you needed protection for, did you?

A No. But see, when you live on Pine Ridge you need protection every day when you're in AIM. Look at what happened to Bisenet. She'd been going to a wake and on the way back she was shot.

Q I'm asking you -- yes. That might have happened here in Fargo this afternoon, too, might it not?

A It might have. But it happens more frequently on Pine Ridge.

Q I'm asking you point blank, and if you would please be responsive to what events you saw and you know.

A. And I told you nothing ever really happened to me.

Q Now I'm going to ask you about the others that were in your company during the period of time that you've testified to. Did anything at any time in any way happen to them in terms of {3559} being harmed in any way?

A I really wouldn't now. You'd have to ask them.

Q I'm asking during the times that you were with them and you would have knowledge.

A No. They didn't tell me anyway.

Q I'm not asking, there's been a, you've answered a lot of things on direct examination about what somebody else told you, isn't that fair?

A For example?

Q Well, for example, about what the feelings were and the attitudes were and so forth.

A Well, see, they talked to me, too.

Q I'm asking --

A I knew it wasn't secondhand.

Q So I'm asking you firsthand. That's what I'm interested in.

A Uh-huh.

Q Did any of the individuals that came to Jumping Bull with you the first time or came back with you in addition to the second time from Farmington, did any of those people in your presence at any time, were they at any time harmed in any way to your knowledge?

A Not that I can recall.

Q Did you ever see anybody with any ski masks while you were there? {3560}

A No.

Q Did you ever see anybody use one during the time that you were there?

A No.

Q Would the use of a ski mask and pulling it down over the face, would that be consistent with the reasons that you've indicated that you were there in the Jumping Bull area?

A What? I don't understand what you mean by that.

Q Was the use of a ski mask in any way with it pulled down over the head, did that have anything to do with the reasons that you were there, the religious reasons that you've referred to or the security reasons?

A No.

MR. HULTMAN: I have no further questions.

MR. TAIKEFF: May I inquire, Your Honor?

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. TAIKEFF:

Q You said your father came after you. When is that?

A It was in July of '75.

Q Where did he come from?

A From Wisconsin.

Q What brought him there?

A You see, my father worked for federal corrections, Bureau of Corrections at Oxford, Wisconsin.

Q Is that the Federal Bureau of Prisons you're talking about?
{3561}

A Yes, it is.

So, see, he was, knew that something had happened in South Dakota and then an FBI agent, I don't know what his name is or anything like that, had come to talk to him and told him that --

MR. HULTMAN: We're getting clearly --

A -- he should try to --

MR. HULTMAN: -- into hearsay. I object on the grounds there is clearly hearsay as to what somebody said.

MR. TAIKEFF: I'm not offering it as the proof of the contents but to prove her state of mind and the declaration made by her father which proceeded her confrontation by the FBI.

MR. HULTMAN: And further irrelevant on the basis, Your Honor, that it's after the facts, 26th of June. That was a response given which was unresponsive to the question which was asked as far a Counsel.

MR. TAIKEFF: Your Honor, the government made inquiry about her refusal to speak with the FBI and I am pursuing some of the surrounding circumstances.

THE COURT: The response was volunteered on the government's question. It wasn't a question that the government asked but I will permit her to answer.

Q (By Mr. Taikeff) You're telling us, I assume, what your father told you when he found you on the Pine Ridge --
{3562}

A Yeah.

Q You don't know whether what he said was true or not, you only know what he told you?

A Right.

Q Now tell us what you learned from your father.

A He came --

MR. HULTMAN: I think it might be proper at this time that the Court make an instruction so there's no misunderstanding as to the nature of, one, the questions and the reasons that are now being asked and the basis upon which, and the limited basis upon which they come in.

MR. TAIKEFF: I have no objection to that, Your Honor.

THE COURT: Counsel approach the bench.

(Whereupon, the following proceedings were had at the bench:)

THE COURT: You people obviously know more about this case than I do and you're talking riddles as far as I'm concerned. I don't know that there is anything that may be prejudicial or not.

MR. HULTMAN: The reason for my request and response at this particular time is that on the basis, one, that we are dealing clearly with hearsay and the testimony itself could only come in on the basis of, Counsel is indicating he is offering it this particular time.

MR. TAIKEFF: Not for the truth of the content.

{3563}

MR. HULTMAN: I would want that made very clear, otherwise the jury not knowing the law is going to conclude automatically what has been said is the truth.

THE COURT: I want to know what the answer is.

MR. TAIKEFF: I think her father told her that he'd been contacted by the FBI and he'd better come home. I don't know the exact answer myself but I think Mr. Hultman is entitled to Your Honor telling the jury that this offered to show what she was told and how it may have affected her decision not to speak of the FBI and not to prove the truth of what her father told her. I think it's a proper instruction.

THE COURT: I'm primarily interested in what the answer will be.

MR. TAIKEFF: I'm not entirely certain.

THE COURT: I think I extended the rules a bit in permitting you to ask the question.

MR. TAIKEFF: I think the answer is going to be she was told there was going to be trouble for her of one kind and another and she ought to come home and take care of her children or something to that effect. It was not a matter I went into in great depth with her so I can only give Your Honor an approximation of what I think the answer is going to be.

THE COURT: Very well.

{3564}

(Whereupon, the following proceedings were had in the courtroom in the presence and hearing of the jury:)

THE COURT: Earlier in this trial I mentioned to the jury at one time that hearsay testimony, except subject to certain exceptions, is not admissible; and hearsay is repeating a statement that somebody else for the purpose of establishing the truth of that statement.

However, a person may testify as to a statement that someone else made to them as long as the only purpose of that testimony is to testify that the statement was made, not whether or not it is true, and that is the category of this statement about to be elicited from this witness, not that what was said to her was a true statement but simply her statement that this comment was made.

You may proceed.

MR. TAIKEFF: Thank you, your Honor.

Q (By Mr. Taikeff) All right, now, tell the Court and jury what your father said to you when he found you on the Pine Ridge Reservation after June 27th?

A When he saw me, he told me, he said, that I had to go home right away because the county was trying to take the girls away from my parents since they didn't have the legal guardianship over them; and so I said that I would go with him in order to take care of this, and so now my girls' legal guardians are now my parents so that if anything happens they will be the {3565} ones to take care of them, that nobody can take them away from them.

MR. HULTMAN: I do move now the answer be stricken because it is irrelevant.

MR. TAIKEFF: That's the foundation to my next question. Could I at least ask the next question before your Honor rules?

THE COURT: Very well.

Q (By Mr. Taikeff) Now, following that, one or more FBI Agents attempted to question you, is that correct?

A Yes.

Q Do you know the name or names of those people?

A I can't remember, you know, the guys in Rapid City; but there was a guy in Wisconsin, last name was Farmer.

Q All right, but let's get back to South Dakota. What did the agents say to you?

A Well, they wanted to know -- well, they really didn't get that far because, see, I told them I wouldn't talk to them unless I had a lawyer with me.

Q And what did they say to you, if anything, about your children?

A Well, they just asked how I was and, you know, that was about it then.

MR. HULTMAN: Your Honor, now I do move once again on the same basis that I have mentioned before, and further, {3566} we are getting into all kinds of leading questions at this point.

MR. TAIKEFF: I will ask a non-leading question.

Q (By Mr. Taikeff) In connection with Mr. Hultman's cross examination, you mentioned the FBI and your children, did you not?

A Um-hum, yes, I did.

Q Tell us about that episode.

A Well the only reason, the only way that I really knew that they was, was through my father, what had been told to him.

Q Well, that's what I am talking about. What did he tell you?

MR. TAIKEFF: Again, your Honor, I do not offer it for the truth but only the fact that it had been told to her.

THE COURT: By whom?

MR. TAIKEFF: By her father in connection with her refusal to speak with the FBI.

THE COURT: All right. She also testified as to who made the statement to her father, and that is what I want brought out in your question.

Q (By Mr. Taikeff) All right. Can you tell us what you know about that?

A Well, the FBI Agent back in Wisconsin -- that was a guy {3567} named Farmer, but if it was -- I am not sure if it was exactly that guy that talked to my father.

Q O.k. Now, as far as you understand, without claiming that it is true, tell us what you learned from your father on that subject.

A Well, my father asked me to come back so that I could take care of it, where that him and my mother would be legal guardians of my children in case anything happened, where either I would be put in jail or anything like that, so that they could take care of them and so that the county

or the state, or whoever, could never take them away from them.

Q Did he say anything about the FBI commenting about your children?

A No, but he asked me if I would talk to them because they wanted me to talk to them.

Q Did he say anything about what would happen if you didn't talk to the FBI?

A He was afraid I would be put in jail.

Q If you didn't talk with the FBI?

A Yes.

Q Now, you mentioned a person by the name of Anna Mae. Do you know her last name?

A Aquash.

Q And you said you saw no weapons at Farmington at the National AIM Convention?

{3568}

A Yes.

Q Do you know whether there were any specific rules concerning the carrying of weapons at Farmington?

A You couldn't carry them.

Q And if anyone came with a weapon what happened?

A It was confiscated.

Q By whom?

A The security people at the front gate.

Q Were they private security people or were they connected with AIM?

A They were connected with AIM.

Q Now, you mentioned the 11 or 12 year old by the name, Jimmy Zimmerman. What was his mother's name?

A Evelyn Bordeau.

Q Did you know her?

A Yes, I did.

Q Was she at Farmington?

A No, unh-unh. She was in Rapid City.

Q Which is how far from the Reservation?

A Oh, maybe about an hour, hour and a half's drive.

Q Was Jimmy Zimmerman a runaway from his mother?

A No, unh-unh.

Q Was Jimmy Zimmerman there with his mother's knowledge?

A Yes, she knew he was there.

Q Was he there with her permission?

{3569}

A Yes, he was.

Q Mr. Hultman asked you about the presence of young people as members of the encampment. Do you recall that line of questioning?

A Yes.

Q Is it unusual for AIM to have contact with young people?

A No.

Q In fact they have a special program for young people, don't they?

A Yes, they do.

Q What is it called?

A The survival schools.

Q And can you briefly summarize what the survival schools are all about?

A It is a school where you learn your education plus you also learn the traditional ways of the Sioux people or of your own tribe.

Q Do you know if there is a survival school run by AIM in Rapid City?

A Yes, there is.

Q Do you know the ages of the people who attend that school?

A Around -- there is even babies there that stay at the house, ranging probably from, you know, your first graders or kindergarteners, all the way up to the Senior High person.

Q Are there any special facts or circumstances of the people {3570} who are at the school concerning their family ties or family situation?

A A lot of them are basically looking for something, and that to be proud of what they are and that's the native American, and at times maybe the family can't take care of them because they don't have the financial fundings to take care of their children.

Q Are the survival schools full-time sleep-in schools, or do the students go home at the end of the school day?

A They would be more like your boarding schools.

Q You said that Norman Brown had danced at the sun dance, am I correct about that?

A Yes.

Q Can you tell the Court and jury briefly the relative importance or significance of the fact that a young person has danced at the sun dance?

A It is a very religious thing. The only thing I can really compare it with would be like in your Catholic religion like confirmation, where you are a part of the Great Spirit and that you pray there and that you suffer for your people.

Q Now, Mr. Hultman asked you about specific incidents where you yourself were actually confronted with danger or the threat of danger, do you recall that?

A Um-hum.

Q And he also asked you about things that you know about {3571} other than things that you may have seen with your eyes, do you recall that?

A Yes.

Q Now, was there a rodeo sponsored at or near the community where you were living during the period, March to June, 1975?

A Yes. There is a rodeo thing right near Oglala.

Q Did you participate in that?

A No, I didn't go over there.

Q Do you know any people personally who were shot on the Pine Ridge Reservation?

A Yes, I do.

Q Name those people.

A Jimmy Eagle -- Eagle's little brother, and Joe Stuntz, and Anna Mae Aquash.

Q You mentioned a person by the name of Bisenet?

A Janet Bisenet, but I don't really know her that well.

Q Did you know a person named Pedro Bisenet?

A Not personally, but I know of him.

Q Was he shot?

A Yes, he was.

Q Dead or just wounded?

A He was shot dead.

Q Now, in addition to those things that involve people that you knew well or casually, while you were on that Reservation did you hear from other members of the community about other {3572} shootings and beatings?

A Yes. See, like for the first few days that we were there, we had been going to wakes, the girls that were there because we would go on hunts for food and clean up and do everything, you know, we could to help; and so there was quite a few killings while we were there the first month or so.

Q Are you saying that these wakes were of people who had died of violent causes rather than natural causes?

A Yes.

Q And what effect, if any, did these experiences have on your belief that it was necessary when you left the Jumping Bull area to either have protection or go armed?

A Well, even reinforced it even more, we would need some sort of protection.

MR. TAIKEFF: I have no further questions.

MR. HULTMAN: I just have a very few questions.

RECROSS EXAMINATION

By MR. HULTMAN:

Q First so that I understand, because I am not sure from the last responses on redirect as to the period of time we are talking about. Did the events that counsel specifically asked you about, did they happen before you left for Cedar Rapids, Iowa, or after?

A Which one? Some of them happened before, and some happened afterwards.

{3573}

Q Do you recall -- so that your response then was to the events that had happened some before and some after, is that right?

A Right.

Q Which one or ones were before you left to go to Cedar Rapids?

A When Janet Bisenet got killed while we went to the wakes, when

Jimmy Eagle's little brother got shot, and then of course -- that's it.

Q I am referring to those that happened before.

A O.k.

Q You don't know any of the details about those, as to the events surrounding them or anything, you were not there, were you?

A No, I wasn't.

Q With reference to your redirect having to do with the FBI or possibly FBI Agents, I believe you referred specifically to a time in the Oglala Pine Ridge area, is that correct, that you -- one of the times counsel was asking you about, or the one time he was asking you about, was in the Oglala area, that you saw FBI Agents there and they were going to ask you some questions, but you would not respond to their questions?

{3574}

A No. When I saw them at the roadblock I mean, you know, when we were coming out of Jumping Bull's, I responded to them. The other times were after, would have been in July or afterwards.

Q All right. So that you were responding to counsel's questions as to any times concerning the FBI; is that right? Is that what you are indicating to me?

A You mean that I talked to them?

Q Yes.

A Yeah.

Q All right. Now, I want to ask you with reference to those occasions as well as occasions when the FBI, you've referred to with reference to seeing them and so forth. Do you have any trouble at any time identifying their cars on any of those occasions?

A There was only, let me see, that time at Jumping Bull's when they stopped us, and then they were in the school vans. And then the next time I probably saw them was in Rapid City. But I don't know what kind of car they were driving.

Q Do you remember any observation that you have given on any previous occasion with reference to any questions that may have been asked you about observations concerning FBI cars?

A Nobody ever asked me.

Q Have you ever had any problem at all identifying FBI cars?

A I never identified one.

Q You saw them on the reservation during the times and the {3575} periods that you have testified to here?

A Well, the only time I ever saw, you know, when I thought that I would -- knew that they were FBI agents is like when they were riding around in their cars right after June 26th on the 27th because they had those big aerials and then there were a bunch of white people, white men in them.

Q You never had any problem at any time identifying what you thought to be an FBI car or distinguishing it from a goon, did you?

A No.

Q The FBI wasn't the goons, there's never been any questions in your mind about that, is there?

A I really wouldn't know.

Q Well, now basically has there ever been a time on any occasion any time anywhere where you had any reason to believe that those individuals that you've testified to and now are relative to FBI that they were ever anybody that was FBI?

MR. TAIKEFF: I don't understand the question, Your Honor. I ask that the question be rephrased.

MR. HULTMAN: All right.

Q (By Mr. Hultman) You referred, and you have referred to specific people, have you not, as being people who you classified as being, using a generic term of goons; isn't that correct?

A Um-hum.

Q All right. And you didn't include the FBI in any of that {3576} definition at any time, did you?

A No. I didn't say that they were the FBI.

Q All right. Is there any doubt in your mind, or any doubt in your mind, any reason to believe at any time that they were FBI?

A You mean where a goon or an FBI could be the same in one.

Q That's right.

A To honestly, truthfully answer that question, I don't really see much difference.

MR. HULTMAN: I have no further questions.

THE COURT: Any more?

MR. TAIKEFF: No, Your Honor.

THE COURT: You may step down.

THE WITNESS: May I be dismissed?

MR. TAIKEFF: Yes. May the witness be excused, Your Honor?

THE COURT: Any objection?

MR. HULTMAN: No objection.

THE COURT: You are excused.

MR. TAIKEFF: Does Your Honor wish the defense to call its next witness?

THE COURT: We might as well put in ten minutes.

MR. TAIKEFF: All right. The defense calls Francis He Crow.

{3577}

FRANCIS HE CROW,

being first duly sworn on the sacred pipe, testified as follows:

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. TAIKEFF

Q Mr. He Crow, can you move the microphone a little closer to make sure that everyone in the courtroom, but particularly the Court and jury can hear you.

How old you, sir?

A Forty-six.

Q And where were you born?

A Oglala, South Dakota.

Q And where do you live now?

A Pine Ridge.

Q And have you ever lived anywhere other than on the Pine Ridge Indian Reservation?

A Yes. I lived in Dallas, Texas.

Q For how long?

A About seven years.

Q Now, is there a group of people who in English might be called the traditional council of chiefs?

A Yes.

Q Could you briefly explain to the judge and the jury who the traditional council of chiefs is?

A Traditional chief council is older peoples of Oglala Sioux {3578} Tribe.

Q The elders of the Oglala Sioux Tribe?

A Yes.

Q Can you raise your voice, or move a little closer to the microphone, please, or move your chair closer if that's more comfortable for you.

Now, do you have any connection with that traditional council?

A Yes. Since November 20, 1972.

Q And would you be kind enough to tell us what is your connection, what is your function and reference to the traditional council?

A I work as a coordinator and researching the treaty, treaties.

Q What kinds of treaties, between who and whom?

A Oglala Sioux, the Sioux nation and United States Government.

Q Now, I'm going to put before you a piece of paper which has been marked Defendant's Exhibit 193 for identification. I ask you first to look at it and then after you've looked at it to please tell us whether you know what it is. But I must tell you that it's not in evidence and you cannot say anything about the details of what's in or on that piece of paper. Look at both pages, please.

A Yes.

Q You do know what it is?

{3579}

A Yes.

Q Can you tell us the name of the person or the group that is responsible for that piece of paper?

A Yes.

Q Please do.

A Head chief is Chief Fools Crow. And other chiefs are David Flying Hawk, Luke Weasel Bear, Charlie Red Cloud, Mathew Bear Shield and Frank Kills Enemy.

Q What do those people have to do with the traditional council of chiefs?

A Well, it's the people, members of the tribe. If they have any problems or anything, that bring it to head man. And head man are the one that put in written or research.

Q No, don't tell us about the document yet.

A Okay.

Q I just want you to give us certain basic information first, and then we will get to the document. Do you understand that?

A Yes.

Q You mentioned before that you were the coordinator for the traditional council of chiefs?

A Yes.

Q You just mentioned certain names to us. I want to know whether those people you mentioned are the council, the traditional council of chiefs?

A Yes.

{3580}

Q There's also an additional government on the Pine Ridge Reservation, isn't there, or an additional governmental body?

A Oglala Sioux Tribe.

Q There's a tribal government?

A Yeah. It's a tribal government under 1934 Indian Reorganization Act.

Q Okay. Now, this traditional council of chiefs is not the same as the tribal government that exists under the 1934 Indian Reorganization Act, right or wrong?

A No.

Q I'm wrong?

A Yes.

Q All right. Explain, are they the same or are they different?

A Different.

Q They're different, okay. I think maybe my question confused you.

The tribal government is a result of the 1934 Indian Reorganization Act?

A Yeah.

Q The traditional council of chiefs is a group of elders from amongst

the traditional full-blooded Indians on the reservation; is that right?

A Yes.

Q And there are two different kinds of groups?

A Yes.

{3581}

Q All right. Now, in the spring and early summer of 1975 was Leonard Peltier on the reservation?

A I think in April.

Q Do you know who he is when you see him?

A Yes.

Q Would you look in the courtroom and see if he's here.

A Yes.

Q Where is he?

A Sitting there (indicating).

MR. TAIKEFF: May the record reflect that he's pointed at the defendant.

Q (By Mr. Taikeff) Is he a personal friend of yours?

A Yes.

Q How long do you know him?

A I don't remember. I know him quite a while.

Q When he came to the reservation did he come with anybody else?

A Well, when he come on the reservation they told us they were there. So we went over there and we met them.

Q When you said "they," that's what I'm trying to get at, who do you mean by "they"? Leonard and who else?

A He's the only one I recognize. I forgot the others names.

Q Was there a person named Dino?

A Yes.

Q Was there a woman named Neelock?

{3582}

A Yes.

Q Was there a man named Bob?

A No, I don't know him.

Q Were there others in addition to the ones I just mentioned?

A Ernie Peters.

Q By the way, when you speak at home, do you speak English or do you speak another language?

A Both.

Q What is the other language you speak?

A Sioux language.

Q What is that called?

A Lakota.

Q Now, do you know what organization Leonard and these other people represented in the spring of 1975?

A American Indian Movement.

Q And do you know, I don't want the details at this moment, I just want to know if you know how it is that they came there to that location, to that area?

A They were invited.

Q And can you tell us who invited them?

A Oglala Sioux. Full-blooded members.

Q And does the document that is in front of you have anything to do with that invitation?

A Yes.

Q Without the Court and the jury --

{3583}

MR. TAIKEFF: Your Honor, considering the time and knowing the nature and extent of the answer I would respectfully ask that I be permitted to stop at this point.

THE COURT: I think we will stop at this point.

MR. TAIKEFF: Thank you, Your Honor.

THE COURT: Court is in recess until 1:30.

(Recess taken.)

{3584}

(Whereupon, the following proceedings were had in the courtroom without the hearing and presence of the jury:)

THE COURT: Question has been raised as to whether or not the Court will be in session tomorrow and the answer is yes, the Court will be in session for the full day.

The jury may be brought in.

(Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

THE COURT: Mr. Taikeff, you may continue.

MR. TAIKEFF: Thank you, Your Honor.

May the record reflect I am returning to the witness Defendant's Exhibit 193.

Q (By Mr. Taikeff) Mr. He Crow, I think I was asking you questions about the invitation to the American Indian Movement, do you remember that?

A Yes.

Q And we had been talking a little bit about that document which is in front of you. When was the invitation originally made to the American Indian Movement?

A I remember 1975. January they generally have a traditional counsel and this is suggestion they wanted to invite the American Indian Movement to come on the reservation and protect Indians and property, fish and wildlife and in February they had another one and in March and April they started drafting this resolution.

{3585}

Q Would you explain to the judge and the jury why there were four meetings, if there was any special reason?

A This is part of our religion, Indian religion. When I hold that pipe, pray with that pipe four days and four nights and when at that meeting, they going to have four days, one first meeting is discussion and second is researching and third is put it together and fourth is resolution.

Q Now these meetings take place in what language?

A They record it on tape recorder.

Q On a tape recorder?

A Tape recorder.

Q What language do the chiefs speak?

A Sioux language.

Q You said you speak English and the Sioux language, Lakota, is that correct?

A Yes.

Q In fact you have a job in that connection, do you not?

A Yes.

Q What is that job?

A I have to gather treaty documents or I go out in district and I do some researching and then I have a tape recorder so I tape all the peoples and bring it back to the meeting.

Q And did you have anything to do with the making up of that document which is in front of you?

A Yes.

{3586}

Q And is it fair to say that you acted as an interpreter as far as the making of that document is concerned?

A Yes. There's about six Indians within there that speak both languages and I was appointed to help the legal aide to put it in English. So I put it in English and then legal aide, they put in the right words on there.

Q Did you check that document?

A Yes. I check it both times.

Q How did it compare with what the chiefs agreed to do at their four meetings?

A Chief counsel, each chief took about hour to explain it and read it over.

Q Who explained it?

A Would be of the coordinator, one called coordinator, but I don't remember. I wasn't there when they go through this because I work out in the field then. So after they go through that four times, each chief's, and then they sign it.

Q And now do you recognize those signatures?

A Yes.

Q And that document which is in front of you, does it have the signatures of the members of the traditional council of chiefs?

A Yes.

Q And who is the head chief?

A Chief Fools Crow.

{3587}

Q And when was the last time you saw Chief Fools Crow?

A Yesterday.

Q And was there a time in the defense office when you saw him within the last week?

A Yes.

Q And did you show him the piece of paper which supposedly has his signature on it?

A Yes.

Q And what did he say as to whether or not that was his signature?

A He told me, "I signed that and I took it to Washington in September, 1975."

Q And now is there anything in that document which makes mention of the invitation to the American Indian Movement?

A Yes.

MR. TAIKEFF: Your Honor, I'm prepared to offer the entire document. Perhaps the government would object. I at least offer the portion that makes reference to the invitation to the American Indian Movement.

MR. HULTMAN: Your Honor, the government does offer its objections on the grounds of relevancy.

MR. TAIKEFF: May I show Your Honor the particular portion.

THE COURT: You may.

MR. TAIKEFF: A copy was provided yesterday to the {3588} government.

It's in paragraph 9. I'm prepared to settle on a stipulation instead of the entire document.

MR. HULTMAN: I might add an additional reason, Your Honor, that in addition to relevancy that the document itself, I think on its face, might import to have some legal force of some kind and in fact I would object for that additional reason.

MR. TAIKEFF: Your Honor, the defense will stipulate that the traditional council of chiefs has no official governmental status on the reservation but is recognized only privately by the traditionalists. We make no claim that they have official governmental status.

THE COURT: Paragraph 9 of the document will be received.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Now would you tell the jury if every member of the traditional council of chiefs signed the document after you prepared it in English and explained it to them in the way you've testified?

A Yes.

Q Now are you aware of your own personal knowledge or based on your own experience on the reservation as to the circumstances which made it necessary to invite AIM to come to the White Clay District?

{3589}

A Yes.

Q First I want you to tell us very generally, not in specific detail, what was the kind of situation, what was life like in the White Clay district that made it necessary to call in the American Indian Movement?

MR. HULTMAN: Before, Mr. He Crow, you answer I would like to offer an objection, then I won't interrupt Counsel.

MR. TAIKEFF: All right.

MR. HULTMAN: Your Honor, I want to make an objection and then I'll leave it as a standing objection if the Court rules to the contrary so I don't interrupt Counsel. My objection is that the matters now about to be discussed are not relevant and then I will not continue if the Court so rules otherwise.

THE COURT: The record may show that the government has a standing objection to the testimony of this witness relating to the subject about to be mentioned in response to the question of Counsel. The objection is overruled.

Q (By Mr. Taikeff) That means you may answer the question, Mr. He Crow. But I want a general answer before we get to any specific events.

A There is no law on the reservation.

Q Is there a police force, or was there in 1975 or in 1974 and 1975 a police force supposedly on the reservation?

A Yes.

{3590}

THE COURT: I may mention for the benefit of the jury that this evidence, the Court is allowing it in but is allowing it in only for the purpose of the defense showing the reason for the representatives of the American Indian Movement being on the reservation.

MR. TAIKEFF: Yes, Your Honor.

THE COURT: You may proceed, Mr. Taikeff.

Q (By Mr. Taikeff) I think I asked you whether there was at least

supposed to be a police force on the reservation.

A Yes.

Q Was there a name for that police department?

A Bureau of Indian Affairs.

Q BIA police?

A Yes.

Q Were there people employed as BIA policemen?

A Yes.

Q Were they supplied with uniforms and cars?

A Yes.

Q Were they maintaining law and order?

A No.

Q In what year, I think you said there was no law on the reservation, is that a fair representation of what you said?

A Yes.

Q In what year did this condition begin?

MR. HULTMAN: Well, if I might interpose, I would like {3591} to go back and get the response which the witness made in order that I might -- I believe, Counsel, he responded, "There is no law." He was not referring to something in the past and I would like the reporter to go back and find that response for me to make sure that I am correct and then on the basis of that I may interpose an objection.

MR. TAIKEFF: I have no objection if the question is read along with his answer.

MR. HULTMAN: I have no objection to that.

THE COURT: The reporter may read the question and answer.

MR. TAIKEFF: Your honor, if that's the issue, I can make a representation on the side bar which is present tense and past tense. There will be a witness in that regard. I think I can explain, Your Honor, something Mr. Hultman is unaware of.

MR. HULTMAN: I'd like to have the response if Counsel is going to use and state a response.

THE COURT: The reporter was diligently looking for the response, then the lawyers started talking and he had to quickly get back to his record.

I will ask the reporter to again look for the question and answer and once he has started looking, then I would ask Counsel to be quiet until he's found it.

(Whereupon, the following question and answer were {3592} read back: Question: "First I want you to tell us very generally, not in specific detail, what was life like in the White Clay district that made it necessary to call in the American Indian Movement?" Answer: "There is no law on the reservation.")

MR. TAIKEFF: I think Mr. Hultman said he wanted to hear that answer so that he might decide whether to say something further to the Court. That's why I'm waiting.

MR. HULTMAN: I was just objecting on the grounds that Counsel did not state in his question correctly the response of the witness. That's all I was getting at.

Q (By Mr. Taikeff) When you said there is no law on the reservation, what time were you talking about?

A That was way back in about '72 or before. I don't remember exact.

Q And for how long did that continue?

A Many years.

Q Did that situation exist in 1974?

A No. Way back.

Q But was it still in existence in 1974?

A Yes. Yes.

Q Was it in existence in the first half of 1975?

A Yes.

Q At this point, once again I don't want you to tell us about specific events that you were at but just generally what were the kinds of things that were happening that made you say {3593} there was no law?

A There was too many violence and murder and --

Q Was there any attempt by the traditional people to hold traditional ceremonies or to have traditional meetings?

A Yes.

Q Was there any interference with that?

A No.

Q Were there beatings?

A Yes.

Q Were people arrested for doing those beatings?

A Yes.

Q How many deaths would you say, violent deaths that you know of in that area in 1974?

A Too many.

Q Now when AIM was invited to come to the White Clay district, what were they to do there, what was to be their job?

{3594}

A Their job is to protect Indian members of the Oglala Sioux Tribe members and their property and the fish and wildlife.

Q In the White Class District are there a lot of traditional people?

A Yes.

Q You know, do you know of people known as the goons?

A Yes.

Q How would you describe what that means?

A Goons is a Richard, Dick Wilson will take over the tribal government. He divide between full-blood Indians and mixed-blood Indians and he organized a goon squad.

Q What did the goons do?

A They threatened Indians if they were going to have a meeting or traditional ceremonies or Indian dance.

Q Or Indian what?

A Indian dances.

Q When you say "Indian dances" are you including a special kind of Indian dance?

A Yes. Every year they have celebration on the 4th of July and one in August.

Q And what is that special celebration called in English?

A 4th of July. Other one is Oglala Sioux affair.

Q Are you talking about the sun dance?

A And they have a sun dance, too, also.

Q When does that occur?

{3595}

A That usually come in the first part of August.

Q Now, were the AIM people, how many AIM people came there in the spring of 1975?

A I don't remember.

Q Did they get paid a salary?

A No. We have the food.

Q You what?

A We have them food.

Q You gave them food?

A Yes.

Q And did they have a place to stay?

A Yes.

Q And did they get any other kind of pay?

A No.

Q And for how long did they stay?

A Some were there from that district.

Q Some of them lived in that district?

A Yes.

Q How about the ones who came from outside that district?

A That outside district, they come in back in 1973 and they live on the reservation.

Q Did you ever see Leonard Peltier in 1975?

A Yes.

Q He wasn't from that district, was he?

A No.

{3596}

Q Did they do work for the people living there, the older people?

A Yes, they do.

Q Can you tell the judge and jury the kind of work that they did?

A Some older people used to have wood stove. So they hauled dry wood for them and they chopped wood for them.

Q Did they do any work on cars?

A Yes.

Q What kind of work?

A In a district most of them, they drive old cars, and if they have car trouble they take it over to this AIM and they fix their car.

Q How much did they charge for hauling and chopping the wood?

A I think it's free.

Q How much did they charge for repairing the cars?

A Sometimes they helped them food.

Q Give them food for it?

A Yes.

MR. TAIKEFF: If I may have a moment, Your Honor.

(Defense counsel conferred.)

MR. TAIKEFF: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. HULTMAN

Q Mr. He Crow, you responded to a number of questions concerning {3597} law on the reservation, and so that I don't have any doubt in my mind or anyone else because of language difficulty, and we do have that on occasion, do we not?

A Yes.

Q So that we don't misunderstand at all, when you responded to counsel that there is no law on the reservation, and then you went back and you referred to I think some words "going way back" or some words to that effect, is this a condition, or is this a response that you were giving from some time far in the past up to and including here in the courtroom today, is that a fair conclusion for me to draw?

A What I say there's no law on the reservation. What I'm talking about is the peoples that need help. If anything happen on reservation we go to BIA police and they never showed up.

Q And I understand I think what it is you're saying. My question is: You are not pointing out by your response to Counsel earlier or to me now, are you, just one period of time? You're talking about sometime way in the past up to and including the present time; is that correct?

A Yes.

Q All right. So I want to make sure I understood that you were not just talking about something in the past or a given time in the past, that you're talking about the far past, the immediate past and the present. This is a general condition that {3598} you are talking about, is that fair?

A Yes.

Q All right. Fine. You referred to the fact that on Defendant's proposed Government -- proposed Exhibit 103, and of which one paragraph is now in evidence of that document, that the traditional chiefs had gotten together, and then through the four meetings had ultimately put down in paper what you have in front of you. Is that a fair conclusion for me to draw?

A Yes.

Q All right. And is it fair for me to include that you were enunciating or stating some principles or some positions that the ten items represent?

MR. TAIKEFF: Your Honor, I suspect that that's too vague a question. I object to the form on that basis.

MR. HULTMAN: Well, I'm just trying to do my best, Counsel.

THE COURT: Do you understand the question?

THE WITNESS: No.

THE COURT: Objection is sustained.

MR. HULTMAN: I will withdraw my question.

Q (By Mr. Hultman) What did you do with paragraph 9 after you had agreed on June 1 of 1975? What did you do, what did the traditional chiefs then do? The date on this is June 1, 1975, is it not?

{3599}

A Yes.

Q And so paragraph nine applies to that date, does it not?

A Yes.

Q All right. Now, what was it that you did with reference to paragraph nine after June 1, on June 1 or after June 1, 1975?

A They make documents and they prepared to take it to Washington after.

Q All right. Was the purpose then of the document to go to Washington? Is that a fair conclusion for me now to draw?

A Yes.

Q Including paragraph nine; is that right?

A Yes.

Q Now, my point is that after you agreed, or the chiefs, the six chiefs who are traditional chiefs whose names appear thereon, after they

had had the meetings and resolved the meetings and the thoughts to writing did you contact anyone about those, and specifically paragraph nine, other than going to Washington?

A I don't understand.

Q Well, let me ask you point blank: Did you or any of the chiefs talk to Leonard Peltier concerning paragraph nine on June 1 or there after?

A Say that again once.

Q Did you personally, or to your knowledge, any of the six traditional chiefs whose names appear on that document speak to {3600} Leonard Peltier about any subject matter of any kind?

A I understand this Leonard Peltier is the one of the leader, and that when they were invited he's one of them that he contact. But I don't remember exact date when we have meeting with them.

Q All right. I'm not trying in any way to be difficult. Is it fair for me to conclude from what your remarks in response to my question is that you don't have any knowledge, first of all yourself, you never contacted Leonard about paragraph nine, did you?

A I worked with his traditional, and when they're going to have a meeting I happen to set up the meeting. And legal aides and the chiefs and some interpreters, they work on this.

Q Well, I'm still asking you one very basic, I'm trying to question, not what about somebody else may or may not have done that you really don't know about, I'm asking you first of all here's a document that June 1 was at least reduced to writing; is that correct?

A Yes.

Q And the purpose was to take these things that are set forth in it, including paragraph nine which is now in evidence here, to Washington; isn't that correct?

A Yes.

Q Now, my question is just very simply this: Did you, Mr. He Crow, did you speak to Leonard Peltier after June 1, 1975 {3601} to June 26, 1975 about anything that's referred to in paragraph nine?

A I remembered they were there the last meeting. So when the American Indian Movement there, but I don't know this. But I think he was there, too.

Q Pardon?

A I think he's there, but the person, I don't talk to him.

Q All right. Now, let me ask you, is there anything in paragraph nine that says anything other than you welcome American Indian Movement to reside and work to support you in your goals?

A Yes. This is, means we have some treaty meetings and we want to negotiate with the United States Government concerning 1868 treaty.

Q Well, now there isn't anything in here about using guns to enforce the law against anybody, is there?

A Well, you go to a reservation. You are going to see a lot of cars, they carry guns. And also the American Indian Movement, they carry rifles.

Q Well, did you look to the American Indian Movement then as being, having a purpose to enforce the law? Is that your understanding of the reason for the American Indian Movement to have guns and enforce the law?

A Yes. It's pretty dangerous to live on the reservation, and they have to carry in case anything happened. Because there are {3602} goon squads were there and they carry guns.

Q Well, let me ask you this: Who were the people, other than Leonard Peltier, you've mentioned him in direct response to the name being used by counsel in examining you on direct examination, who are the other members of the American Indian Movement other than, or in addition to Leonard Peltier that were at the Jumping Bull area, or in that group that you specifically invited in for a specific purpose?

A All I know is the American Indian Movement.

Q So is it fair for me to conclude that all you are talking about is that as paragraph nine reads, and I think it's, since it's in evidence it might be appropriate that I read it, "The legal aides are recognized by this Lakota treaty council to reside and work within the boundaries of the Pine Ridge Reservation for an unlimited time," end of sentence.

Second sentence, "The American Indian Movement is likewise recognized by us to reside and work here to support us in our goals," end of second sentence. End of paragraph nine.

A This legal aides were there in 1974, in November. And when they worked there they need protection.

Q Well, are you saying you went out and hired some guns, is that

what you are saying?

A No.

Q Well, what is it that you are saying then to this jury {3603} concerning what your relationship was with the American Indian Movement in general, and any specific individuals other than to come in and assist you in any ways with your general goals as traditionalists?

A Well, we asked the American Indian Movement to come on our reservation, what they're going to expect as to goons. This is one reason they carry guns.

Q Well, then you did hire them as hired guns, is that fair for me to conclude?

A They carried guns, I know that.

Q Well, now let me ask you specifically about the individuals that we're concerned with here. Whose names have appeared in the course of these proceedings rather than generalities. Is Leonard Peltier a Sioux?

A He's Chippewa.

Q So I conclude from that that he is not a Sioux; is that correct?

A No.

Q He's a Chippewa.

Now, why is it that you have to go out and hire a Chippewa to do whatever it is that you want done that you couldn't do yourself as a Sioux?

MR. TAIKEFF: I object to the form of the question because it implies something which has not been testified to. He didn't specifically go out and hire a Chippewa.

{3604}

MR. HULTMAN: Well, then I'll include some others, some from the Wisconsin Winnebago --

THE COURT: Just a moment. Are you withdrawing the question?

MR. HULTMAN: I was just going to make it ever more specific.

THE COURT: Why don't you withdraw it and restate it.

MR. HULTMAN: All right.

Q (By Mr. Hultman) Why is it, if you can tell us, Mr. He Crow why is it that in the group of individuals that we are concerned with here, specifically on the Jumping Bull property, that the individuals are Chippewa, Wisconsin Winnebagos, Navajos and maybe some others that I'm

not absolutely certain of? Why is it that you have to hire those people to come in and do the things that you were referring to here other than you doing them yourselves?

A Well, this organization, they come back in in 1972. And one Indian were murdered at Gordon, Nebraska, and there's no investigation. So his relative's name is Yellow Thunder.

Q Is Gordon, Nebraska on the reservation?

A No.

Q Then we're not talking on the reservation as far as that issue; is that right?

A Yeah. That's his first time, I know, American Indian Movement to come on reservation.

{3605}

Q Well, my question is: I thought we were talking about events on the reservation; is that fair in my discussion?

A Yes.

Q Now, the event you just mentioned wasn't on the reservation at all, was it?

A Yes.

Q Is there any specific reason that you know, other than you stated thus far, as to why Leonard Peltier is the one that you have referred to and not to any others by name specifically?

A He's the only one I know or recognize him, and I know him before.

{3606}

Q Do you know, when did you first meet him approximately?

A That was probably in 1975, in January I believe it was.

Q Did you know at that time that there was a warrant for his arrest for attempted murder?

A No.

MR. HULTMAN: I have no further questions.

REDIRECT EXAMINATION

By MR. TAIKEFF:

Q Mr. He Crow, do you know the name, Russell Means?

A Yes, I do.

Q What connection, if any, does he have with the American Indian

Movement?

A I remember he was the leader at one time.

Q How about Ted Means?

A Yes, I know him.

Q What connection does he have with the American Indian Movement?

A I don't know.

Q How about Bill Means?

A Yes, I know him.

Q What connection does he have with the American Indian Movement?

A I don't know. I know he is a member.

Q He is a member?

A Yes.

{3607}

Q Do you know if Ted Means is a member?

A Yes, he is a member.

Q Pedro Bisenet, do you know his name?

A I know Pedro Bisenet.

Q Do you know whether he was involved with the American Indian Movement?

MR. HULTMAN: Your Honor, now I am going to object. I don't think there is any relevancy of any kind to show any association of what we are concerned with here.

MR. TAIKEFF: If Mr. Hultman would just exercise a modicum of patience, I will show him that this is an extension of his last objection.

THE COURT: Proceed.

Q (By Mr. Taikeff) You said you knew the name, Pedro Bisenet. I asked you whether he was involved in any way with the leadership of the American Indian Movement?

A No.

Q How about Bob Yellow Bird?

A Yes.

Q Is he involved with the leadership of the American Indian Movement?

A Yes, he is a member.

Q How about Byron DeSersa?

A Yes.

Q Involved in the leadership of the American Indian Movement?
{3608}

A He is a member.

Q He is a member. O.k.

How about Marvin Ghostbear?

A Yes, I know him.

Q What is his involvement with the American Indian Movement?

A I think he is a member too.

Q How about Leonard Crow Dog?

A Leonard Crow Dog, yes, I know him.

Q What is his involvement with the American Indian Movement?

A He is a member.

Q Does he have any official standing as far as you know with the American Indian Movement?

A Spiritual leader.

Q Which of those people that I have read the names of and that you have identified are Sioux Indians?

A Means.

Q The three Means?

A The three Means. Pedro Bisenet, Crow Dog, Bob Yellow Bird Ghostbear. I can't remember those other names.

Q Did I read the name Byron DeSersa?

A Yes.

Q Is he a Sioux?

A Yes.

Q Now, I think you said that the legal workers came on the Reservation, came there in 1974, is that correct?
{3609}

A Yes.

Q Were they Indian people or white people?

A Some are Indian and some are whites.

Q Now, Paragraph 9 of the document indicates that those people are welcome to stay and live there, is that correct?

A Yes.

Q Does that mean that they couldn't come until they had that document?

A No. They were there before.

Q They were there before?

A Yes.

Q Now, likewise after that document was signed, the document which is in front of you, there was no special invitation given after the document was there?

A I think they call this Legal Aid before that, but I don't remember the date.

Q When did the AIM people come into the district?

A They come in the district about around 1972.

Q Do you know who told the people from AIM who came there in 1957 about the goon problem?

A I don't remember.

MR. HULTMAN: Well, I object to this, your Honor, again on many grounds, the last one of which is that it is a matter which has been gone into and is a matter which is new material again as far as redirect examination, and {3610} further, there is no showing as to times or places or events specifically to which we are now referring, and further --

THE COURT: (Interrupting) The witness says he doesn't know.

MR. TAIKEFF: Your Honor, I believe it was on the Government's cross examination that they elicited that fact.

THE COURT: Well, the witness has stated he has no knowledge.

MR. TAIKEFF: I was merely asking for details, if he had any.

Q (By Mr. Taikeff) Now, Mr. Hultman asked you about a killing you talked about in Gordon, Nebraska, you remember him asking you about that?

A Yes.

Q Now, Gordon, Nebraska, is not on the Reservation, is that right?

A No.

Q What connection did the Reservation have --

MR. HULTMAN: (Interrupting) Well, again, your Honor now I am going to renew my objection. We are not getting into specific events of other kinds that are highly prejudicial and are not material.

MR. TAIKEFF: I didn't finish my question. I don't {3611} know how Mr. Hultman could possibly know whether the question is objectionable or not.

MR. HULTMAN: The form of the question clearly indicated it to me, your Honor. That's the reason I objected.

THE COURT: You may complete your question.

MR. TAIKEFF: Thank you, your Honor.

Q (By Mr. Taikeff) What connection, if any, was there between the Gordon, Nebraska, incident and the Pine Ridge Reservation?

MR. HULTMAN: And again I object, your Honor, that being totally irrelevant and immaterial unless that question goes to the issue that's before this jury as the events on the 26th.

MR. TAIKEFF: The subject was opened up by the Government, and all I am trying to do is counter the Government's cross examination on the question of whether there was any connection between that incident and the Reservation.

That subject was gone into for the first time by the Government on cross.

MR. HULTMAN: That is not correct, your Honor. This witness was asked specifically about a given death. My only question was: "Was it on or off the Reservation?" The subject matter was raised in direct examination,

MR. TAIKEFF: I think he said, "Did it have any {3612} connection whatsoever with the Reservation?" And that is what I am addressing myself to.

THE COURT: I will allow him to answer that.

MR. TAIKEFF: I am entitled to ask a leading question and I am not doing this.

Q (By Mr. Taikeff) Was there any connection between that death on the Reservation and the people on the Reservation?

A Yes. Raymond Yellow Thunder, he is from Pine Ridge.

MR. HULTMAN: Again, your Honor, I object on the grounds that there is no showing of any relevancy of any kind.

THE COURT: He has answered. I will let it stand.

Q (By Mr. Taikeff) Now, you said on your cross examination that the people from the American Indian Movement were going to or did help you with your treaty work?

A Yes.

Q Can you briefly explain what you mean by your treaty work, just

in general?

MR. HULTMAN: Again, your Honor, I would object on the grounds of relevancy. I can't see what possible relevancy does that have to the issues that are stake in this particular trial for materiality or relevance.

MR. TAIKEFF: It was brought out on the Government's cross examination.

THE COURT: Well, I have allowed defense counsel to {3613} go into the reasons, at least their alleged reasons for AIM to be on the Reservation; and on that matter, I would allow the question.

Q (By Mr. Taikeff) I asked you in general terms, not to get into complicated things or specifics, when you said that the AIM people were going to help you with your treaty work, and you summarize for the Court and jury what you meant by "treaty work"?

A 1974 they were going to have a treaty hearing in Lincoln, Nebraska.

Q And in the Federal Court?

A Yes, and after that Court, they want to take it on up to the upper Court.

Q When you say an "upper Court", you mean a higher Court?

A Yes, higher Court.

Q Yes.

A And this is one reason their Legal Aid live on the Reservation.

Q And it is that case that you were referring to when you said "treaty work"?

A Yes.

MR. TAIKEFF: I have no further questions.

MR. HULTMAN: No further questions.

MR. TAIKEFF: May the witness be excused?

THE COURT: Any objection?

{3614}

MR. HULTMAN: No objection, your Honor.

THE COURT: You may step down, and you are excused.

(Witness excused.)

MR. TAIKEFF: The defense calls Al Trimble.

ALBERT TRIMBLE,

being first duly sworn, testified as follows:

MR. TAIKEFF: May I proceed?

THE COURT: You may proceed.

DIRECT EXAMINATION

By MR. TAIKEFF:

Q Your name is Al Trimble?

A Yes.

Q Where do you live?

A Batesland, South Dakota.

Q And is that on an Indian Reservation?

A Yes.

Q Which Reservation?

A Pine Ridge.

Q Were you born on that Reservation?

A Yes.

Q And have you resided there all your life?

A No.

Q What part or how much of your life did you live off the Reservation?

A Three years in military service from 1945 and approximately {3615} 16 years in Federal Service in Spokane, Washington.

Q What was that Federal Service?

A With the Bureau of Indian Affairs. It was various other places too.

Q In Washington you lived on an Indian Reservation though, did you not?

A No.

Q Do you presently hold any official and public office with respect to the Pine Ridge Reservation?

A I am the president of the Oglala Sioux Tribe.

Q And is that a position which you hold pursuant to an election?

A Yes.

Q And when were you elected to the presidency of the Oglala Sioux Tribe?

A In January, 1976.

Q And where do you have your official offices?

A Pine Ridge, South Dakota.

Q Pine Ridge is the place on the Reservation at which the center of Government sits, is that correct?

A Yes.

Q The entire Reservation has approximately how many residents?

A I am not sure about the number of residents, but we say there are more than 12,000 tribal members.

Q And of that total number, how many live in Pine Ridge?

{3616}

A I am given to believe about 3,000.

Q Is that the largest single center of population on the Reservation, Pine Ridge?

A Yes.

Q But it is not referred to as a city, it is a village, am I correct?

A Yes.

Q Now, in addition to your present function as tribal president, did you hold any official position on the Pine Ridge Reservation in the past?

A I was the superintendent of the Pine Ridge Agency for the Bureau of Indian Affairs.

Q And during what period did you hold that position?

A Beginning November of 1973 until the end of March 1975.

Q Can you summarize for the Court and jury the relationship between, or the comparison between the tribal government of which you are the chief executive officer, and the BIA so they will understand the different functions that you performed in the past and that you perform now?

A Well, the Bureau of Indian Affairs carries out certain service functions for the people of the Reservation pursuant to Statutes and legislation, and in some cases treaty obligations; and these are services, such as education, welfare, law enforcement, and a variety of other programs; and the tribal government of course, is the elected tribal government of that particular {3617} sovereign entity of which the United States is trustee of the land.

Q Now, the Bureau of Indian Affairs is an agency of the United States Government, is it not?

A Yes.

Q Particularly which Department?

A The Interior.

Q And the tribal government is a local government, is that correct?

A Yes.

Q It is the Reservation Government, so in some sense is it fair to say that the tribal government is like our State Government?

A Yes.

Q In relationship to the Federal Government, that it has its own areas of responsibility, and the Federal Government has its areas of responsibility?

A Yes.

Q Now, as the BIA superintendent, you were the executive who supervised many activities including which services, if any?

{3618}

A Well, we provided all the education services.

Q That would be the school system, the public school system?

A No. The Bureau of Indian Affairs school system and welfare services, law enforcement services, trusteeship and management of Indian land. Those are the varieties.

Q There are others. Your reference to law enforcement services, that would include the BIA police?

A Yes.

Q Now these employees who were known as BIA police, were they employed as federal employees?

A Yes.

Q And which criminal law did they enforce?

A They enforced all of it. Well, the tribal code which is essentially those which are not felony in nature or major crimes. That's the nature of the tribal code. And, of course, they also assisted in the investigation of major crimes and in conjunction with the Federal Bureau of Investigation, major crimes being the responsibility of the United States government.

Q If I can summarize that, the FBI has exclusive jurisdiction as to certain crimes, the BIA police had exclusive jurisdiction as to local or misdemeanor type crimes which are defined in the tribal code?

A That's not quite right. There is an overlap. The Bureau of Indian

Affairs plays a responsibility, had a responsibility to assist the Federal Bureau of Investigation but they did not {3619} present cases.

Q Now as the BIA superintendent you had then a very special relationship with the police department. In a way you were the top cop, is that a fair statement?

A According to Title 25 of the Code of Federal Regulations, the superintendent is the commander of police.

Q Okay.

Have you ever heard the term "goons"?

A Yes.

Q Does that term refer to a category or a group of people?

A At Pine Ridge it did; yes.

Q And did that term have any meaning in 1974 and 1975?

A Yes.

Q Can you describe the meaning of that term for the Court and jury?

A Well, the common understanding of the term "goon" at Pine Ridge during the time I served as superintendent there, I guess I'd call them sort of a right wing activist that was a follower of the Dick Wilson and his administration, Dick Wilson being the tribal president at that time.

Q Was there any pattern to their make-up concerning racial make-up?

A Yes. I believe they're mostly thought to be mixed blood people as opposed to the more predominant full blood and traditional people that live in the outlying districts of the {3620} reservation.

Q I'm sorry. I didn't mean to interrupt you.

A And they, I believe, were people that did not mind exercising, oh, violence and intimidation in carrying out the role that was sort of expected of them.

Q What was their role?

A Well, they are felt to be sort of enforcers for the Wilson administration at that time.

Q Wilson then held the tribal position that you now hold, isn't that correct?

A Yes.

Q And if you as tribal president found some violation of law to be in existence, is there a mechanism by which you could do something about

that?

A Yes.

Q Specifically what could you do now if you became aware of the fact that there was a violation of the tribal code, for instance?

A Call it to the attention of the law and order people.

Q And that would be specifically who or what?

A At this date it's still the Bureau of Indian Affairs police.

Q And specifically in 1975 if you were the president at that time of the Oglala Sioux tribe and you were cognizant of any violation of law, you'd notify the BIA police, would you not?

A Yes.

{3621}

Q And expect them to carry out their duty under the law, would you not?

A Yes.

Q When you made specific reference a few moments ago to "even right now it's the BIA police," were you thinking about some change which is in the process of occurring?

A Yes.

Q Would you briefly summarize that for the Court and jury.

MR. HULTMAN: If it please the Court, I have not objected up to now. I see no materiality or relevancy of the testimony evidently now elicited by this question.

MR. TAIKEFF: I'll withdraw this question, Your Honor.

I would like to point out that when Mr. Hultman objects he always notes that he hasn't objected up to that point. I would like to suggest I haven't asked any objectionable questions, it's not because he's being overly generous.

THE COURT: You may proceed.

MR. TAIKEFF: Thank you.

MR. HULTMAN: It's the latter, Counsel.

Q (By Mr. Taikeff) Now to go back to the point of departure, you said in substance, I don't mean to quote you, that the goons acted as some kind of, did you say enforcers? I don't want to use the word you didn't use.

A I believe I did.

{3622}

Q Enforcers for Mr Wilson who was your predecessor in office. Was there then, did I misunderstand, no BIA police department?

A There were BIA police; yes.

Q Did the goons have any official governmental status?

A No.

Q As far as you could tell from your own observations, did they enjoy the equivalence of having the governmental status?

MR. HULTMAN: I object to this, Your Honor, as calling for clearly an opinion and conclusion of the witness to which there is no proper foundation. Purely speculative.

THE COURT: Sustained.

Q (By Mr. Taikeff) Would you say that the goons brought to the reservation peace, tranquility and law and order?

A No.

Q Did they bring anything to the reservation?

A I believe they made a contribution; yes.

Q And what did they contribute?

A To a considerable amount of social disruption or disorientation in the whole reservation community.

Q And within the definition you gave us, were there any violations of law?

A Yew.

Q Any violence?

A I believe so.

{3623}

Q Now at first I asked you of your own personal experience rather than things which may have been generally believed on the reservation and I direct your attention to Labor Day, 1974, the rodeo.

MR. HULTMAN: Your Honor, may we approach the bench.

THE COURT: You may.

(Whereupon, the following proceedings were had at the bench:)

MR. HULTMAN: I fail to see what the Labor Day of 1974 has any relevance of any kind. There is no showing that this defendant was even in the

territory, let alone with any events we're not going into and I think I have been most generous in not raising objections but I think we're getting into all kinds of matters that go beyond the scope of relevancy and I'm going to indicate that on the record now and then I'm going to continue to object. I want that made very clear.

MR. TAIKEFF: Your Honor, I took that point because I thought it was a reasonable point in advance of the spring of 1975 and to come forward from there to show some of the specific incidents and some of the problems which the people of Pine Ridge were confronted with in terms of lawlessness and violence and the two incidents I was going to ask him about which he was personally involved are rather extreme ones and {3624} he was the head of the police department. The one that I'm asking him about involves the take over of the goons of the jail, the disarming of the police and the emptying of the jail.

MR. HULTMAN: I clearly object, Your Honor, that there is no nexus of any kind between this defendant, June 26th and that event. That is so irrelevant to any issues in time and place and it's highly prejudicial and I think under the rules the bringing of this kind of testimony before the jury clearly out Weighs probative value.

THE COURT: We're getting far afield and I think I can see the relevance of the general conditions but I'm not going to permit you to go into the specific events.

MR. TAIKEFF: All right. I just wanted to point out to Your Honor, not by way of further argument, but to refresh Your Honor's recollection for general purposes that in the course of the government's case there was testimony from one witness that there were rumors that the goons were going to attack the AIM group and one of the things I wanted to do with this particular bit of testimony was to show their potential, the actual strength that they had and the kinds of things that they were capable of doing so that they won't be in an indefinite, ill-defined force.

THE COURT: Well --

MR. HULTMAN: Could I respond also one more thing, {3625} Your Honor?

THE COURT: You may.

MR. HULTMAN: Counsel is attempting here to set up something by way of a straw man, straw man and straw men of goons and then somehow to lift

himself by his boot straps to then say somehow that this defendant acted on that day because of events that had to do with goons. Now there has been, I'm not going to indicate what Counsel has just postulated may not be true. There may be some scintilla to the effect of what he said not raised by the government. I don't think at all, but maybe on the government's case, maybe that comment somewhere did enter and I'm not attacking that. What I'm saying, Your Honor, is there is no nexus of showing of any kind in this record other than maybe that one scintilla that this defendant and goons on that day had anything to do with Leonard Peltier and the FBI. All of the testimony to my knowledge clearly shows that the FBI was not looked upon in any way as goons. There is not one scintilla to that effect.

MR. TAIKEFF: I don't make that claim and we will not.

MR. HULTMAN: I don't see a nexus of any kind here.

THE COURT: Well, as I mentioned, the only purpose of this evidence, and I think the defense has a right to show a reason for these people to be on the reservation, that's why I'm allowing general evidence relating to the reason for them being on the reservation but not getting into specifics.

{3626}

MR. TAIKEFF: I understand.

(Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

MR. TAIKEFF: Could I have one moment to consult with Counsel?

THE COURT: Yes, you may.

Q (By Mr. Taikeff) Mr. Trimble, contrary to my recent suggestion to you about focusing your attention on specific incidents that you were personally involved in, I would rather that you answer a different line of inquiry.

I would like you to focus your attention on the one year period, June '74 through June of '75 and in terms of, or with relationship to the subject of violence generally, that is to say, presence or absence of violence, I would like you to characterize for the Court and jury the Pine Ridge Reservation.

A A general statement, sir?

Q A general statement; yes. You think is a fair appraisal of the

situation on the reservation.

A It was a period of time when a very high number of killings were reported on the reservation, some of them brought to trial. It was a period when my administration, Bureau of Indian Affairs sort of came apart with the administration, the tribal government because of differences as to, at least from my part. However, I could not in good conscience in supporting what I felt was {3627} a corrupt tribal administration and I believe this led to some escalation. Certainly it did lead to instances which you initially asked me to comment on. Is that what you wanted?

Q If that's your answer to my question, that's what I wanted.

Was there any particular impact that this situation had on the full blooded or traditional Indians on the reservation as opposed to any person in general?

A Yes. It did increase the feeling and belief on the part of the full blooded traditional people living on the reservation that laws were not being equitably applied to them as others, that there was definitely, I guess you'd refer to it as selective law enforcement on the part of the police force that we had on the Pine Ridge Reservation.

Q At that time you were, at least nominally, in charge of the police department?

A Yes.

Q Did you make any attempts to change the situation?

A We made constant attempts to try to change the situation. {3628}

Q And were you successful?

A I don't believe the picture would reveal any success, or at least considerable success

Q At least during the year I asked you about, from June of '74 to June of '75?

A That's right.

Q I think you said that in the village of Pine Ridge there were 3,000 people and that in the entire reservation there were at least 12,000 registered, if not living there. Did I hear you correctly?

A We believe there are 12,000 living there.

Q That means if all 12,000 are in fact living there, there are 9,000

living outside of the village of Pine Ridge?

A Yes.

Q Those areas outside the village, is there a word or a phrase that describes those areas generically?

A Yes. Districts.

Q They call them districts?

A Yes.

Q How many districts are there?

A There are eight districts and the village of Pine Ridge which is considered a district, as a political entity or subdivision I should say.

Q Are there any districts in which the traditionals have a rather substantial influence or presence?

{3629}

A At this point I believe there are.

Q Let's go back to 1974-75, if there's any difference since then I'd like to know the state of affairs back then.

A Well, I believe that the traditional philosophy among the Sioux people is more prevalent in the White Clay District in which Oglala community is located and in the Porcupine District.

Q Now, in connection with your presence on the reservation as the BIA superintendent, which I understand continued until March of 1975, do you have any awareness of the presence of the American Indian Movement on the reservation?

A Yes.

Q Do you consider yourself a member of the American Indian Movement?

A No.

Q Would you categorize yourself as a supporter of the American Indian Movement?

A No.

Q Are you cognizant from your work on the reservation of any changes that may have been brought about by the presence of the American Indian Movement?

A Well, it's my personal belief that the traditional and full-blooded people are much more cognizant of their own personal individual rights

and seem more willing to try to exercise them now. And I believe they evidenced this in my own election as president of the tribe.

{3630}

Q Are you a full-blooded Indian by the way?

A No.

Q From what you've observed, or by the way, your tenure as BIA superintendent ended in March of 1975. Did you continue on your reservation beyond that date?

A I maintained my residence on the reservation; but officially I was moved by the Bureau of Indian Affairs to Albuquerque, New Mexico. I commuted to my job on a weekly basis.

Q And did you then, after March of '75, resume full-time residence on the reservation?

A I did again in November of '75.

Q So then you were gone for a period of, on a part-time basis, somewhere between six and eight months?

A Yes.

Q Based on your experience and observations would you say that the American Indian Movement is a violent organization?

A Not based on my experience as an administrator.

Q Did you ever have to negotiate with them in connection with your role as BIA superintendent, or deal with them in your official capacity?

A As a superintendent --

MR. HULTMAN: Well, again, Your Honor, I object to the relevancy. I had not realized that the American Indian Movement was the subject of the trial here other than in a very, very possibly remote way. And I object to any further {3631} questions of this kind as to relevancy.

THE COURT: Sustained.

MR. TAIKEFF: I have no further questions.

CROSS EXAMINATION

BY MR. HULTMAN

Q Mr. Trimble, would you explain to me, and maybe in a comparison like counsel used, as to what the relative position is between the office you now hold and the office that you previously held with reference to law enforcement? I'm not quite sure I understand what that relationship

is.

A Well, in my present capacity as president of the tribe I'm simply sworn to uphold the laws of the tribe and the United States. And we take part in creating these laws as far as the tribe is concerned.

Q So you would be like --

A I haven't finished answering your question.

Q Oh, I'm sorry, go ahead.

A And as superintendent of the Bureau of Indian Affairs I was in charge of the police force that should have enforced those laws.

Q So that it is fair for me to conclude that when you referred to Dick Wilson and what his capacities were then compared to what yours are now, his was similar in nature; is that right?

A Yes.

Q And I don't want to get into the political matters here, I want to talk merely about relationships. Now, do you have anything {3632} to do then today in telling the Bureau of Indian Affairs agents in terms of enforcing a law what they are to do or what they are not to do?

A Not directly.

Q And that would have been the same relative position that Mr. Wilson was in at that time, is that fair?

A It should have been, yes.

Q All right. So it is fair for me to conclude that you yourself, during the time that counsel was asking you, were the chief law enforcement officer? Is that fair for me to conclude?

A By title, yes. In job description.

Q Well, you certainly had more authority than the position you're now sitting in, there's no question about that, is there?

A No. But I didn't have as much authority as the area Director in Aberdeen, or as much as the director of Indian Affairs.

Q I'm not talking about the president of the United States ultimately.

A Both of these had line authority that happened on Pine Ridge.

Q I'm talking on Pine Ridge, but ongoing day by day events.

A I'm --

Q You were it, were you not?

{3633}

A No. I was the superintendent with the job description and a title. What I'm trying to say, I did not have the final answer as to what happened with regard to law and order in Pine Ridge.

Q Well, you sure were a key man in it on the reservation, were you not? The same as the chief of police in a city, isn't that comparable?

A Yes, I thought so.

Q Well, now you mentioned that there were specific groups that had some responsibility then, and I assume still have some of the same responsibilities today with reference to enforcing the laws, and would those, I believe you indicated in response to counsel with, one, primarily the Bureau of Indian Affairs officers, one; and secondly, the Federal Bureau of Investigation; is that fair for me to conclude?

A Yes.

Q Now, that was true then, that's true now, is it not?

A Yes.

Q And it was true before?

A (No response.)

Q All right. Now, you also indicated that there were some individuals who were referred to as goons, and I assume that those are not, one, the FBI?

A I couldn't answer that for sure.

Q Well, now give me your fairest and most honest response, {3634} Mr. Trimble. You don't know any FBI agents that are goons?

A No, I don't. I didn't say I did.

Q Well, you didn't respond straight out as you now have to me.

A I couldn't.

Q There were some, also some individuals evidently who may not have been BIA-FBI or goons who likewise committed some crimes of violence on the reservation, was there not?

A It's possible.

Q Were there any AIM members that you know of?

A That committed crimes?

Q Yes.

A According to court decisions I guess there were, yes.

Q Well, all I'm trying to indicate is that there, that you just

can't nicely package up into one group and say that the goons are the people that caused the violence on the reservation; and you didn't mean to imply that in any way, did you?

A No, I didn't. I just, I think I mentioned a contribution that I felt they made.

Q Okay. There were some others that made some contribution likewise, too, did they not, and we're talking about an unfavorable contribution, are we not?

A Yes, sir.

Q All right. They likewise had something to do with escalation as I believe was the word you used, right?

{3635}

A It's possible, yes.

Q Would it just be fair for me to conclude, by the way before I get to that, did you have any knowledge of any kind as to what took place in this area on the 26th of June, 1975?

A Not until I read it in the news.

Q All right.

A I heard it on the T.V.

Q You had no knowledge concerning the specific events we're concerned with here?

A No.

Q Would it be fair for me to conclude that if I were not a member of the BIA, the FBI or the goons, that if I were one who used weapons of this kind against individuals that I would be contributing to the violence, or the escalation on the reservation, or the general area that you've been talking about during the period of time you've been referring to. Would that be a fair conclusion for me to draw, or to you to draw as the chief law enforcement officer?

A Be fair.

Q Okay.

MR. HULTMAN: I have no further questions.

MR. TAIKEFF: Would you leave those weapons there, please.

REDIRECT EXAMINATION

BY MR. TAIKEFF

Q Do you know what kind of weapons these are, Mr. Trimble? {3636}

A No, I don't.

Q Can you tell -- beg your pardon?

A I believe we had something similar in our police arsenal at Pine Ridge. I'm not sure.

Q But the weapons you had were capable of firing fully automatically; isn't that correct?

A Yes, sir.

Q As you looked at those weapons, and so the record is complete, let me state that these are Government Exhibits 37-A and 34-AA. Is it your impression that they're automatic weapons or weapons capable of firing automatically?

A Yes.

Q Did that in any way influence the answer you gave to Mr. Hultman?

A Yes.

Q Now, if I --

MR. TAIKEFF: I just wanted to wait until Mr. Hultman finished laughing, Your Honor.

MR. HULTMAN: I'm not laughing.

Q (By Mr. Taikeff) If I told you that each of these weapons was a semiautomatic that you could buy in any sporting goods store that had them in stock, would you reconsider the answer you gave before concerning contributions to escalation?

A I don't believe the answer I gave expressed any believe on my behalf. It expressed the possibility, and that's the {3637} way he asked the question.

Q If you owned either one of those two weapons or anything like them and you felt that you or your family was under attack, would you hesitate to keep that gun loaded nearby, or that you were potentially under attack?

A I don't know how to answer that question because I'm not much on guns.

Q I understand that. But I have to ask you to make an assumption. Assume that you believed you were in a dangerous posture and you had access

to a gun like that.

MR. HULTMAN: Your Honor, that's objectionable on the grounds that there's no such showing in the record at this time.

MR. TAIKEFF: I believe that area of inquiry was opened by the Government on cross-examination, Your Honor.

THE COURT: You may ask the question.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) If you believed that you were in danger from violent attack and you had access to one of those weapons would you make sure that you had it nearby and loaded?

A I can understand why a person would, but I don't think I would, no.

Q All right. Do you think that a person who used a weapon to defend himself against an attack by another who had a weapon --

{3638}

MR. HULTMAN: Well, now again I object, Your Honor, that there's no showing on the record as far as this is concerned.

MR. TAIKEFF: I didn't suggest that there was a showing .

MR. HULTMAN: Then it is irrelevant.

MR. TAIKEFF: It's misleading to suggest that that's what I'm asking about.

THE COURT: You may. You hadn't finished your question.

MR. TAIKEFF: I had not finished my question.

THE COURT: You may finish your question.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) I asked you whether you your opinion, considering the Pine Ridge situation, a person who used a weapon, shot a weapon under circumstances where that person believed or in fact saw that he was being fired upon could be said to be escalating the violence rather than defending himself against it?

A I believe that's so.

Q He would not be escalating the violence, is that what you're saying?

A Not if he's protecting himself.

MR. TAIKEFF: I have nothing further.

Q (By Mr. Taikeff) Oh, by the way, I do have something {3639} further.

There came a time in the spring of 1975 when you thought it appropriate to acquire a little hardware which you didn't in your life before that; isn't that true?

MR. HULTMAN: Don't put them away, Counsel. I've got a question or two to ask.

MR. TAIKEFF: I wanted to share the burden with you, taking them out and putting them back.

Q (By Mr. Taikeff) Isn't it a fact that you acquired a piece of hardware that you had not previously owned?

A Yes. After receiving a threat from a former policeman at Pine Ridge I did have the chief of police issue a .38 police special to me.

Q Now, did you put bullets or bubblegum in that revolver?

A I believe they issued bullets.

Q And did you carry it loaded?

A Yes.

MR. TAIKEFF: I have no further questions.

RECROSS-EXAMINATION

BY MR. HULTMAN

Q Mr. Trimble, so that there's no question as to the opening remark, when I asked you about these weapons did it make any difference to you whether I was asking you about two weapons you were looking at; isn't that right?

A I guess.

{3640}

Q I didn't say to you "Are they automatic or semiautomatic," did I?

A No.

Q I was asking you about an impression by looking at two weapons; isn't that fair?

A (No response.)

Q And did it really make any difference to you whether they were automatic or semiautomatic?

A Well, I think if you -- I don't know.

If you showed me a .22 I might have answered a little different. I don't know.

Q Well, I was not showing you a .22. I was showing you these two weapons right here (indicating), was I not?

A Yeah, I understand.

Q And it was you looking at them and the impressions of what they are, the kinds of guns they are, the number of rounds they fire that you drew the conclusion; fair for me that you did that, did you not?

A I believe I answered your question.

Q And you answered me fairly, did you not?

A That's what I said.

Q And I didn't represent whether they were automatic or semiautomatic or anything else? Isn't that fair?

A (No response.)

Q Would it have made a difference in your response if you {3641} had known that either of these weapons were fully automatic or only semiautomatic?

A Well, it's difficult because out in the country where we live every pickup has a rack.

Q Answer my question, please.

MR. HULTMAN: I want the question responsive, Your Honor, and I have a right to object.

THE COURT: Just a moment. The answer was not responsive.

The reporter may read the question back.

(Question read back: "Question: Would it have made a difference in your response if you had known that either of these weapons were fully automatic or semiautomatic?")

A No.

Q (By Mr. Hultman) That's all I'm trying to get at.

You are an old military man I believe from an opening question, are you not?

A I never had anything like that.

Q Where did you serve in the military?

A Germany.

Q What branch of the service?

A Army Engineers.

Q And you never even seen weapons of this kind or these many rounds

even in that capacity; is that right?

A I've seen them.

{3642}

MR. TAIKEFF: Objection. The gun in Mr. Hultman's left hand didn't exist in the 1940s.

THE COURT: I think it's getting far afield too --

MR. HULTMAN: I have no further questions. Thank you, Mr. Trimble.

MR. TAIKEFF: May the witness be excused?

THE COURT: Any objection?

MR. HULTMAN: No.

THE COURT: You may step down and you are excused.

Court is in recess until 3:30.

(Recess taken.)

{3643}

(Whereupon, at 3:30 o'clock, p.m., the following further proceedings were had in the courtroom out of the presence and hearing of the jury, the Defendant being present in person:)

THE COURT: Mr. Taikeff.

MR. TAIKEFF: Yes, your Honor, just a few matters that should not take very long.

I am wondering whether the Government has discovered the names of the agents who prepared the Poor Bear affidavits.

MR. HULTMAN: Your Honor, what I have been able to find out at this point is that the affidavit itself was prepared -- and correct me because I have not talked to Mr. Halprin -- the affidavit itself was prepared by Mr. Halprin, that during the period of time itself there were two agents that assisted, and I am not sure what part each of the three individuals play; but the three individuals, two in addition to Mr. Halprin, would you identify the two agents -- Agent Woods and Agent Price.

MR. TAIKEFF: Thank you.

The second matter, your Honor, is that at this time the defense is considering the possibility of calling Leonard Crow Dog. One of the factors which will determine whether or not we do call him is whether your Honor, pursuant to the application I am now making, suppresses {3644} for use on cross examination his prior Federal convictions, neither of which

concern any conduct which would go to his propensity for telling the truth.

I do not have specific details about those convictions. I think one of them arose out of an assault which we have heard something about on trial. He was a participant in some way or other, he was convicted. I understand by what is probably quadruple hearsay that the Judge in that case found in the main that his principal wrongdoing was that as a spiritual leader he did not interfere and stop the fighting which apparently he had the power to do.

THE COURT: You are not suggesting that I exclude or make a collateral inquiry into the justice of his prior conviction?

MR. TAIKEFF: Not at all. I am merely revealing, your Honor, the full extent of my knowledge on the subject and characterizing it properly so that your Honor doesn't think I am offering personal knowledge of the subject.

THE COURT: Thank you.

MR. TAIKEFF: The other conviction, I am not sure of, it may have arisen out of the Wounded Knee occupation and may have something to do with the fact that there were two Federal employees -- they may have been postal employees -- who came into Wounded Knee because there is a small Post Office there; and these two men were captured, {3645} if I may use that word, by certain of the occupiers of Wounded Knee; and in certain ways Leonard Crow Dog was involved in their restraint for a certain period of time.

These are the two events which lead to Federal convictions, and I believe that neither of them reflects in any way upon his ability to testify truthfully; and on that basis I would ask if the Government won't voluntarily restrain themselves from impeaching him with his convictions, that the Court suppress the convictions for such purposes.

MR. HULTMAN: I haven't had a chance to brief this, your Honor; but I would at this time indicate I would fully intend to use those convictions the same as I would fully expect the defense at any time any witness is going to appear on behalf of the Government who has been convicted of a felony, would be a proper matter and a proper inquiry; and I am not prepared at this time because, one, I have not seen the specific request, and two, I remember one of the convictions very well because I was there in Cedar

Rapids when the trial took place in Cedar Rapids, so I am very familiar with that one.

So at this point on the record I would indicate that I would fully intend to use those as a basis within, within what the present law is, for whatever purposes I can use it. I would in no way indicate anything to the {3646} contrary.

MR. TAIKEFF: My brief reply is that case law before the publication and effective date of the Federal Rules of Evidence has held that the Court has discretion in connection with convictions, to suppress them particularly if they have no relationship to the tendency on the part of the witness to tell the truth, so that a conviction for larceny would surely be something that could be used for impeachment. A conviction for some act of violence might be, but need not necessarily be.

I believe that that case law was adopted in the Federal Rules of Evidence, but I regret at this moment I cannot say to your Honor what I think the Rule number is.

THE COURT: Well, I was just sitting here reading the Rule and listening to you at the same time.

The Rule 609 says: "For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant or (2) involved dishonesty or false statement, regardless of the punishment." {3647}

Then there is a 10 year time limit in the next sentence.

What would Mr. Crow Dog testify to, what would be the substance of his testimony?

MR. TAIKEFF: It would concern events on the Rosebud Reservation in September of 1975.

MR. HULTMAN: Well, I think, your Honor, on the basis of that -- and I haven't had a chance to go back and brief the law -- but I think on the basis of that, for the one specific offense involved, goes to the very

kind of matter and the very issues that are involved in this case as well as the fact that were the Government deprived of that opportunity, then we are left with a witness who is put in the posture of being a medicine man, which he is, and the cloak of honesty, the cloak of lawfulness, the cloak of uniqueness that a person in that posture has; and I think it would be doubly critical for the Government under that cloak to have the opportunity to show that he is a convicted felon and especially of the type and nature of what that felony is, or felony was.

THE COURT: The holding of the Court would be, in view of the testimony that would be elicited from this witness, that a showing that he had been convicted of a felony within the last 10 years would be admitted.

MR. TAIKEFF: Your Honor, I am wondering whether there {3648} has been report made to the Court by the Marshal concerning the Marshal's efforts to contact Myrtle Poor Bear?

THE COURT: Not directly to me. I do not know whether Mr. Hanson has any information or not.

THE CLERK: I have none, your Honor.

MR. TAIKEFF: I just wish to remind the Court that in the conversation with Chief Deputy Warren which I think took place yesterday, he indicated to me that he would report to your Honor sometime early today. That's my vague recollection, and I would respectfully ask the Court to make some contact after the close of court this afternoon so counsel could be advised.

THE COURT: I will try to get a report from Mr. Warren this afternoon.

MR. TAIKEFF: The only other matter I have, your Honor, is an administrative one. It concerns the fact that the defense team intends to devote this weekend in the main to discussing its closing argument and preparing counsel for same.

We would like to allow our client to participate in that activity. It is going to be an activity participated in by every member of the defense team; and since the Defendant has been here throughout the proceedings and has listened intently to the testimony, he will have many reasons to be there and because of his presence he would {3649} be able to make contributions concerning his observations in the courtroom.

I would ask your Honor in view of the fact that the Marshals have never had any difficulty with him, they don't seem to have to take any

special precautions with him, as I have observed it, that your Honor allow us during the hours of 9:00 to 5:00 to work in Room 326 and have Mr. Peltier present with the appropriate number of Marshals standing guard outside.

THE COURT: There may be a problem with that because of the availability of the Marshals, particularly on Sunday which Easter Sunday.

MR. TAIKEFF: I would modify my request in light of that then to be Saturday only.

THE COURT: Let me finish what I was going to say.

For your information I was just going to mention that the Marshal will, of course, because of this jury being sequestered, have to give special attention to them on Easter Sunday.

MR. TAIKEFF: I understand.

THE COURT: And it will require more personnel.

MR. TAIKEFF: I understand that, and I think if the arrangements could be made for Saturday, it would be very helpful to all of us if Mr. Peltier could participate in that critical phase of the proceedings.

{3650}

THE COURT: You are asking for 9:00 to 5:00?

MR. TAIKEFF: Yes, your Honor.

THE COURT: I will take that up with Mr. Warren.

MR. TAIKEFF: I appreciate that, thank you.

THE COURT: By the way, as long as you are talking about that -- and I realize this is premature -- but do counsel for both sides have any requests to make to the Court as to how much time should be allowed for argument? I thought it might be something you might want to consider at this time if you are going to be discussing it.

MR. TAIKEFF: I am glad your Honor asked. I would appreciate if I could respond after Mr. Hultman because I think my answer would be more dependent upon his than his upon mine.

MR. HULTMAN: Very frankly, I haven't given it any thought of any kind, but I would suggest two hours. I don't think I intend to take that long, for both opening and closing, but I would think two hours would be at least --

THE COURT: (Interrupting) Well, in a trial of this length I am inclined to be liberal. On the other hand, each side will have the same

amount of time, and the Government will have to divide their time between their opening and their closing.

MR. HULTMAN: I understand, your Honor, that's why I am making at least a suggestion because counsel said that {3651} he was going to determine on what I said. I don't know what that really means, but I would like to have two hours, for a total of opening and closing.

MR. TAIKEFF: I trust that your Honor will find no offense in what I am going to say. If your Honor is ever inclined to be liberal, I am inclined to take the maximum advantage of it.

MR. HULTMAN: Are you suggesting that isn't enough?

MR. TAIKEFF: No. I said what I said. I trust the Judge understands the good spirit in which it was said.

THE COURT: Is there a hidden message in that?

MR. TAIKEFF: No, your Honor, it is a public message.

In any event, it is said with respect. I hope your Honor appreciates that.

THE COURT: I appreciate the humor of it.

MR. TAIKEFF: Thank you, your Honor.

Since your Honor wishes to allow both sides to have the same amount of time, I think from what I anticipate, as most trial lawyers do, having an idea of how it is going to go in summation from the first word of testimony, that perhaps your Honor should allow each side to have up to three hours which would give the Government two hours approximately to make its principal closing and then up to an hour -- he doesn't have to divide it that way -- to make his rebuttal summation; and I think that I could not {3652} have a sense of security about being able to say all that might appropriately be said if there were not up to three hours allowed.

I would hope to do it in less, but I would like your Honor to allow up to that time.

THE COURT: What is the response of the United States?

MR. HULTMAN: Well, the Government certainly has no objection of any kind, your Honor.

THE COURT: Very well. Counsel may then count on time for argument, when we get to that point of the trial, of up to three hours on each side.

MR. TAIKEFF: May I assume that the second portion, the so-called

rebuttal summation of the Government will indeed be a rebuttal summation, but not merely a continuation of what might have or should have been presented initially, that is to say, it is to answer specific arguments?

THE COURT: That is the requirement of the Rule.

MR. HULTMAN: I will do my best to stay within the Rules, that's for sure.

MR. TAIKEFF: If Mr. Hultman has any difficulty, your Honor, I will do my best to help.

MR. HULTMAN: I know that will be the case.

MR. TAIKEFF: Although I would like to say now -- so that Mr. Hultman understands what I said was meant {3653} primarily to be facetious -- I think that summations should never be interrupted by adversaries; and I hope that both sides are going to make a very, very strong effort to do so. Unless an extreme violation of the basic rule of not referring to something that isn't in evidence is broken, I don't think there should ever be an interruption of closing argument.

MR. HULTMAN: Our feeling is very mutual.

MR. TAIKEFF: He has the same feeling.

Your Honor, the defense has submitted to the Court by this time its requested charge, and because there are now countervailing considerations on the same subjects, we counter-proposed, as it were, some of the Government's proposal.

{3654}

MR. TAIKEFF: I'm wondering whether Your Honor would consider setting aside the time, but not necessarily fixing the time now, to hear argument as to those items where the Court be assisted in hearing from Counsel. We've submitted at least one and I think two memoranda of law as well as a rather lengthy set of proposed instructions and at sometime we would like to have an opportunity to make our view of the situation known in oral argument.

THE COURT: I believe that could be arranged.

MR. HULTMAN: Your Honor, I have just one matter and again I don't wish to press Counsel, and that's not my reason, but tomorrow is Friday and I would like to know as soon as reasonable whether or not Mr. Kelly is going to be called. Tuesday is going to be here and he has to get here

and come on Monday. That's more reason for my request. I might know as soon as possible.

MR. TAIKEFF: I will answer that question and possibly provide some additional information that may assist the Court and the government. I think that the defendant's case will end by Tuesday evening. Of course, we can never tell when we get into a complicated situation and may prolong our expectations by a day or two. There are no special problems and no lengthy cross-examination beyond that which is anticipated, I think that three more full days of evidence are the maximum that will be necessary. {3655}

But now to specifically answer Mr. Hultman's question. This evening I think the final plans with respect to which witnesses to call and the order of proof will be made, but surely by 9:00 o'clock tomorrow morning, and at that time I'll be able to inform Mr. Hultman of our decision with respect to Mr. Kelly.

MR. HULTMAN: That's very satisfactory. Thank you, Counsel.

THE COURT: Very well.

I might mention, however, before Mr. Kelly is called you're going to have to get the approval of the Court.

MR. TAIKEFF: Your Honor, the twice mentioned procedure would be adhered to without question.

THE COURT: Very well.

MR. TAIKEFF: Your Honor, there is one last question and that is that in the next day or two a few witness whose tenure on the stand will not be very lengthy would be ideal for Mr. Engelstein and/or Mr. Ellison to examine and I'm wondering whether Your Honor would object in any way if we gave each of them the opportunity to do that.

THE COURT: I will allow that.

Are Counsel ready for the jury?

MR. TAIKEFF: Yes, we are, Your Honor.

MR. HULTMAN: Yes, Your Honor.

(Whereupon, the following proceedings were had in the {3656} courtroom in the hearing and presence of the jury:)

MR. TAIKEFF: Your Honor, the defense will call Jim James.

Your Honor, I'm sorry. I just received a report before that Mr. James

had arrived from Oregon but apparently he's somewhere in the building so instead at this time we'll call Marvin Stoldt.

MARVIN STOLDT,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TAIKEFF:

Q Is your name Marvin Stoldt?

A It is.

Q Do you wear those sunglasses with prescription lenses?

A No.

Q Do you have any illness that requires that you wear them?

A No.

Q Would you mind taking them off so I can see your eyes?

A No.

Q Thank you.

A Does that look all right to you?

Q Yes, it does.

A Okay.

Q Are you angry with me about something?

A No. I'm in a habit of wearing sunglasses. I feel more comfortable with them on.

{3657}

Q I understand that. But I would like the jurors to see your facial expression when you testify.

Have you ever spoken with me in your life in person or on the telephone?

A Not as I recall.

Q How come you're here today?

A Because I was subpoenaed here.

Q Now your name, your full name is Marvin A. Stoldt?

A Right.

Q What is your present occupation?

A I'm a heavy equipment operator.

Q And in 1975 what was your occupation?

A I was a police officer for the Bureau of Indian Affairs.

Q Where did you work?

A Pine Ridge.

Q Were you on duty on June 26th, 1975?

A Yes.

Q And where did your official duties take you that afternoon?

A I was in the vicinity of the Jumping Bull residence.

Q And how did you go from the vicinity to wherever you went, if you went anyplace?

A In a vehicle.

Q How did you know you had to go someplace?

A I was called there.

Q On the radio?

{3658}

A Yes.

Q And what time was it that you received that call?

A At approximately, roughly around 11:30, 12:00 o'clock.

Q When you went to your assigned place, exactly where did you go?

A That depends. When I was called the first time I went immediately towards the Jumping Bull residence and turned back at Jumping Bull Hall.

Q Do you see the chart behind you, Government Exhibit 71?

A Uh-huh.

Q Do you recognize what it shows?

A Yes, I do.

Q And is that the Jumping Bull area?

A Yes.

Q Now sometime during the day you worked with a group of other law enforcement officers, is that correct?

A That's correct.

Q And when did you first join up with other law enforcement officers, approximate time of day?

A Oh, soon after 12:00 o'clock.

Q And where was that that you joined them?

A Approximately where it says three and three-tenths miles to Oglala. Approximately that area right there (indicating).

Q On Highway 18?

A Right.

{3659}

Q Where did you go from there?

A From there we went to the vicinity that's not marked on this map. There's a back road that goes all the way around this area (indicating).

Q Is that Highway 35?

A I don't recall if it was a highway. It's a road. But goes behind the dam there.

Q Let me just ask you in light of other testimony that we have had, is that a road that starts on Highway 18 in the direction of Oglala and goes around the Jumping Bull area and gets back to Highway 18 towards Pine Ridge?

A That is correct.

MR. TAIKEFF: Would the government stipulate that's Highway 35?

MR. HULTMAN: Yes. I assume it is. I don't know the number, Counsel.

Q (By Mr. Taikeff) Now where were you on that highway 35, if you can look at this chart and give us some indication in reference to some point on the chart, perhaps that would be helpful.

A Approximately to the rear of this wooded area back in here (indicating).

MR . TAIKEFF: The witness is pointing to the lower right-hand corner of Exhibit 71.

A That would be approximately southwest of Jumping Bull's {3660} residence.

Q And how far back from the Jumping Bull residence is that road which we decided to call Highway 35?

A Well, actually, it's maybe, could be 700, 800, maybe 900 yards, you know.

Q Something in the vicinity of a half mile?

A Uh-huh.

Q What time of day did you get to that point approximately?

A Oh, roughly around, between 12:00 and 1:30 perhaps.

Q And for how long did you stay in that vicinity?

A Roughly between that time and maybe after 4:00 o'clock sometime.

Q And when you left that vicinity, where did you go first?

A Well, I headed back towards Highway 18 back around that area there

where it goes back (indicating), you call that Highway 35 back and towards, that would be Highway 18.

MR.TAIKEFF: The witness has indicated a circular motion going clockwise around the periphery of the diagram.

MR. HULTMAN: Counterclockwise.

MR. TAIKEFF: I'm sorry. Counterclockwise. Thank you.

Q (By Mr. Taikeff) Now when you left that area and traveled back to Highway 18 on Route 35, what kind of a vehicle were you in?

A A police unit.

{3661}

Q And were there any other people in the vehicle?

A After I had left that area there?

Q Yes.

A No. I was alone.

Q What sort of activities were you involved in immediately after getting out of that vehicle that you were in alone?

A I was turning back some people that were causing a disturbance at a roadblock.

Q Now did you then return to the wooded area or --

A Yes.

Q -- the scene of events around Jumping Bull Hall?

A No. A gun battle broke out and I was called to assist.

Q Where was that gun battle?

A Well, it isn't shown on the map there but it's the road that runs between Highway 18 and this wooded section area here (indicating). It was about halfway between here (indicating).

Q Halfway between the wooded area and that part of Highway 18 which travels east-west?

A Right.

Q I'm sorry. That part of Highway 35 which travels east-west?

A Uh-huh.

Q Okay.

Where was the shooting coming from that you were involved in at that time?

{3662}

A The shooting was, it begun over in the wooded area. There was shooting at a police officer and then they bypassed him and they headed south, southwesterly direction.

Q Initially I think you pointed in this vicinity. Is that where you pointed when you said there was a shooting incident or was it further up?

A I'd like to say I was engaged in shooting all day but this one here, two of them I was involved in (indicating).

Q All right. Let's talk about the one that you refer to as a shooting incident of people shooting at a police officer. Did you make any determination of where that shooting was coming from initially?

A Yes.

Q Where was that shooting coming from?

A Up in that area right up there where the creek bottom is, south from there (indicating).

Q That is to say a place slightly below what we have been calling tent city and about six inches to the right on the diagram.

What time of day was it that there was shooting up in that vicinity?

A Hard to say. There was gun battle going on and nobody was looking at watches. But between 2 a.m. and 4:30 approximately.

Q How many different locations in this general area did you detect shooting that was being done by people who were not law {3663} enforcement officers?

A We couldn't see exactly where all of the shooting was coming from, but they were coming from the Jumping Bull residence there and some coming from the Jumping Bull residence there (indicating).

Q Stop one second.

MR. TAIKEFF: The first place the witness pointed to was on top of the crest designated "residences, body of Joseph Stuntz." The second place he pointed to is to the left and somewhat below marked "residence" on the chart and I think previously with a magnetic device that said "red and tan house." That's the two places.

Q (By Mr. Taikeff) Go on.

A There was shooting came from the tree level area there (indicating).

Q Here?

A Yes. On the edge there.

Q Right here?

A Uh-huh.

Q That's the area to the right of the Y intersection that has been variously labeled including "Z1."

Go on.

A There was gun firing coming from the areas marked "Williams and Coler." Shooting coming from that area, too (indicating).

Q Right here?

{3664}

A Yes.

Q The words on the chart are "bodies of SA Williams and SA Coler."

Go ahead. Any other places you detected shooting coming from that day?

A Yes. But it isn't on the map.

Q Help us by using the map as a reference point.

A We were dug in in an area that is, as I said before, to the southwest of this wooded area (indicating).

MR. TAIKEFF: Let me explain that for the benefit of the record that the witness has designated a place which is approximately in the middle of the right-hand third of the exhibit and below the lower edge of it.

Q (By Mr. Taikeff) How far below would you say? If the chart were extended, could you approximate how much longer the chart would have to be?

A 200 yards beyond that.

{3665}

Q Two hundred yards below the lower edge of the chart?

A Yes.

Q Now, when you were in that area was it a wooded area?

A No. We were pretty much exposed.

Q And where was the firing coming from?

A Well, we were caught there at one time in cross-fire. They were behind us and in front of us.

Q Now, those in front of you, were they inside the wooded area?

A No. They were shooting from up in that area there (indicating).

Q The area of the residences on the crest?

A Yes.

Q And where was the other firing coming from that put you in cross-fire?

A As I said before it wasn't on the map. It was to the rear of us, a hill there. We were pinned down between a hill and a flat area here (indicating).

Q That second place where the firing was coming from, was that on the Jumping Bull side of Highway 35, or was it on the far side of the Highway 35, remembering that Highway 35 is the road that goes around the chart as I'm showing you with the pointer.

A Okay. With the second bunch of firing was coming from the south. Well, I would say the west side of Highway 35.

{3666}

Q It was west of the highway?

A Right.

Q All together by the highway, is that all of the locations from which you detected firing that was not coming from law enforcement positions?

A Well, I didn't look up all the times to see where it was coming from because I was afraid I might get hit.

Q There was a lot of shooting going on?

A Yes. A whole lot of shooting going on.

Q And that went on all afternoon?

A Yes.

Q And how many years were you a police officer as of that afternoon?

A Oh, about a year.

Q Had you ever been in a fire fight before?

A Yes.

Q Anything of that magnitude, of that size?

A No.

Q Could you tell us, based upon both your memory and your observations of that day the total number of people that you counted or that you estimate were shooting at you or your colleagues, your law enforcement colleagues that afternoon?

A I don't think there's any way of determining that, you know.

Like I said, you're not going to stand up and expose {3667} yourself with bullets zipping around you, you know. There's no way that you can count that. I don't think anybody can.

Q I understand that you can't make a precise count, but surely it was more than two people?

A Oh, yes.

Q And surely it was less than a hundred people?

A (No response.)

Q So now we have the lower and the upper limits. Could you give us some kind of idea, not a guess, but based upon your own observations the sound that you heard, the rapidity with which firing came, the differences and the kinds of sounds that different guns make? Could you tell us what your observations were concerning the approximate number of people whose firing you detected?

MR. HULTMAN: Your Honor, I would object to this. I think the question has been asked and has been fairly answered. I have no objection if counsel will ask with reference to those specific places to which he has alluded to. If again he can't tell, well, approximate. But I think otherwise this is pure guess and speculation.

MR. TAIKEFF: I think that's a suggestion I'll take, Your Honor, if I may.

THE COURT: Very well.

MR. TAIKEFF: Take the positions one at a time and tell us from what you saw, from what you heard your best estimate {3668} as to how many people were firing from each of those locations.

A There was, from the area of this lower area, sounded like a semiautomatic weapon to me at times because I'd hear him crank off fast rounds, you know.

Q Which is that, the residence up by the crest or the red and tan house on the left?

A Yes.

Q We've been calling that the red and tan house?

A Yes. That area there. And it's hard to say other than that. I couldn't say anything more than that.

Q At least as to that location there was at least one person?

A Could have been two with automatic weapons.

Q Okay. How about up at the residences by the edge of the crest?

A In the heat of battle you don't stop to count bullets or shots. You just try to keep down.

Q I understand that, but did you have some impression? I'd like you to share that with us.

A I have no impression, you know.

Q How about in that area in the upper right-hand part that you pointed to earlier somewhat below and to the right of tent city? You told us of an incident up there, or did you recall about -- what do you recall about that?

A Well, as I said I heard over the radio that it was a gun battle broke out there and I was to lend assistance.

Now, I couldn't very well tell you how many shots were {3669} being fired because I was somewhat two hundred yards up the road there, you know, working with these other people. And I was just called over to assist. I went over there and assisted.

Q Any impression about the kinds or the number of weapons being fired by non-law enforcement people in connection with that incident?

A No. All I could see was five people running up the hill.

Q What time of day was that?

A Like I said it could have been any time between 2:00 and 4:30, you know.

Q Which hill are you speaking of, by the way, when you say you saw people running up the hill?

A Well, it's, the hill is in a, once they get in a southwesterly direction, but more further south. There's no way of showing it on a map. It's pretty rugged terrain and it would take a heck of a big area to cover all that area.

Q It's off the right-hand side of the chart is what you are saying?

A Right.

Q How about any incident or any incidents in the wooded area, or the lower portion of the chart. Do you have any information to give us concerning the possible number of people, possible number of weapons or

possible kinds of weapons?

A No.

{3670}

Q Now, at some time that afternoon you made a sighting at a distance, did you not?

A Yes.

And in connection with that you reported to the FBI that you could identify one or more people?

A Yes.

Q Now, I would like you to start at the beginning of that particular aspect of the afternoon by telling us what time it was, where you were, what you were doing and then tell us the details about that.

A Okay. Approximate time, I can't really say the time of the sighting. I would again say between 2:00 and 4:00. Nobody was looking at watches. We were in the heat of battle.

There was some commotion and one of the officers that we were with mentioned that he had seen some people break out of the woods area there and running up in a plowed field. I was standing with several other officers and one of them asked about a weapon. I don't recall at this time who it was. I thought possibly Fred Coward. I grabbed his weapon and looked through the scope to see if I could make an identification on it; but I wasn't getting a clear picture.

One of the other officers that I was with had a pair of binoculars, I think they were 735's with zoom lenses on them. He handed them to me and I looked through the binoculars. And I was pretty certain I had identified two people out of that.

{3671}

Q Now, what did you do if anything concerning the subject of your observations? Did you speak with someone about it? If so, whom, where and when?

A At that time I didn't speak that particular incident to anybody except I ran out to where one of the FBI agents was in his car with his radio; and I asked him, I told him that I knew the terrain, the lay of the land and which way these five would probably break out, and to try to get a back-up unit to try and head these guys off.

I went back inside and they dropped out of sight. They had gone into that tree area there (indicating).

Q Go ahead.

A I then, I then was called back outside for some reason and my radio came on. And I was asked to come and render some assistance to some police officers that were operating a roadblock.

Q You went to that FBI agent and told him about what you had seen and your knowledge, did he do anything about it?

A Yes, he did. I didn't told him, I didn't state to him what I had seen. I only told him that these five had run across the field and that I knew which way they were going to break out.

And I asked him to get assistance. And there was so much going on on the radio, there was gunfire and there was other people on the radios, and he was trying to make contact with a unit that would come to our assistance and at this time he couldn't.

{3672}

Q Did you think that I asked you whether you told him the name of the person you had seen?

A Yes. That's what I thought you asked me.

Q I see. Now, did he transmit this information?

A He was trying, but like I said there was other police officers on the radios and all the transmission was all tightened up, you know, you couldn't break out.

Q This was definitely an FBI agent; is that correct?

A Yes, it was.

Q Now, those binoculars that you say you looked through, they weren't yours?

A No. Belonged to one of the other officers.

I don't think they were his personally. I think they were some we checked out from the Government.

Q Now, Agent Coward had a rifle with a telescopic sight on it, right?

A Yes. He was using a rifle of that type that day.

Q And before you looked through the binoculars you looked through his telescopic sight, right?

MR. HULTMAN: I object. That's not a correct statement. This witness

said that it may have been. He did not say it was.

MR. TAIKEFF: Coward?

MR. HULTMAN: Mr. Coward.

MR. TAIKEFF: I'll stand corrected on that.

{3673}

MR. HULTMAN: All right.

Q (By Mr. Taikeff) The person you think it was, was Coward; is that correct?

A That's possible.

Q But you are not absolutely certain?

MR. HULTMAN: Let him answer.

A That's possible, but there were a whole group of us officers and there were several of them that had scope-mounted rifles.

Q How many of them?

A Maybe three, maybe four.

Q And you took one of the rifles?

A Yes.

Q From a person you think was Agent Coward, might have been Agent Coward?

A Possible, yes.

Q And you looked through?

A Yes.

Q Describe to the jury what you saw when you looked through.

A Well, when I had looked through the scope two people had already dropped down into the tree area. I picked up one running in the scope, you know, and then I swung the scope to the one running last and I swung, I couldn't get a clear picture of him. All I could see was running objects of human beings in the scope.

And I handed the scope back and grabbed the binoculars from one of the other guys, you know, and used the binoculars.

{3674}

Q What prompted you to take someone else's binoculars instead of saying to that person "Use your binoculars, take a look up there"?

A Because he wasn't using them. Since he wasn't using them thought I would use them, you know.

Q Well, when you first saw this group of people how many were in the group?

A Approximately five.

Q And when you then looked through that telescopic sight there were less than five, right?

A Right.

Q And you determined that the reason you saw less the second time was because they were moving, and the first two had gone to position completely out of sight, right?

A Right.

Q So time was of the essence?

A Yes.

Q And if you waited too long they would all be out of sight, right?

A Right.

Q Did you say to the man with the binoculars, "Hey, take a look up there quickly"?

MR. HULTMAN: Well, I object that this is clearly leading, Your Honor. I don't have any objection if he asks what if anything he observed.

{3675}

THE COURT: Sustained. But he's answered.

Q (By Mr. Taikeff) Do you know the names of the other agents you said had telescopic rifles?

A Yes, I do.

Q In your group who were present at that time?

A Yes. I remember at least one of them, you know, for a fact, you know, beside Agent Coward that was carrying a scope on a rifle that day.

Q What was that agent's name?

A He was BIA police officer Pourier.

Q Can you spell his name?

A P-o-u-r-i-e-r. Delbert Pourier.

Q Do you know whether he took a look and saw anything?

A No, I don't, you know. It was a lot of excitement going on in that window, you know.

Q But the rifle that you took was from a person who was a special agent of the Federal Bureau of Investigation; is that right?

A No, I didn't say that.

Q Oh, I'm sorry, I misunderstood you. I thought you said there were several agents there who had rifles with telescopic sights. You thought it might be Coward, but you're not absolutely certain. It may have been one of the other agents; is that what you said?

A There was, yes, there, like I said before, there was other {3676} agents there that had telescopic rifles, you know. But as I said we were all grouped at this window trying to get a look at these guys going across there, you know, and it could have been anybody.

I could have grabbed Coward's rifle, I could have grabbed another agent's rifle, I could have grabbed Delbert Pourier's. I just grabbed a rifle and looked through the scope.

Q When you looked through that scope before you looked in the binoculars you saw the figures of three people; is that right?

A Right.

Q And there was no doubt in your mind that you were looking at three objects which were human forms, right?

A That's correct.

Q Could you see any detail?

A Through the rifle scope?

Q Yes.

A I really couldn't say, you know. Like I said it was hot, it was a lot of excitement going on, sweating. Maybe I had sweat in my eyes. Looking through a rifle scope like that, you know, especially if you just swing it up, if you know anything about rifles and guns you got to, sometimes your eye relief isn't all the same on the rifle. Each man sets his according to himself, you know. But as I said I could see human figures running there, you know.

{3677}

Q Could you see any features of any kind on the faces?

A Through the rifle scope?

Q Through the rifle scope.

A No.

Q Now, putting aside the presence of BIA officers, could you tell us the number of FBI agents?

A Three.

Q Who were there at that time, who had telescopic sights on their rifles?

A One of the agents was out in the car. Two of them that were with us by the window there.

Q The window of what?

A The Pumpkin Seed residence.

Q And what were you doing immediately before the time you first saw these human figures at a distance?

A Well, prior to that --

Q I mean immediately before, I don't mean three minutes before. I mean seconds before. What were you doing?

A Ducking bullets.

Q Where were you ducking bullets?

A In the Pumpkin Seed residence?

Q Inside the residence.

A Right. We were all near the window area.

Q How many windows are there in the Pumpkin Seed residence facing east?

{3678}

A Facing east? There's one, and then there's one over on the, sort of the north side there.

Q On the north side facing north, or on the north side facing east?

A Well, the house is set in such a way it's sort of catty- corner to that area. So if you look from the north window you can see the Jumping Bull residence, and if you look from the east window you can also see them.

Q How many people all together were in that room at the time when you first saw the figures at a distance?

A Seven of us.

Q And how many FBI, and how many were BIA?

A There was two RBI, and the rest of us were BIA.

Q Was Agent Coward one of the people in the room that time?

A Yes. He was watching out the window that sits catty-corner on the north side.

Q So then if you looked at a telescopic sight which was on a rifle

being held by an agent of the FBI it either had to be Coward or one other person, is that right?

A No. There was, like I said, there was another agent there, and I'm quite certain he had a scope-mounted rifle.

Q Well, the FBI had how many rifles with scopes in that room?

A Two, as I recall.

Q And was Coward carrying one of them?

A Yes.

{3679}

Q Let's, for the moment, call that second person Agent X , all right?

A All right.

Q So we have a shorthand.

Now, tell me whether the following is true: The gun which you took and looked through before you looked through the binoculars was either handed to you Agent Coward or Agent X?

MR. HULTMAN: Well, I object again, this being an unfair question, Your Honor. This witness has already indicated that there was another BIA agent who had such a weapon, and that there were seven people in the room.

I think it's a very unfair question and I objection to it on that grounds. Cumulative, been asked and answered.

MR. TAIKEFF: Never been asked, Your Honor.

THE COURT: I don't think it's in accord with his previous testimony.

MR. HULTMAN: And further, Your Honor, that it's totally leading.

THE COURT: The objection is sustained.

Q (By Mr. Taikeff) Did you get that rifle with scope from a special agent of the FBI?

A I don't recall.

Q Is it a fact that the identification you made was made through binoculars?

A Yes.

{3680}

Q Are you absolutely, positively certain of that fact?

A Are you quoting out of my 302? Way I look at it if that's what you're quoting out of because that happened almost two years ago, you know, and you don't remember everything, you know.

{3681}

Q I press my question, sir, are you absolutely certain?

MR. HULTMAN: Well, again I object, your Honor, on the showing that this time counsel is trying to elicit an answer to which he has already given an honest response.

THE COURT: He did not actually respond to the question. He asked a question of his own.

Q (By Mr. Taikeff) My question, sir, is: Are you absolutely certain that the identification you say you made was made through a pair of binoculars?

A Like I said, I don't recall that. It was almost two years ago, you know.

MR. TAIKEFF: Your Honor, I would like some leeway in asking what might be considered leading questions in view of that last answer.

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, your Honor.

Q (By Mr. Taikeff) At the beginning of your testimony, didn't you tell us in essence that with your naked eye you saw some people?

A Yes, that is correct.

Q That you made use of a rifle with a telescopic sight that was in the hands of someone nearby?

A Yes.

Q That that was not sufficient for you to see anything other than the general outline of human forms?

{3682}

A Yes.

Q That there was another BIA person there with binoculars?

A Yes.

Q That you took those binoculars, put them to your eyes, looked at what was now a smaller group and identified at least one person, actually made an identification, wasn't that the substance, the essence of what you said at the beginning of the testimony you gave here today?

A I never said anything about positive identification. I think you are implying that, you know.

Q All right. Putting aside for the moment the question of whether

it was a so-called positive identification, you made some kind of identification?

A Yes.

Q Other than that word, "positive", being there, didn't I just fairly summarize what your testimony was 10 or 15 minutes ago?

A Yes.

Q Now, sir, will you explain why you say, when I ask you if you are certain that you made that sighting through the binoculars, that you don't remember?

A Well, like I said, that was almost two years ago. You don't remember every minute detail that happens that far back, you know.

Q Well, did your loss of memory occur in the last 15 minutes? {3683}

A No.

Q Well, when I originally asked you the questions, why did you say you looked through binoculars?

A I did look through binoculars, you know. I told you that once, you know.

Q Why did you say you made whatever identification you made through the binoculars?

A Because I did,

Q Are you sure of that?

A Sure of I did or sure of using the binoculars?

Q Sure of using the binoculars.

A I am sure of using the binoculars, yes.

Q You are sure you made whatever identification you made through the binoculars?

A Yes.

Q So you didn't forget?

A I don't know what you are trying to do.

Q I am afraid I can't say what I am trying to do. I regret that.

MR. HULTMAN: Well, I object to that, your Honor, as being clearly inappropriate on the part of counsel.

THE COURT: The statement will be disregarded.

Q (By Mr. Taikeff) What kind of binoculars were those that you used

that day?

A Standard Government issue, I imagine. They have a zoom on {3684} them, you know.

Q How does that zoom work, where is the mechanism, what part of the binoculars is it attached to itself?

A Up near the adjustment, the focus magnification, there is a switch you pull over, you know.

Q Do you know how much power that binocular is capable of giving you?

A No. No, I don't.

Q Did you ever know?

A No.

Q Is it fair then to conclude that you never told anyone what power that binocular was?

A That's possible I never told them. Why should I tell someone when I don't know anything about it, you know?

Q I have no quarrel with you about that.

That day, after your involvement with the binoculars, did you ride in an automobile with any agents of the FBI?

A Yes, I did.

Q How many times?

A Oh, twice. Twice.

Q Can you tell us the approximate time of day in each instance?

A Like I said, it could have been any time after 2:00 o'clock into, you know, 6:00 o'clock, for all I know, you know.

Q On the first occasion how many agents were there?

{3685}

A Oh, there was a lot of excitement going on there. I recall some of the BIA I was with. The agents, the only one I remember is Fred Coward. Some of them -- there were some SWAT teams from other organizations, probably the State Patrol or something, that were also there that we joined up, so I couldn't really say. It was just a big group of us, you know.

Q Is it accurate to say that you were once that afternoon in a car with Agent Coward?

A I may have been with Coward and several others, you know.

Q On June 26th did you discuss with Agent Coward what you had seen through the either telescopic sight or the binoculars?

A It is possible that I did.

Q Do you have any recollection of doing that?

A There was a lot going on that day, you know.

Q Yes, we know that. I asked you whether you have any recollection?

A Maybe yes and no, you know.

Q Those are the only two possibilities, isn't that true?

A Um-hum.

Q So now tell us whether you have any recollection of it, "yes" or "no".

A Like I said, I may have and I may not have. I don't remember, you know. There was a lot going on, I said.

Q That day was June 26, 1975. When was the next time you either saw or spoke with Agent Coward?

{3686}

A About two months after that.

Q Do you remember what month that was in?

A I think probably around in September sometime.

Q You made reference before to 302's?

A Yes.

Q You know what a 302 is, it is a FBI report, right?

A Yes, I know what it is.

Q When was the last time in your life you ever looked at a 302?

A It has been some time, you know. I really couldn't say. It may have been when I was up there in Cedar Rapids, you know. It may have been then, I don't recall exactly.

Q But not within the last month?

A No.

Q Did you see Agent Coward two days later on June 28, 1975?

A No.

Q Is it possible that you have forgotten, and that only you and Agent Coward were alone in that building?

A No.

Q That's not possible?

A It is not possible.

Q By the way, in connection with your report to the FBI Agent about spotting people --

A (Interrupting) Um-hum.

Q (Continuing) -- do you know Agent Skelly?

{3687}

A Yes.

Q Was he the person to whom you made that statement?

A What statement?

Q That you saw some people running, and you told us you went to a FBI car to tell them that you saw people running and that because you knew the terrain, you could figure out where they were going to come out?

A Yes, that was Ed Skelly.

Q And do you recall anything that he attempted to say into the microphone of his radio?

A No. I seen -- he already had his radio in his hand when I ran up, and I told him and I went back inside the building.

Q Right away?

A Yes.

Q In other words, you didn't hear what he said?

A No.

Q Then please be kind enough to tell this jury how you knew he had trouble trying to make a transmission?

A Because he told me that after I came back out. He told me that. They were calling me on my radio -- he couldn't get through -- he was to lend assistance up to the roadblock.

Q He couldn't get through on your radio?

A On a police radio you can pick up transmissions from other units, you know. You don't necessarily have to be in Skelly's unit or my unit or Coler's or Williams' unit. You could have {3688} been in any unit. The transmissions are the same, you know, unless one is State and one is local, you know.

Q You testified before the Grand Jury in this case?

A What?

Q Did you testify before the Grand Jury in this case?

A No.

Q Did you previously testify under oath in any proceedings concerning this case?

A Yes, in Cedar Rapids.

MR. TAIKEFF: May I have a moment to consult with Mr. Hultman, your Honor?

THE COURT: You may.

(Counsel confer.)

Q (By Mr. Taikeff) Do you know what a Grand Jury is?

A Yes.

Q This is not a Grand Jury, right?

A No, this is the jury.

Q This is a petit jury?

A Right.

Q Now, did you ever testify before a Grand Jury in connection with the June 26th incidents?

A Not that as I recall.

Q Does it refresh your recollection any if I suggest to you that on November 24, 1975, at slightly after 5:00 p.m. you testified before a Grand Jury in connection with this case?

{3689}

A It is possible. Maybe I did, you know.

Q Well, that's why I am asking you. What is your best recollection?

A I am trying to think, o.k.?

Q You think while I get this document marked for identification.

A All right.

Q I am going to place before you the document which has just been marked Defendant's Exhibit 196 for identification. It is not in evidence so it cannot be read from except under special circumstances.

I want you to look at it for as long as you think necessary to possibly refresh your recollection.

A (Examining) I am trying to remember where this took place, you know.

Q Wait a second. No one said anything took place. All I am asking you is to look at that document, don't reveal what it is and see if it

helps you. Don't comment on it because it is not in evidence.

(Counsel confer.)

Q (By Mr. Taikeff) Yes. Mr. Stoldt, don't hesitate to read beyond the first page. You can look at any part of that document, just don't read from it outloud.

A (Examining).

{3690}

Q Have you looked at it?

A (Witness nods affirmatively.)

Q After having looked at that document, do you have a different recollection?

A Yes.

Q What is your recollection now?

A What confused me is I have been to several grand juries and, you know, can't always remember the date and stuff, you know, and other incidents I was involved in, you know.

Q How many times did you testify about the June 26th incident before a grand jury?

A Just that one time.

Q Now when you went before that grand jury, were you under oath?

A Yes.

Q For all practical purposes, it was the same oath that was administered to you by Mr. Hanson here?

A (Witness nods affirmatively.)

Q And you understood that that obligated you under the law to tell the truth as you knew it at that time, right?

A Yes.

Q Now when you were asked questions in the grand jury room, you listened to the questions so that you would give the correct answer, isn't that right?

A Yes.

{3691}

Q And as far as you know you didn't lie to that grand jury, is that right?

A As far as I know; yes.

Q You didn't make anything up?

A No.

Q Well, didn't you tell them that you had a pair of binoculars?

A No. Not as I recall; no.

Q And didn't you tell them that it was a 15 power set of binoculars?

A It's possible.

Q It's possible?

A There was a lot of things going on that day, you know.

Q You said that five or six times.

But explain, how is it possible that you told them it was 15 power if a few minutes ago you said you didn't know and you couldn't tell anybody something that you didn't know?

A Well, maybe at that time I thought they were 15 power. 17.35 to 15 power zoom binoculars are very popular, you know.

Q Do you deny that you told them that it was 15 power?

A No. I'm not denying it.

Q Do you remember that you told them?

A I don't remember that either.

Q All right.

Take a look at the page marked 144 in Exhibit 196 {3692} reading from lines 5 through 16 to yourself.

MR. TAIKEFF: Do you have a copy, Mr. Hultman?

MR. HULTMAN: Yes.

Q (By Mr. Taikeff) Did you look at that page, sir?

A Yes, I did.

Q Now in looking at that page, do you have any recollection now whether you told the grand jury that you had a pair of binoculars that were 15 power?

A Approximately 15 power; yes.

Q Yes. I'm sorry. You told them that you had a pair of binoculars that were approximately 15 power.

A Uh-huh.

Q Can you explain to us how it happened that you gave such testimony to the Grand Jury?

A Because at that time I did have in my hand, I had taken it from

someone but I had a pair of binoculars; yes.

Q How about the 15 power?

A That was an assumption at that time; yeah. I said approximately on that statement there and that's the way it's going to stand.

Q I show you Defendant's Exhibit 195 --

MR. TAIKEFF: But first I show it to Mr. Hultman and his colleagues.

Q (By Mr. Taikeff) Did you ever see that document before in your life or a copy of it or the original?

{3693}

A Yes.

Q You've seen it before?

A No, I don't. I don't recall seeing that before.

Q Earlier in your testimony you said that in Cedar Rapids you read some 302s.

A Yes. It's possible I may have seen that there. You know, I don't recall.

Q That was last summer, was it not, either June or July?

A Yes.

Q And you were called as a witness in the trial in Cedar Rapids, is that right?

A Yes.

Q How many 302s did you review on that occasion?

A I don't recall, you know. I just looked at a bunch of papers, glanced through them, you know.

Q Have you had a chance to read the exhibit which I placed before you a moment ago?

A Yes.

Q Based on things which you know of your own personal experience, just answer this question yes or no, is there anything in that document which is factually incorrect?

A The date.

Q What date?

A 6/28/73. I never saw Coward after the 26th of June.

Q Where do you see that date?

{3694}

A Up on the top there.

Q Up on the upper right-hand corner?

A That's right.

Q Now, sir, may I have the document, please.

Is it your testimony here and now when you looked at the document you said the date in the upper right-hand corner, saw it was June 28th and realized that that was a mistake because you hadn't seen him on June 28th, is that right?

A That's correct. I never saw him on June 28th.

{3695}

MR. HULTMAN: Well, I object, Your Honor. Now counsel is trying to make out that there is an inconsistency of some kind, and I think the documents --

MR. TAIKEFF: No inconsistency, Your Honor, not at all. I promise Your Honor I will pursue it to a logical and proper conclusion.

THE COURT: Proceed.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) Did you discuss with anyone in the last month, any other human being, your possible appearance and possible testimony in this case?

A I never saw any of those agents again after June 26th, until maybe two months later.

Q I'll ask my question again.

In the past month have you talked with or consulted with any other person concerning the content of your testimony in this trial? That's the last month.

A No, I don't recall.

Q You don't recall or no.

A I don't recall. No.

Q You didn't speak with Agent Coward in the last month?

A I hadn't seen him.

Q I asked whether you spoke with him. You've heard of the telephone I assume?

A No. I have never spoke with him.

{3696}

Q Did anyone tell you anything about a possible wrong date --

A No.

Q -- on one of your reports?

A No.

Q And you looked at this document, 195 for identification, carefully when you were looking at it, did you not?

A Yes, I did.

Q And you read, wherever there were words, you read the words?

A Yes.

MR. HULTMAN: Your Honor, could I voir dire just two simple questions. There's a possible basis for an objection.

MR. TAIKEFF: I object to that, Your Honor. I'm about to conclude this line of questioning.

THE COURT: Well, the voir dire is --

MR. HULTMAN: I object.

THE COURT: Just a moment. Voir dire is normally for purposes of establishing a foundation for an objection, and there's no questions pending.

MR. HULTMAN: Well, Your Honor, counsel has had all kinds of questions about a given document that he's all but offered in front of the jury, and we all know that there's a date 6/28/75 on the face of it. And I'd just like to voir dire to establish that I think anybody looking at it would come to the same conclusion.

MR. TAIKEFF: Well, that's precisely the point of this {3697} part of this examination and I think I can do it quite well myself.

MR. HULTMAN: That's the basis why I'd like to voir dire.

MR. TAIKEFF: May I proceed to the next question?

THE COURT: You may proceed.

Q (By Mr. Taikeff) Isn't it a fact, sir, that the date that you referred to of June 28, 1975 in the upper right-hand corner has preceding it the printed word "date of transcription"?

MR. HULTMAN: If he can read it. Will you ask him that?

MR. TAIKEFF: No, I will not. And I do not appreciate signals being thrown to the witness.

A Yeah, I can read it.

Q (By Mr. Taikeff) What does it say?

A "Date of transcription 6/28/75".

Q What does that mean to you?

A When that was written, that piece of paper there.

Q What does that have to do with any day that you saw or didn't see Agent Coward?

A What does that got to do with it? Because it simply says that I didn't see him on that date.

Q It says you didn't see him on that date?

A I'm saying I didn't see him on that date, you know.

Q Does date of transcription, 6/28/75 mean to you that he {3698} saw you on that date?

A It's possible he may have seen me on that date, but I didn't see him.

I never talked to him. I never saw him from the 26th of June until sometime in September.

Q Isn't it a fact, sir, that what you were referring to was in the lower left-hand corner, that someone alerted you to that, said interviewed on 6/28?

MR. HULTMAN: I object, Your Honor, as that being highly improper.

THE COURT: The statement "That someone alerted you to" will be disregarded.

Q (By Mr. Taikeff) Weren't you referring to the fact when you gave your answer about you didn't see him on the 28th, weren't you referring to the fact that in the lower left hand corner it says "interviewed on 6/28/75"?

A I was looking up at the top and I recall that I never saw him on the 6/28/75.

I saw him the last time on the 26th of June, 1975.

I never saw him for two months later.

Q Anything else in that document which you found to be actually incorrect?

A No. I can't see anything else on there.

Q Then isn't it a fact that you told Agent Coward that with the use of his 7 power binoculars --

{3699}

MR. HULTMAN: If it please the Court may we approach the bench?

THE COURT: You may.

(Whereupon, the following proceedings were had at the bench:)

MR. HULTMAN: Your Honor, I haven't objected but very, very seldom. This is direct examination, this isn't cross-examination, and I object on the grounds that counsel is not proceeding properly. But again it's obvious he's setting up a strawman, first of all in trying to destroy. The misleading things that he's just now put before the jury, there's nothing in that document, other matters that he's talked about up to this particular time, that are in any way but to destroy a witness in some way for which he is called.

Now, I further object on the grounds that he's again trying to get information from a 302, reading from it in fact in front of the jury as if it were cross-examination at this particular point, and I object to the procedure.

This witness, we know did not write that 302. This was somebody else's.

MR. TAIKEFF: But it purports to say that he did, and if he said what's in there, that's inaccurate. And furthermore if you object I'll offer it in evidence.

THE COURT: Just a moment.

MR HULTMAN: Are you finished, Counsel? When you're {3700} finished --

MR. TAIKEFF: I'm sorry.

THE COURT: We might just as well have stayed at the counsel table. All right.

MR. HULTMAN: My objection, Your Honor, is that it's an improper use, and it's an improper method. This is direct examination and he has no basis in which there's been no showing of any kind that at this particular time that there's anything inconsistent in any way.

He hasn't even elicited what the response is going to be, and he's already set up a strawman assuming that the response is going to be something different than what he's got.

MR. TAIKEFF: Your Honor, I'm proceeding under 607 under the Federal Rules of Evidence.

THE COURT: You mean impeaching your own witness?

MR. TAIKEFF: That's correct.

THE COURT: Well --

MR. TAIKEFF: And I am prepared to introduce the entire document if Mr. Hultman thinks it would be fairer.

THE COURT: Well, the problem is, as I see it, this witness seems to be totally unable to state definitely one way or the other --

MR. TAIKEFF: But, Your Honor, he read the document and I asked him whether he found any factual mistakes other {3701} than the question of the date. He said there's nothing in there that is factually incorrect.

THE COURT: He has also testified at least twice that he didn't know what the power was.

MR. TAIKEFF: And could not possibly tell it to anybody. And now I'm inquiring about how is it possible, if it is possible, if in fact it occurred that he told the agent --

MR. HULTMAN: That's the strawman.

THE COURT: He is your witness, and you do have the right under that rule to impeach him. I'm not going to, however, if you're going to offer this exhibit I'm not going to receive this exhibit. You can question him with reference to the statement made at that time.

MR. TAIKEFF: That's what I started to do, and that's when the objection came.

THE COURT: Very well.

(Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

Q (By Mr. Taikeff) My question, sir.

A Yes.

Q Is: Did you tell Agent Coward on June 26, 1975 that with the use of your 7 power binoculars you were able to identify somebody in that group of people?

A As I recall I said I didn't positively make identification.

Q Put aside the positive identification aspect of it. The {3702} question that I'm focusing on is the possibility of whether or not you told Agent Coward something about your 7 power binoculars.

A Yeah. It's possible I did.

Q What would have been the basis of your telling him something about 7 power binoculars?

A I don't know. Maybe we were discussing binoculars.

Q You mean just in general?

A It's possible.

Q Did you ever say to him that with the use of your 7 power binoculars you focused on those Indian males whom you saw at a distance?

A It's possible, sir, yes.

Q Didn't you tell us much earlier that you didn't know what the power of those binoculars were and that they weren't yours?

A Yes. Told you earlier that they were approximately 735, you know, on up. Zoom binoculars, you generally are, you know.

MR. TAIKEFF: Does Your Honor want me to conclude at this point?

THE COURT: Are you about ready to conclude?

MR. TAIKEFF: Noting Your Honor has closed his book the answer is yes.

THE COURT: Very well. Are you going to want this witness held?

MR. HULTMAN: No.

MR. TAIKEFF: Oh, yes, I'm not finished with my {3703} examination.

THE COURT: You are not finished with your examination. Very well. Court is in recess until 9:00 o'clock tomorrow morning.

(Whereupon, the Court recessed at 5:00 o'clock, P.M.; to reconvene at 9:00 o'clock, A.M. on April 8, 1976.)

{3704}

(Whereupon, the following proceedings in chambers:)

THE COURT: First of all, I want to report that I just talked to Mr. Warren on the telephone and he said that he will arrange that 9:00 to 5:00 Saturday matter with the defendant. It may create problems for him but he'll do it.

MR. TAIKEFF: Thank you.

THE COURT: He said his report on Myrtle Poor Bear is no different than what he gave you yesterday. He again attempted to contact her at noon today. I said, well, maybe I'd suggest you talk directly to him. She just apparently has disappeared.

MR. TAIKEFF: Your Honor, I want to say that I anticipated something

like this happening. That in itself doesn't tell anybody anything factual except that I have an active intuition. But I just want to say at this particular time by way of encouraging Your Honor to grant whatever relief we decide to ask Your Honor for tomorrow morning that when Mr. Crooks came to me that afternoon to report that she was available he told me that she was about to be released from protective custody. Up to that time and for a long time she had been in protective custody. I don't know why. But I will assume there was some good reason for it. The moment that we heard that she was in protective custody and was about to be released we raced to Mr. Hanson and got a subpoena hoping that we'd at least get that much of a hook into her.

{3705}

My instant reaction at that time, and again it's very subject, I just tell it to Your Honor for historical reason if there is no other reason, I sensed that that woman was going to disappear, that after all these months and possibly almost two years of her being in protective custody, suddenly when we decided to use her as a witness she was being released from protective custody. We were informed and I have reason to believe that it's true if a witness doesn't want to be in protective custody there is no way under the law that you can force it upon that witness.

THE COURT: That's right.

MR. TAIKEFF: So we did not press to have her held in protective custody, but we elevated her status from that of a person who was subject to the call of the subpoena to that of a material witness. By serving her with that subpoena a little after 5:00 on the day in question which was returnable the next morning, we placed a certain kind of obligation on the marshal. I think the marshal would have been embarrassed to say the least if he let her go then and she didn't show up the next morning. When she showed up the next morning we made an application which resulted in Your Honor declaring her as a material witness. Your Honor is aware of the fact she has signed at least two and possibly three separate affidavits saying that she was standing right there and watched the agents being shot.

{3706}

THE COURT: I am not aware of it other than what you people may have said to me. I have not examined the record.

MR. TAIKEFF: I meant to say Your Honor is aware of it because Counsel has represented to you that that is the fact.

THE COURT: All right. All right.

MR. TAIKEFF: Your Honor held her as a material witness and signed a warrant which was merely a technicality because she was down the corridor and she was technically arrested on the warrant and was taken to the magistrate, I understand. The order of arrest or the warrant specifically provided that she could be released on a thousand dollar PRB. We consented to that.

THE COURT: Excuse me. You didn't consent to that.

You requested it. If you had requested a bond other than PR I would have granted it. I thought of it as the same as I did on Angie Long Visitor.

MR. TAIKEFF: Your Honor is quite correct.

THE COURT: I remember I had it in mind at the time. I remember when you asked for it. I remember Mr. Lowe, when Mr. Lowe asked for the PR bond I know the thought entered my mind, "They must know her pretty well if they're willing to let her go on a PR bond."

MR. TAIKEFF: Your Honor is quite correct. Actually if I finished my sentence Your Honor would have known the intent {3707} of my statement.

THE COURT: Excuse me for interrupting.

MR. TAIKEFF: We didn't want her to fail to meet the bond and be incarcerated. There is perhaps a defect in all defense lawyers but they just don't like to see people behind bars.

THE COURT: Well.

MR. TAIKEFF: In any event, we felt a PRB would be sufficient because she'd be subject to the same requirements of the law and the same punishment if she failed to appear.

Then something hard to imagine took place. She was arraigned before the magistrate and she was not bailed. She was just turned loose.

THE COURT: I don't know. That has been reported to me by Ralph or somebody and I didn't know what the explanation is. I have not talked to the magistrate. I don't know how that could have happened.

MR. HANSON: I don't believe I reported it to you, Judge.

MR. NELSON: I did.

THE COURT: Sometimes get those two fellows mixed up. Mike reported

to me.

MR. TAIKEFF: But in spite of the fact that she had not been formerly bonded, she did apparently comply with the requirements that she keep in touch with the marshal up to a {3708} point which was last Sunday and then all of a sudden she stopped communicating.

Now I think she's a very important witness, an exceptionally important witness and I have to think about this and consult with my colleagues on the defense team as to the extent of the assistance that we need from the Court to make sure that we find her before this case goes to that jury, and I'm afraid under the circumstances I can't help but think that this just didn't happen itself. I can't point the finger at anybody or anything and I cannot specifically indicate to Your Honor what item of relief we'll ask for but I will tell you Your Honor that we are very much concerned with the fact that we don't have her to call as a witness. I know the government isn't here and I won't say anything new to disadvantage them. But if the facts we allege with respect to her involvement in those affidavits is as we say, that is a very, very serious piece of conduct on the part of certain government officials.

THE COURT: I'm not willing to accept the fact because I have no knowledge or information, I am not willing to accept the fact there is anything irregular here other than the fact this woman apparently doesn't want to come back.

As I say, because of the fact that I was prepared to set a monetary bond on her.

MR. TAIKEFF: I don't dispute that, Your Honor. I would {3709} say that Counsel encouraged Your Honor to do it that way.

But there is no question it originated with us out of a desire to make sure there is a compulsion but no incarceration. That's true. I wanted the record as well as Your Honor to be clear.

THE COURT: I don't want to go into this any further now.

You're making a certain, I was going to use the word insinuations, I guess that's too strong, you're questioning whether the government may have had anything to do with this or someone. I'd rather if you're going to go into something like that we do it when they're present.

MR. TAIKEFF: We will by tomorrow morning be in a position to make

application to Your Honor with respect to this matter and there is no sense speculating on what we will do at this particular time.

THE COURT: The reason I asked you to come in this afternoon and at 5:00 o'clock today is on this last request for subpoenas for another five people. I asked the clerk to give me a list of the number of subpoenas that you have indicated so there would be, there is 54 or 53 plus 13 government witnesses that maybe you would wish to recall plus these five.

I have been issuing subpoenas on the affidavit, or the certificate that they are necessary for an adequate defense, {3710} but a comment you made in court yesterday and another comment you made in court today after I had asked you to come in here leads me to believe that an awfully lot of these witnesses may be just taking a free trip across the country.

MR. TAIKEFF: Many of them are not taking trips, they are remaining subject to telephone calls.

THE COURT: That's just what I wanted to clarify. I believe that in an indigent case that where counsel certify it is necessary for adequate defense I shouldn't have to go behind that. But on the other hand, I don't want, just because it's government money a lot of money coming in from all over the country just for the trip or just for an interview.

MR. TAIKEFF: We have an investigator working out and can interview five people in five different locations.

THE COURT: This was the reason or thought that came mind was that was one of the reasons I gave you this appointment of investigators.

MR. TAIKEFF: I want Your Honor to know before anyone's name is certified there is sufficient discussion to satisfy either me or Mr. Lowe that such a person is really a potential witness.

Now in the last day I interviewed a number of people and I was quite certain that I wanted to call them. Two of them I had to decide I wasn't going to call. I can't prevent that from happening from time to time. {3711}

THE COURT: I appreciate that.

MR. TAIKEFF: There are many people standing by who are not making the trip until they're actually told their testimony is needed.

MR. HANSON: May I interject a point at this time. I'm starting to sound like Mr. Hultman. Two witnesses have now been excused, one has been

certified for payment, the other one has been requested certified for payment. Frankly it disturbs me that one was here twelve days --

MR. TAIKEFF: For us?

MR. HANSON: The other one I think eleven days. We're being asked, I suggested to you I think --

MR. TAIKEFF: Are you talking about Fools Crow?

MR. HANSON: Would be him. Fools Crow I think was one. He never did testify, quite frankly. One never did testify and the other one testified sometime today, He Crow I think in one instance he's been here eleven days and the other one twelve days. A point that maybe you would want an explanation at this point.

THE COURT: I wasn't aware of that information but this is kind of in line with what I'm talking about.

MR. GILBERT: There was a point in the government's case when we were anticipating they would finish on the Friday or Monday that we're now referring to. I think it was the 27th was Monday, 28th.

{3712}

MR. TAIKEFF: 28th was Monday.

MR. GILBERT: We had reason to believe the government was going to finish approximately Monday or Tuesday of that particular week.

MR. TAIKEFF: They told us that.

MR. GILBERT: I was down on the reservation doing investigation and trying to arrange logistically the getting of people from the reservation up to Fargo. It's a very isolated place down there and people have to plan. It's a tough trip. Some people don't take planes. Some people have to drive. I told people they should get there by Sunday or Monday with the anticipation they may be called earlier that week. It turned out once they arrived in Fargo that a severe blizzard, snowstorm hampered the reservation.

THE COURT: I'm aware there was a very bad snowstorm.

MR. GILBERT: We couldn't get through to a lot of people. Rather than taking an 86 year old man and sending him back to Pine Ridge and having him subject to recall we felt it was best to keep him here.

THE COURT: I guess all I'm asking you is you monitor and keep control of it. As long as you give me your assurance we're doing it, fine.

MR. TAIKEFF: With the sensitivity to spending the money as if it

were our own, we do that, Your Honor.

THE COURT: That's all I was concerned about.

MR. ENGELSTEIN: It's partly ours.