United States District Court

FOR THE DISTRICT OF NORTH DAKOTA

Southeastern Division

CR NO. C77-3003

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	**U.S. District Court for the District**
v.	*	**of North Dakota,**
	*	**Southeastern Division**
LEONARD PELTIER,	*	
	*	
Defendant.	*	

VOLUME I

Pages 1-54 [Original; Pages 1-22 herewith])

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TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that heretofore, on Monday, the 14th day of March, 1977, the above-entitled cause came on regularly for trial in said court at the hour of 9:30 o'clock, a.m., before the Honorable PAUL BENSON, one of the Judges of said court, at Fargo, North Dakota, and a jury duly empaneled.

A p p e a r a n c e s:

The Plaintiff was represented by its attorneys, Mr. Evan Hultman, United States Attorney, Sioux City, Iowa; Mr. Lynn E. Crooks, Assistant United States Attorney, Fargo, North Dakota; Mr. Robert L. Sikma, Assistant United States Attorney, Sioux City, Iowa; Mr. Bruce Boyd, Sioux Falls, South Dakota; and Mr. Richard E. Vosepka, Minneapolis, Minnesota.

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The Defendant was present in person and was represented by his attorneys, Mr. Elliot A. Taikeff, New York, New York; Mr. John Lowe, Charlottesville, Virginia; Mr. Stanley Engelstein, New York, New York; and Mr. Terry Gilbert, Cleveland, Ohio.

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W h e r e u p o n, the following proceedings, among others, were had and entered of record, to-wit: (Voir dire examination and empaneling of the jury.)

* * * *

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WHEREUPON,

the following proceedings were had and entered of record on Wednesday afternoon, March 16, 1977 at 3:10 o'clock P.M., the jury being present and the defendant being present in person:

MR. SIKMA: May it please the Court, ladies and gentlemen of the jury. It's a difficult task which is going to confront you in the next couple of weeks. You are going to have to decide whether or not Leonard Peltier is guilty beyond a reasonable doubt of the charges which the judge just indicated to you. It's a serious charge so you have to be concerned and you have to listen carefully to the evidence. But it's also a very serious matter from the other point of view because there are two men whose lives were taken away while they were 27 and the other 28 years old, two young FBI agents. And as I say this to you, because it's important not only to make sure that you don't convict a defendant when you have a reasonable doubt as to his guilt but it is also important for you to keep in mind throughout the course of this trial that you make sure that justice is done. You cannot waiver from that point of view. You must see that justice is done. So I ask you to keep that in mind as you consider what is happening during the course of this trial. That's an awesome responsibility for you. You must also realize there are human weaknesses and frailties, things that must be taken into consideration. All that will be asked of you is that you do your very best under these circumstances.

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There's going to be inconvenience, there's going to be time and delay, arguments of Counsel. Throughout the course of the trial government's counsel, defendant's counsel are in an adversary position. This is an adversary proceeding. The government presents its evidence in the light most favorable to the government and the defense presents its evidence in the light most favorable to the defendant.

Then the judge instructs you on the law. You look at the facts and compare it with the law and you determine whether the government has proven its case beyond a reasonable doubt. While you're taking these matters into consideration, there will be two types of evidence that you're going to consider, or rather three types of evidence. First of all, you're going to listen to the witness' testimony. Then you're going to see exhibits, various exhibits which are offered into evidence. Then you're going to hear about stipulation.

Well, stipulations are things that the government and defense agree upon. There are some things that the government and the defense counsel all agree upon. We have established certain lines which we will confront each other on certain types of evidence. So one of the things that's not evidence is what I say to you right now. This isn't evidence. But this is what I expect as an advocate, what I expect the evidence is going to show.

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Now I'm not going to be able to tell you all the evidence which I expect to come in and I can't read minds and I can't tell the future so I can't always say what the witnesses are going to say to you during the course of this trial, so you keep that in mind. Just remember those things.

You remember that what I say during the course of this trial, what defense counsel says is not evidence. Listen to what the witnesses have to say.

The government's contention when you listen to the evidence will prove the defendant's guilt beyond a reasonable doubt.

The defendant is charged with a crime, with two offenses: first degree murder, the murder of Ronald A. Williams, special agent of the FBI, while he was in the course of his duties as an agent. The other charge is first degree murder of Jack R. Coler while Jack R. Coler was in the official capacity as an FBI agent carrying out his sworn duty.

Let me tell you a couple things first about Ronald Williams. Ronald Williams is a native of Los Angeles. He was 27 years old at the time he died. Ronald Williams was sent to Rapid City as a special agent of the FBI a couple years prior to the time that he died. A couple months before he was killed he was assigned to the Pine Ridge Indian Reservation.

Jack Coler was also from Los Angeles, California. He was 28 years old at the time he died. He was also a special agent {6} of the FBI. He was assigned to Denver, Colorado. That was his permanent assignment, but because of the case load, I believe the evidence will show that he was sent to Pine Ridge, South Dakota to work on some of the cases on the Indian reservation.

Now the FBI has the responsibility of investigating major crimes on the reservation. Among them the crime of robbery, crimes of burglary, the various felony crimes.

On the 24th of June, 1975, Ronald Williams and Jack Coler were assigned the case of James Theodore Eagle. James Theodore Eagle was at that time on the reservation and he was charged with a crime of robbery. Since there was a Warrant outstanding, it was their duty to find James Theodore Eagle.

Now if I may for a moment to give you some idea of the areas involved, the map on the right, the large map is an area which is on the Pine Ridge Indian Reservation in South Dakota. It is the general area where the crime took place. This is the area, as you can see a thing here that says, "Coler's Car." And you'll see an arrow there that says, "The bodies of William," and, "SA Williams and SA Coler."

This is a larger map of the western part of the United States and a small part of Canada. We will be using this during the course of the trial. The purpose of using these maps is because the

evidence is very great. It's an area which you're undoubtedly all unfamiliar with and we're going to use this as an aid to you during the course of the trial.

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While these maps will be available to you and so forth, they are not as such items which were found or items which were part of the criminal investigation.

The Pine Ridge Indian Reservation where this took place is located here in the southwestern part of South Dakota. As you will notice, it is about 100 miles southeast of Rapid City, South Dakota.

The agents on the 25th were working in the town of Pine Ridge and another town of Oglala, South Dakota.

If you look at this map, you'll see here this is an area going towards the north. Now in most cases the map would be on ends like this and you can see it's going to be large enough and so you will be able to see the map that you have to have it somewhat larger than it is and by having it a rectangular map in this manner, we can't, we have some of the exhibits too high so it's easier for us to place this map in a manner like this. Keep that in mind and it will keep you some, give you the idea of the directions involved.

Highway 18 will be discussed a lot during the course of this trial. You will notice here that the Jumping Bull Hall, see this, "Jumping Bull Hall," this area on the map is generally known as the property of Harry Jumping Bull. Highway 18 runs past Harry Jumping Bull's property.

To the northwest Oglala, South Dakota is located, about 3.3 miles. Pine Ridge is located 12.2 miles to the southeast of the Jumping Bull Property.

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Now on the date in question, or before the date in question, on the 24th to be exact, James Theodore Eagle and three companions were charged with a felony offense as I stated earlier.

At that time a Warrant went out for their arrest. Two of the other individuals were arrested and Agents Williams and Coler were assigned to look for James Theodore Eagle.

I believe the evidence will show that James Theodore Eagle had been seen in the area of the Jumping Bull property.

Now you'll notice that there are one, two, three, four houses here. The evidence I believe will also show that in the back area, there's an area back here to the southeast of the Jumping Bull's main residence which is a wooded, in a wooded area which had a number of tents and I believe the evidence will show that the defendant and his companions were staying in this area for a couple of weeks prior to the date of the 26th of June.

Now I believe the evidence will show that Jimmy Eagle was observed in this general area and consequently Special Agents Williams and Coler went to look for him on the 25th, the day before the date of the murders.

On the evening of the 25th they appeared there. I believe the evidence will show that they could not locate him but were advised at that time that he had been there but that he was gone.

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I believe that the evidence will show that on the next day they once again set out to locate Jimmy Eagle and serve him the rest of it.

Now this is the time, I remind you, when the defendant and his companions, about twelve of them, were occupying the area in a tent and they were also in the area of these residents from time to time.

On the afternoon of the 26th of June at about 11:00 o'clock Special Agent Adams, while he was working, assigned to another case in that area, drove into Pine Ridge, South Dakota which I mentioned is about twelve miles to the southeast of the Jumping Bull residence.

Will he was there he did not speak with Special Agents Williams and Coler but I believe that the evidence will show he was well-acquainted with Special Agent Williams.

He observed Special Agent Williams talking with another agent and determined that Special Agent Williams was going out to look for James Theodore Eagle and that they were going in that direction.

Shortly before noon, since he was by himself, he left in the opposite direction to the south to go out to get some lunch. This was about quarter to 12:00 on the 26th of June.

While traveling in his car he heard a radio transmission and because he knew Special Agent Williams well he recognized his voice and he heard something to say to the effect that they {10} were following a vehicle. It seems that it was a red and while vehicle of some kind; that he heard other communications which indicated that they were still following the vehicle and then he heard the communication, "It looks like they're going to shoot at us," and then immediately over the sound of the of the radio net he heard the sound of gunfire.

He immediately stopped his car and turned around and headed back toward the Pine Ridge, or toward the Oglala area.

When he turned around he made some contact during this time with Special Agent Williams. He heard him state that he had to get on the high ground. He heard him talk about Jumping Bull Hall.

He did not know precisely where Jumping Bull Hall was but he drove in that direction. He knew that it was in the Oglala area so he drove in that direction and met two agents, or two Bureau of Indian Affairs police officers and they directed him toward Jumping Bull Hall.

Meanwhile Special Agents Williams and Coler were following a vehicle.

Apparently and, I believe that during the course of the trial you will have to put evidence together. Sometimes circumstantial evidence is the best evidence that there is to show a certain thing.

If you see someone, for example, if you go to an island {11} where no one, where you think no one has been but you see footprints in the sand, you know that someone's been there. Even when you see the trees bowing you can't see the wind but you know that the wind is there so you can tell that.

Circumstantial evidence is the same way. So we're going to take physical evidence during the course of this trial and present that to reconstruct the events which took place.

I believe that this evidence will show that Special Agents Williams and Coler traveled down this road; that when they got down to here they were communicating with Special Agent Adams to the fact that he'd better get on the high ground or they'd be dead men;

That at this time Special Agent Williams and Coler, while they were armed with their service revolvers, did not have on their person a long rifle.

Now I believe that the, this will show that the area from the housing to the bottom of the hill is approximately two hundred yards. Now with a pistol, I believe the agents will be able to testify that with a pistol that's a long ways to fire with any accuracy.

However, with a high-powered rifle that's a very short distance to fire.

Special Agents Williams and Coler, Special Agent Coler apparently got out of his car and went to the trunk where he had a 308 carbine rifle.

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I believe that the, that he took the weapon out of his car and at this time I believe that Special Agent Coler's car was parked in a manner which was pointing it right towards this green house because that's where it was found. It was found in this area; the trunk was open.

I believe that Special Agent Williams' car was running parallel to this road that runs along an area which takes the bodies of Special Agents Williams and Coler.

I believe that the evidence will show that during this time while the gunfire was going on Special Agent Williams was trying to get Special Agent Adams to find the location;

That while, Special Agent Coler meanwhile went to the back of his car to get a gun out of the trunk, the 308 carbine, that a bullet went through the trunk and went into his arm and nearly tore his arm off.

It was in such a manner that I believe the evidence will show the injury would have been so great and cause such extreme pain that he would have been disabled from it. He may have eventually gone unconscious from it.

Sometime during this time Special Agent Coler, or Special Agent Williams was shot in the shoulder. The bullet went from the top of his shoulder out his underarm and into his side. He was shot with a 44 magnum carbine.

At this time or sometime after he was shot I believe that the evidence will show that he took off his shirt and made {13} tourniquet for Special Agent Coler's right arm.

I believe that Special Agent Coler at that time was laying out alongside of his car.

I believe about this time while he was doing this the defendant Leonard Peltier and his companions came from this area of the, of these cars here. There are some junk cars that were parked along there. There are some houses in this area. I believe the evidence will show that they were being fired at from these two areas.

A number of individuals were firing at them with high powered weapons;

That when they stopped firing, that the defendant and his companions went to the bottom of the hill; when they got to the bottom of the hill, that Special Agent Coler had been, or Special Agent Williams had been shot two times.

He had been shot in the left shoulder and he was wounded in the side. He was shot in the right foot.

And at that time while ho had his hand extended in front of his face and the defendant and his companions at close range, the gun was placed up against his hand and the trigger was pulled, a high-powered weapon.

The bullet went through his hand and into his face and tore away the back of his head.

He was, I believe medical evidence will show, was killed instantly.

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Special Agent Coler at this time was laying on the ground unconscious or unable to defend himself.

I believe from the photographs, from the reconstruction of the events you will see that while Special Agent Coler was laying on the ground the gun was held not more than four feet from his forehead. He was shot in the right side; that the bullet carried away the top front part of the skull. This would not in itself probably have been a fatal shot but immediately thereafter he was shot in the side of the jaw on the right side. The bullet went through his jaw, tore away the bottom of the jaw and killed him instantly.

Meanwhile Special Agent Adams and two Bureau of Indian Affairs police were coming, were traveling from Pine Ridge down toward this area.

Special Agent Adams I believe will testify that he heard gunfire during this time. Special Agent Adams will then state that they went down this road and he drove his car to this point right here by the residence which is in the northwest area of the residence of Harry Jumping Bull;

That in this particular, when he got to this point, that his car and the car of the Bureau of, BIA police was fired upon, both front tires shot out of the vehicles.

He began backing up into this area and he backed his car until he got to an area right along here parallel with Highway 18. There's an old road which is to the southwest of {15} Highway 18 running parallel to it and his car got stuck there, while a front tire was shot out, he had a flat tire.

He couldn't move and he remained pinned down and stayed in this area throughout the afternoon until 4:30 that afternoon.

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Throughout the afternoon more agents came. I believe that the Government and the Defendant will agree that Special Agent Williams and Coler died approximately 12:00 o'clock noon; and so at this time, if you recall, if you look at the evidence, I believe that you will find that at this time the offense had already been committed. I believe that at that time the agents were already dead, had already been murdered; but other agents and other police, members of the Bureau of Indian Affairs, moved into the area in an attempt to capture the persons who had fired the shots.

Now, we will have a mock-up for you, I believe, in the courtroom -- I believe that counsel for both sides have agreed; and it will be helpful to you to understand.

Now, there is a line here that says "crest of plateau". This area along here (indicating) which you follow is a plateau, and this (indicating) is a level table top flat area. The area along the trees at the bottom of the map, where it says "wooded area" and the "tents" on it, there is a small creek running and this (indicating) is much lower than the area here (indicating).

Now, right along here (indicating), where it says the "crest of plateau", right along this road (indicating) it drops down about 30 feet so while Special Agent Adams was here, up from the crest of the plateau (indicating), {17} unless he got over to the edge of the crest, he could not see Coler's car. If you were down here (indicating), in the bottom of it, below the meadow in the wooded area, the land drops off immediately almost. It isn't like a cliff, but it is very close to that, drops down another 10 feet. Agents going into this area (indicating), who would come out of the tree line or to the edge of the tree line would be fired on. Agents who would come anywhere near this plateau area, along here (indicating), would be fired at from the residents so that it wasn't until 4:00 o'clock in the afternoon before any one of the agents was able to get there.

During the afternoon a couple of times there were attempts made to negotiate with the people in this area. I believe though that the evidence will be that all negotiations were unsuccessful. One of the assailants was killed during the course of the gunfight in which the agents were trying to get into the area; but I believe the evidence will show that during the time from 12:00 o'clock until 4:30, until the agents' well-being was known, that no one was certain as to whether or not Special Agents Williams, Special Agent Coler were hostages or what their condition was, so during this time I think you will find very little firing was done by the law enforcement agents going into the area.

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Later in the afternoon the Defendant and his companions, about six or seven of them, or eight of them, met in the area by the tents. They waited there for awhile. They loaded a red and white Chevy van with supplies and discussed whether or not they would attempt to run the roadblock. They decided to abandon this idea and decided to escape out the back way which they did, and they traveled for a couple of days into the hills around the -- toward the direction of Pine Ridge and in various areas, and eventually their trail was lost.

A few days later they went to an area which you will see on the other map is designated as Rosebud. This is another Reservation which is to the southeast of the Pine Ridge Indian Reservation; that while they stayed there for some time -- the Defendant and his companions stayed in this area for some time.

On September 5th the FBI had warrants for a number of persons. One of them, namely Al Running, his son. They had warrants for a number of people living at the Al Running residence. In serving these warrants they arrested a man by the name of Butler and others; but Dino Butler was a man, I believe the evidence will show, who was in the area of the tents, was living in the area with Leonard Peltier.

I believe that the evidence will show that around {19} this area certain evidence was found, firearms, spent cartridge cases and so forth were found in the area of the Al Running residence where the Defendant had been and where Dino Butler was arrested.

But on of the things that was found in an automobile on that property was Special Agent Williams' service revolver.

Another thing that I should note is that later on, I believe that it was on the 12th of September, on the turnpike in Wichita, Robert Eugene Robideau, Mike Anderson, two people who were there at the crime scene, who had been observed firing at the agents, who had been living in the tents, were driving in a vehicle with some other persons. While they were driving there at this time their car caught fire. The muffler got hot, and the car caught fire. They ran from the vehicle, but it exploded. The vehicle exploded, and a number of items were found. One of the things that was found in this vehicle was a 308 carbine rifle. In this 308 carbine there was -- this was a gun that was assigned to Special Agent Coler.

Now, there was also a firearm found there that was connected to the crime scene.

Now, during the course of the trial we are going to use a variety of exhibits in order to help you. Now, I am just going to give an example. This is Government {20} Exhibit 34-b. It is a spent cartridge case, and you can see that his is in this area (indicating).

Now, Government Exhibit 34-b, when it is offered into evidence, is going to be placed there (indicating). We say it is there that it was found in the trunk of Special Agent Coler's car. This is going to help you remember where the various items of evidence are found.

Government Exhibit 34-a is a picture of an AR Fischer Rifle.

Now, if this is offered into evidence, the reason that we chose to number this cartridge casing 34-b is because, I believe the evidence will show, that Government Exhibit 34-b was fired from Government Exhibit 34-a; and if you will look at the exhibits, I believe that you will see that these things have a connection or connecting by means of numbering these exhibits, and this is used as a method to help you in determining where various items are found.

To continue, it was later on in November -- Leonard Peltier, incidentally, I might add, was wanted on another warrant; but at this time a warrant had gone out for his arrest, so on November 14 Leonard Peltier was seen in the area near Ontario, Oregon. Leonard Peltier had earlier, on September 9th, purchased a vehicle, using the name of Louis Martinez. He had purchased this vehicle {21} in Denver, Colorado.

Now, when Leonard Peltier was being sought, he was spotted in this particular area; and there was a bulletin out for him. There was a recreational vehicle, a Dodge recreational vehicle being driven in that area.

There was also in that area a Plymouth automobile which Leonard Peltier had purchased, using the name of Louie Martinez. These two vehicles were traveling close together on the highway. The highway patrolman stopped the vehicle. When he stopped the vehicle, he observed a man get out who he will, I believe, identify as Leonard Peltier; that when he got out of the vehicle, he fired a shot; and he was shot at by the man attempting to apprehend him; that he escaped into the woods not too far from this area.

On the following day it was noticed -- or two days later -- that there was a burglary notice and an automobile was stolen.

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From this ranch house in the country which was burglarized a rifle was taken and in addition to this there was some fingerprints left behind. The fingerprints were those of Leonard Peltier.

Leonard Peltier was a fugitive until February 6 when the Royal Canadian Mounted Police caught him in the area of the Jasper National Park, which is a small boy's camp in Alberta, Canada.

When he was arrested, certain other things were found. Among those was a rifle that had been stolen from Oregon with his fingerprints on it.

Well, I have stated that I have by no means stated the evidence. I have given you an idea of how the defendant was traced, how his companions were traced from various places and how the items which they had on their person or near to them connected directly-back to the area of the death of special agent Ronald Williams and Jack Coler.

Throughout the course of the trial I ask you to look for connection, pay close attention to it because there are a number of items that are involved that are rather complex. But throughout the course of the trial, as I said earlier, the defendant starts out and there is no evidence against him, but throughout the course of the trial you'll be seeing evidence placed in one at a time, pieces of evidence will come in. I believe they will show circumstantial and direct evidence of the {23} defendant's guilt in this matter.

Now perhaps if you would consider these things and the government's theory of the case throughout this trial. If you take isolated incidence one at a time, they don't mean too much, like if you took the word out of the sentence, it doesn't mean a whole lot. When you put it altogether, even though there are some words missing from the sentence, you will know what the sentence says. I believe if you pay attention to the evidence in this matter and look at all the facts and put them altogether, in addition to the facts and the items I mentioned.

I believe you will find that a paper bag was found in a recreational vehicle, a vehicle which Leonard Peltier was driving, and on this paper bag, for example, there was fingerprints of Leonard Peltier. Inside of the paper bag, special agent Coler's personal firearm along with some shell casings, empty shell casings which had been fired.

I think if you put all these things together, by the end of the trial you'll understand the case. I can't tell you at this point and I'm not, I'm going to urge you not to decide anything until all the evidence has been entered and until we're all finished arguing.

I ask you to listen closely and it's our contention by the close of the trial the government will have proven its case against the defendant beyond a reasonable doubt.

Remember, only one person is on trial. You're not on {24} trial here, the government is on trial here, AIM isn't on trial. The defendant is on trial for two counts of first degree murder and I ask you to keep that in mind when you're considering the evidence. Thank you.

MR. LOWE: Ladies and gentlemen of the jury, the purpose of an opening statement has been explained somewhat by the judge and by Mr. Sikma.

What I say here is not evidence. It is what I expect the evidence to be.

The government witnesses are, of course, under the control of the government and whether they call or fail to call or decide not to call particular witnesses after telling us that they are on the witness list is something which is within the province of the government and we can only here base reasonable expectations and tell you what we think is going to happen. Some witnesses may not be called, additional ones may be called. So I will just give you the best I can tell you now. Since this is not evidence, it's only to give you an overview, try and help you to follow as we go along and understand where each piece of evidence fits in in this mosaic, so in the end you'll know where it all fits in.

This is an opportunity for each of the parties to give you their theory of the case, give you an overview of what they expect to be able to prove and what they think the evidence will show as well as their theory of what took place. It's also {25} an opportunity to alert to call your attention to certain things so that you will be looking for them or when they take place you will realize they may have a particular significance and you will be alerted to them.

The one thing that is quite clear in this case is that what took place on June 26th, 1975, was an American tragedy by any standard of measure. What the government has said is two-thirds correct. In one regard the government said two young men are dead and we mourn for their families and that is true. But the other third of that is that one young Indian man is dead and we mourn for his family as well. All three lives are a loss to all of us and we all mourn for all of their families.

I can state the theory of the defense in two succinct sentences and then I will explain to you how I think the evidence will relate to the theory.

The first sentence is, theory one is the absolute innocence in fact of Mr. Peltier of any criminal charge on June 26, 1975.

The second theory of our case is that there is not one shred of believable evidence that will appear before you to convict Mr. Peltier of that criminal charge on June 26, 1975.

I would like to talk a little bit about procedure. Based on the voir dire, some of you have been on criminal trials before. Perhaps you are old hands at some of the procedures. Some of you, however, have never sat on a criminal trial and {26} while the judge has explained a few things

and Mr. Sikma explained a few things, there are several things I think may help you to follow more carefully the evidence as it is presented. Also some items of jargon, as it were, that we lawyers may use from time to time that may help some of you to know what we're talking about.

First of all, the object of the court's evidentiary rulings are to make sure only reliable evidence gets before you. Now there are lots of things that could come out if we had no rules of evidence that would be just rumors, that would be unsupported. That would be what we call hearsay which means one person is reporting what somebody else said but that somebody else is not here where we can confront them and either side can ask questions of them. The law has recognized over the many years, many centuries of American juris prudence that it is unwise to allow serious criminal matters to be decided on unreliable evidence. We have these rules. They are not technicalities. Sometimes people talk about technicalities. These are the most important fabric of our judicial system. If a person can be convicted on rumor, then a lot of us in this courtroom wouldn't be here today I suspect.

Another point is that the evidence in this case may come from several different forms. There will certainly be testimony from witnesses. There will be physical exhibits ranging from guns to cartridge cases, things of that nature, {27} pictures.

Sometimes jurors don't realize that cross-examination has two purposes. One is to try to test the truth of what the witness has said or the completeness of it or to bring out questions of whether the witness is believable or not. But additional cross-examination can simply bring out evidence that was not brought out on direct examination. That may not be contradictive at all but may simply be additional information which that witness has available and which the first party did not bring out. So just because a lawyer asks cross-examination questions does not necessarily imply that he doesn't believe the witness. It may very well be to bring out evidence. And cross-examination information is just as much evidence as what is brought out on direct.

There will be stipulations from time to time. Some of them we will have entered in formality, others because of what has been testified by a particular witness, it may become obvious that the question is not in dispute and one counsel or another may offer at that time to stipulate to save time.

Inferences are to be drawn by the jury because you think they are reasonable. Mr. Sikma referred to if you're on a desert island and you see footprints you would draw an inference there was somebody else on the island. That is an inference you draw from that circumstantial evidence. All of that evidence is entitled to be accorded whatever weight you {28} decide it's worth. You're the ones ultimately to decide how important one piece of evidence is against another. If there are two witnesses that give conflicting information, you're the ones that decide which one is most believable or whether there is simply doubt left in your mind as to who you can believe or what the true situation is. That is your function as the jurors. It is one of the most important functions you carry out.

One of the types of evidence that may come into this trial or may be referred to in evidence is what is called a 302. That is a term you'll hear a lot. This is simply a form used by the FBI to make reports, sort of like a summary that an agent makes after he makes an interview or does a certain thing, and when you hear of talking about a 302, just remember that's some sort of a report that's made by an FBI agent. You may have an opportunity to see one or more of them before we're finished here. But that's what that is.

A transcript will be referred to from time to time and a transcript is nothing more than the typing up of what has been taken down by a court reporter either in a court room or in a deposition or pretrial hearing or in a grand jury or whatever it might be.

The last procedural point I would like to make is that if you cannot hear or cannot see at any time, some witnesses may be very soft spoken, some exhibits may be very difficult to see from where you're sitting, I hope you will raise your hand {29} and indicate to the judge so that some adjustment can be made because it's very important for each one of you to see and hear everything.

From time to time there may be a question about what was said or what was observed and each one of you must make your own determination and when you get back in your deliberations it's an awfully lot to remember. It's almost a super human job to ask you to remember it. Because there are 12 of you and you all bring your own recollections to that jury room, you'll be able to come up with a composite so you can come up with the truth of what was heard and what was seen.

I will point out some Indian cultural matters which you should be aware of so they do not concern you and so that you will understand some of the testimony that will come out about this. First of all, in the Indian religion there is the religion of the holy pipe. On the defendant's table you see in a pipe carrying pouch the holy pipe. Sometimes in the past we white people have referred to this as a peace pipe which is really a misnomer. But it is a holy pipe. It is a symbol and used in the religion of the Indian people. It has the same type of status with them as perhaps a cross or crucifix does for certain Christian religions or a bible or some other holy symbol for a religion. You will notice some of the Indian witnesses take their oath or affirmation before they testify on the holy pipe because {30} the testimony will be that is what is most solemn for them in swearing to tell the truth as opposed to some person perhaps of a Christian background who will swear to God.

You will notice many of the Indian witnesses as well as the defendant will wear traditional Indian dress, will wear their hair in traditional Indian length.

You will hear testimony that traditional Indian customs, many times people have two or three different names for various reasons and that will come out in testimony. So that you will understand, on occasions a person may be called one thing on the Pine Ridge Reservation and another thing on the Rose Bud Reservation.

Factually in this case we will probably stipulate to virtually the vast majority of what Mr. Sikma said. There is very little dispute about much of the physical evidence in this case. Cartridges, weapons, things of that nature. What is significant and what I trust caught your attention is that Mr. Sikma only spoke perhaps for a total of 30 seconds out of the time he was on his feet about Mr. Peltier and where Mr. Peltier was and what Mr. Peltier did.

We believe that the evidence you will want to be most alert for is evidence relating to Mr. Peltier and whether or not he was doing certain things or located in certain places or doing certain things.

I want to alert you to the importance of the time {31} sequence. You have already heard Mr. Sikma describe radio transmissions that took place at about ten minutes to 12:00 and this time can be pinned down because there was certain electronic recordings of radio transmissions with a

timer and me of death will be stipulated as being noon on June 26th, 1975. The shooting that you heard of the other agent coming in took place in the afternoon after that time and at some point later in the afternoon a group of people, including Mr. Peltier, left the tent area and made their way out past, I think the testimony is on that day and on days subsequent that they went through, past, over, around about 100 FBI agents and actually there was no arrest of any of the people in that group.

They were ultimately, those who were arrested or found were found through different ways and on different occasions.

It will be very important for you to notice the time sequence. To give you just one example, to alert you, not because the evidence will particularly point to one thing or another, you'll have to wait to see what the evidence is. But if the evidence was as we stipulated that the agents died at noon, if the evidence turned out Mr. Peltier, if it even comes out that he was shooting at any time, if he was not observed shooting at any time prior to 1:00 o'clock, that would, of course, be very important to you and you would think about that when you got the judge's instructions and have to figure that in your deliberations. Without going into detail of what {32} it might mean, I think you can understand it will be very important to notice times and be careful as to what the time sequence is.

Another factor which is going to be very important is the state of mind. Now when I say state of mind, what I'm speaking of is what was going on subjectively inside of the minds of the people, particularly that were in what we call the Jumping Bull area. I will mention in passing that in truth this was not Harry Jumping Bull's, it was Cecilia Jumping Bull's. You will probably hear Cecilia Jumping Bull testify. She's an Indian lady in her 60's and I think you will see her testify here during the trial.

But the state of mind in the various people, Indians and others in the area here will be very important, will be important for several reasons. First of all, we believe there will be evidence that at a certain time shortly before noon there were people, I believe there may be testimony that Mr. Peltier was among them, in the tent area and that they heard shooting and that they heard something on the order of 20 shots that appeared to be coming from somewhere in the north; and that when they heard these shots their first reaction was that the camp was somehow under attack; that their first reaction was self-defense. They were being attacked, "We have got to protect ourselves, the women and children." There were women and children in the houses that are pointed out "residences"; {33} and that the men, including some young teenagers, in the tent area reacted by grabbing weapons and running up to try to fend off whatever the attack was.

It will be very important for you to fix in your mind as a fact that you will be looking for as to what those people were thinking about. Were those people thinking, "we're under attack and we have got to go up and defend our women and children," or were they thinking, "We have got to go up, somebody's here we don't like, we're going to kill them"? What is in their mind is going to be very important. We believe you will find the state of mind of the people running up was one of self-defense.

The judge will instruct you on all of the law at the end of the evidence and argument and we believe that he will instruct you of the law of self-defense. Self-defense as we use it, I might add the Court will instruct you, will relate to the individuals and may also include families or close friends who are living with them. You will have to wait until the judge instructs you on that. As you go along be alert on that fact.

The state of minds of the ones you have, people around the residence shooting at these two white men, who we now identified as special agent Williams and special agent Coler, will be very important also. The testimony will be that neither of these two agents were wearing a uniform of any kind. They {34} were in just what I would call country clothes, slacks and shirts or something like that, working pants and shirts, no uniforms or badges displayed or special hats. The cars had no markings on them or big red lights or anything of that nature. And one of the things that you will have to decide is with regard to the people shooting, whether they even knew or reasonably recognized that these were FBI agents. And I'll explain in a moment why that will become important because of other testimony there will be.

Finally, if as the government has told you they will prove or expect to prove that one or more people shot and killed these two agents at very close range, it will be important for you to be able to determine whether anybody not actually close in, was around the edges, either knew this was taking place or was supporting or aiding and abetting them in some way, that would make them culpable.

Finally, it is possible, and we don't know what the government will argue, that the government will try to show some responsibility in Mr. Peltier for the conduct of others there. On what basis I'm not quite sure.

{35}

The idea that he was one of the group that were doing something, and it will be important to you to know whether the people there were acting as a group or whether they were acting as individuals, whether they had a common design or just what was the situation, so that's the state of mind that is going to be very important there and the evidence we believe will show pretty clearly what that was.

The second state of mine which will be very important for you will be the state Or mine of various witnesses for the defense and for the prosecution who come before you. The motivation, why the witnesses are testifying, and I think it will be fairly safe to say that all witnesses will be testifying pursuant to a Subpoena so in one sense they're here because they're required by law to be here, but it will be up to you to determine the credibility of each of the witnesses.

The Judge will instruct you that it is up to you to determine how much weight to give to each witness if any. The Judge will tell you, give you criteria for determining whether you want to believe all or any part of a witness's testimony and he will give you some guidelines, some yardsticks that you can use to determine whether a witness is to be believed or given great weight or not.

So one of the factors you will need to know and we'll try to portray through evidence is factors which affect the state of mind of witnesses.

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A number of the key government witnesses are going to be Indian people, young Indians particularly who were involved in the shoot-out area.

There are a number of motivations that could be, and we suggest are, involved in those young men and at the time you hear them testify and subsequent to that we will endeavor to show you some of the factors that might be influencing them so that you may make a judgment as to whether that affects your decision as to whether or not that person is telling the truth or not and to what extent he is to be credited.

One of the most difficult things for you in this trial, I believe, will be to take yourselves mentally and emotionally on a trip from Fargo, North Dakota to the Pine Ridge Indian Reservation and assimilate the surroundings and the atmosphere that existed on June 26, 1975.

Fargo and Pine Ridge today are vastly different places and I think the evidence will be that they were even far different back then.

There was an atmosphere, we believe the evidence will show, in 1975 of violence and fear and oppression on the Pine Ridge Reservation which is likened to nothing that most of us have ever experienced in our lifetime, certainly nothing that any of us in the white community have experienced in my recorded lifetime or I believe any of yours.

We believe the evidence will show that beginning with, {37} and I think an arbitrary point because in 1973 there was a general activity which erupted into the now famous Wounded Knee Occupation on the Pine Ridge Reservation and Wounded Knee is on the Pine Ridge Reservation not very far from Oglala where this all took place and part of the reason for the Wounded Knee Occupation and the events which took place surrounding this event in 1975 related to the oppressive atmosphere, the fear, the violence that was going on there and somehow through the evidence we are going to try to insert you there emotionally so you can sense and judge what took place and determine the mental state particularly of the actors in this drama on the basis of what took place there because if you judge them on what would happen in similar circumstances in Fargo the evidence will show, I believe, that it is not a valid determination.

Now what am I speaking of. I will tell you that some of the evidence that will indicate this to you is as follows:

In the three years surrounding 1975 on the Pine Ridge Reservation with a population of eight thousand people there were two hundred forty-three deaths by violence.

Now that's a little hard to assimilate, to think about.

In order to get you to have a feel for that I will tell you that my investigation indicates that the Fargo-Moorhead complex, the metropolitan area here has about eighty thousand people in it, a little bit more than that but let's call it {38} eighty thousand. This would be equivalent over the past three years of having twenty-four hundred thirty deaths by violence in Fargo-Moorhead. Twenty-four hundred and thirty deaths by violence.

The vast majority never resulted in arrests and there were very, very few prosecutions successful in convictions.

The result is that life is cheap on the reservations; everybody is armed for their self-defense; killings are only the tip of the iceberg; beatings were regular things.

We'll have evidence of a little girl who lost her eye when she was walking along the road and someone just shot at her. This is violence that we have a hard time relating to.

The evidence will show that everybody on the reservation, and when I say everybody, obviously the Government may find one or two people or a handful that aren't all armed but for all intents and purposes everybody feels a need to be armed.

Now another thing that will come out in the evidence, probably some of you think, "Well, why don't you call the police." That's a natural reaction, probably my reaction.

The evidence will show that one family in fifty on the reservation has a telephone and in fact within this entire Jumping Bull Compound as it is sometimes called there was no telephone so that if trouble starts you are on your own and there's not much of any way to get help even if you had a {39} telephone there.

The nearest police were the Bureau of Indian Affairs police, twelve miles away from Pine Ridge. If you assumed that you made a successful call and someone started out immediately if there is trouble, you've got something on the order of a twenty-minute ride before the police arrive. So people have to be self-reliant much as they were in the old west and and the old six gunned justice, self-defense by weapons. That will be the order of it. That is what the evidence will show.

The evidence will show and we'll have testimony from residents of Pine Ridge that if anybody approaches, the reaction is not what you'd have, they'd grab the gun, turn out the lights and sort of peak out the windows and wonder what's going to happen next.

In the area of tents you'll hear referred to as Tent City there were alot of tents; there were teepees, there were huts, there were camper tents and there were a lot of weapons and yet the Government will bring a whole lot of them in here to show to you, I think we'll probably stipulate to most of them, and there's no question that the people there, that the evidence will show that they had armed themselves as everybody else on the reservation had.

There's no doubt that the evidence will show that the members who were in this encampment who were active in the American Indian Movement, some of them were certainly in low {40} leadership positions, feared for their lives for one reason or another and carried weapons from time to time as they moved from place to place as a lot of people on the reservation did from time to time.

Prior to this incident there was a tribal chief who had been elected in what was a questionable election, that from the evidence will be named Dick Wilson.

Dick Wilson ran a ruthless, violent regime. The evidence will be that he had a series of henchmen who beat people, shot at people, carried out all sorts of violence in order to maintain him in power.

A term that is going to be used is goons. When I first heard it I found it offensive because I thought it was the kind of nickname that indicates a prejudice that most of us rebel against but I then found that everybody including the people themselves called the people I'm talking about

goons, Dick Wilson and his goons and apparently on the reservation everybody including the goons called the people goons who worked for Dick Wilson.

In any event you will hear both sides referring to goons from time to time and these were the henchmen of Dick Wilson, a bunch of roughnecks.

The evidence will be extensive as to the terror that these people carried out and that these were people who were feared and one of the reason that the people in this camp were {41} armed was the rear of raids by goons.

We will bring out evidence in addition in support of the need for self-defense, self-arming, that the traditional Indians on the reservation and also the members of AIM who had had some experience in the area believed that they could not count on the FBI to give them equal protection of law and that this affected their mental state, again that if they became under attack, even if they could get a call for help to the BIA or the FBI, that it would, probably would not avail them. Now at the end of this trial, in fact and truth I think by the end of this trial the evidence will indicate that that at least is what the truth will be and this is important in your deliberations.

We will also show that the American Indian Movement people, including people in this camp, believed that there were provocators enlisted by various people trying to cause violence and to try to draw AIM into various confrontations in order to discredit them, in order to get them and their leaders into all serving jail terms and perhaps getting James in order to break up the movement and we'll present evidence on that which again goes into the mental state of the people or some of them who are involved here so that when they heard gunshots, what it was they were thinking might not be exactly what you and I would think under similar circumstances.

The facts will show that Mr. Peltier and a number of {42} other people involved here had been in Farmington, New Mexico for an AIM conference, much as the American Legion has a conference or other groups have conferences, and they had come back to the Jumping Bulls' at the invitation of elder traditional Indians in the area in order to try to help the people there to overcome the problems of violence and oppression and help them to organize to help themselves.

Contrary to what Mr. Sikma indicated, I believe the evidence will be that Mr. Peltier had lived in this area for several months; that it was for all intents and purposes, in other words, his home at that time.

We will produce evidence that will show that the people there including Mr. Peltier were engaged in community projects to help uplift the Indian, particularly the traditional older Indians there who were having difficulty in coping with problems, trying to get many of the Indians in the area to stop drinking, to gain more self-respect and take care of themselves. We'll show evidence of this group, including Mr. Peltier and his companions, on an occasion when a store burned down, that they reconstructed it, put a roof on it; that they had programs of helping the elderly in the area including planting woods and bringing in wood for them; that they helped to develop political awareness of people in the area there, to try to help and develop community grass roots efforts to get people out to vote on important issues and to {43}

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The people there knew that -- for example, there were FBI S.W.A.T. teams deployed in the Pine Ridge area. Members of these teams -- in fact Special Agent Coler was a member of a S.W.A.T. team. I think by now most everybody has some familiarization with a S.W.A.T team.

The evidence will be that the people there associated that with an aggressive purpose. Whether that is accurate or not, that's what they associated it with and it made them frightful.

We will show that the people there, including Mr. Peltier, were aware or believed that the FBI had certain counterintelligence programs which over the years had been attempting to disrupt the American Indian Movement by provocators or by confrontations or other things and in their mind the logical extension of that could include the FBI provoking trouble with them.

We will also have witnesses to show what is called the oral tradition of Indian history which means that in the Indian culture historical events either are told generation to generation by elders and are passed down verbally or orally and that in the Indian culture these events seem to telescope in time so that events that may have happened a hundred years ago seemed to have only happened very recently and things that happened four or five years ago appear quite recent.

It's difficult for me to explain to you. It's difficult {45} for a white person, I think, to understand that we will have a witness who, I think, will be qualified to help you to understand that and the significance of it because he will describe the tact that in the late 19th Century the many massacres that took place, the Sand Creek Massacre, the Wounded Knee first massacre in 1890, the Trail of Tears of the Cherokee, the various problems that various Indians had when they confronted with the U.S. Government whether rightfully or wrongfully. The Indians take the position that the American Indian Movement Indians, the people we are concerned with, had in their mind what this witness will describe as their massacre psychology, that is, their terrible fear that any time there is going to be a confrontation with the Federal Government it will result in a massacre of some kind because history, that is what is most recent in their recollection because of this oral tradition.

You will hear the witness and I think you will understand it better when he describes it. We will give you a feeling for it that I think I am inadequate to do.

The Government will produce witnesses. I suggest that there will be witnesses and evidence given from this witness chair which you will find is unbelievable.

At least one Government witness will admit to having lied under oath in this case or in a proceeding.

There will be other things which I would rather not go into detail right now, but you will certainly identify them {46} when they take place, that will show you that a number of Government witnesses are not worthy of any belief at all and when they take place I will assure you that you will have no hard time of identifying them.

We will introduce evidence to show, both in cross-examination of some of the Government witnesses, particularly the young Indians, that the Government has given inducements to some of these witnesses which will color their testimony in your eyes to the point of disbelief we believe;

That they have been in many cases offered to have their names changed, to be given new lives in other parts of North America, whether it's the United States or Canada, whether it is jobs and other things in order to protect them supposedly in any event, in the event they testify and that this is a substantial inducement, the evidence will show, for a young Indian who is impoverished, living on a reservation with no prospect of getting off;

That other Indian witnesses, we believe it will be shown, have been offered immunity or the opportunity to get out of some kind of trouble, not just Indian witnesses.

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We believe that you will also find some Indian witnesses have in their mind, whether true or not, that their lives are in danger if they do not cooperate with the FBI and testify at this trial; and again you may at the end of the trial not believe that their lives actually were in danger, but I believe the evidence will convince you that they believed that their lives were in danger which affected what they said.

And finally, we believe that you will find a witness, at least one witness whose mental imbalance is so gross as to render her testimony unbelievable.

Turning to the day in question, there is no dispute that Leonard Peltier had been living in this area and was in the area off and on during that immediate period and probably on this day. It is certainly undisputed that late in the afternoon he left the tent area and went through the FBI lines undetected. The Government will introduce a whole lot of fingerprints. We are willing to stipulate to all of them. I don't know if the Government will accept the stipulation. There is no question he was in there. We don't need his fingerprints. We will tell you that right now, that's not disputed.

The evidence will be -- and I didn't hear Mr, Sikma say this, whether that's significant or not -- that the radio transmission from the agents said they were {48} following a red pickup truck -- that's going to be vc y important -- and I would alert you to that. Keep in mind the red pickup truck, and the reason for that is that there was no red pickup truck ever found nor any occupants of a red pickup truck ever found as far as the evidence discloses. The FBI agents and the two vehicles were chasing a red pickup truck. The testimony was: It looks like they are going to run for it -- that's the radio transmission. I hope we have enough gas, it looks like they are going to shoot at us, and then shooting and then some comments, cries -- somebody has to get on the high ground or we are dead for sure, something to that effect. You will get it directly. The important thing I want to alert you to is it was a red pickup.

There is testimony -- there will be testimony, we believe that sometime after noon a red pickup truck ran a roadblock and got away and was never caught, and we suggest that that is very significant testimony in light of the testimony of the radio transmissions that they were engaged in a gunfight with somebody in a red pickup truck, and I will alert you to watch for that.

We do not believe that there will be any dispute over the pathology of death, that is, the way the death occurred on these two agents, or on the dead Indian man, We, I suspect -- I frankly don't know any of the {49} pathology we would not stipulate to. There is little doubt about it. Mr. Sikma stated that both of these agents were shot and killed at a distance of, in one case, a contact shot, and in the other one, a four foot away shot. For purposes of discussion here -- and I think

probably for purposes of the trial -- that's undisputed. Whether there is any justification for or an explanation of that, we will have to wait to see the evidence, but certainly this is not a case in which somebody who was seen up at one of the houses got a lucky, long-range shot away and killed an agent. That simply is not the evidence, according to what the Government says, and certainly according to what I understand the evidence will be. That will limit severely the evidence as to what will be critical as to who shot and killed the agent and whether that was a justifiable killing, and if Mr. Peltier was one of them or was aiding and abetting the person or persons who did do it.

The testimony will also be undisputed that a number of them -- seven or eight is a figure that I think sounds about right -- left the tent area after praying for deliverance. A rather remarkable story that will unfold from the witness stand from a young Indian lad was that when the Indians stopped in the tent area to make their way out, take out the women and children, {50} they did two things. The first is that they decided that an 11 year old boy who was with them would not be able to make the trip satisfactorily, it would be dangerous; and they turned him loose, figuring that no one would harm him, and he would just be able to walk out and be safe, and in fact that is what did take place.

We suggest that that evidence -- again I would alert you to listen carefully to that because we think that you will find that completely inconsistent with a guilty state of mind of the people in that group -- to send out a boy who could put the finger on who was in the group.

The second remarkable thing is that this young Indian lad will testify, assuming he takes the stand -- he is a Government witness -- that prior to leaving they decided they would pray, and they all got together and prayed in the tent area; and while they were praying, an eagle descended.

Now, eagles have very great significance in the Indian religion. They are omens of good and they are taken very seriously; and the group decided this was an omen and they would follow the eagle. Whereupon the eagle led them down that creek bottom out under a conduit, under an FBI roadblock, up the woods on a hill on the other side, and over the top of the hill; and this {51} young lad will tell you that once he saw the eagle fly over into the sunset at the top of the hill, he knew they would be safe; and he will then relate to you that for the next five days the seven or eight Indians in the group successfully eluded some 150 FBI and BIA agents on the open prairie. He will tell you that in a matter of fact way because it is obvious he feels the eagle is important. This goes to the state of mind of the people in that group, and you will want to weigh that in with other evidence.

A frequent statement that is made by prosecutors -- it is an old catch-line, it has probably been around for 150 years, and it is effective in final argument, and at some point here you are going to hear final argument from the prosecution and the defense -- is that when the Defendant has nothing else to do, he tries the FBI or the police or he tries the prosecutor. I want to make it clear that whatever evidence takes place, whatever argument, whatever cross examination, that we are not trying the FBI, we are not trying the prosecutors; but the actions of the FBI or the Government or their agents may very well be relevant in terms of the witnesses, the evidence you hear and how you interpret the evidence in this case.

We believe that the evidence will show shocking {52} Governmental misconduct. We believe that the evidence will be at a level that you will probably have difficulty believing, but we believe it will be so clear-cut when it is complete, that you will -- pursuant to what the Judge has

told you in repeatedly ruling on this case -- based purely on what you hear in this courtroom, conclude that there was a Governmental misconduct of monumental proportions in this case.

You have told the Judge that you would try this case on the evidence, and that's all we ask. You have sworn to do what the Defendant, Mr. Peltier, believes the U.S. Government has never done, sworn to be impartial and unbiased toward him and sworn to give him a fair trial in the United States courtroom. That is all he could ask.

When the Government evidence is over, two things are going to be clear. mere may be a lot of things that are unclear. Two things will be clear no matter what I suggest. First, that this is a real American tragedy, and second, that the Government has utterly failed to prove Leonard Peltier guilty beyond a reasonable doubt.

Mr. Sikma used the analogy of taking one word out of a sentence, that you can't do that; but he said if you have a sentence and you take one word out, perhaps {53} you can still meaning of the sentence, But I would like to suggest, based on his opening statement and on what we believe the evidence will be, that there is a sentence that is going to be important in this case or could be important in this case; and if you take the one word out, it is meaningless in terms of your deliberations. The sentence that I have in mind is: Special Agents Coler and Williams were unlawfully killed by -- blank. If you take that word out, your verdicts by law must be not guilty, that is, assuming that you find that it was an unlawful killing by somebody that was there. Unless you can put the name in of Leonard Peltier, that sentence no longer has meaning in terms of your verdict; and as jurors, you will do your duty I am confident, and vote for acquittal. Thank you.

THE COURT: The Court will recess now until 9:00 o'clock tomorrow morning.

One thing I neglected to mention to the jurors, and that is there are 14 of you in the jury box. When the case has been submitted to you for your deliberation, it will be submitted only to 12 of you. The reason that there are 14 of you is that we have selected two alternates; and that is to guard against the possibility that during the period that this trial is underway, that one of you might become ill or unable to continue, or {54} one or two of you might become ill or unable to continue, and then the alternate can fill in. None of you know which of the two of you are alternates, and you may not ever know in the event that the alternates have to be used. However, if illness does not strike any one of the 14 of you and 14 of you are prepared to deliberate the case when all of the evidence is in and when you have been instructed on the law, then two of you will be excused. The reason we do not tell which of you will be excused is because there is always the possibility if you know you are an alternate, you might not be as interested in the case as if you did not know that you were an alternate, so two of you are alternates, 12 of you are not.

The Court is in recess,

(Whereupon, at 4:40 o'clock, p.m., the trial of the within cause adjourned until 9:00 o'clock, a.m., on Thursday, March 17, 1977.)

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