

United States District Court
FOR THE DISTRICT OF NORTH DAKOTA
Southeastern Division

CR NO. C77-3003-01

UNITED STATES OF AMERICA,	*
	*
Plaintiff,	*
	*
v.	*
	*
LEONARD PELTIER,	*
	*
Defendant.	*

**U.S. District Court for the District
of North Dakota,
Southeastern Division**

VOLUME III

Pages 300-520

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J. GARY ADAMS

FRIDAY MORNING SESSION

March 18, 1977

Whereupon, the following proceedings were had and entered of record on Friday morning, March 18, 1977, at 9:00 o'clock, a.m., the Defendant being present in person:

THE COURT: There are one or two matters that I want to mention.

The counsel will recall that at the conference prior to the opening of this trial which was held a week ago today I raised the question about bench conferences or some of you refer to it as side

bar conferences and I stated that I would have no objection to a number of people from each side approaching the bench so long as it didn't create any problem in the conduct of the trial.

The court reporters tell me that it creates an almost impossible situation for them and the problem arises out of the propensity of two or three people to address the Court and each other at the same time so I'm going to have to limit the bench conferences to one spokesman from each side.

I have no objection to the additional counsel approaching the bench but they will have to decide when they approach the bench as to who's going to speak.

And I also would ask the counsel who are not speaking to, to the greatest extent possible, refrain from conversations between themselves which can be very distracting to the court reporter attempting to take down what needs to be taken down.

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The other matter that was before the Court was this matter of numbering of exhibits.

I am not going to order the renumbering of Exhibits 33F, G, K, G and H, 33F, G and K and 34G and H.

I will, if requested, give the jury a cautionary instruction that, to the effect that the numbering of exhibits has absolutely no significance at all.

MR. TAIKEFF: We do request that, Your Honor.

THE COURT: Very well.

Are you ready now then to have the jury brought in?

MR. TAIKEFF: Yes I don't know --

MR. HULTMAN: Your Honor, --

MR. TAIKEFF: I'm sorry.

MR. HULTMAN: Go ahead.

MR. TAIKEFF: Your Honor perhaps noticed the absence of Mr. Lowe. The cold that he has been fighting got very bad last night and he decided that it was in the best interest of his ability to recover to take three days in bed and we discussed the possibility of our being deprived of his services and we concluded that given our anticipation for today, in view of the thirty-five hundred material which was provided, that there would probably be no difficulty in my handling it in his absence.

If something should arise that is not anticipated or is otherwise unexpected, I would probably ask Your Honor for an {302} opportunity to consult with him. He's available by telephone.

But otherwise I believe we can proceed today without --

THE COURT: Thank you.

It was reported to me that there's, further reported to me that there are some, well, apparently Mr. Hultman and, did you indicate that there were some witnesses also that are going to want to catch a plane?

MR. HULTMAN: Yes, Your Honor.

There is a problem with reference to, and I would request to the Court for this one day and it would probably likewise help with the matter that Mr. Taikeff has referred to, that we adjourn somewhere around 4:30.

There is a 5:30 plane that if some people don't get that today, they don't get a plane until tomorrow and it creates a problem.

One of those, Your Honor, is very frankly myself. I've been away from my offices now for in excess of two weeks and I will be again at least two or three weeks and I would like an opportunity to have at least one day, Saturday, to cover a number of matters back in my office including the preparation of appellate matters and some matters for the Attorney General that I am working on and so if I could catch that plane I can get a day and if you can't there is no reason for me to leave because I can't get there and back.

THE COURT: Well, I am not inclined to grant that {303} request.

MR. HULTMAN: I understand, Your Honor.

THE COURT: However, you will be excused because you do have associate counsel to carry on and it may be that the evidence will develop in such a way that we will decide to recess at 4:30.

But I would normally expect to go until 5:00 o'clock and I mentioned before, one of the reason that we're keeping these hours that are longer than you would normally schedule is because we do have the sequestered jury.

MR. HULTMAN: I understand.

There is one other matter, Your Honor, and that is, on the record I would like to indicate to the Court that, as concerning the matter that was taken up in chambers without referring to it specifically other than that.

The Court indicated that the Government would have until the morning to make an indication and the indication that the Government would like to put on the record at this time is the fact that we join in the motion that the defendants made late yesterday afternoon.

THE COURT: The Court will then proceed pursuant to the agreement of counsel on that matter.

MR. TAIKEFF: Yes, Your Honor.

THE COURT: The jury may now be brought in.

(Whereupon, the jury returned to the courtroom and {304} the following further proceedings were had:)

(Whereupon, the witness having been previously sworn, resumed the stand and testified as follows:)

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

CROSS-EXAMINATION (Continued)

BY MR. TAIKEFF

Q Good morning, Mr. Adams.

A Morning.

Q Do you recall that at the time of the recess yesterday I was asking you some questions about radio transmissions --

A Yes, sir.

Q -- from you to Rapid City?

A Yes.

Q All right. For a moment I'm going to divert your attention to something else and we'll get back to that.

You said that you heard or felt some explosions during the course of the afternoon of June 26, is that right?

A Yes. I did.

Q How many such explosions?

A To the best of my recollection there were three or four.

Q And at what time of day?

A I cannot recall that, sir.

It was sometime after Miss LaDeau left about 1:30.

Q What was the period of time that Miss LaDeau was in the area?

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A I estimate it to be from 12:00 to 1:30.

Q And during this period of time am I correct that she was either in a specific house or in the area of those houses that I'm now pointing to which are labeled residences, log cabin, white house, green house?

A She was in the vicinity of those three houses and then I also saw her walk in a westerly direction.

Q Did you see where she went when she walked in a westerly direction?

A No. She came back toward the tan and red house and I saw her disappear off the crest of the plateau there in the direction of, well, when I saw her walk she'd been headed toward the vicinity which is marked bodies of SA Williams and SA Coler.

Q Now I've got my finger on that particular area.

A Back to your left, sir. I was just referring to the letter.

Q Over here?

A Yes. She was walking in that general direction.

Q Am I correct that this road along which we have the marker of Coler's car and these houses up here are not at the same elevation?

A That is correct; yes.

Q What would you say is the difference of the elevation, I ask you only for an approximation, between this road and the place where these houses are to be found?

A Approximately twenty feet.

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Q Now you were back in this area somewhere, were you not?

A Back toward the curve in the road there; yes.

Q Okay. That's the road that's to the left on the chart?

A Yes, sir.

Q When you are here can you see this road where we have the name Coler or Coler's car marked?

A No. You cannot.

Q How close do you have to come before you can see this road coming in this way from that road where you were?

A It would just be within a few feet of the crest of the plateau. The line depicts the crest of the plateau there; yes.

Q That's this curved line here to the south of the tan and red house?

A Yes.

Q You have to get up to the edge of that crest before you can see the road?

A Within a few feet of the crest.

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Q Like while Miss La Deau was in the area, at least the extent that you were able to personally see her, was there any firing going on?

A As I recall, there was not. But I think it was indicated to me by other people that there was during that time.

Q Didn't you say yesterday that during that period you received some fire?

A Yes. That would be a correct statement because, as I said, as I recall, there was not. Now when I think, when I prepared my documents I was under the impression there wasn't any fire at all that afternoon, but in talking with other agents now they, and discussing the matter, there could have been some fire during that hour from 12:30 to 1:30.

Q Is it accurate to say that your attention was focused in this area of the residences over here?

A During that time?

Q During that period; yes. Now only talking about that particular period of time.

A No I think my attention was centered more around getting assistance in there and getting law enforcement people around the south and the west sides of this particular area.

Q Is it fair to say though that you observed no shooting coming from the area of the residences during that period of time?

A I cannot positively state that; no. To the best of my {308} recollection there was none, but I will not positively state that there was none.

Q You can only relate to us what you saw or heard, is that correct?

A That is correct.

Q As far as what you saw or heard, was there any shooting coming from the area of the residences during that period?

A To the best of my recollection there was none.

Q Could you say where the firing was if there was -- withdrawn. Can you say where the firing came from during that period? Not based on your own observations, based on your investigation and consultation with other agents.

A It would have been in that same general vicinity there of the three houses.

Q And in which direction was the firing going?

A It could have gone to the west as there were agents across there monitoring the situation or it could have been back our direction or more to the northeast where there were other law enforcement people.

Q When you say to the west, you mean down in this area?

A Yes.

Q At 1:30 in the afternoon there were law enforcement people down here near Coler's car?

A There were law enforcement people across the creek to the west.

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Q Where is that creek?

A It goes through the wooded area, sir.

Q Goes through this wooded area here, lower wooded area?

A Yes, it does.

Q Were there any people between the road where Coler's car was and the law enforcement people?

A At 1:30 in the afternoon?

Q Yes.

A No. To the best of my knowledge there wasn't.

Q Do you know what prevented them, if anything prevented them, from coming to the edge of the woods and looking at the road and seeing Coler's car or the other car if they were both there?

A There was a group of individuals led by Delmar Eastman entered the area to the north and northwest and proceeded in that direction. They at one time in the afternoon were in this area and I don't know what time it was they got in there. I know they received some fire from the creek area and had trouble making it through the area because of the heavy brush and the way the creek goes through there.

Q What you just referred to occurred late in the afternoon, didn't it?

A Well, Mr. Eastman was there shortly after I arrived at noon and they were organizing this thing. I was up at my car and all I know is later on that afternoon I talked with some {310} of the BI people and some of our agents that were in there and backed out. As far as what time they were in there, I have no idea.

Q Putting the time factor aside for the moment, do I understand that what you're saying is that somewhere, but unspecified exactly where in this lower area there was shooting going on?

MR. SIKMA: Your Honor, I would object. I think that's a clear misstatement of the record and the testimony of this witness.

MR. TAIKEFF: I'll withdraw the question, Your Honor.

THE COURT: Very well.

Q (By Mr. Taikeff) I want you to focus your attention on that period of time of approximately one hour which you estimate ended at 1:30 when Miss La Deau was attempting to negotiate and she spent some or most of her time in this area of the residences. Now do you know whether during that time there were law enforcement people down here near the creek or in the wooded area around the creek?

A No. I do not know for sure one way or the other.

Q Do you know whether a person standing at the edge of the wooded area where it says "Corral," the one on the right, do you know if a person stood there if that person could see the place where Coler's car was?

A No. I do not.

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MR. TAIKEFF: May I have a moment to look at the model, Your Honor.

Could the witness come over here for a moment.

THE COURT: I might mention this to Counsel for both sides. That exhibit which I believe was designated Exhibit 21 was identified but it has not been offered or received in evidence.

MR. TAIKEFF: Your Honor, I'm aware of that fact and I will phrase my questions accordingly. I'm assuming only the witness has the ability to look at this as if he were looking at something for identification.

MR. HULTMAN: Exhibit 20, Your Honor.

THE COURT: The Clerk just corrected me.

Do you have any objection to the use of the exhibit in that way?

MR. HULTMAN: No, Your Honor.

Q (By Mr. Taikeff) For purposes of refreshing your own recollection as to the terrain, I ask you to look at this and tell me yes or no whether I am now pointing at that part of the model which coincides with the lower portion of the chart where the word "Corral" appears twice?

A Yes.

Q And am I pointing to that thing which corresponds to the word "Corral" that's written on the right-hand side of the chart? {312}

A Yes. It appears that way.

Q Now look at that and look at this area here and tell me, is the latter area that I'm pointing to the place where Coler's car was found?

A Yes, it is.

Q Would you look at that, make sure that you have refreshed your recollection as to the terrain and if you'd be kind enough to resume your seat in the witness box.

Now, sir, let me repeat my earlier questions. If you were standing at the edge of the wooded area at the western edge of the right-hand corral, could you see the roadway?

A Yes, you could.

Q Are there any obstructions between that corral and the roadway?

A Just the corral fence and there is some wagons sitting there.

Q How tall is the fence?

A I'd say approximately six feet.

Q And what type of fence is it?

A Appears to be a board or rail.

Q Can you see through it?

A Yes, you can.

Q Now between the two corrals is there area I want you to focus your attention on. If you were standing inside the woods but just at the edge, is there any obstruction to one's vision that would prevent a person from seeing Coler's car?

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A Again there is just remnants of a fence across there.

Q Could you go through it or over it?

A Yes, you could.

Q Now, with the exception of these small courses of bushes or trees, if a person were anywhere between the southern edge of the right-hand corral and this part (indicating) of the wooded area, where this little peninsula sticks out in an easterly direction, could you fail to see Coler's car?

A No, I think I could see it.

Q Did you at any time in the course of the afternoon see any people in that creek or wooded area at the lower part of the diagram, up to 4:00 o'clock?

A No, I did not.

Q Yesterday you told us or identified for us several places that you yourself knew firing was coming from. I think there may have been four specific places that you mentioned?

A Yes.

Q Can you tell us the times, generally speaking, when firing was coming from those areas?

A It would have been intermittently all afternoon from the time I arrived until 4:00 o'clock.

Q Now, earlier this morning you said that some of the law enforcement personnel received fire from the creek area and the wooded area, or the wooded area -- I am not exactly sure how you phrased it.

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Q You are talking about this area here west of Coler's car?

A I can't state that specifically. All I know is they came in from the northwest edge here (indicating) -- would have been even probably over the edge of the board -- and came into it along the creek area in an attempt to get up in the vicinity of the residence.

Q What you referred to before is in or below the lower left-hand corner of Exhibit 71, is that correct?

A Yes, sir.

Q Were fingerprints taken of the various objects found in tent city?

A Yes, they were.

Q And in the tent city area some fingerprints were found of Mr. Peltier, isn't that correct?

A To the best of my knowledge, yes.

Q Were his fingerprints found on the dynamite that was found there?

A I have no knowledge of that, sir. I have no knowledge of where the prints were found.

Q Now, yesterday you identified two objects called handi-talkies?

A Yes.

Q What was the date and the time of day when you first saw those objects?

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A It was on June 27th, 1975, and I would estimate the time around noon.

Q Now, between 4:00 o'clock on June 26 and the time you first saw those handi-talkies, was this area sealed off?

A No.

Q Could you say whether those handi-talkies were there on the 26th? "Yes" or "no".

A I do not know.

Q You don't know whether you could say?

A No, I do not know if they were there or not.

Q So you couldn't say whether they were there, is that correct?

A No. I was not in that house on the 26th.

Q Could you say whether they were on the 25th?

A No.

Q Or the 24th?

A No.

Q Or even on the morning of the 27th?

A Yes.

Q You could say they were there on the morning of the 27th?

A Yes.

Q How could you say that?

A Because we entered the house before noon on that morning, and they were there at that time.

Q At what time did you enter the house?

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A Well, all I know is it was before noon sometime because as soon as the warrants arrived we started our search.

Q Could you say they were there two hours before you entered the house? "Yes" or "no".

A Before I entered the house, no I could not say that.

Q Now, when you saw them, they were both there, is that correct?

A Yes, it is correct.

Q And were they turned on?

A I don't know if the radios were turned on. The chargers, as I recall, were plugged in and they were charging the handi-talkies.

Q How could you tell they were charging?

A As I recall, there is a little light on there that was on which shows they were active.

Q Did you check the radios to see if they were?

A No, I did not.

Q Now you have identified in the course of your direct testimony a number of shell casings, that is to say, the brass that remains after a bullet or a cartridge is fired. Were those the only indications which were found in that area?

A No, they were not.

Q Can you tell us where other casings were found? Use the pointer if it is convenient for you.

A Well, there were casings found in the vicinity of all the {317} houses depicted on Government Exhibit 71 and in the vicinity of the tent area, and in some of the vehicles located in the tent area.

Q How many casings were found in the vicinity of the house, in addition to those which you identified yesterday?

A It would be an estimate of a couple hundred.

Q Were casings found anywhere else in the area?

A There were -- I know there were one or two casings found in the vicinity of Coler's car or in Coler's car.

Q How about in the wooded area near the creek?

A To the best of my recollection I know of none. There could have been. I was not in that area, did not conduct any searches in that area so I have no knowledge of any.

Q Who did?

A Some of the members of the group from Denver were in there, I know. They found some objects in that area. That off the top of my head is the only people I know that were in there. I am sure there could have been others.

Q Do you know if they were looking for casings when there?

A Any remnants of a crime, sir.

Q What was the total number of casings that were found?

A In the entire area?

Q Um-hum.

A There were several hundred. I don't know exactly what the final count was.

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Q Do you know whether it is illegal for a person to carry a gun on the Reservation?

A Not to my knowledge.

Q Do you know whether many people do, in fact?

A I would say a few, only a few. Now, law enforcement people do, but outside of that, you know, you will see a farmer, a rancher now and then, with a rifle in the rack behind him in his pickup. If you want an overall figure, I would say few people do.

Q Now, yesterday you were asked about the number of agents who were working on the Reservation in 1974, and the first six months of 1975, and the second six months of 1975. Do you recall those questions?

A Yes.

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Q Did you interpret that question to mean how many agents were permanently assigned to the Rapid City office?

A Yes.

Q Were there other agents working on the reservation who were temporarily assigned to the reservation?

A Yes. They were.

Q Okay. I want to ask you the same three questions but this time I want you to interpret my question literally, the number of agents working on the reservation, not the number of agents permanently assigned to Rapid City.

How many in 1974 approximately?

A Ten to fifteen.

Q First six months of 1975?

A Again that same number. Around eleven or twelve to be exact I think.

Q And during the second half of 1975?

A Immediately following June 26 there was maybe as many as one hundred fifty agents on the reservation and then that went down to twenty-six or so at the end of the year.

Q Now the twenty-six or so, are those --

A Excuse me. Twenty-seven or so.

Q All right. Twenty-seven. By the second half of 1975 the number of permanently assigned agents to the Rapid City office grew to twenty-six or twenty-seven, is that right?

{320}

A Yes. By the end of the year.

Q And prior to that time how many were permanently assigned there?

A Eleven or twelve to the best of my recollection.

Q Now was it part of your function as an FBI agent who spent a considerable amount of his time on the reservation to keep track of what was happening generally, I'm not talking about specific facts with reference to specific cases, but to have some sense of what was going on in that community and what the general trends were and what was happening in the communities in which you worked?

A Did you say --

MR. SIKMA: Your Honor, I would object to this. There's no showing at this time that Leonard Peltier was a member of the community in the Pine Ridge Indian Reservation.

THE COURT: Read the question back.

(Whereupon, the last question was read.)

MR. SIKMA: Your Honor, it also calls for speculation on the part of this witness.

MR. TAIKEFF: I'm not asking him to speculate, Your Honor I'm asking whether it was part of his function to be aware in that kind of way.

THE COURT: You may answer.

A No.

Q (By Mr. Taikeff) Did you in fact become aware of events {321} in the community other than those which were of direct interest to you because of a pending case.

MR. SIKMA: Your Honor, I would object. That's irrelevant.

THE COURT: I beg your pardon?

MR. SIKMA: That is irrelevant, Your Honor, to the case at hand.

THE COURT: Sustained.

Q (By Mr. Taikerf) Did you know that there was an AIM encampment prior to June 26, 1975 in that area?

A No.

Q Did you know of the existence of tent city?

A No.

Q Did you know of the presence of the people who were living in tent city prior to June 26, 1975?

A No.

Q Did you ever hear the word "goon" on the reservation?

A Yes.

MR. SIKMA: Your Honor, I would object to that as irrelevant.

MR. TAIKEFF: Your Honor, I ask that it be taken subject to connection. I will connect it.

THE COURT: Very well.

A Yes.

Q (By Mr. Taikeff) What does that word mean on the {322} reservation?

A It's, my interpretation of that word is that it's a title or a name given to a supporter of the former tribal chairmen, Dick Wilson.

Q Was the American Indian Movement an organization that supported Mr. Wilson?

A I --

MR. SIKMA: Your Honor, I would object to this as totally irrelevant.

MR. TAIKEFF: Your Honor, once again I represent to the Court that I will connect this.

THE COURT: You may answer.

A I have no knowledge of that.

Q (By Mr. Taikeff) Do you have any knowledge whether the organization AIM was the constant adversary of Mr. Wilson?

A No.

MR. SIKMA: Your Honor, I would object to that on the grounds that no foundation has been laid.

THE COURT: He has answered that he has no knowledge. The objection is sustained.

Q (By Mr. Taikeff) With reference to your earlier testimony about a certain limited number of people carrying guns, how about those who were known as goons, did they generally carry guns?

MR. SIKMA: Your Honor, I would object again as this being a matter that's irrelevant.

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THE COURT: Overruled.

A I, I have no knowledge of that.

Q (By Mr. Taikeff) Prior to June 26, 1975 did you receive any word, and I'm only talking about within the week which preceded that date, of an impending armed confrontation between any two factions on the reservation?

A No. I received no word.

Q How many people were staying, approximately how many people were staying in tent city?

MA: Your Honor, I would object to this. Counsel should be specific as to time of this witness's knowledge.

Q (By Mr. Taikeff) Let's say on or about June 25.

A I didn't even know tent city existed at that time.

Q But you subsequently ascertained that there were people staying there, did you not, through investigation?

A Yes. I did.

Q All right. I'm talking about what you learned as a result of your investigation.

MR. SIKMA: Your Honor, I would object to this as calling for hearsay on the part of this witness.

THE COURT: Overruled.

A I think there were approximtely eleven people residing in that area.

Q (By Mr Taikeff) Now you spoke in your earlier testimony about an escape route, --

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A Yes.

Q -- do you recall?

A Yes.

Q And that was a route generally speaking which was a north-south line running from tent city in a southerly direction, correct or incorrect?

A That --

Q I don't mean a straight line. I'm just speaking generalities now.

A That would be a fair statement; yes.

Q From your vantage point were you able to see any part of that escape route?

A Yes. I was

Q And at any time during the day were you able to perceive any people proceeding along that escape route?

A Yes. I was.

Q How many people did you observe.

A I just took a glance up there and I estimate it to be six or seven people that I observed.

Q Would you say that you necessarily saw all of those who may have been moving along there at that time or are you saying that you saw six, you don't know exactly how many there were?

A I feel I probably didn't see all of them; yes.

Q And what time of day was that?

A I estimate it to be about 6:00 pm., quarter to 6:00 as a {325} matter of fact.

Q Did you have occasion to see a young Indian boy about twelve years of age that afternoon?

A Yes. I did.

Q And what time did you see him for the first time?

A I estimated that time to be about 3:00 p.m.

Q And do you remember his name?

A Yes. I do.

Q What is his name?

A Jimmy Zimmerman.

Q Did you ascertain where he came from prior to the time you saw him?

A On the 26th? Did I ascertain on the 26th where he came from; is that the question?

Q Yes, sir.

A Not on the 26th; no.

Q Through subsequent investigation?

A Yes.

Q And where did he come from?

A From the area of the tents.

Q And in connection with what event did he leave the tent area according to your investigation?

A Preparation for escape.

Q And did the so-called escape occur at the time he left the tent city area?

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A It could have started at that time. I didn't see any individuals leaving the area until, as I stated, 5:45.

Q Can you say with any certainty that the people you saw on the so-called escape route were the people from tent city who were leaving the area?

A No. Because the distance --

Q Just answer yes or no.

A No.

Q Where were you looking at 3:00 p.m., what direction when you saw Jimmy Zimmerman?

A I don't know where I was looking. My attention was directed to that area from a transmission from the State radio.

Q And where were you at that particular time? I'll use the pointer and you can tell me or if you want you can use it.

A At that time I was at my vehicle in this general location right here.

Q Almost at Highway 18 in the upper left-hand corner of the Exhibit 71, is that correct?

A Yes. It is.

Q Now from that position what is the furthest point that is on the chart that you could see?

A It would be the area just to the south and east of the tents.

Q Put your pointer there.

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A (Indicating.)

Q Is that high ground relative to tent city?

A No. Oh. Relative to tent city? No.

Q Same level?

A Approximately; yes.

Q So could you see tent city from there or at least the trees surrounding tent city?

A Yes. The tops of the trees.

Q Now if somebody were in tent city and walked south, viewing the matter from your vantage point, you would see that person presumably at or shortly after the time the person came out of the trees, isn't that correct?

A No. I could not.

Q Now, you say that you could see the area south of the trees.

A I could but I'm referring, sir, to an area a mile and a half over here, a mile over this way.

Q I see. Okay. Can you explain why you can't see the area immediately south of the trees from the vantage point that you were at?

A This area here?

Q Yes. For example, almost at the right-hand edge of Exhibit 71.

A Yes. For two reason.

This area has an elevation comparable to this area {328} here and also the trees here would obscure my vision into this area.

Q I see. Now as to that area on the right-hand side of Exhibit 71 that's lower than tent city, isn't it?

A No. I would say the elevation is about the same because the, the creek runs through there and then it comes back up and, again at about the same elevation.

Q Can you tell us approximately what the comparable elevation is of your vantage point to tent city, to the floor of tent city, not the top of the trees?

A I would say the elevation in the trees here would be twenty to thirty feet lower in elevation than my vantage point.

Q So then you could see at some point beyond the trees that you couldn't see just at the southern edge of the trees?

A That is correct.

Q How far out would, if the first point where you could see the terrain beyond the trees going in a southerly direction? I'm not asking where you first saw a person I'm asking you where you could first see the terrain.

A Right. There is an old road that comes down along this area and back along the west edge here and that is about where I could see from my vantage point.

Q Would you say that's about a quarter to a half mile beyond tent city?

A At least a half mile; yes. Maybe even further.

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Q So from tent city to one-half mile beyond tent city in a southerly direction if one or more persons were walking, you would not be able to see them from your vantage point, is that correct?

A Yes. It is.

Q Now will you oint out for the Court and the jury, where was Jimmy Zimmerman the first time you saw him?

A I have estimated him to be in this vicinity right here.

Q Now am I correct that what caused you to look in that direction and see him was the fact that you received a radio transmission saying the equivalent of, I'm not trying to quote it, "There's somebody up there in a certain direction," and you turned and there he was?

A That is correct.

Q Now if people left the tent city area at the same time as Jimmy Zimmerman, left the tent city area, you wouldn't have seen them, would you?

A That is correct.

Q You may resume the witness stand, sir.

I believe that you told us yesterday that the shooting stopped at 4:00 p.m.

A Yes. That was my estimate; yes.

Q Is it not a fact that the shooting continued until beyond 7:00 p.m.?

A Well, when the individuals went out the south end --

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Q Just yes or no, sir.

MR. SIKMA: Your Honor, if the witness cannot answer the question by a yes or no, I think that it would be fair for him to explain his answer.

MR. TAIKEFF: Your Honor, I don't disagree with that but I think he should say that the question can't be answered with a yes or no.

THE COURT: Are you able to answer the question yes or no?

THE WITNESS: I'd have to have the question again, sir.

THE COURT: The reporter will read back the question. (Whereupon, the last question was read.)

A Yes.

Q (By Mr, Taikeff) Now you said smthin I believe yesterday about the people you saw walking south along the so-called escape route shooting, is that correct?

A Yes.

Q And that occurred about 6:15?

A About 5:45.

Q About 5:45. Who was doing the shooting at about 7:00 p.m.?

A I have no idea.

Q Who was doing the shooting at 7:14 p.m.?

A Again I do not know.

Q Who was doing the shooting at 7:16 p.m.?

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A I do not know that.

Q And who was doing the shooting at 7:17 p.m.?

MR. SIKMA: Your Honor, I would object. This witness has stated that he doesn't know the times or where the shooting was going on. It's very clear.

THE COURT: Well, it's without foundation too. There's no evidence that there was any shooting at those particular times.

MR. TAIKEFF: The witness has not denied that there was any shooting.

THE COURT: You may ask the witness if there was any shooting at those particular times again and then if he answers yes you may ask him if he knows who.

MR. TAIKEFF: Yes, Your Honor.

Q (By Mr. Taikeff) Do you deny that there were shootings at the time that I stated?

MR. SIKMA: Your Honor, I would object.

THE COURT: Now that's not a matter of whether he denies. It's a matter of whether he knows.

The objection is sustained.

Q (By Mr. Taikeff) Was there any shooting at the times that I stated?

A I have no knowledge of any shooting at those times.

Q Where were you between 7:00 and 7:30?

A At that time I was probably in the wooded area to the south, southwest of the houses conducting the search.

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Q In that creek area?

A Yes.

Q Did you hear any shooting then?

A Not that I can recall.

Q Did you hear any radio transmissions at that time?

A I did; yes.

Q What, what was the facility through which you heard radio transmissions?

A It was from Agent Williams' car.

Q Was that car playing transmissions on the FBI frequency?

A Yes. It was.

Q Do you know who a person named Ann M. Johnson is?

A Yes. I do.

Q Who is she?

A She's a secretary in our office in Rapid City.

Q And do you know what, whether she was working on June 26, 1975?

A Yes. She was.

Q And do you know whether she was working from approximately noon beyond 7:00 p.m. that day?

A I assume she was. I don't know what time she quit that evening.

Q Do you know what duties she was performing that afternoon?

A No. I do not.

Q I show you Defendant's Exhibit 75 for identification and {333} ask you to look at it till you ascertain what it is and what it reflects.

It's not in evidence and its contents cannot be read out loud.

A I can see what it is.

Q Have you ever seen it before?

A Yes. I have.

Q When did you see it for the first time?

A I believe as near as I can recall it was about a year ago.

Q And is it a 302?

A Yes. It is.

Q Prepared in the course of the official function of the FBI?

A Yes.

Q By an agent of the FBI?

A Yes.

Q In connection with this case?

A Yes.

Q Now, sir, would you be kind enough to turn to page 25.

Before you do that, sir, let me ask you a question.

Are you able to tell us now from your memory either verbatim or by paraphrasing anything that came over the radio, the FBI radio between 7:00 and 7:30 p.m.; yes or no?

A No.

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Q Would you look at page 25 and 26 and see if that in any way refreshes your recollection.

A No.

Q Have you read both of those pages?

A As I remember, I was not in any position to monitor the radio transmissions between these times. As I recall, now I think I was in the wooded area participating in the search.

Q Didn't you tell us a few minutes ago that you were able to hear FBI communications over the radio in Williams' car? Yes or no.

A Yes.

Q And when I asked you --

MR. SIKMA: Your Honor, I would object to this line of questioning. It's totally misleading. The witness has indicated that he heard the sound of the radio. He hasn't indicated that he monitored the radio and furthermore he's indicated that he wasn't in a position to listen to this radio communication. This form of testimony indicates that he in fact turned off the radio and left the area.

MR. TAIKEFF: Would Mr. Sikma prefer to go up and whisper in the witness' ear as to what his testimony should be on cross-examination.

MR. SIKMA: Your Honor.

MR. TAIKEFF: There was no such testimony in this case thus far.

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MR. SIKMA: Your Honor, the witness testified that on direct examination that that is what occurred and he also indicated just moments ago that he was not monitoring radio conversation.

MR. TAIKEFF: Your Honor, the record will clearly reflect that I asked him whether or not a few moments ago, a few minutes ago he said that he was in the wooded area and he was able to hear the radio from Williams' car and he said yes to that question. Now Mr. Sikma wants to throw him some signals. Perhaps we could have a recess so they could have a conference.

MR. SIKMA: I object to that clearly.

THE COURT: That is argumentative and it will be stricken from the record.

Specifically what is your objection now?

MR. SIKMA: Your Honor, the line of questioning, number one, is misleading and, number two, Counsel has given a misstatement of the record at this point.

THE COURT: Well, it may be that this is something that you could bring out on redirect. I'm going to permit the questioning to proceed at this time.

Q (By Mr. Taikeff) Do you wish to change your answer?

A No.

Q In connection with my question as to whether or not you had earlier in your testimony within the last seven or eight {336} minutes told us that you were in the wooded area conducting a search and you were able to hear FBI transmissions on Williams' car, the question is do you wish to change your testimony in that regard? Yes or no.

A No. But I could clarify it.

Q That's a chance you'll have on redirect examination.

Now when I ask you to look at Defense Exhibit 75 for identification, pages 25 and 26, did you read those pages before you responded and said, "I didn't hear any transmissions," or the equivalent? Yes or no. Did you read the text of the pages?

A No, I have not.

Q Do you know how to sight read an entire page at a glance?

MR. SIKMA: Your Honor, I would object. This is argumentative. He's arguing with the witness. He indicated that he didn't read the entire transcript.

THE COURT: Sustained.

Q (By Mr. Taikeff) How would you be able to respond so quickly, Mr. Adams, the minute you turned to page 25? What prompted you to say almost instantly, "I didn't hear those radio transmissions"?

A Because I didn't hear any specific radio transmissions at this particular time.

Q Now I asked you when I handed you that document to look at pae 25 and 26 to see if it refreshed your recollection. Would {337} you be kind enough to read those two pages and tell us whether it refreshed your recollection in any way.

A Yes, I will.

This does not refresh.

MR. SIKMA: Your Honor, I would like to ask a question on voir dire to determine whether or not this witness can answer that question.

MR. TAIKEFF: I think my question is clear cut, Your Honor.

MR. SIKMA: Very well.

THE COURT: Are you withdrawing your request?

MR. SIKMA: Yes. I'll withdraw it.

A No. This does not refresh my memory.

Q (By Mr. Taikeff) Getting back to Ann Johnson, what was she doing that afternoon in the Rapid City office?

MR. SIKMA: Your Honor, might I ask a question on voir dire for the purpose of making a possible --

THE COURT: I think all you need to do is make an objection. There is no foundation he knew what she was doing.

MR. SIKMA: Objection. No foundation, Your Honor.

THE COURT: Objection is sustained.

Q (By Mr. Taikeff) Now that official FBI document, does it reflect what she was doing? Yes or no.

MR. SIKMA: Your Honor, I would object again. There {338} is no foundation.

MR. TAIKEFF: Yes, there is. The document is in front of the witness.

MR. SIKMA: In addition it's hearsay.

THE COURT: It's not in evidence.

MR. TAIKEFF: I understand. I'm laying the foundation to offer it in evidence.

MR. SIKMA: Your Honor.

MR. TAIKEFF: HE has the document in front of him and I'm asking him without saying what its content is whether that official document prepared in the official course of the FBI business reflects what she was doing that afternoon. That's my foundation.

MR. SIKMA: Your Honor, this witness cannot answer. This document cannot be offered to this witness because the witness didn't prepare the document. While it may be a document that was

prepared in the course of business, it is not the type of document that is an exception to the hearsay rule.

MR. TAIKEFF: I'm going to offer it as an official business record, Your Honor.

MR. SIKMA: We would object, Your Honor.

THE COURT: I'm going to sustain the objection to the question that was asked of this witness.

MR. TAIKEFF: May I continue to pursue laying the foundation to the introduction, Your Honor?

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THE COURT: You may.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) Was the document which is in front of you, Defense Exhibit 75 for identification, prepared in the ordinary course of the official business or function of the Federal Bureau of Investigation?

MR. SIKMA: Your Honor, I would object as irrelevant. That can't go to laying the foundation for this particular document because it's not a document that's admissible as a business record under the Business Records Act, nor as an exception to the hearsay rule.

THE COURT: Counsel approach the bench, please.

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

THE COURT: Why do you feel that it is an exception to the Business Records Act, Rule 803?

MR. SIKMA: Your Honor, if that were the case we could put into evidence our 302s as evidence because all 302s are conducted in the ordinary course of business, but because they are made in the course for the purpose of preparing an investigation for prosecution, they are clearly not a business record for that purpose. If they were admissible, we could put in any of these documents as business records and there is a clear exception that documents prepared for the course of prosecution are not admissible.

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There are two cases here, one is Police Reports, USA versus Schriever, 414 Fd 2d 46th, 5th Circuit, 1969. Secondly, the treasury claim, for example, was found inadmissible in U.S. versus Thompkins which is an eighth circuit case which came down on 10/24/74.

I don't have the citation date. It is an eighth circuit court in U.S. versus Thompkins. It was decided on 10/24/73.

THE COURT: What did the fifth circuit hold in 414 Fd 2d 46?

MR. SIKMA: Your Honor held that police reports were not admissible as business records.

MR TAIKEFF: By prosecution. Am I not correct, Mr. Sikma?

MR. SIKMA: I do not know.

MR. TAIKFFF: I think you'll find that's what the decision dealt with because they were constituted self-serving statements. But here the adverse party is seeking to put in the information collected by the investigative arm of the prosecutor in this case and that is not relevant here.

THE COURT: I don't think that this 302 would be available as far as this witness is concerned except if it were his report and were in conflict with what he testified on the witness stand.

MR. TAIKEFF: He has official knowledge as an FBI agent {341} as to what the FBI functions were and who did what on that particular day and he recognizes this document as an official, an officially prepared recordation of those activities and there is substantial reliability. The reason there is an exception to the hearsay rule because there is a reliability. Even though this witness has no direct personal knowledge, he does know enough about the general circumstances to know that that document undoubtedly reflects the truth. That's all we need.

The government is in a peculiar position trying to argue this document is unreliable, it being a document which they prepared and turned over to us pursuant to law.

MR. SIKMA: We prepared it, but this document can't impeach the testimony of this witness because this witness has no knowledge of this fact and he stated that he has no knowledge of gunshots being fired at that time of the day.

MR. TAIKEFF: That's for the jury to determine.

MR. SIKMA: It's entirely an improper time for him to introduce this document.

THE COURT: I will not, unless you can show me some authority why this document should come in, I will not permit this document to be received on the basis of this witness' testimony.

MR. TAIKEFF: Yes, Your Honor.

MR. SIKMA: Your Honor, I would object to any {342} further questioning with regard to this document on that basis.

MR. TAIKEFF: Well, this was some background to that concerning the underlying facts that this witness does have personal knowledge that I intend to question him about. I think Your Honor will find that those questions are clearly not objectionable. Concerns his own personal knowledge.

THE COURT: And the document could be used to refresh his recollection.

MR. SIKMA: He has indicated, Your Honor, that it does not refresh his recollection.

THE COURT: I understand that. Particularly with reference to those two pages.

MR. SIKMA: That's correct.

MR. TAIKEFF: That's clearly understood, Your Honor. (Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

THE COURT: The record may show that the objection is sustained.

Q (By Mr. Taikeff) Do you know where Ann Johnson works in the Rapid City office?

A I don't understand the question.

Q The Rapid City office consists of one or more rooms in the federal building?

A Yes, it does.

Q Do you know where in that suite of offices Ann Johnson {343} works?

A Yes, I do.

Q Can you describe or designate for us the room in which she works?

A What's the tense, worked or works?

Q Let's get back to June 25, 1975.

A At this specific time I think she was a stenographer in the steno pool, as I recall.

Q Was there a room set aside for people assigned to the steno pool?

A Yes.

Q And was there any facility in there such as a loudspeaker that would broadcast transmissions going out on the FBI frequency?

A No. I don't believe there was.

Q As far as you know, when Ann Johnson was at her place of assignment on that day, she could not, as a general rule, hear the radio transmissions?

A To the best of my recollection, that's correct.

Q Sir, I'm placing before you Defendant's Exhibits 76 and 77 for identification.

MR. SIKMA: Your Honor, might I see what those documents are?

MR. TAIKEFF: Your Honor, I'm not offering them in evidence yet. I'm merely placing them before the witness for {344} the witness' perusal.

MR. SIKMA: Your Honor, I would merely like an opportunity to see what the witness is looking at.

MR. TAIKEFF: I don't believe I'm required to show the government and I will not do so voluntarily. But I will, of course, if Your Honor asks me to.

THE COURT: Well, at this point I'll deny the request.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Have you ever seen either of those two documents before?

A No. I have not.

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Q Now, I would like to direct your attention once again to the early portion of the period of time that you were at the Jumping Bull Hall area on June 26, and in particular ask you to focus your attention on the half hour following your arrival there at approximately 12:00 noon.

Now, I believe that our point of departure yesterday afternoon was a question to you as to whether or not you broadcast over your radio that you were receiving heavy fire from the vicinity of Jumping Bull Hall, and you said, "Yes," am I correct about that?

A Yes, sir.

Q Are you able to say from your own memory what time you made that transmission?

A As I recall, I made several transmissions to that effect.

Q Can you tell us what times were involved?

A No. It would have been at various times throughout the afternoon.

Q Well, do you recall making a transmission shortly after your arrival in which you said -- and I am not intending to quote you precisely, just giving you the general sense of what I am asking you about -- that "We are under fire, that you guys are going to have to direct us to where to

go, we don't know where those guys are, and they are firing at us like crazy." Do you recall anything like that?

A I could have made a transmission similar to that, yes.

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Q Do you know whether that was your first transmission on the FBI frequency?

A No, I do not.

Q Can you tell us whether the next transmission you made after the one that I have paraphrased for you was to the extent that you were receiving heavy fire from the vicinity of Jumping Bull Hall?

A I could have made that transmission, yes.

Q Now, at or about the time that you made a transmission that you were under heavy fire from the vicinity of Jumping Bull Hall, did you also say there was a red pickup leaving the Jumping Bull Hall area going north and seeking some assistance in pursuing that vehicle? "Yes" or "no".

A I need the time stance, sir.

Q I would say at approximately 12:18 p.m.?

A No. I do not recall making that transmission.

MR. TAIKEFF: Could I have a moment, your Honor, to look at this document which was just handed to me?

THE COURT: You may.

(Counsel examines document.)

Q (By Mr. Taikeff) I gather that you believe you made such a transmission but you say it wasn't at or about 12:18, it was at some other time, am I correct in my surmise?

A Generally speaking, yes.

Q And am I also correct that the time that you made such a {347} transmission would be 1:30 p.m.?

A That time would probably be more appropriate, yes.

Q But you are sure you didn't make that transmission at 12:18 p.m.?

A Yes.

Q How do you know that you didn't do that, on what do you base that statement?

A Because I don't recall a red or red and white pickup. However, it was described being -- leaving that area at that time.

Q Is it possible that you have forgotten?

A No, it is not. It is not.

Q Do you ever forget anything?

A Yes, I do.

Q Why is it not possible that you forgot that fact?

A Well, because to the best of my recollection there was no vehicle leaving about that time.

Q Mr. Adams, do you recognize that if you forgot something, you wouldn't have any recollection?

A Yes.

Q I ask you why you are so certain that you didn't do it and have forgotten it?

MR. SIKMA: Your Honor, I would object to this as argumentative.

THE COURT: Sustained.

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Q (By Mr. Taikeff) I show you Defendant's Exhibit 75 for identification again, and I direct your attention to the lower portion of the first page going over to the top of the second page; and I ask that you read that to yourself.

A (Examining) All right.

Q Does reading that in any way jog your memory?

A No, it does not.

Q Mr. Adams, isn't it a fact that you are not telling us the truth about that?

MR. SIKMA: I object, your Honor. This is argumentative and --

THE COURT: (Interrupting) Sustained.

Q (By Mr. Taikeff) Mr. Adams, isn't it a fact that you don't want to admit that you made that transmission?

MR. SIKMA: Objection.

MR. HULTMAN: May we approach the bench?

THE COURT: I think counsel is aware of the proper way of impeaching the witness.

MR. TAIKEFF: Your Honor, I am not ready to impeach him yet. I am first inquiring as to whether or not it is his testimony that he is telling the truth. I don't feel bound by his answers since I am cross-examining.

THE COURT: You are bound by his answer unless you have some other impeaching evidence. You cannot argue with the witness. He has answered. If you have some --

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MR. TAIKEFF: (Interrupting) I take his answer. I am asking him a different question as to whether he has consciously told us the truth or not in giving that answer. That's an entirely separate question, and I think --

THE COURT: (Interrupting) I will allow the witness to answer that question.

MR. TAIKEFF: I don't believe I finished the question. If I may complete it, your Honor?

THE COURT: You may.

Q (By Mr. Taikeff) I ask you whether or not it is your conscious motive at this time to deny that transmission so as to eliminate from this case the red pickup truck that left the area at about 12:18 p.m.? "Yes" or "no".

MR. SIKMA: Your Honor, I would make the same objection, and there is no basis for counsel to ask this question.

MR. TAIKEFF: There is, your Honor, a good faith basis, and I will establish that in about one minute without any doubt about it. MR. SIKMA: Your Honor --

THE COURT: (Interrupting) The objection to the question is sustained.

Q (By Mr. Taikeff) You testified in another trial in connection with these events, sir?

A Yes, I did.

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Q I am going to refer to Page 238 of the transcript of those proceedings. I ask you, sir, when you testified at that other trial arising out of these events, did you testify under oath?

A Yes, I did.

Q Did you testify pursuant to essentially the same oath you took in this case?

A Yes, I did.

Q And did you tell the truth as you knew it then?

A Yes, I did.

Q And was that trial last June and July?

A Yes, it was.

Q And as a rule, when you have experienced a certain event, is your memory better close to that event or is it better further away from that event in time?

A Usually it would be closer to the event in time.

Q Then, sir, were you asked the following question under oath and did you give the following answer under oath:

Question: And did you not give instructions at 12:18 that there was a red pickup leaving Jumping Bull Hall area going north, and you instructed people to stop this pickup?

Answer: Yes.

The question is, were you asked that question and did you give that answer under oath? "Yes" or "no".

A Yes.

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Q Since June 26th, 1975, have you intermittently worked on this case?

A Yes, I have.

Q And In that capacity have you interviewed witnesses or prospective witnesses or people you believed in your official capacity had knowledge of the events of that day?

A Yes, I have.

Q Did you have any conversations at any time with a person known as Wish Draper?

A Yes, I have.

Q Without revealing the content of your conversations, approximately how many times?

A Are you speaking of dates, because one day there was probably two or three conversations we had.

Q Any way you want to count it, whichever you think is most accurate and most revealing of the truth.

A I would say three or four times.

Q How about a person by the name of Norman Charles?

A The question is, did I discuss this case with him?

Q Did you in your official capacity as an FBI Agent, working on this case, interview, question, talk with, consult with Norman Charles?

A Yes.

Q How many times?

A Once or twice.

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Q Norman Brown?

A Three or four times.

Q Mike Anderson?

A Three times.

Q As of right now, how old is Wish Draper?

A I believe he is 20 or 21.

Q Norman Charles?

A Approximately 20. I have no idea of that.

Q Norman Brown?

A I believe he is 16 or 17.

Q Mike Anderson?

A 18.

Q Am I correct, sir, that the second time you spoke with Norman Charles was in the State of Washington within the last few weeks when you served the subpoena upon him to appear in this case?

A That is correct.

Q Did you ever say to any of the four people whose names I have mentioned in the last few minutes that if they did not cooperate with the FBI, you would see to it that they would be indicted for the murders which are the subject matter of this case? "Yes" or "no".

A No.

Q To none of them?

A Not that I can recall, no.

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Q What do you mean, "Not that you can recall", is it something that you might have had in your mind but don't remember saying?

A No. I will state, I will answer that question "no".

Q When you served the subpoena upon Norman Charles in the State of Washington, specifically now, did you tell him that if he did not cooperate, that he would be indicted for the two murders and spend the rest of his life in prison?

A No, I did not.

Q Where are you assigned right now, what is your official office of assignment?

A Phoenix Division of the Federal Bureau of Investigation.

Q Do you have -- when I say "you", I mean the FBI -- do you have offices in the State of Washington?

A Yes, we do.

Q And do you know whether the United States Marshal's Service has offices in the State of Washington?

A To the best of my knowledge they do, yes.

Q Are you aware of whether or not the Marshal's Service would serve a subpoena for the FBI?

A Yes. As I understand it, they will, yes.

Q And have you ever had occasion to have another agent in another city at a distance serve a subpoena for you in connection with a case you are working on?

A Yes.

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Q Why did you go personally to the State of Washington to serve a subpoena on Norman Charles?

MR. SIKMA: Your Honor, I would object. This is totally irrelevant.

THE COURT: Sustained.

Q (By Mr. Taikeff) Before you went to Washington to personally serve the subpoena on Norman Charles, did you ascertain that there was no one else available to do that for you?

MR. SIKMA: Your Honor, I would object. This is totally irrelevant.

THE COURT: Sustained.

Q (By Mr. Taikeff) Mr. Adams, in connection with your efforts relating to this case, do you view it as a professional duty that you have as an FBI Agent?

A Yes.

Q Do you also find that you are motivated for personal reasons because one or both of the agents were friends?

A No, I do not.

Q Was one of those agents a close personal friend of yours?

A Yes, he was.

Q And you are in no way motivated by that fact in connection with your work?

A No, I am not.

Q Do you have any feelings that perhaps you might have done {355} more to assist your fellow agents on that day?

A No, not necessarily.

Q What do you mean by "not necessarily"?

A I feel I did all I could.

Q Did you at any time in the first hour that you were there make any effort to get down into that area?

A No, I did not.

Q Once your car came to a halt, near Highway 18, during the half hour following that event, what was the furthest distance you went from that car?

A I didn't leave the car.

Q For how long?

A Oh, it was sometime after 1:30 when I crawled out of the area just for a brief time.

Q Do you feel, sir, some sense that it is very important that you see to it that there is a conviction in this case because maybe you didn't do everything that you could have done on that particular afternoon? "Yes" or "no".

A Yes.

MR. TAIKEFF: I have no further questions.

THE COURT: The Court will recess until 10 minutes to 11:00. (Recess taken.)

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THE COURT: Ready to have the jury brought in?

MR. TAIKEFF: Yes, sir. But I want to report some thing to Your Honor. I believe Your Honor and the government are waiting for an answer from Mr. Lowe as to the name of a certain person. Does Your Honor recall that? There was an interview with a prospective witness that has been subpoenaed by the government. The government asked for the name of those people.

THE COURT: Yes.

MR. TAIKEFF: There was one name that Mr. Lowe said he wanted to make sure he was not bound to any confidentiality. He called and asked me to report to Your Honor the name of that person. Madona Slow Bear.

MR. HULTMAN: Your Honor, I have one matter I would like now to make a part of the record and we will refer to it at various times, a stipulation of evidence which has now been signed by all Counsel and by the defendant and a second one page stipulation which has been signed by Counsel for both parties and by the defendant. At the appropriate time, whatever part of the stipulation should be entered into the record --

THE COURT: Are you filing that now?

MR. HULTMAN: I would file those now, Your Honor, so the Court would be aware of it.

THE COURT: The jury may be brought in.

(Whereupon, the following proceedings were had in the {357} courtroom in the hearing and presence of the jury:)

MR. SIKMA: Your Honor.

THE COURT: That's right, you had completed your --

MR. TAIKEFF: Yes. I had completed, Your Honor.

THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MR. SIKMA:

Q During cross-examination you referred to an answer given in prior testimony concerning the red and white pickup. You referred to it --

MR. TAIKEFF: Objection, Your Honor. I withdraw the objection.

THE COURT: Very well.

Q (By Mr. Sikma) You were asked for a yes and no answer whether you said at that time, the question being, "At 12:18 P.M. did you not say you saw a red pickup?" Answer: "Yes". Was it your intention at that time to lead the record to indicate that you believed that at that time you in fact saw a red pickup?

MR. TAIKEFF: Objection to the form of the question.

THE COURT: Sustained.

Q (By Mr. Sikma) Can you state what your intention was with regard to that answer that you --

MR. TAIKEFF: Objection, Your Honor.

THE COURT: Sustained.

Q (By Mr. Sikma) On cross-examination you were asked whether {358} or not you gave that answer to the question which was, "At 12:18 P.M. did you not say you saw a red pickup," is that correct?

A Yes.

Q And were you not asked for a yes and no answer simply to that question at that time?

A Yes, I was.

Q Did you state what you meant by your answer at that time?

MR. TAIKEFF: Objection. The answer speaks for itself, Your Honor.

MR. SIKMA: Your Honor, the answer does not speak for itself. Counsel read one statement out -
-

THE COURT: I will overrule that objection. The witness may explain his answer.

Q (By Mr. Sikma) Would you explain your answer.

A That question was asked of me in regard to an entry on a statement prepared by another individual from our office.

Q Now can you state whether or not you believed at that time and whether or not you stated at that time that was your impression as to the correctness of that time?

A Not so much the correctness of the time but the vehicle being in there. I recall the vehicle was in there and in answer to that question, and it was on this particular document, it was there subsequent, subsequent testimony reflected and we got it clarified that I was referring to the pickup that was in there about 1:30 P.M.

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Q And is that your recollection as to the time that you observed the red and white pickup?

A Yes, it is.

Q And what time was it that you recall that?

A 1:30 P.M.

Q Is that an approximate time?

A Yes, it is.

Q And with regard to this observation, were there any other factors that you have been able to determine in your mind happened prior to the time you observed that red pickup?

MR. TAIKEFF: Objection to the form of the question.

THE COURT: Sustained.

Q (By Mr. Sikma) Can you state if there were any other things that you observed after you arrived at the crime scene? Were there any other things that happened prior to that time?

MR. TAIKEFF: Objection. It goes beyond the scope of the cross. Too indefinite.

THE COURT: Overruled.

A Yes. There were other things happened that I relate this incident to.

Q (By Mr. Sikma) What are those things that you relate it to?

A The visit of Joanne La Deau to the crime scene.

Q And this happened before or after Joanne visited the crime scene?

A My recollection, it had happened after she was at the crime {360} scene.

Q Now you say "after she was at the crime scene." Is that after she arrived at the crime scene or after she left the crime scene?

A After she departed about 1:30 in the afternoon.

Q You were asked a question on cross-examination concerning what you could have done on that particular day. Do you recall that question?

A Yes, I do.

Q Now during the afternoon from the time you arrived until 5:00 P.M., where were you?

A I was near my car where it was stalled in the roadbed out here near Highway 18.

Q Now can you tell me whether or not this was in the line of fire?

A Yes, it was.

Q And can you tell me during the afternoon how long it was that you received fire?

A It was from the time I arrived until, I estimated the time to be about 4:00 P.M.

Q So from that, was approximately 12:00 o'clock until 4:00 P.M. you stayed in a position where you were in a line of fire?

A Yes. That is correct.

Q And shots were being fired at you at this time?

A Yes, they were. Intermittently all afternoon.

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Q Did you have any instructions from your superiors with regard to where you should be during the afternoon?

A Yes, I did.

Q And what were those instructions?

A They instructed me to stay with the radio and keep them advised what was going on at the scene.

Q Were they aware of the fact that your radio was in an approximate area which was in a line of fire?

A Yes, they were.

Q Now you also indicated the time as to what you were aware of as to hearing shots being fired or gunshots, is that correct?

A Yes.

Q What shots or what time were you aware of the shots being fired from your own personal knowledge?

A When I say the firing stopped at 4:00 o'clock, that was in our general location there. There was some additional shots fired when the houses were secured about 4:00 P.M. and then, as I related, I observed the individual, heard firing as I observed the individuals fleeing from the south end about 5:45.

Q And if there were gunshots fired at that time or after that time, were you aware of, did you have personal knowledge of that?

A After the 6:00 o'clock time?

Q Yes.

A There could have been. I had no personal knowledge of it.

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Q And where were you at about that time?

A I was either at the vicinity of the houses or proceeding to the wooded area. I think I left the area about 7:15 and was taken to the hospital.

Q You indicated that while you were going back to Highway 18, I believe, you had cut your hand, is that correct?

A Yes.

Q And you heard the sound of an FBI radio?

A I heard the sound of radio transmissions; yes.

Q And did you recognize whose radio that was?

A They were both transmissions on both the FBI and the State radio frequencies.

Q Did you listen to the content of those transmissions?

A No, I did not.

Q Between 12:00 o'clock and 4:00 P.M. did you know of the whereabouts of Special Agents Williams and Coler?

A No, I did not.

Q Did you have any idea as to where they were throughout the course of the afternoon?

A All I knew is they were possibly in the vicinity of the houses but I had no knowledge as to any exact location.

Q And you couldn't see the bottom of the hill?

A No. I could not.

Q I have a further question about the terrain along the wooded area. Can you tell me what if any terrain features there are at {363} the edge of the wooded area, let's say to the northeast of the wooded area? Is there anything particular that you can say about the terrain there?

A Referring to this area here (indicating).

Q The area all along the wooded area along the creek.

A At times the creek approaches the edge of the wooded area and there's another drop off of 10 to 15 feet into the bottom of the creek.

Q Can you tell me whether or not there is a drop off at the edge of the tree line?

A Yes. In some areas it would be. The creek approaches the edge of the tree line, very near the edge of the tree line, so some of the trees are right even on the incline from the creek bottom up to the elevation. There is a plateau area here (indicating).

MR. SIKMA: I have no further questions.

RE-CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Mr. Adams, would you resume your position at the map, please, and I ask you to keep your attention focused on the subject matter which Mr. Sikma just asked you about.

Now run your finger over the edge of the wooded area so that everyone will know specifically what point you were referring to when you answered the question about the drop in the vicinity of the creek.

A Well, I know for a fact, I believe it's right in this area {364} here (indicating) the creek approaches right at the tree line somewhere in here (indicating). As far as through here, as I stated, the creek zigzags and, as I recall, in this fashion throughout the wooded area.

Q For the benefit of the record, I will state that you started out at the northeastern edge of the woods in the vicinity of the left-hand corral and traced the boundary line of the wooded area along the boundary line on Exhibit 71 for at least eight or ten inches, is that a fair description?

A That would be right-hand corral?

Q You started at the left-hand corral I said.

A Oh.

Q Then you traced your finger along the edge of the wooded area for a linear distance of approximately eight inches before you then designated or indicated that the creek went inside the wooded area. Have I made an accurate statement?

A Well, I might elaborate further that perhaps there is a bend in here (indicating). I can't state for a fact, but I know that somewhere in this vicinity that creek approaches the wooded area (indicating). Now if it travels along the wooded area, I can't state that for a fact.

Q But subject to that modification, is my statement an accurate one of the way you moved your hand on the exhibit?

A Yes. Somewhere in this vicinity the creek does pass in the near vicinity to the edge of the trees.

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Q All right.

If you'd be kind enough to resume your seat.

I gather then that there is a change of elevation at that point.

A Yes.

Q What is the difference in elevation between the high side and the low side?

A I would estimate it to be 10 to 15 feet.

Q And is it a vertical drop or is it on an incline?

A Well, there are places in there that -- now I can't speak specifically -- all I know, there are places that creek bank drops off almost vertically, then there are places you can walk down gradually.

Q All right.

So there are places where there is an incline?

A Yes.

Q And trees growing on that incline?

A Yes. That's correct.

Q And those trees are growing essentially a vertical position?

A That's correct. Yes.

Q Now which way is higher: towards the corral or away from the corral?

A The higher elevation would be in the vicinity of the corral.

Q So that as a person came through the woods from the lowest edge of Exhibit 71, he would come upon a rise in the terrain, {366} whereas if a person came from where Coler's car was into the woods, he would experience a decline in the terrain, right or wrong?

A Well --

Q You don't understand the question, say so.

A Well, I can't answer right or wrong because I think we're misinterpreting each other. I am talking about the 10 to 15 foot difference in elevation being from the ground level around there to the base of the creek.

Q Okay. So far we're together.

A All right.

Q My question is which way does it go? Is the creek area higher than the nonwooded area or the nonwooded area higher than the creek area? Do you understand the question put to you that way?

A Let me say this: there is, some of the wooded area is on the same elevation as the nonwooded area. Do you follow me?

Q Yes.

A The creek meanders through there. When I say the 10 to 15 foot difference in elevation, I am talking of the plane of the nonwooded area, some of the wooded area down to the base of the creek.

Q Let me put it to you this way: is it fair to say that at that point in the vicinity of the two corrals the creek has an east bank and a west bank?

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A It has.

Q Which has a higher elevation: the east bank or the west bank?

A I would say they are both in the same plane, same elevation.

Q On both sides of the creek?

A Yes.

Q Where does that change of elevation occur?

A From the sides of the creek to the base of the creek, the bottom, the floor of the creek.

Q Are you saying that the creek is in a crevice like a canyon?

A It's in a creek bed. The bottom of the creek bed, that's what I was referring to.

Q Is it possible for a person to cross the creek at that

A I assume it is. I crossed the creek in several locations and, as I said, sometimes the water was above my waist.

Q Was that crossing done at a great distance from either one of those two corrals?

A No, it was not.

Q Are we talking about a quarter mile or 100 feet?

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I, I believe I probably crossed within, the first time, within two hundred feet. That would be an estimate.

Q Okay. Now your car when you first arrived and then backed up was somewhere up here near the left-hand edge, the center of the left-hand edge of Exhibit 71 almost at Highway 18, is that correct?

A Yes. It is.

Q What is the nature of the terrain on which that old highway goes: is it elevated above 18, the one that parallels the present Highway 18?

A I would say generally that elevation would be, well, when you're up on top of the plateau it would probably be higher than 18.

When you drop off to the left-hand side of the road where I was parked there, I believe it's lower than the elevation of 18.

Q But along this area generally is there a rise here along this parallel line west of 18 that's higher than 18.

A Yes. The, the plateau to the southeast of the road where I was stopped on there which runs diagonally to the upper lefthand corner, that elevation to the best of my recollection is either at the same elevation or it might be slightly higher than 18, particularly in this location there.

Q If you stood on the center line of Highway 18, could you see the tan and red house?

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A It depends on the location where you stood.

Q Well, let's say in this general vicinity where your car was.

A On an extension of the intersection, the road where my car was on Highway 18 I would say you could not but if you proceeded on toward Pine Ridge you could.

Q You mean going up that way --

A Yes.

Q -- towards the top of the chart?

A Yes.

Q Now people who entered this wooded area in the vicinity of the corral, --

A Yes.

Q -- how did they enter the general area? Where did they come into the area?

A They drove into Highway 18 and parked to the north of where my car was parked there. There's a --

Q That would be out here, somewhat off to the left?

A No. Right at the intersection of the road and as the road leaves the -- I'll just point it out to you.

Our cars were all parked in this vicinity right here.

Q Did any of those cars take any bullets?

A They were down off the edge of the bank, sir.

The plateau breaks off right in this area and goes down at a lower elevation.

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Q So that if you went beyond that rise in the direction of 18 you'd be shielded from the shooting, wouldn't you?

A That is, that is correct; yes.

Q And then you could proceed on the chart to the left along 18 and increase the distance between yourself and the houses where the shooting was coming from, right?

A Yes. You could.

Q Then you could find some path or other means of entering the area and getting down here in the woods, right, as those people did?

A Yes.

Q Now at 1:30 a pickup truck left the area and you observed that pickup truck leave the area, isn't that correct?

A Yes. Approximately 1:30.

Q And what color was that?

A A red and white.

Q Now before on redirect examination Mr. Sikma put a question to you concerning your testimony at the other trial last summer and you made reference to an entry somewhere, do you recall?

A Yes.

Q What you were talking about?

A Yes. At that time I was shown a document which contained an entry, this particular entry.

Q And?

A And I was asked questions regarding this entry.

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Q And as you recall it -- withdraw.

As you recall what your understanding was at the time you were asked the question or questions, what did you understand those questions to ask of you?

A As to my recollection of the vehicle I saw enter and depart that area on the afternoon of June 26th.

Q I'm showing you Defendant's Exhibit 75 for identification and I ask you, is that the document that you looked at in the last trial?

A Yes. I believe it is.

Q And did that document make any reference to a red and white van or pickup at 12:18 p.m.?

A I believe it's a red pickup.

Q And what is that document?

A It's a FD 302.

Q A 302 prepared by the FBI?

A Yes.

Q And generally speaking what subject matter does it deal with?

A This particular document here?

Q Yes. Do you want to look at it again?

A No.

As I recall it's an interview of Ann Johnson.

Q And go on.

A And it reflects, I guess it reflects her observations on the 26th of June, 1975.

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Q Observations in what sense: touch, smell --

MR. SIKMA: Your Honor, I object.

This, this question has been asked and answered a number of times.

MR. TAIKEFF: I believe the Government has opened the door on their redirect examination.

MR. SIKMA: Your Honor, --

THE COURT: The door had not been opened as to the contents of that, of that exhibit except --

MR. TAIKEFF: I'm looking for a general description of it. I have not asked him, I will not ask him about content of it but the witness used the existence of that document to explain why he gave a certain answer.

I believe it's appropriate for me to probe his state of mind and his understanding at the time he gave that answer to eliminate, if possible, the question of any confusion in his mind.

THE COURT: The point that the Court is making is that you cannot through this witness and without the exhibit being in evidence get the information from the exhibit.

Your question relating to the, whether or not the document reflected her observations which really goes to the content of the document --

MR. TAIKEFF: No, Your Honor, I was asking for a generic description --

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THE COURT: All right.

MR. TAIKEFF: -- as he understood the document as he looked at the courtroom last June or July.

Q (By Mr. Taikeff) Do you understand that question, Mr. Adams?

A No. I'll need the question.

Q All right. Let me see if I can try it a different way.

You looked at a document. After looking at that document you were asked this question: "And did you not give instructions at 12:18 that there was a red pickup leaving Jumping Bull Hall area going north and you instructed people to stop this pickup?"

A Yes."

Now when that event occurred, namely that you were asked that question and you gave that answer, it was at a time after you had looked at the Defendant's Exhibit 75 for identification; yes or no?

A I can't answer that yes or no, Mr. Taikeff.

Q Why not?

A Because the way the question is stated.

Q It's a statement seeking chronological fact.

Did you give that answer to that question after you looked at the document which in this case is marked Defense Exhibit 75 for identification; yes or no?

A To the best of my recollection; yes.

Q Now speaking in general terms only, you've told us so far {374} that the document in question was a 302, an official FBI report, is that correct?

A Yes.

Q And it reflected or summarized an interview with Ann M. Johnson, an FBI employee, is that correct?

MR. SIKMA: Same objection, Your Honor. We've been through this about three times.

Counsel has asked questions about it. It's been asked on redirect examination.

MR. TAIKEFF: I haven't gotten any answers yet, Your Honor. Of course, I keep getting interrupted with objections.

MR. SIKMA: Your Honor, I object to those statements. It's perfectly proper for the Government to make an objection to the objectionable question.

THE COURT: The jury will remember my preliminary instructions, that it's proper for both sides to make objections.

I'm not sure I understand now what the state of the record is.

MR. TAIKEFF: The state of the record is, Your Honor, that the witness has said that he answered the question and, which I read to him and reread to him after he looked at the document which is Defendant's Exhibit 75 for identification; that that document was an FBI 302 and I'm up to the point where I was getting to the last point of departure, namely, whether that was an interview with an FBI employee or a recordation of {375} an interview with an FBI employee by the name of Ann M. Johnson.

I am probing his state of mind at the time he answered the question on page 238 of the transcript of the last trial.

THE COURT: Very well. That will be allowed.

Q (By Mr. Taikeff) Now did you, when you looked at that document and before you gave that answer to that question, recognize the document as a report by Special Agent O'clock of an interview with an FBI employee by the name of Ann M. Johnson; yes or no?

A Yes.

Q And you told us that as you recall your state of mind in June or July of last year when you were testifying, you recognized that that report contained her observations, right?

A Yes. Her observations.

Q What kind of observations? Don't tell us the content. Just generally what kinds of observations?

MR. SIKMA: Your Honor, I would object to this.

It's obvious that this document rerers to hearsay evidence that is not only one step removed but two steps removed. It is a recollection of another individual.

Your Honor, the effect is the same on the jury or, whether or not he's offering the exhibit or not. It's totally improper.

MR. TAIKEFF: I am not offering the content.

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The Government has made inquiry about the witness's state of mind in an effort to rehabilitate with reference to the question and answer that I put to him on cross.

I am now probing his understanding about that document and they keep interrupting me when I get to this particular question. It's been ruled on twice already.

THE COURT: The objection, as I understand it, goes to your question relating to the document reflecting her observations and I will sustain that objection again.

MR. TAIKEFF: He's already answered the question twice, Your Honor, without objection. He said it does contain her observations.

All I asked him is what kinds of observations does it reflect, not what the content of those observations were.

MR. SIKMA: Your Honor, that's my objection, the kind of observations and the observations --

THE COURT: Sustained.

Q (By Mr. Taikeff) When you read that document, Mr. Adams, were you then sufficiently secure in the knowledge that you had made that statement so that you answered yes to the question which was put to you; yes or no?

A No. I was not.

Q You were not?

A No.

Q You were on the road, is that correct; yes or no?

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A Yes.

Q And you were uncertain about an answer and you'd said yes without qualification; is that what you're telling us; yes or no?

A Yes.

MR. SIKMA: Your Honor, --

MR. TAIKEFF: No further questions.

MR. SIKMA: Your Honor, I did not have an opportunity to object to that question.

I would object to the question as, first of all, being highly improper and I would ask that it be stricken, the answer be stricken. It was argumentative and misleading.

THE COURT: Specifically which question are you referring to?

MR. SIKMA: The last question, Your Honor, with regard to the question that was asked with regard to his intent at the time the question was answered because I don't believe the witness understood the question.

MR. TAIKEFF: How does Mr. Sikma know what the witness understood, Your Honor.

THE COURT: Well, the question's been answered. I'm going to leave the record as it is.

MR. SIKMA: I just have one question, Mr. Adams.

MR. TAIKEFF: I object, Your Honor. There's been direct, cross, redirect, recross. I believe that's appropriate.

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MR. SIKMA: Your Honor, he has left the witness with a, without an opportunity to --

THE COURT: My normal procedure is that until they get completely out of line, either side, I do not abide by any normal limitations on direct and cross, redirect and recross.

You will have an opportunity to recross if there's some question asked.

REDIRECT EXAMINATION

BY MR. SIKMA

Q Can you explain what you meant by your last answer?

A Yes. I answered that question yes when I was under oath a year ago because I was answering the question in regard to that document.

There are several pages in there where we had three different vehicles and that we were, I was referring to one, counsel was referring to another and I think it all finally, if you go through the entire thing it's going to finally come out in the end exactly which vehicle was where and my observation of each one of them.

Q And what was your observation as to the red pickup that --

MR. TAIKEFF: Objection. The question has been asked and answered ad nauseam.

THE COURT: Sustained. That's cumulative.

MR. SIKMA: I have no further questions, Your Honor.

MR. TAIKEFF: May I have the last word, Your Honor?

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THE COURT: You may.

RE-CROSS-EXAMINATION

BY MR. TAIKEFF

Q Let me read to you the question from page 238.

MR. SIKMA: Your Honor, I would object to that as being clearly repetitious.

THE COURT: That is also cumulative.

Q (By Mr. Taikeff) All right. Do you recall the question you were asked?

MR. SIKMA: Your Honor, again I would make the same objection.

MR. TAIKEFF: I just wanted to know whether the witness recalls the content of the question.

MR. SIKMA: Your Honor, he's answered that and it was cumulative.

THE COURT: He may answer that.

Q (By Mr. Taikeff) Do you recall the content of the question?

A Which question now?

Q That was put to you last summer which is the subject matter of these inquiries; yes or no?

A There were numerous questions. That's why --

Q Are you saying that you have some failure of memory in that regard; yes or no?

A Well, I recall several questions but I want a specific question.

MR. TAIKEFF: Then, Your Honor, am I permitted to {380} assist the witness by reading the question to him?

THE COURT: If you are reading the question regarding the pickup, you will not be permitted. It's my same ruling that it is cumulative. I ruled that the United States' question was cumulative and your question was cumulative.

MR. TAIKEFF: That I want to ask the witness a question about the inquiry that was made of him and now he tells me he doesn't remember what question I'm talking about.

Your Honor, I have a suggestion.

Q (By Mr. Taikeff) Look at page 238, sir, and look at lines 19, et cetera, as long as you need to.

Now, sir, are you able to look at that page and think at the same time?

A Yes.

Q Does that question inquire of you as to whether something was in a 302 or did it ask you whether you did something?

A It refers to an entry that was in a 302.

Q It does?

A Yes. It does.

Q Read the words to me that reflect that fact in the question, just those words.

MR. SIKMA: Your Honor, I would object to that as cumulative.

He's given the answer to the question and has cleared up what was on the witness's mind. Now he wants to go through the entire line of questioning once again.

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THE COURT: You may answer counsel's question.

A All right. Starting at Line 9 --

Q (By Mr. Taikeff) (Interrupting) Yes.

A (Continuing) Question: Let me ask you this: You have in front of you the radio log monitored by Miss Johnson, do you not, I think it is "B"; and that is the same document that I looked at -- I believe it is referring to your 75?

Answer: Yes.

And I ask you to look at the entry for 12:18 p.m., that is about the bottom of the first page -- yes -- and over to the top of the second page. Do you remember you arrived approximately noon?

Answer: Yes, that is right.

Then the question: And did you give instructions at 12:18 that there was a red pickup leaving Jumping Bull Hall area going north, and you instructed people to stop this pickup?

Yes.

Q O.k. Now as to that last question, was that question put to you to find out what was on the paper or what you actually did on June 26th, 1975?

A My interpretation of the question, and I answered it, it was on the paper.

Q You understood that question to mean, do you see it on the paper?

A Yes.

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Q So a lawyer handed you a piece of paper on which something was written and asked you those questions to find out from you what was on the piece of paper, is that your understanding? "Yes" or "no".

A Yes.

MR. TAIKEFF: I have no further questions.

MR. SIKMA: That's all, your Honor.

THE COURT: You may step down. (Witness excused.)

MR. HULTMAN: May we approach the bench, your Honor, with reference to the next witness pursuant to counsels' previous discussion?

THE COURT: You may.

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

MR. HULTMAN: Your Honor, the Government in good faith is attempting to meet -- even though there may not have been a ruling from the Court yet, your Honor -- requests of the Defendant with reference to specific exhibits and specific testimony, so this is one of those indications had. We had trouble with it yesterday. I just want to make sure we are not putting something before the jury that there is some question about.

The Government now intends to call Mrs. Coler and that's one of the items --

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MR. TAIKEFF: (Interrupting) Thank you very much, I appreciate that.

MR. HULTMAN: (Continuing) -- to which counsel objected. He requested that I not even mention the name in calling the witness. I don't think under the Rules I need to, but I have met the request.

MR. TAIKEFF: Your Honor, I believe that he intends to produce a photograph of the deceased agent taken at the time when, I think he was either entering or graduating from the FBI Academy, and the testimony will be offered through the witness or the mother -- in one instance it is the wife, and one instance it is the mother.

We feel that this would be irrelevant to begin with, and in any event highly prejudicial because it will appeal to the emotions rather than the intellect of the jury. There is no dispute that the people who died on that day were the two FBI Agents whose names are before the Court, and there is no question about identity. There is no need to introduce photographs which were taken at a much earlier time which show them to be rather attractive young people, which only emphasizes the tragedy of what occurred that day; but there can be no legitimate probative reason for offering these photographs and testimony except to inflame the passions of the jury. That's why we have objected in advance.

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MR. HULTMAN: Your Honor, the intent of the Government is to introduce them for a number of probative reasons; and we think it is very legitimate; that it is Government's Exhibit No. 27 and Government's Exhibit No. 28; that those are photographs of the two agents recognizable by a number of people who will be called as witnesses. It will be the only type of identification. They certainly would not necessarily recognize them by the status of their faces to which counsel has already objected in many instances; and it is for that probative value that I intend to call these witnesses and for that limited purpose, your Honor, to introduce these photographs.

MR. TAIKEFF: We will solve that very simply. Any witness who is unable to state of his or her own knowledge that the person about whom the witness has been called to testify is either Coler or Williams, we would stipulate that the person who is questioned about is called either Coler or Williams.

THE COURT: The ruling of the Court, of course, is that the parties are not required to stipulate.

Furthermore, the allegation is that the two persons were murdered. That is what the case is all about, and I think that the evidence simply showing the picture, of course, of two persons is clearly admissible and will be allowed.

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MR. HULTMAN: Ellie, would you be willing -- I mean, I understand what the intent of your motion is; and I have tried to meet what your needs are, the same as mine.

MR. TAIKEFF: Yes, I have no question about that.

MR. HULTMAN: You are not really objecting to the two exhibits, are you; you are objecting primarily to the testimony of the two witnesses, or maybe you are?

MR. TAIKEFF: No. My primary objection was the manner of introducing it. My secondary objection was the introduction of the photographs themselves, but as between the two, if you

were about to ask whether I would stipulate those are the photographs, in light of the Judge's ruling I most assuredly would.

MR. HULTMAN: There would be no necessity for me to call either of the two witnesses.

THE COURT: Is that the only purpose you are going to call them for?

MR. HULTMAN: That is the only purpose for which the Government sought --

THE COURT: (Interrupting) Then I would say that that is the way it should be presented.

MR. HULTMAN: The other thing though, your Honor, I would want to make sure now, as counsel said earlier, his willingness to stipulate with reference to any witness who may be called.

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MR. TAIKEFF: There is no question we will not give you any difficulty in making proof in that regard.

MR. HULTMAN: All right. The Government will formally offer, when we go back, your Honor, the two photographs, the two exhibits; and I will not call the two witnesses.

THE COURT: Very well.

MR. TAIKEFF: Thank you.

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

THE COURT: You may proceed.

MR. HULTMAN: May it please the Court, your Honor, as per stipulation at this time -- and if I in any way misstate, Mr. Taikeff, what the oral stipulation was we had at the side bar, why, you correct it in any way -- the Government and the Defendant at this time stipulate, your Honor, into evidence Government's Exhibit 27 and Government's Exhibit No. 28 which are photographs, an individual photograph in each instance of each of the two FBI Agents, Mr. Coler and Mr. Williams.

It is further my understanding of that stipulation that there will be no challenge by counsel for the Defendant as to these photographs in terms of any witness recognizing them as either of these two individuals, that there will be no objection.

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MR. TAIKEFF: That's correct, your Honor.

MR. HULTMAN: Exhibit 27, we offer, your Honor, then is a photograph of Special Agent Williams, and Exhibit 28 is a photograph of Special Agent Coler.

THE COURT: Would counsel approach the bench once more?

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

THE COURT: I assume in stipulating that you are not waiving the objection that you made at the bench?

MR. TAIKEFF: That's correct. I had indicated in my willingness that it was in the light of your Honor's ruling.

THE COURT: Just so the record is clear on that point.

MR. TAIKEFF: I think Mr. Hultman has made a very reasonable offer and a very reasonable compromise. I technically object to the use of the photographs.

THE COURT: I understand. I think your objection was based on possible prejudice, and I just want the record to be clear that that objection has not been waived.

MR. TAIKEFF: Thank you, your Honor. I appreciate that.

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

THE COURT: Mr. Hultman, before I receive those two {388} exhibits, would you state for the record which exhibit is the picture of Mr. Williams and which is the picture of Mr. Coler?

MR. HULTMAN: Yes, your Honor. Exhibit 27 is a photograph of Special Agent Williams.

THE COURT: Very well, thank you.

MR. HULTMAN: And Exhibit No. 28 is a photograph of Agent Coler.

THE COURT: Thank you.

MR. HULTMAN: Could I proceed to take one moment to pass these photos to the jury at this moment?

THE COURT: You may. The exhibits are received.

(Plaintiff's Exhibits Nos. 27 and 28, having been previously duly marked for identification, so offered in evidence, were received.)

(Jury examines exhibits.)

MR. HULTMAN: The Government calls Mr. Steven Weston as the next witness, your Honor.

STEVEN WESTON,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HULTMAN:

Q Would you state to the Court and to the jury your name, please?

A Steven Weston.

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Q And where do you live, Mr. Weston?

A I now reside in Phoenix, Arizona.

Q And approximately how long have you lived in Phoenix?

A Until -- for ten months since I have come home from my mission.

Q What is the nature of your occupation?

A I am a lab technician.

Q And where do you work in Phoenix?

A For United Metro-Tanner -- (spelling) T-a-n-n-e-r -- Brothers.

Q Now, immediately prior to this period in Phoenix, where were you located prior to be in Phoenix?

A Prior to this I was a missionary for the Church of Jesus Christ for Latter Day Saints.

Q And for what period were you in that capacity?

A For two years.

Q Would you tell the jury approximately what time, referring to the time frame?

A April of '74 to April of '76.

Q And where -- is there a mission for your particular church, Mr. Weston?

A Yes, sir.

Q And to which church do you belong?

A The Mormon Church, the L.S. Church -- Church of Jesus Christ for Latter Day Saints.

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Q Where was it that you did this mission work?

A It was in several areas, Pierre, Hot Springs, Rapid City, Oglala, Pine Ridge, Standing Rock Reservation.

Q Now, at what time did you arrive at Pine Ridge, approximately?

A In Oglala or in Pine Ridge?

Q I am sorry, in Oglala.

A In Oglala, approximately February of '75.

Q And what did you do from the time you arrived in Oglala as far as your everyday endeavors?

A Well, our everyday endeavors, we were out among the people. We talked to people the teachings of the church. We taught seminaries to the young children. We visited many other people, more or less got to know a lot of the people.

Q All right, and where was it specifically in Oglala that you worked out of, or what was your home base?

A We had a trailer sitting up on the hill next to the cemetery and next to the Catholic Church.

Q All right. Now, as you went from Oglala to Pine Ridge, what highway would you take?

A I don't even know the name of the highway. It is just a road we went on -- is 15 miles from Oglala.

Q Well, if I showed you behind you what has been introduced in here as Exhibit 71 and refer to an area which is just generally also in evidence as an area known as Jumping Bull {391} property, could you tell me what highway, would that refresh your recollection in any way?

A Sure, I think so.

Q Would you turn and take a look at Government's Exhibit No. 71?

A Highway 18.

Q Is your memory refreshed as a result of that, do you know as a fact that it is Highway 18?

A Sure.

Q And that is a U.S. Public Highway?

A Yes, sir.

Q Now, did you have -- approximately how long did you work out of Oglala in this mission that you had?

A Six to seven months.

Q Six or seven months, so tell the jury approximately what time frame, to what time frame.

A From February until about August.

Q Of what year?

A Of '75.

Q Did you have occasions then to travel up and down Highway 18?

A Yes, sir.

Q And would this normally be every week during that period of time?

A Several times during the week.

{392}

Q Now, I want to direct your attention to the 24th of June, 1975, and ask you whether or not you do recall some events that took place on that particular day?

A That was two days prior to the killings.

Q Is that why you recall this being a specific day?

A Well, two days before the killings we were out at Chauncey Lone Elk's house.

Q Is it fair for me to conclude that the reason you remember that particular day is that you remember it being as two days prior to the event that we are concerned with here in this courtroom, and it is a matter of general knowledge in that area it happened the 26th of June?

A Yes.

Q All right. Now, relating -- did you have an occasion to go down Highway 18 that day?

A Yes, sir. In order to reach Chauncey's, you have to go down Highway 18, he lives out near Jumping Bull Hall.

Q All right. The name of the party that you were referring to is again -- what was the name?

A Chauncey Lone Elk.

Q Chauncey Lone Elk. What was your reason for your going to Chauncey Lone Elk's that day?

A Several of his children were going on placement, and we went out there to check on them and to teach the kids the seminary and just to more or less keep them committed to going.

{393}

Q All right. So as a part of your work, as you indicated awhile go, a general mission of dealing with children was part of your mission; and on this day you were carrying out a specific part of that mission, is that right?

A True.

Q Now, what was the nature of the children that you had -- how many children were there that you were working with?

A Chauncey has, if I remember right, he has six children; and three or four of them were going to go on placement.

Q Now, with reference to Government's Exhibit 71, would you point out to the jury, if you can, the relationship of that exhibit, if you can, approximately where Chauncey Lone Elk's home would be?

A Down there to the left, on the north side of the road, there is a little exit road that goes off, and that's approximately where Chauncey's property stands right now.

Q All right, so in a general description then, Chauncey lives across Highway 18 on the other side of the highway from the Jumping Bull property, is that right?

A Sure.

Q And somewhere down the road, I believe as you pointed it out, on Highway 18 toward Oglala, is that a fair conclusion for me to draw?

A Yes.

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A Yes.

Q If in a 302 someone making an interview of you at some time they stated in the interview that the property to which you are referring you were at was across from Harry Jumping Bull's, would that be in a general sense maybe correct but in a specific sense maybe incorrect?

A In a general sense, correct. The property, you know, is at an angle.

Q But it's not directly across the road in which you turn in to come to Jumping Bull's is that correct from what you have told us?

A That's true.

Q And what time of day was this that you went to Chauncey Lone Elk's?

A It was in the afternoon. Probably early afternoon.

Q This was the 24th of June, 1975, is that correct?

A Right.

Q Tell us what if anything happened.

A Well, we'd been out to Chauncey's and we had talked to him and his children and getting ready to leave. As we left there was a carload of people at the edge of Chauncey's property and their had been broken down and they --

Q Now --

A Pardon?

Q Where was that, their car and these people with relation {395} to Highway 18?

A Just like I showed before where Chauncey's property was, they were just off of Chauncey's property at the, off of the exit road there.

Q Just off of Highway 18?

A Right.

Q They were not on the highway?

A No, sir, they weren't.

Q Now did you at that particular time recognize any of the individuals as anybody that you had ever seen or knew in any way?

A I'd seen several of them before; yes.

Q Did you know their names at this particular time?

A Not specifically.

Q Now would you describe the individuals that were there at the car?

A It's been a year and a half and it's hard to kind of describe them.

Q Let me just ask you the general questions. Were they native Americans?

A Yes, sir, they were.

Q Approximately how many were there at that time?

A Approximately six.

Q Did you notice anything unusual about the individuals or anything about them?

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A They were all carrying firearms.

Q Now what if anything did they ask you or did you indicate to them at that time?

A They just asked us if we could push them to Jumping Bull Hall.

Q And what if anything did you do?

A We pushed them to Jumping Bull Hall.

Q Would you explain and show to the -- I assume you pushed them out to Highway 18, is that a fair conclusion?

A Yes, sir.

Q Would you then indicate to the jury the route and the path down Highway 18 and wherever it was you went?

A Would you like me to stand and show you?

Q Would you please. And I believe there is a pointer there at the base of the Exhibit No. 71, Mr. Weston.

A We pushed them off the road off onto the highway here (indicating). We traveled up the highway. We came into the main entrance up here of Jumping Bull Hall and we pushed them down the road (indicating). And about right here they told us not to go any further and back off and leave immediately.

Q Now what was your reaction at that moment?

A They were carrying guns and we knew that they meant what they said: we weren't to go any further.

Q Did they indicate to you specifically that you were to go no further?

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A Yes, sir.

Q And that you were to back off?

A Yes, sir.

Q What if anything did you do at that time?

A We backed off.

Q Would it be fair for me to conclude that this moment that you were surprised?

A Yes, sir, I was.

Q Were you in fear at this point?

A Not real fear, but I understood that we weren't go any further.

Q Now what if anything did you do next?

A We went back home. We turned around and went back home.

Q Were you later shown a book of photos which contained a number of names and, or, rather, a number of pictures without names?

A Yes, sir.

Q And did you recall about when that was? I mean, approximately from the day in which you're talking about.

A It was maybe three, maybe five days later, a week.

Q Did you at that time, were you able to identify any specific people?

A Yes, sir.

Q And do you recall who those were?

A I didn't know any names, sir.

{398}

Q Had you ever seen up to that time or do you know Leonard Peltier?

A I may have seen him on several occasions, but as far as his name, I didn't know it then.

Q Did the individuals -- approximately how many people were in the car with arms on that particular day?

A All six of them.

Q All six of them.

In the viewing of the photographs that you viewed on that occasion, you were able to make three positive identifications, is that correct?

A Yes, sir.

Q Now as to the rest of the pictures that were there, what was the nature of the identification or lack of identification that you made? Would you tell us in your words.

A I may have known the people but they may not necessarily be there.

Q Did you recognize any of the people in that photo spread of any kind?

A No, sir.

Q Even though you may have, as you've indicated, seen them before and even in the area, is that correct?

A Yes, sir.

Q By that identification, you did not say as to all of the rest of those pictures, those people were not there, is that {399} a correct conclusion for me to draw?

A Yes, sir.

Q It was that you didn't recognize any of the other individuals?

A Yes, sir.

Q Now two days later, I would direct your attention to the 26th and ask you what approximately at noon or shortly before noon, between 11:00 and 12:00 o'clock were you doing.

A Between 11:00 and 12:00 we were teaching a day camp that we held regularly every day during the week three to four days a week and we let the kids out early and we traveled across to the Star Store to pick up some groceries or do our laundry, I can't remember which it was.

Q Was there anything unusual that you heard or observed somewhere in that time frame on that day?

A There were shots that day.

Q Would you describe to the jury the impression that you got at that time and as you now recall of what it was you heard with reference to the shots?

A Well, we heard the shots. In Oglala that's nothing unusual. You hear shots all the time. We were walking across to the store and we just asked them, asked the people standing in front of the store what was going on, what the shots were for, and nobody said specifically what it was, what the shooting --

{400}

Q And how far approximately is Oglala and where your mission was from the general area that is shown on Exhibit 71, the Jumping Bull property, approximately how far would it be?

A You mean our apartment from --

Q Just approximate distance, if you know.

A About three miles.

Q Pardon?

A About three miles.

Q Approximately three miles.

On that particular day, other than this to which you have just now testified, do you have any knowledge of any kind concerning the events that did take place in and about the Jumping Bull property?

A You mean --

Q Do you have any knowledge yourself of anything that took place there?

A Prior to that day; no.

Q Or even on that day there?

A No.

Q Let me ask you a question or two concerning your activities and your mission work. In that work I would assume that you did have conversations with various people in carrying out your responsibilities and your duties, is that correct?

A Yes, sir.

Q And during that period of time did you have an occasion to {401} hear the word "goon" or a reference made to a term, the word or term "goon"?

A Yes, sir.

Q Had you heard any conversation of any kind anywhere any time during the period that you were there with reference to whether or not there might possible be a confrontation of some kind?

A Yes, sir.

Q Concerning anybody or any party?

A Yes, sir.

Q Would you refer and tell the jury what it is you heard to the best of your recollection.

A Throughout the village it was common knowledge that the goons and the American Indian Movement were going to have a shootout.

Q Now approximately how many occasions had you heard that?

A Quite a few times.

Q Do you remember any of the specific occasions or not?

A No, sir.

Q Did such an event ever take place to your knowledge?

A No, sir.

Q I just have another question or two.

What kind of guns, as you recall, did the individuals have that you pushed their car out of the property of Lone Elk on the 18th and down towards Jumping Bull Hall and past Jumping {402A} Bull Hall?

A There were a couple of shoulder weapons and side arms.

Q Would you just, one final question, go to the map and Exhibit No. 71 and place on that map for me an approximate point for the record where it was that you were told to back off, or whatever the words were that were used, as you came down the road into the Jumping Bull property and past Jumping Bull Hall. Would you just give us the best approximation and mark it with a letter "X."

A (Indicating.)

MR. HULTMAN: Let the record show that an X was drawn on the location between Jumping Bull Hall and the residence known as Wanda Sears.

THE COURT: What is the color of your X?

MR. HULTMAN: I'm sorry, Your Honor. It's a black X.

I have no further questions. Thank you, Mr. Weston.

MR. TAIKEFF: Your Honor, may I have a moment to confer with government counsel about a document.

THE COURT: You may.

MR. TAIKEFF: May I inquire, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Mr. Weston, you were interviewed by one or more FBI agents, were you not?

A Yes, sir.

{402B}

Q And the interview occurred on or about March 1, 1976, something more than a year ago?

A Yes, sir.

Q Do you remember the names of the agents who interviewed you?

A I remember one last name was Green.

Q Do you know if his full name is Thomas H. Green?

A I'm not certain.

Q Have you seen Mr. Green since you came to Fargo?

A Yes, sir.

Q Now I understand that you spent two years living on that reservation.

A No, sir.

Q How long did you live on the reservation?

A I lived on Oglala for approximately six or seven months and then later I was moved to Standing Rock Reservation and then back down to Pine Ridge.

Q How much of the two years did you spend on the Pine Ridge Reservation?

A About ten months.

Q Did you cover in your work the entire reservation or only a particular district? And I use that word in its formal sense.

A Only a particular area which we were assigned to cover.

Q Do you know of the existence of the district known as Oglala?

A Yes, sir.

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Q And there is also a town or hamlet called Oglala, is that correct?

A Yes, sir.

Q The town or hamlet of Oglala is within the district of Oglala, is that correct?

A Yes, sir.

Q Now what part, if any, of the district of Oglala were you responsible to working?

A We were responsible for the area in and about Oglala. Oglala, mainly number four area, the lowland area and out beyond, out to the Badlands.

Q What was the total number of Indian people within the area for which you were responsible?

A I'm not quite certain.

Q That means you're almost certain but not completely certain?

A It means I don't know, sir.

Q At all?

A Yes, sir.

Q Was it more than a thousand people?

A I'm not quite certain.

Q Did you have any discussions with any FBI agent or assistant United States attorney on the subject of the population of that area?

A No, sir, we didn't.

Q How many different people would you say you come in contact {404} with in the Oglala district in the ten months that you worked in that district?

A Are you meaning numbers or what do you mean by that question?

Q Well, part of your work was speaking with the people, was it not?

A Yes, sir.

Q And helping them in one capacity or another, isn't that right?

A Yes, sir.

Q And is it fair to say that in the main, if not exclusively, you were there to assist people who lived on Pine Ridge Reservation in that area and that they were native Americans?

A Yes, sir.

Q How many such people did you have contact with in the ten months that you were in that area?

A It's hard to count, sir, because we were seeing different people every day.

Q How many people did you see a day?

A Today?

Q I beg your pardon, sir?

A What was the question again?

Q How many people did you see per day in your work?

A Hard to say. Our days would change.

Q Well, let's take an easy day.

{405}

A An average day.

Q Average day.

A Probably 10 to 15 families.

Q And how many days a week did you do this?

A Seven days a week, sir.

Q For ten months?

A For ten months.

Q And generally speaking, without getting into the specific details, what was the nature of what you communicated to them?

A We taught them the teachings of our church. We taught the children seminaries.

Q Your church is a church which is generally speaking a Christian church, is it not?

A Yes, sir.

Q Now when in the ten month period that you worked on the reservation did you become aware of the existence of an organization known as AIM?

A As soon as I moved onto the reservation, sir.

Q As soon as you moved to the reservation?

A Yes, sir.

Q Did you in connection with your work ever have any contact with AIM members, AIM activists or AIM supporters?

A We'd talk to them on several occasions.

Q Were you endeavoring on any of those occasions to persuade them of your religious views?

{406}

A We were always trying to talk to the people about our religious views, sir.

Q So I gather the answer to my question is yes?

A Yes.

Q Now did you find any pattern or consistencies to the response you got from AIM people?

{407}

A It depends. It depended a lot on the people.

You have to, different people in the village. They would claim to be AIM and we could talk to them about our religion where other people would claim to be AIM and we couldn't talk to them.

Q Did they explain why you couldn't talk to them?

A No, sir.

Q Did you ever make inquiries why AIM people wouldn't talk to you?

A You don't press the fact, sir.

Q You mean if someone doesn't want to hear what you have to say, you go on to the next person?

A Yes, sir.

Q Did you ever discover in the ten months you were there whether any aspect of the AIM function was religious in nature?

A No, sir.

Q Did you ever encounter any people on the reservation who were involved in religious beliefs and religious practices who were not of the Judea Christian realm?

A Yes, sir.

Q How would you describe that religion or those religions?

A Native Americans, sir.

Q Do you know if AIM had then an official policy with respect to the native American religion as opposed to the Christian or other more modern religions?

{408}

A No, sir.

Q You do not?

A No, sir.

Q Did you ever become aware of the fact that native American people in your district attended upon a thing known a a sweat

A Yes, sir.

Q Do you know whether that was connected with religious activity?

A Yes, sir.

Q Native American religious activity?

A Yes, sir.

Q Do you know whether events called pipe ceremonies were conducted?

A No, sir.

Q Now I think you said on your direct examination that when you heard shots on June 26, 1975 you didn't pay a great deal of attention to that?

A Yes, sir.

Q Why is that, sir?

A It was something, you're always hearing the shots.

Q That area I gather then must be a game preserve where a lot of hunting goes on?

A Some hunting.

Q Any other reason why there might be shooting going on?

{409}

A There's a lot of shooting there. People shoot --

Q Shooting of animals or shooting of people?

A Of people, sir.

Q Did you see a lot of guns when you were there during those ten months?

A Pardon?

Q Did you see a lot of guns during the ten months?

A I saw some guns.

Q How long have you been in Fargo?

A The past few days.

Q See more guns on the reservation than you do in Fargo?

A Yes, sir.

Q Have you been over to Moorhead?

A No, sir.

Q You live in Phoenix now?

A Yes, sir.

Q See more guns on the reservation than you do in Phoenix?

A Sir, I was into the people's homes. In Phoenix I'm not into the people's home. In Fargo I'm not into the people's homes.

Therefore I would see more guns being into their homes in Oglala.

Q Where did they keep those guns?

A When I saw the guns they were being transferred into, into the cars.

{410}

Q I see. See any cars in Fargo?

A Yes.

Q See any guns in the cars?

A No, sir.

Q See any cars in Phoenix?

A Yes, sir.

Q See any guns in those cars?

A No, sir.

Q Now you told us something about goons and I think you said, I'm not attempting to quote you, that they were people who were supporters of the then tribal chairman, Mr. Wilson.

A I said nothing of the like, sir.

Q Who were they?

A Just, just people as far as I know.

Q Well, how did one, how does one attain the status of goon as opposed to all the other categories of humanity?

A I had no interest whatsoever so it didn't bother me to find out.

Q Did you ever meet a goon?

A If I have I never recognized him.

Q People talk a lot about goons, on the reservation?

A Yes, sir.

Q Who was the tribal chairman when you were there?

A Dick Wilson.

Q Ever hear people talking about the fact that goons carry {411} guns?

A Yes, sir.

Q People ever explain to you that the reason why they keep guns handy at home and in their cars is because the goons carry guns?

MR. HULTMAN: If it please the Court, Your Honor, I object at this time.

It's clearly beyond, this witness has indicated that he has no knowledge beyond what he's indicated and it's an attempt by counsel now to put his own words before this jury in the record and I object that there's no proper foundation.

THE COURT: The objection to the last question is sustained.

Q (By Mr. Taikeff) Now in Pine Ridge most of the people live in individual dwellings, a family to a dwelling approximately, what we call a one-family home?

A Yes, sir.

Q Did you say yes or no?

A Yes, sir.

Q And the reservation is a rather affluent suburban area, is it not? You seem to be smiling. Did I amuse you?

MR. HULTMAN: Well, I object, Your Honor. Again I raise the same objection, additional objection that now counsel has become argumentative. He's going beyond the record.

THE COURT: It wasn't argumentative but the objection --

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MR. HULTMAN: It's an observation by counsel.

THE COURT: The objection to the question is sustained.

The witness may answer the first question that was asked.

THE WITNESS: Will you repeat the first question, please.

MR. TAIKEFF: May I repeat it, Your Honor?

THE COURT: You may.

Q (By Mr. Taikeff) I asked you whether the Pine Ridge Reservation, using middle-class terminology, was an affluent suburban area. Was that true?

A It's basically suburban; yes, sir.

Q Was it affluent?

A I don't know the meaning of the word, sir.

Q Was it a place where well-to-do people, financially well-to-do people live?

A It depends on how you, how you determine well-to-do.

Q Financially well-to-do.

A They -- compared to what area?

Q Compared to the way you live, sir, now in Phoenix.

A Compared to the way I live its a good area; yes, sir.

Q All right. Would you say that the people on Pine Ridge generally are poverty-stricken people?

A No, sir.

Q Are there herds of cattle on the reservation?

{413}

A Yes, sir.

Q Are those herds owned by Indian people or white people?

A I'm not certain, sir.

Q Did you ever have any contact with FBI agents on the reservation?

A Other than when I was interviewed by them.

Q Other than that the answer is no I gather?

A No.

Q I think you said that the knowledge about the situation as far as the conflicts on the reservation were widespread or well known, is that correct?

A Yes, sir. They are.

Q And would you say that that information was available only to a select few or was it generally known amongst the populous as far as you know?

A It was generally known.

Q In your opinion, sir, knowing what you do about the reservation and its conditions based upon your ten months of living there and working there, is it possible that an agent of the FBI spending ninety per cent of his working time on the reservation would not know about these things that you've just described to us?

MR. HULTMAN: I object, Your Honor. This question is, foreign in nature is purely speculative, it's indeterminate, for which there has been no proper foundation laid and clearly {414} this witness is not in a status, he said he's only had one contact by previous question and answer with an FBI agent and thus is in no position to answer such a speculative question.

I object for all those reasons.

MR. TAIKEFF: May I have one moment, Your Honor, please.

THE COURT: In about one moment I'm going to declare a noon recess.

MR TAIKEFF: If Your Honor does I'm going to go to lunch.

THE COURT: Very well. The Court will recess until 1:30.

{415}

AFTERNOON SESSION

March 18, 1977

Whereupon, the following proceedings were had and entered of record on Friday afternoon, March 18, 1977, at 1:30 o'clock, p.m. the defendant being present in person:

THE COURT: Are counsel ready for the jury to be brought in?

MR. TAIKEFF: There are a few matters that, these matters do not have to be taken up at this time but I'd like to alert the Court to them but when it's convenient for the Court, counsel would like to address the Court in the absence of the jury.

THE COURT: Do you wish to state the matter at this time or do you --

MR. TAIKEFF: I'm perfectly happy to do it now.

THE COURT: Why don't you state the matter.

MR. TAIKEFF: I received a telephone call from Mr. Lowe who is apparently trying to keep busy in something constructive so he received a television listing for this week and there is one particular fact he wanted me to call to Your Honor's attention.

Sunday night at 10:30 on Channel 11 according to his list there is a film, a movie called "Red Tomahawk" which is described as an effort by a small community to stave off a Sioux attack.

He respectfully renews his application at least with {416} respect to that movie and asks the Court to instruct the Marshals accordingly.

THE COURT: I will suggest to the Marshals that there be some other channel on that. There is only TV set available of course.

MR. TAIKEFF: I understand.

At this time we would like to give notice to the Government and at the same time place upon the record our request that we have an interview with certain witnesses and if the witnesses are in the Government's custody or control, that the Government make them available at least so

that we may ask them whether they will yield to a consent interview and those people are James Harjo, H-a-r-j-o, Mike Smith, Wilford, W-i-l-f-o-r-d, Draper and Michael Anderson.

We also would like to formally request if the Government has a copy of a transcript of the Canadian Extradition Proceedings, that either they provide us with a duplicate or give us access to their copy which we will duplicate on our own machine.

Further, Your Honor, we wish to place upon the record that in a letter, I believe a copy was sent to Your Honor through the Clerk, we asked the Government to make available to us in connection with certain witnesses a certain rifle and telescopic sight which is the subject matter of certain testimony and we trust that the Government will comply {417} with that request or give us adequate advice in advance that they cannot.

We also and finally would like to put the Government on notice that there are three employees of the FBI that we intend to call as witnesses.

We assume that since they're Government employees and the defendant is proceeding in forma pauperis that we won't have to go through the formality of getting Your Honor to authorize a Subpoena and then deliver that Subpoena to the Marshal's office. And those three people are Linda Price, Ann Johnson and Special Agent Thomas Green.

Thank you, Your Honor.

MR. HULTMAN: Your Honor, until this moment I am not familiar with any of the requests right now.

THE COURT: This is why I suggested that they be made known at this time and then I will ask you to make a response unless there's some matter here that needs to be handled this afternoon.

MR. TAIKEFF: No. There's no rush. I was just trying to give adequate notice of our position or request.

THE COURT: Very well. The jury may be brought in.

(Whereupon, the jury returned to the courtroom and the following further proceedings were had:)

(Whereupon, the witness having been previously sworn, {418} resumed the stand and testified as follows:

THE COURT: You may proceed.

MR. TAIKEFF: Your Honor, there was a question and an objection pending at the time. Should I re-ask the question and then if the Government objects we can proceed to --

THE COURT: Very well.

RE-CROSS-EXAMINATION (Continued)

BY MR. TAIKEFF

Q Mr. Weston, --

A Yes, sir.

Q -- based upon your personal experiences in the Oglala district during a ten-month period would you express an opinion for us as to whether or not a person who had devoted ninety per cent of his working time to the reservation could be totally unaware of the facts that you have related to us concerning the conditions in that area as they pertain to conflicts between different groups?

MR. HULTMAN: Well, I object, Your Honor, on the same grounds that I mentioned before and I don't know whether I mentioned these before but there's no foundation. It's a clearly speculative response and also it's an attempt to impeach another witness.

MR. TAIKEFF: Well, I can see that it's an attempt to impeach a witness which is authorized by Rule 701.

THE COURT: I sustained the objection before on the {419} grounds that it related at that time specifically to an FBI man. You have revived your question now to put a person.

MR HULTMAN: It's highly speculative, Your Honor. It serves no probative purpose, no foundation.

MR. TAIKEFF: Your Honor, I'm not asking the witness to speculate. I'm asking for him to render his opinion as a layman. The foundation is his ten months of experience.

THE COURT: The objection is overruled. The witness may answer.

A I don't see how.

Q (By Mr. Taikeff) When for the first time in your life did you see Leonard Peltier?

A It's hard to say. It would have to be during my stay in Oglala.

Q Do you remember where in Oglala?

A No, sir.

Q Now when you were interviewed by Agent Green and possibly one or more other agents, how many agents were there by the way?

A There were two.

Q Were you shown any photographs?

A Yes, sir.

Q I'm going to place before you Defendant's Exhibits 77A, 78A and as soon as the Clerk marks it, 78A.

MR. HULTMAN: Counsel, could I just make an inquiry? {420} Are these the same documents that have already been shown to me earlier?

MR. TAIKEFF: Yes. They've been shown to counsel during the recess, Your Honor.

THE COURT: Very well.

Q (By Mr. Taikeff) I call your attention to the fact they're not in evidence and can be seen only by you and not by the jury. Now, sir, the first two of those exhibits are before you. Will you pick them up in a way that permits you to see them. Look through them and then tell me whether you have ever seen those exhibits before.

{421}

A (Examining).

MR. TAIKEFF: If I may, your Honor, the Clerk has called my attention to the fact that I referred to the exhibit which I wanted marked as 78-A. There already is one. I should have said 79-A, and I understand he is marking it accordingly.

MR. HULTMAN: What are the numbers?

THE COURT: The record will be corrected accordingly.

(Counsel confer.)

Q (By Mr. Taikeff) Now I am placing before you Defendant's Exhibit 79-A for identification, and ask you to do the same thing.

A (Examining).

MR TAIKEFF: Excuse me, sir.

(Counsel confer.)

Q (By Mr. Taikeff) Now, I believe that there is a question pending, and that is, have you seen any one of those documents before? You understand the question to mean specifically those documents.

A Those, specifically those?

Q Yes. I am not asking you whether you have seen something of a similar nature, just to clarify that question for you.

A It is hard to say. I don't know if I seen specifically these or not. I have seen a similarity of them.

Q O.k. Now, if it were suggested to you that you had in {422} fact seen 78-A for identification about a year ago, could you say, "No, I have not"?

A No, sir.

Q Would you turn it over, please? In any of those three exhibits did you see a photograph of Leonard Peltier?

A Of who I felt was Leonard Peltier, yes, sir.

Q Would you find that?

A (Examining) I have.

Q Is it on Page 6?

A (Examining) Yes, sir.

Q I have that document, please?

A (Handing).

MR. TAIKEFF: May I confer with Government counsel for a moment, your Honor?

THE COURT: You may.

(Counsel confer.)

MR. TAIKEFF: Your Honor, the Government is going to stipulate that on Page 6 of Photograph No. 7 is a photograph of Leonard Peltier.

THE COURT: Very well.

Q (By Mr. Taikeff) Now, sir, when you testified before the luncheon recess, did you have occasion to look over at the defense table and see Mr. Peltier?

A Yes, sir.

Q And is your identification of that photograph that you {423} identified a few moments ago based upon what you saw this morning or based upon something you may have seen on the Pine Ridge Reservation or a combination of the two?

A Possibly a combination of the two.

Q Do you recall whether you ever identified that photograph for Agent Green or his colleague?

A It has been a year and a half, sir.

Q It has been a year and 17 days and that doesn't answer my question.

Do you recall whether or not you identified that photograph?

A No, sir.

Q You do not you recall how many people you identified on that day in March, 1976, when you were interviewed by Agent Green?

A Three, sir.

Q Did they tell you the names of any of those people?

A No, sir.

Q Was the photograph which is concedingly Mr. Peltier's one of those you identified on that day?

A You asked me that question already.

Q That's correct.

A And I said "No, sir."

Q But you remember that there were three?

A Yes, sir.

{424}

Q Was your memory recently refreshed in that regard or do you remember it from one year and 17 days ago?

MR. HULTMAN: Could I voir dire just one question, your Honor?

THE COURT: You may.

MR. HULTMAN: When is the first time that you have seen the photos in front of you that counsel presented to you, when is the time prior to being in front of you here in the courtroom today, the last time that you saw these particular photos?

THE WITNESS: You mean when I was on the Reservation?

MR. HULTMAN: Yes.

THE WITNESS: A year ago.

MR. HULTMAN: Has counsel or anyone shown you for the Government these particular photos since you have been here?

THE WITNESS: No, sir.

MR. HULTMAN: No further questions

Q (By Mr. Taikeff) Between March 1, 1976, and the time you entered this courtroom this morning, had you seen Leonard Peltier?

A No, sir.

Q As a general rule, do you find that your memory is better, your memory of a particular event or your memory of someone's face, is it better closer to the time of that event or further {425} in time from that event?

A Obviously closer to the time.

Q On March 1, 1976, isn't it a fact that you were closer in time to having seen Leonard Peltier than you are today?

A Yes, sir.

Q Did Agent Green or any of his colleagues show you any documents other than things similar to 77-A, 78-A and 79-A?

A No, sir.

Q Is it fair to say that the work you were doing on the Reservation was missionary and religious in nature?

A Yes, sir.

Q And is it also fair and accurate to say that at least as far as non-Christian people were concerned, you were trying to proselytize or convert them to your religious point of view?

A Yes, sir.

Q Now, you say that you assisted some people on that road at or near Highway 18. Approximately how many such people were there?

A Approximately six, sir.

Q What was their age range, from the youngest to the oldest?

A I would say anywhere from 18 to at the oldest probably 30.

Q And how many of those people did you recognize?

A I recognized maybe about four or five of them.

Q And from what kind of event, prior event did you recognize them?

{426}

A Seen them about the village.

Q Did you ever speak with any of them?

A Perhaps.

Q About social matters or religious matters?

A Social matters.

Q Didn't you ever discuss with them your religious views?

A No, sir.

Q Why not?

A Didn't come up at the time.

Q Well, who brings up these things when you go around trying to spread the word?

A We do.

Q Well how come you didn't bring it up with these people?

A The opportunity wasn't afforded then.

Q What sort of an opportunity do you need?

A The correct situation, sir.

Q What is that?

A There is nothing that you can explain with mere words, sir.

Q Can you explain it in some other way?

A It comes with the feeling.

Q Are you talking about a feeling that the person who may be confronted is just not the person that you might want to try to proselytize?

A No, sir.

Q Beg pardon?

{427}

A No, sir.

Q What kind of feeling are you talking about?

A We are talking about things that are -- feelings that are spiritual things that are coming from within; and at times that you know are right for that situation, for the proper teaching situation, and the situation has to be in tune. It has to be at the proper moment to be able to teach, and that moment was not proper.

Q Do you think it possible, reasonably likely, rather, you think it reasonably likely that when you were refused access to the Jumping Bull Hall area on June 24, 1975, that it was because the people you were with, then in the presence of, didn't want to hear your religious sermon?

A No, sir.

Q Not possible. Why is that not possible?

A Because --

Q (Interrupting) Or not likely. I ask you "likely".

A We weren't there to preach, sir.

Q Do you have any reason to believe that the people who denied you access knew that fact?

A No, sir.

Q Then why do you say it is not likely that they were trying to avoid your sermon?

A Pure speculation, sir.

Q In your work do you ever find that you try to open the {428} conversation on your religious beliefs and people react somewhat strenuously and essentially say, "Go away, leave me alone, I don't want to hear anything"?

A Yes, sir.

Q What reason, if any, do you have to believe that that was not the reason why you were refused access, do you have any?

A No, sir.

MR. TAIKEFF: I have no further questions.

REDIRECT EXAMINATION

By MR. HULTMAN:

Q You had just responded, had you not, to these gentlemen to do them a favor?

A Yes, sir.

Q Could that possibly be a reason for your speculation that after having done them a favor, that you reacted the way you did?

A Possibly.

Q Had you ever been to the Jumping Bull area before?

A Yes, sir.

Q Approximately how many times?

A Quite a few times.

Q Where in the Jumping Bull area had you been before on this quite a few times?

A We had been to the Jumping Bull Hall itself and down to the corral.

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Q So that you had been in this area on previous occasions then to this particular one?

A Beyond that.

Q Had you had any trouble getting in or doing the things that you were doing there on those occasions?

A No, sir.

Q What were you doing there on those occasions?

A We would go down and watch the kids at the Rodeo Club.

Q And where would the Rodeo Club be? Would you take the pointer and point it out on Government's Exhibit 71?

A Sure. The Rodeo Clubs usually have their practices down here (indicating) in the corral, down below that residence there (indicating).

Q So that you had been down the same path or the same road past Jumping Hall, past Wanda Sears' house, down to the corral on numerous occasions before?

A Yes, sir.

Q Had you ever been stopped at any time or told not to go any farther?

A No, sir.

Q Well maybe that might have been a possibility as to why you concluded what you did, is that a fair conclusion for me to draw?

A Yes, sir.

Q I just have one last question, Mr. Weston.

{430}

Counsel asked you questions about goons and about the FBI. Did you ever hear any discussion of any kind from anybody while you were working this area that was disrespectful to -- in any way to the FBI?

A As far as linking them in with the goons?

Q Yes.

A No, sir.

Q Beyond that did you ever -- tell me what the general climate and feeling was about the FBI with the people that you went to see and visited and had contacts with?

A Mainly in the village it was kind of, you know some for, some against. On the outlying areas, mainly for the FBI.

MR. HULTMAN: I have no further questions.

REXCROSS EXAMINATION

By MR. TAIKEFF:

Q You spoke about some activities in the corral area, a Rodeo Club?

A Yes, sir.

Q Was that something which you did because of your interest in horses?

A No, sir.

Q What motivated that activity?

A Our interest in people, sir.

Q What kind of interest in people?

A Our friendly interest in people.

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Q For what purpose?

A To become a part of them.

Q For you to become a part of them?

A Yes, sir.

Q In what way?

A To feel like a part of the community, sir.

Q To what?

A To feel like a part of the community.

Q So that you could do what?

A So that we could become closer to the people.

Q And then do what?

A Teach the gospel, sir.

Q O.k. So you participated in this Rodeo Club to ultimately influence young Indian people and teach the gospel, right or wrong?

A We participated --

Q (Interrupting) "Yes" or "no".

A Sir, we participated in the Rodeo Club because they were our friends, and they asked us to come.

Q But you were ultimately and at the same time interested in finding a few more converts, weren't you?

A Yes, sir, that's our primary goal.

Q Now, on the other occasions when you had access to the Jumping Bull Hall area were any of those armed Indians there? "Yes" or "no".

{432}

A Yes, sir.

Q The same ones?

A One.

Q What is his name?

A Maybe two. I don't know his name, sir.

Q You have seen his picture in there?

A Yes, sir.

Q Let me see his picture.

A (Examining) I have it right now.

Q All right. Name the page, the document and the picture number.

A 1, 11, 78-A.

Q Page 1, No. 11, Defendant's Exhibit 78-A for identification.

MR. TAIKEFF: May I have a moment, your Honor.

THE COURT: You may.

(Counsel confer.)

Q (By Mr. Taikeff) Do you know whether that person's first name is Dusty?

A No, sir, I don't.

Q Do you have any reason to believe that he was aware of your function on the Reservation?

A Yes, sir.

MR TAIKEFF: I have no further questions.

MR HULTMAN: No further questions.

THE COURT: You may step down.

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THE WITNESS: Thank you.

MR. HULTMAN: Your Honor I would make a request that this witness, as well as others, be excused at the time so that they may not be detained unduly.

THE COURT: Well, I will not act on the general request as to others.

MR. HULTMAN: I will make that request of this witness now.

THE COURT: As to Mr. Weston?

MR. HULTMAN: Yes.

MR. TAIKEFF: There is no need to ask him to remain within the jurisdiction, your Honor.

THE COURT: Very well. You are excused from further participation in this trial.

(Witness excused.)

MR. CROOKS: Your Honor, if it please the Court, the United States would call Mr. Lawrence Doley White Eyes.

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LAWRENCE DOLEY WHITE EYES, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS:

Q Mr. White Eyes, would you repeat your name again for the record.

A Lawrence White Eyes.

Q And you are here pursuant to government Subpoena, are you not?

A Yes.

Q Where do you live, Lawrence?

A I live in Pine Ridge.

Q And have you lived in Pine Ridge area all your life?

A Yeah.

Q And you're an enrolled member of the tribe there, is that correct?

A Yes, sir.

Q Mr. White Eyes, I'd like to call your attention back to June 26th, 1975, and you recall that this was the day of the shooting involving the two FBI agents?

A Yes, sir.

Q On the morning of that day where were you?

A In the Oglala housing area.

Q That is in the village of Oglala itself?

A Uh-huh.

Q Whose home were you at?

{435}

A Young. LaVonne Young.

Q And during the morning hours of that day were there some visitors that came to the door?

A Yes.

Q Was there anybody in the house other than yourself?

A No. Just me.

Q Who did the visitors identify themselves as being?

A Williams and Coler.

Q And who did they work for?

A They worked for the FBI.

Q And about what time of the day was it when they came to the door?

A Somewhere around 9:00 o'clock, 9:30 or 10:00, something like that.

Q When they came to the door, did they say what they wanted?

A They wanted to know if Jimmy Eagle was there.

Q Now is Jimmy Eagle a guy you knew?

A Yeah. I knew him.

Q You'd known him for some time?

A Oh, maybe a year or so.

Q So at least you knew who they were talking about?

A Uh-huh.

Q Did they say what they wanted with Jimmy Eagle?

A No, they didn't. They just said they wanted to know if he was there.

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Q Were looking for him?

A Yes.

Q They didn't say whether they had a warrant or what charges or anything of that nature, is that correct?

A No.

Q They just were looking for him?

A Yes.

Q Was Jimmy Eagle there?

A No.

Q Did you tell him, what if anything did you tell him about Jimmy Eagle?

A I just told him he wasn't there.

Q And did you tell him how long had it been since you'd seen him?

A No. They didn't ask me.

Q In any event, did they search the house or do anything else other than ask if he was there?

A No, they didn't. They just asked whether he was there or not.

Q And in fact Jimmy Eagle wasn't there, is that correct?

A No, he wasn't.

Q You were the only one in the house?

A I was the only one there; yeah.

Q Mr. White Eyes, I'd like to show you two pictures, Government's Exhibit No. 28 and Government's Exhibit No. 27 which has been {437} identified as pictures of Special Agents Williams and Coler and I'd ask you to look at those two pictures and tell me whether or not those were the two young agents that came to see you on that morning.

A Yeah. Them are the two. They're the ones.

Q Do you recall which of the two guys, two agents came up to the door, or did both of them come up?

A No. Mr. Williams the one that came up to the door.

Q So he would be the darker haired individual?

A Yes.

Q It would be this picture?

A Yes.

Q 27?

A Uh-huh.

Q And the other man, where did he go or what did he do?

A He stayed down on the pavement, on the sidewalk.

Q Now insofar as Special Agent Coler, at the time that you saw him was there any difference in his appearance such as a beard or moustache?

A He had a moustache.

Q He had a moustache?

A Yes.

Q Which is different from this picture in Exhibit 28?

A Yes.

Q Now insofar as the two agents are concerned, did they come {438} in one car or two cars?

A They came in two cars.

Q Could you describe those cars for us?

A One was a green one, one was a tan one.

Q A green one and a tan one?

A Yeah.

Q The green one, do you know what make that it was?

A No, I don't.

Q Was it a dark green or a light pea green or what color green?

A Kind of a light green like.

Q And when they left, did they leave in both cars or did they leave one car there for some reason?

A No. They both went in both cars.

Q Now do you know from your own observations which car belonged to which agent?

A No, I don't. I didn't see them get back in the car.

Q You didn't see them drive up?

A No. I didn't see them drive up.

Q The first you saw them would have been when they came to the door?

A Yeah. When they knocked at the door.

Q What did you do after that, Mr. White Eyes?

A After they talked to me?

Q Yes.

{439}

A I went, oh, I stuck around there for maybe an hour, something like that, then I went to the post office.

Q How much after they were there did you learn of the shooting?

A When I went to the post office.

Q Well, would that have been an hour?

A Oh, maybe an hour, hour and a half or something like that.

Q Hour, hour and a half or so?

A Something like that.

Q Then you had heard there'd been a shooting and two agents had been shot?

A I didn't know whether anybody was shot. They said there was a shooting.

Q I'm sorry. I stand corrected. You heard about a shooting?

A Uh-huh.

MR. CROOKS: That's all the questions we have, Your Honor.

MR. TAIKEFF: We have none, Your Honor.

THE COURT: You my step down.

MR. CROOKS: We would ask Mr. White Eyes be permanently excused.

MR. TAIKEFF: No objection, Your Honor.

THE COURT: And you are excused.

MR. CROOKS: The United States will call next Mr. {440} Leonard W. Schumacher.

LEONARD W. SCHUMACHER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS:

Q Mr. Schumacher, would you again repeat your name for the record, please.

A Leonard Schumacher.

Q And what is your occupation, Mr. Schumacher?

A I'm a car salesman.

Q Where do you work?

A I work at Rice Motors, Rapid City.

Q And what kind of cars do you sell there?

A We sell Toyota and Honda.

Q Pardon?

A Toyota and Honda.

Q Do you have a used car line that goes along with that?

A Yes, we do.

Q Calling your attention back to May of 1975, were you employed by Rice Motors at that time?

A Yes, sir.

Q And calling your attention to specifically May 19th of that day, did you sell a 1967 Ford?

A Yes, sir.

Q I'd like to show you Exhibit No. 45D and ask if you can identify that.

{441}

A Yeah. That's an order I wrote up.

Q What is it for?

A For a '67 Ford Galaxie two-door.

Q And does it show who, now without going into the details, does it show who it was sold to?

A Sold to John --

Q Don't read it. Just say does it show that?

A Yes, it does.

Q Does it show who it was sold to?

A Yes, it does.

Q It gives a serial number and so forth for the vehicle?

A Yes, it does.

Q I'll also hand you Exhibit No. 45E and ask if that's something you can identify.

A Yes, it is.

Q And is that again a record of Rice Motors pertaining to the same sale of a 1967 Ford?

A Right. That is.

Q And I would ask you generally with regard to these two exhibits, they are records of Rice Motors, are they not?

A Right.

Q And they were given to the FBI pursuant to government Subpoena?

A Yes, they were.

Q And is there any difference with regard to these items {442} other than the obvious discoloration by being laboratory treated as opposed to the condition they were in at the time you last saw them?

A No, they're not.

MR. TAIKEFF: The authenticity of the documents is not in dispute, nor will there be any objection to their offer.

THE COURT: Very well.

MR. CROOKS: I will offer at this time, in that case, Exhibits 45D and E.

THE COURT: 45D and 45E are received in evidence.

Q (By Mr. Crooks) Now you can relate, if you would, what is the name of the individual to whom this vehicle was sold?

A John Yellow Robe.

Q Is that the name he gave you at the time of the transaction?

A Yes, it is.

Q I would show you a picture which has been introduced into evidence as Exhibit 13B and 13A and ask whether or not that in fact appears to be the same vehicle described in the papers you just discussed?

A Yes. It looks to me like the same car. I can't tell the color, I mean, on these pictures here.

Q It would appear to correspond, would it not, with the general description which is contained on your form?

A Yes, it does.

Q All right. I would now like to show you for identification {443} Exhibit No. 45B and ask if that is a document you can identify. Now again don't go into the details, just say what it is, if you can identify it.

A Yes, I can.

Q What does it purport to be?

A Well, it's a form that's, the buyer takes to the County Treasurer wherever he applies for his license.

MR. TAIKEFF: No objection to this offer, Your Honor.

MR. CROOKS: Well, if Counsel has no objection, I will offer 45B at this time.

THE COURT: 45B is received.

Q (By Mr. Crooks) That would be the customer's copy, would it not?

A Yes.

Q And that would be retained with him?

A Right.

Q Or whatever he wished to do with it?

A Right.

Q It wouldn't be retained by your company?

A No. No.

Q I then show you 45C and ask if you can identify the type of document that is.

A Yes. It's an application for title.

Q And what function does this serve in the state of South Dakota?

{444}

A Well, it's to obtain their license.

Q So this would be a document which is filled out and turned in to some state official?

A Right.

Q Would this be correct?

A Right.

MR. TAIKEFF: No objection.

MR. CROOKS: We'll offer 45C.

THE COURT: 45C is received.

Q (By Mr. Crooks) Would you have a part in filling out this yourself?

A No, I wouldn't.

Q So this would be something he would obtain from a proper state official and fill it out and send it in for a license plate or a title?

A Well, that I can't say whether it's made out in the office with this or whether that is --

Q Might be either way?

A Yes.

Q You might help the guy fill it out or he might get it done through the state official?

A Right.

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Q In any event this would tie up with a vehicle he was attempting to get registered?

A Yes.

Q And does this give the same description which is generally contained on the documents you've identified?

A Yes. The serial number's the same.

Q All right. Insofar as this document, this would again pertain to a green or a 1957 Ford automobile?

A Right.

Q Now insofar as this sale was concerned, the individual gave his name as John Yellow Robe, is this correct?

A That's right.

Q And do you see that individual in the courtroom today?

A Yeah, I believe I do.

Q And where would he be seated?

A Right over there.

MR., CROOKS: Let the record show that the witness has identified the defendant in this cause, Mr. Leonard Peltier.

No further questions.

MR. TAIKEFF: No questions.

THE COURT: You may step down.

Mr. Crooks, do you want this witness excused?

MR. CROOKS: Oh, yes. I was about to ask if this witness could be permanently excused?

THE COURT: You are excused.

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MR. CROOKS: The United States will next call Mr. Michael Rooks.

MR. TAIKEFF: May I confer with Mr. Crooks for a moment, please.

MR. CROOKS: Your Honor, Mr. Taikeff informs me that they're having some difficulty locating the thirty-five hundred material on this witness and the United States would be agreeable to taking a break now so that this could be located prior to the witness testifying.

MR. TAIKEFF: Or afterwards. Whichever is more convenient to the Court.

THE COURT: Well, I would prefer not to take a break at this time unless it's necessary for the orderly presentation of the evidence.

MR. TAIKEFF: It is not necessary.

MR. CROOKS: Not as far as the Government, we're ready to go.

MR. TAIKEFF: Even without the material it's not necessary to do it now, Your Honor.

THE COURT: Thank you.

MICHAEL ROOKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS

MR. CROOKS: Would you again give your full name for the record, please.

{447}

A Michael D. Rooks.

Q Mr. Rooks, where do you live?

A Oglala, south of Oglala. Three miles south of Oglala.

A A few miles south of Oglala?

A South of Oglala.

Q And that is on the Pine Ridge Indian Reservation, is it not?

A Yes. It is.

Q You again are appearing here pursuant to a Government Subpoena, are you not?

A Yes, sir.

Q Mr. Rooks, are you familiar with the area which has been referred to by the various witnesses as the Jumping Bull Compound or the Harry Jumping Bull residence?

A Yeah.

Q And would you turn around in your witness chair and look at the large map, Exhibit 71, and see if you can identify that area?

A Yeah.

Q And what is that area?

A This one right here?

Q Yes. Where the green stickers are pointing to, what does that area depict to you?

A That's the Jumping Bull's house around there.

Q And that would be the principal residence of the Jumping Bulls?

{448}

A Yes, sir.

Q How long -- well, let me ask if you would, from this area that's depicted on this map, principally the Jumping Bull houses, where is your home located from that, those residence?

A About -- it isn't on the map.

Q Well, let me get you a pointer. If you could just come down, Mike, and indicate generally to the jury where your houses would be with reference to the Jumping Bull houses.

A Right here.

Q So it would be in an area off of the map, more or less south of the area that's marked tents?

A Yeah.

Q Okay. You can get back on the --

Insofar as your farm is concerned, would you just generally describe a little bit about what kind of a farm it is, what the setup is in your farm.

A Kind of just starting out now, you know, building the place up.

Q Pardon? I'm not picking you up either, Mike.

A Just kind of building the place up.

Q You're just building it up?

A Yeah.

Q How long have you and your family lived there?

A Since I was about fifth grade. I graduated about '68, '69.

{449}

Q Okay. And I don't know that I asked you, what is your age now?

A Eighteen.

Q Eighteen. And so you've lived there since you were roughly around in the fifth grade?

A Yes.

Q And I might also ask you, are you a member, an enrolled member of the tribe of the Pine Ridge Reservation?

A Yes.

Q And all members of your family are enrolled members?

A Yes.

Q Now the Jumping Bulls, have they lived in this area more or less as long as you remember?

A Yeah. They've been there alot longer than I have. I mean, they were born and raised there, around that area.

Q So they would have lived there prior to your family moving across the creek?

A Yeah.

Q All right. And from the time that you moved in there have you more or less had intermittent contact with them, neighborly contact?

A Yeah.

Q And insofar as the Jumping Bulls are concerned, was there anyone that lived in their area during the years you've lived there other than Mr. and Mrs. Jumping Bull themselves?

{450}

A Them and some members of the family like their grandchildren and daughters. Not right there, you know, but in the general vicinity.

Q All right. So what you're saying is other members of their family from time to time would occupy other houses in that area?

A Yeah.

Q All right. Calling your attention back to May of 1976, during that period of time did you notice other people moving into this area?

A Yes.

Q Excuse me. I'm sorry. '75.

During 1975 there were other people that moved into the area?

A Yes, sir.

Q And do you know exactly where these people lived?

A Not right around there but off in other buildings around there.

Q And during the period of time that, that you, we'll say of May of '76, or '75, excuse me, during that period of time were there a good number of people that you observed in this area that were strangers to you?

A I really couldn't tell you numbers but there, because I really didn't have no reason to be going up there all the time.

But from the times I was there I seen people, you know, {451} that I'd think, "What are they doing there," you know.

Q People that you wouldn't know as being local community members?

A Yeah. Kind of; yeah.

Q All right. All right. Then going back into the time that these people were, other strangers were living in the area, did you make any observations with regard to them such as any unusual noises, anything of that nature?

A Lots of shooting in the creek bottom down there.

Q And where would this be from the Jumping Bull house?

A Well, I really couldn't pinpoint it but I didn't think it was right at the house, you know. The shooting was, I thought it was taking place like around where it says plowed field and up around there.

Q Okay. Let me get the pointer for you.

A I can't really be sure about that. I just figured that's where it was coming from.

Q Well, I realize that. I'd like you to give me some general indication, if you can, as to the general area where you heard a lot of shooting coming from.

A Right in there.

Q It would be up against this bluff around the plowed field, in that area?

A That is my guess; yeah.

Q And would this be from your hearing shots and so forth as {452} opposed to actually seeing any shooting done?

A Yeah.

Q All right. When you were living in this area and the strangers were there, did you see any signs of, of a camp at any time?

A Around what time? You mean like in the spring or right before it happened?

Q Well, I'm talking about before the shooting; right.

A Not what they refer to as tent city. I kind of stayed away from there, you know.

Q You stayed away from the tent city area?

A I mean I didn't even know it was there. I just kind of stayed away from the whole --

Q Did you go into that area after the shootings?

A Not into the tent city.

I went to where there was a sweat bath, right around in there.

Q Okay. So you went down in that area after the shooting?

A Yeah. Just once.

Q All right. During the evenings at any time could you see activity over in the area where the tents turned out to be?

A Not the tents but that one sweat bath, that one little camp there, we could see like --

Q Okay. What kind of activity could you see around there?

A I don't recall that. You just kind of see movements in the {453} trees or, I mean just, you know, they had a fire down there and you could tell that there were people camping down there.

Q So the record is clear, Mike, you are talking about an area which would be just about straight south of the tent area; would that be about right?

A That would be southwest, southwest, wouldn't it?

Q Okay. A little southwest of the tent area. All right.

Mike, I'd like to show you what has been marked for identification purposes as Exhibit 69A. I ask you to take that and keep it pointed up if you would and I'd ask you if you can identify that.

A Yes. This is, this was my dad's gun.

Q And your father owned this gun?

A Yes, sir.

Q And where was this gun kept?

A At the time it was stolen it was sitting in the corner by the stove in our house.

Q In your house. All right.

You indicated that this gun was stolen.

A Yes, sir.

Q Approximately when was it stolen?

A May 1st.

Q On May 1st. And was anything else stolen other than this gun?

A There was seven guns altogether and a TV, there was a {454} stereo and cameras and just anything that was worth anything.

Q All right. Again I'm having a little trouble staying with 75 and 76.

You're talking about May of 1975?

A '75; yeah.

Q All right. You indicated some other household items were stolen, --

A Yes.

Q -- is this correct? And what would you estimate the total value of those items that were stolen?

A The FBI said, I think --

Q Well, no. Don't say what they said. What your estimate is.

A My estimate?

Q Yes.

A I'm not -- I know it was over \$1500 worth but I, it was either 1500 or 3,000, something like that.

Q So there was a substantial number of items stolen from your family home?

A Yes.

Q And this was one item?

A Yeah.

Q And how can you identify that?

A Because I sanded the front and I put some stain on it but it didn't look too good so I didn't do it to the back.

{455}

Q And this stock that's on there, has that had some work done on it by you?

A Yeah. See, the back is rough and it still has the same finish and the front is different.

Q Is there any doubt in your mind that that's your gun?

A No doubt.

Q All right. This gun was stolen in May of 1975?

A '75.

Q And when did you next see the gun?

A Day before yesterday.

Q When the FBI at my suggestion showed it to you, --

A Yes.

Q -- is that correct? What, by the way, what caliber rifle is this, Mike?

A 303 British.

Q And that is a British gun, is that correct?

A Probably; yeah.

Q Well, at least that's the name of it, a 303 British?

A Yes. The caliber name of it.

Q Do you know where your father got this gun?

A Sharp's Corner.

Q And how long had he owned it?

A About seven, eight years.

Q Seven, eight years before it was stolen?

A Yeah.

{456}

Q When this theft took place were any tracks left by the people that stole your family's property?

A Yes, sir.

There was some tracks from the house to the corral and that's where they ended.

Q Well, which corral?

A Right below the house. It would be east of the house about fifty yards I suppose.

Q Now is this your corral or is this --

A This is our corral.

Q Your corral. That is not the same corral that's shown on this map?

A No. It isn't. That's the wrong place.

Q All right. And then what did you find at the corral?

A Just, you know, well, there was horse tracks in there but we have horses and stuff too so I didn't think nothing of it, you know.

Q Okay.

A And I got to thinking later and that's my --

Q So they found no tracks other than horse tracks leading away from the corral?

A You know, the gates were still closed, you know, the entrances, the one leading to our house, they were all still closed and no tracks were up there.

Q Okay. Now calling your attention back to May of 1975 did {457} you see any people down in the Jumping Bull area that you knew or identified?

A Yeah. I seen a few that I'd known.

Q And who were these individuals that you saw down there that you knew?

A Well, just the ones that I knew were like Jimmy Dean Moosecamp and Jimmy Eagle and Leon Eagle.

Q Now Jimmy Eagle and Leon Eagle, are they brothers?

A They're brothers; yeah.

Q And have you known those guys for some period of time?

A Yeah.

Q Did you go to school with either of them?

A I went to school with Jimmy Dean Moosecamp and then Jimmy Eagle and Leon Eagle, they went to another school.

Q Okay.

A But I lived on the same street as they did before we moved out in the country. We lived right by them.

Q And whereabouts was it that you saw the Eagle brothers?

A At --

Q Just point out generally on the map if you could.

A Around in there.

Q So it would be generally in a northwesterly direction from the Jumping Bull residence?

A Yes, sir.

Q And it would be down by the creek area?

{458}

A Yeah. Up from the dam on the creek.

Q There is a dam down there, isn't there, Mike?

A Yes, sir.

Q And where is that? Is that shown on the picture or is it quite a bit farther down?

A That would be quite a bit farther down and just around there is this general marsh area.

Q So the dam would be more or less where the exhibit sticker is or maybe a little bit farther out than that?

A Yeah. Around in there; yeah.

Q Toward the Oglala area?

A Yeah.

Q Now on the day that this shooting took place, June 26th of 1975, what were you doing that day?

A Just sitting in the house, you know, just, maybe walking around the house every once in a while.

Q All right. Did you hear anything unusual that day?

A Lots of, not really unusual but I heard some more gunshots.

Q It wasn't unusual for that area apparently?

A Not really unusual; no.

Q You described gunfire coming from the area. Approximately when did you hear the gunfire start?

A About midday, around there, you know, 11:00, 11:30, 12:00. I wasn't really paying attention to the time.

Q So it would be roughly in the noon, --

{459}

A Yeah.

Q -- somewhere around noon that the shooting started?

A Yeah.

Q And how long did the shooting last that day as you recall, Mike?

A I'm not really sure just, oh, maybe an hour or quarter or half hour, something like that.

{460}

Q (By Mr. Crooks) Was there a lot of shooting that you recall?

A At that time there was a lot of shooting, died out maybe.

Q So it would die off, and then there would be shooting again; and then it would die off, intermittent shooting?

A Yes.

Q Did you see any of the individuals that have been involved in the shooting, I mean see any activity over there?

A No, sir.

Q Could you see that area from your farm?

A Oh, from my house you can see something -- Jumping Bull, their house, and you can see Jumping Bull Hall, not real good in the summertime because there is leaves on the trees and everything.

Q You don't really have a good view of any of that area then?

A Not really.

Q You didn't really see anything that was occurring over there?

A No.

Q Did you see any individuals leaving the area might have come by your property?

A No.

MR. TAIKEFF: Objection to the form of the question because it includes the speculation "might have come from {461} some place".

THE COURT: The objection is sustained.

MR. CROOKS: Well, the answer I think is "no", anyway.

Q (By Mr Crooks) All right. On the day of the shooting did you stay home all day that day, or did you leave at some point?

A I had a pickup at the house, but then I didn't have no keys to it so my brother had to come out to the house in another car and give me the keys for the pickup and come into town that day.

Q What time did you leave?

A 1:30, 2:00, something like that.

Q 1:30, 2:00 o'clock you left and didn't come back until later?

A I didn't come back until the next day. I stayed in town. Left me in town that night.

Q Do you know the Defendant in this case, Mr. Peltier?

A No, sir.

Q Ever seen the individual sitting over there before?

A No, sir.

Q During the -- excuse me. Did I cut off your answer?

A Unh-unh.

Q All right. Have you seen Mr. Peltier before, either in the Jumping Bull area or anywhere else?

{462}

A I don't think I have. I can't recall.

Q As far as you know you have never seen him?

A No.

MR. CROOKS: We have nothing further.

MR. TAIKEFF: Your Honor, could we approach the bench?

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, I am quite sensitive to his desire to adhere to the work schedule that was set out. If the Government would not object I would be amenable to this witness stepping down and the next witness getting on preferably -- or hopefully it will be a short witness; and then during the half hour recess from 3:00 to 3:30 I can prepare the cross examination and there won't be any change in schedule. It will be, just a change in the order of activity. I don't think it will be a very long cross examination, but I do feel obligated to go through the materials which I just got.

MR. CROOKS: I don't know that I agree with that. I would rather have the break now and let them look it over and continue. I don't want the witness' direct to get separated from the cross. I would rather take a break now and look at it than split it up. I think it becomes very confusing to the jury.

{463}

MR. TAIKEFF: We hope the jury has a better recollection than that.

THE COURT: What witness -- what is your next witness, is he going --

MR. HULTMAN: (Interrupting) That's another problem. I think we are going to be faced with the same situation. We would get about 10 minutes on the next witness and have to cut that one off and go back to this one, have another break.

MR TAIKEFF: We could solve both of them with a half hour recess.

THE COURT: I will declare a half hour recess 15 minutes earlier than I usually do, trying to get this thing done.

MR. CROOKS: That is all right.

MR. TAIKEFF: Your Honor, could I raise another point at this particular time? I don't consider what happened in connection with this witness particularly serious as far as the specific contents is concerned; but I suspect that there is a certain insensitivity on the part of the prosecution to introducing into this case proof or possible proof of other crimes that are totally unnecessary to prove their case and totally irrelevant. For instance, the fact that that rifle was stolen in May and this person lived on the premises which was adjacent to the tent city {464} area raises the suggestion at the very least that someone in that encampment in tent city was either responsible for the theft or had purchased stolen property.

Now, I understand from Mr. Ellison who has been keeping track of evidentiary matters for us, that this rifle was recovered in New Mexico. Apparently there will be some effort to place it in the encampment, and I think if that was the Government's purpose, then they would become sensitive to the fact that we are very concerned this case might be decided on some prejudicial basis rather than some relevant fact.

It would be very simple if the Government could indicate to us that it has some problem with its proof and that without offering such evidence cannot show the geographic nexus which is theirs, at least give us an opportunity to avoid the kind of problem we have here. This is a rather simple thing. This is perhaps an even more -- an unimportant theft, but if the Government is not conscious of this problem, then we may end up at a later date with an application for a mistrial, and I don't want to try this case again any more than the Government wants to try it again; and I would ask them most respectfully, and I am being serious and respectful about this, to give some thought to these matters.

MR. CROOKS: Your Honor, Mr. Taikeff completely {465} miscomprehend the purpose of this showing, that we have no doubt that this rifle was traced back to this camp; and we are going to tie it up with both physical and oral testimony.

MR. TAIKEFF: Most assuredly, the fact it was stolen from a nearby location --

MR. CROOKS: (Interrupting) Can I finish? One at a time, I believe.

MR. TAIKEFF: I am sorry.

MR. CROOKS: We certainly contend that the weapon is tied to the crime scene, tied to shell casings and so forth; and certainly, the very fact that Mr. Peltier and his group are out stealing the next-door neighbor's guns, I think has a very direct bearing on his state of mind; and we certainly don't back off of that issue at all. I think we have covered that in our brief, and we certainly are willing to meet that head on.

MR. TAIKEFF: Well, your Honor, that supports at least my contention to a mathematical certainty.

THE COURT: Well, I assume that you are going to tie this up?

MR. CROOKS: We definitely are, your Honor, no question about it.

MR. TAIKEFF: The fact of the theft has no relevancy. If this gun was in that area, it was in an area. If it was {466} used that day it was used that day. The fact that it may have been stolen was not an issue. The Government repeatedly fails to recognize what it is they are supposed to prove here and what it is they are not permitted to prove.

MR. CROOK: Your Honor, the circumstances under which Mr. Rooks' gun got into this crime scene has a direct bearing on Mr. Peltier's state of mind, and I don't equivocate on that at all.

MR. TAIKEFF: Your Honor, I assume, and I think I am assuming correctly, there is going to be further nexus between that theft and the presence of that gun there one month or 26 days later.

Now, if this were a possession of stolen property case, and that were the Government's proof, I dare say the Court would grant a Rule 29 motion. This is not that kind of a case. This is a murder case, at least step removed from that: and it would be irrelevant to introduce to the jury the fact that this gun which was used -- which raises its own set of issues -- was a stolen gun. It is a proof of another crime that is wholly unrelated to the issues in this case.

THE COURT: Well, there is nothing for me to rule on at this moment.

MR. TAIKEFF: I understand. I am just trying to {467} apprise the Court and the Government at this stage so there cannot be a misunderstanding about the position of the defense in regard to evidence of this character.

I will, in fact, move to strike that portion of the testimony that refers to the theft -- not as an instruction to the jury -- just so the Government will be deprived of arguing that fact to the jury.

THE COURT: I will reserve a ruling on that motion.

MR. TAIKEFF: Thank you, your Honor.

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

THE COURT: Normally we go until 3:00 o'clock to recess. Because of a problem in the presentation of the evidence, we will recess at this time; and we will take a little longer recess than we did this morning. The Court will recess until 3:20.

(Recess taken.)

{468}

(Whereupon, the following proceedings were had out of the hearing of the jury:)

THE COURT: Are you now ready to proceed?

MR. TAIKEFF: Yes, Your Honor. I just want to report one thing to the Court but that doesn't change the answer I gave to the Court. The Grand Jury material was missing a page and Mr. Sikma has gone to look for that page. Although I can begin, I don't know whether I can finish until that page is delivered. I suspect everything will work out all right.

THE COURT: The jury may come in.

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

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR.TAIKEFF:

Q Mr. Rooks, do you know of your own personal knowledge who stole those guns from your father's house? Yes or no.

A Personally?

Q Yes.

A No.

Q And do you know of your own personal knowledge what happened to those guns; namely, who had them after the theft took place?

Q No.

Q Do I understand that at or about the time of the theft {469} you discovered horse tracks in the area?

A No. Horse tracks were, because we have horses, I told you. Could have been ours. I didn't think nothing of the horse tracks.

Q Those horse tracks as far as you're concerned had nothing to do with that theft?

A I'm, I didn't think nothing of that. That could have rode up on horse, you know, and, or whatever, you know, but there was tracks from the house to the corral and that's where he stopped.

Q I see.

But you had no specific reason to believe that those horse tracks had anything to do with the theft, do you?

A They had to be. How would they got away? Why would the tracks go from our house to the corral? No tracks in any member of the family and stop to the corral and that's as far as it goes. Can't fly away.

Q There were no tracks after the corral?

A You mean foot tracks?

Q Horse tracks.

A Horse tracks. Yeah. Horse tracks all over but no foot tracks after the corral.

Q I see.

How many people live in the home in which you live? Let me rephrase that. In May and June of 1975 how many people {470} lived in your residence?

A In May when the break in took place, me and my sister and my mom and my dad.

Q Four people?

A Four people.

Q How many guns did you say were taken?

A Seven.

Q Can you tell me what kind of guns they were?

A Three 22's, a 20 gauge, a 410 and a 12 gauge.

Q Those last three guns are shotguns?

A Shotguns. Three shotguns, and a 303, and 32 pistol and a 357 pistol.

Q That's nine guns altogether?

A Yeah.

Q And how many belonged to you?

A To me?

Q Just how many? Not which ones.

A One.

Q How many to your mother?

A None. The rest were probably just family's, you know.

Q Family guns?

A Well, let's say dad owned them.

Q I understand.

But in terms of who used them or who carried them.

A I was the only one who really did any hunting.

{471}

Q Did anybody else use any of those guns?

A In the family?

Q Yes. I'm talking about your family.

A They wanted to, yeah, I suppose.

Q But did anybody actually, your father use any of those guns?

A Yeah. We all used them, except for like mom and my sisters, they...

Q They never used the guns, just you and your father?

A And like my brothers, wanted to go hunting or something.

Q Do you know what the expression intermittent shooting means?

A No.

Q Do you recall that Mr. Crooks asked you whether there was intermittent shooting and you shook your head yes?

A I mean like shooting now and then shooting like every once in awhile.

Q At intervals?

A Yeah.

Q Okay.

You said the shooting lasted a half hour.

A Well, somewheres in that nature. Maybe longer. Maybe, yeah. It's approximately longer than half an hour.

Q Do you mean the first installment of the shooting lasted a {472} half an hour or do you mean that's all the shooting there was that afternoon while you were there?

A No. Like I heard the shots and I didn't think nothing of it, you know, so I went about my work. Went in the house and, you know, didn't pay too much attention to it because --

Q But I want to find out from you whether you only heard one period of shooting perhaps lasting a half hour and no more between the time you first heard the shooting and the time you left.

A Well, let's just say they were shooting all during that time. Maybe they might have stopped, maybe they might have shot a little more. They were shooting, all during the time I heard shooting.

Q What time was it you left approximately?

A 1:30, 2:00 o'clock, somewheres around there.

Q Have you ever heard of the American Indian Movement?

A Yeah.

Q And is it known by a shorter name on the reservation?

A Yeah.

Q What's it named by?

A AIM.

Q And have you ever heard the expression "goon"?

A Yeah.

Q What does that word indicate?

A Supposed to be Wilson supporters or opposition or whatever.

{473}

Q Opposition to what?

A To the AIM movement or whatever.

Q Now did you know that the area which we've called tent city was an AIM encampment?

A Yes.

Q And were there any religious activities going on in connection with that encampment?

A Religious?

Q Yes.

A I don't know. I never asked them. Never saw them.

Q You said you saw a sweat lodge?

A That was after the shooting and everything took place. You know, we remembered that camp so I and my brother and my cousin went down to see what was down there.

Q Did you find the sweat lodge there?

A Yeah.

Q Was there any connection between a sweat lodge and religious activities?

A Yes.

Q Could you describe by name the religion that uses a sweat lodge as part of its religious activity?

A No. I never, I've heard a lot about it but I couldn't tell you the name.

Q You are an Indian, are you not?

A Yeah. Part.

{474}

Q One grandparent or two grandparents or how many grandparents were Indian?

A All of them on my father's side.

Q So you're half Indian?

A Not quite half. I mean, all the relations on my father's side were mostly Indian except for my great grandfather.

Q Does your family follow any religious beliefs?

A What do you mean? Like Christian, Catholic, whatever?

Q Yes.

A They're Christian.

Q Your family is Christian?

A Yeah.

Q Is it a fact or is it not a fact that the AIM people were trying to persuade people to return to the old Indian religious ways?

A I'm not sure; no. I don't know.

Q You're not sure. Did you ever make reference to the activity of the people in the tent city by calling it a revival?

A Did I ever what?

Q Did you ever describe the activity going on in tent city as a revival?

A I never knew of tent city until after it all happened.

Q I understand that. But once you found out about it and talked about the activities of the people in AIM city, did you {475} ever refer to that activity as a revival?

A There was a revival going on at the time but that wasn't around there. That was way up further from them, some sort of a revival. I don't know if any religious, Christian or Moslem or whatever. There was a revival going on on up that way.

Q Did you ever tell Special Agent Frederick Coward of the FBI that you thought there was a connection between the people in that camp and the revival that was going on in Oglala?

A I might have told him that. Well, might have told him that maybe. Maybe that was, might have used that to get a lot of people in. That's just speculation. I didn't know.

Q First I'm asking about what you said to somebody, then perhaps we can go into the meaning of what you said.

A Oh.

Q My question is --

A Yeah.

Q Did you ever tell an FBI agent or did you ever mention a connection in your opinion between the revival that was going on in the Oglala area and the people in the tent city area?

A Yeah. But I never knew it was going to come to this. I just was talking to him. I didn't know he was going to put it on record or anything. I was just talking to him about it. I said maybe. I didn't say I thought it was. I said maybe.

Q Were you somewhat surprised that I knew what you said to the {476} FBI?

A Yes.

Q You don't like the American Indian Movement, isn't that correct?

A Well, I don't like the things that they have done.

Q You don't like them, the people associated with them, isn't that correct?

A No. I'm friends with lots of AIM people.

Q Some of your best friends are AIM people?

A Not best friends but some of the people.

MR. TAIKEFF: May I have a moment to confer with Mr. Sikma, Your Honor?

THE COURT: Very well.

MR. TAIKEFF: Your Honor, that page was delivered. Could I have a moment to look at it?

THE COURT: You may.

Q (By Mr. Taikeff) Now let's go back to June of 1975, almost two years ago. Is it fair to say that at that time you did not like AIM or any of the positions which it took on the reservation?

A Yeah. It would be fair.

Q You understand, of course, you're entitled to your personal opinion.

A Yeah. And so are they.

Q In fact, in talking about Harry Jumping Bull, you once {477} said that "He is with AIM but he's always been nice to us," isn't that correct?

A No. That isn't correct.

Q That's not correct that you once said that to somebody?

A I said that there has been, he's been associated with AIM. I didn't say anything like that.

Q At page 54, grand jury material, you testified before a grand jury in connection with this case?

A Yes.

Q And you were under oath at that time?

A Yes.

Q Tell me whether you recall being asked the following question and giving the answer that I will read to you, question: "Do you know whether or not Harry Jumping Bull or his wife are associated with AIM?" Answer: "Well, Harry always has been nice to us and then I always liked him but I knew he was, I figured he was or else he wouldn't have nothing to do with them. They wouldn't have been staying around there if they wouldn't, but he was always nice to us."

A That's the same --

Q Just tell me whether or not you recall that question and answer.

Now you were testifying there under oath, right?

A Yes.

Q And you told the truth before the grand jury, right?

{478}

A Well, maybe I got, I had it wrong or something but I'm not saying he was AIM.

Q Calm down a little bit and listen to my question. All I asked you was when you gave that answer before the grand jury were you saying the truth? Yes or no.

A You mean I was saying he was AIM?

Q Do you read English?

A Yeah.

Q Let me show you page 54 and ask you to read this question and that answer and this question and that answer to yourself just to see if it refreshes your recollection.

A Yeah.

Q Do you remember being asked those questions?

A Yeah.

Q Now one of those questions was the one I just read out loud, isn't that correct?

A Yeah.

Q And you answered that question, didn't you?

A You mean here or there?

Q There in the grand jury.

A Yeah.

Q And I read the answer exactly the way it is on that piece of paper, right?

A (Witness nods affirmatively.)

Q Isn't that the answer you gave to the grand jury?

{479}

A Yes. It's on paper.

Q I beg your pardon?

A Yeah.

Q And when you said that answer, as far as you were concerned you were telling the truth, right?

A Yeah. At that time; yeah.

Q You're telling the truth right now?

A About him being AIM?

Q No. About all your answers. Are you telling us the truth?

A Yeah.

Q Now right after that were you asked the following question and did you give the following answer, question, same page: "How about Ivis Long Visitor and his wife Angie, do you know if they were ever members of AIM or associated?" Answer: "I knew they were probably associated but they were still nice to us."

A Uh-huh.

Q You gave that answer?

A Uh-huh.

Q Was that a truthful answer?

A Yeah.

{480}

Q Now what was the connection between various people being members or supporters of AIM and the question of whether or not they were very nice to you?

A You mean -- well, just because they're AIM don't mean you can't talk with them or, you still got to live with them.

You can't throw them out altogether because they're AIM. If you are going to live there, you have to be friendly with everyone around there. If they're neighbors, you know, you got to be friendly with them.

Q Well, do you expect people who are AIM member or AIM supporters not to be nice to you?

A It depends upon the situation.

Q Well, then when you were asked whether certain people were members or supporters of AIM, in each instance you specifically said, "Yes I think they were but they were nice to me."

But motivated you to make that special statement at the end?

MR. CROOKS: Your Honor, I'll object to this as an improper use of this grand jury transcript.

In fact he's asking questions from the transcript. He isn't even contending that they're supposed to be inconsistent with anything the witness is saying.

I object to the grand jury transcript being read in lieu of asking the witness questions.

I think he can question the witness as to his present {481} recollection and if his answer is inconsistent, then go to the transcript but he's doing it just the other way around and I'd object.

MR. TAIKEFF: Your Honor, I'd like to make a brief response.

I asked the witness whether he ever made a statement that, "Harry Jumping Bull is with AIM but he was always nice to us," and he answered, "No. I never made any such statement," and that is the use of that transcript, to illuminate that point.

MR. CROOKS: Your Honor, that's been asked and answered about three times and I object going back to this transcript. I object to examination in this fashion.

If he wishes to carry his examination on and come back to the transcript for an inconsistent answer, that's an entirely different thing but that isn't what he's doing now. He's reading the grand jury transcript and I object to it.

MR. TAIKEFF: All right. I'll assure Mr. Crooks that I'm turning it face down and putting it under my other papers.

Q (By Mr. Taikeff) Now, Mr. Rooks, what is it about people who are members or supports of AIM that makes you say when you're asked if someone is a member of AIM, "Yes, but they've been nice to me"? What does being nice have to do with their being members of AIM?

A Nothing I suppose.

{482}

Q Well, does it mean that if someone's a member of AIM there's some reason why you should expect they wouldn't be nice to you?

A Yeah. Because I don't look that much Indian.

Q Does your family take a public position with respect to Mr. Wilson or did they when Mr. Wilson was a tribal chairman?

A No. They never have.

I mean we, they never supported him. In fact my dad never did, never voted for him when he was up for election.

Q So do you have any personal reason to think that AIM would not like you?

A No. I suppose not.

Q Did any people from AIM ever attempt to persuade you to follow the old Indian religious ways?

A Well. I've talked to people, a lot of them about it, not a lot of them but I've talked to people and they've talked about the religion.

Q And have they tried to persuade you to go back to the old ways?

A Not, not persuade me.

They just tell me what they believe in and that's it.

Q Do you know what a missionary is?

A Yeah.

Q Are there any missionaries on the reservation that you knew of?

{483}

A You mean Mormon, Christian?

Q Christian, Mormon, any kind of religious missionary?

A Well there's the Jesuits if you want to call them that, missionaries and there is the Mormon elders.

Q How about Mr. Weston, do you know Mr. Weston?

A I don't think so. I don't know. Which Weston?

Q A young fellow who preaches Christianity.

A No. I don't know him.

Q When you refer to AIM people, do you refer to them or have you ever referred to them as a bunch of long-haired people?

A Yeah. Well, maybe there's a lot of them that, they might be AIM and, you know, it's just the way, they just stay the way they are, you know. They don't grow their hair or --

Q Don't you think the people with long hair are the way they are?

A What do you mean?

Q Well, you said some of them just stay the way they are and don't grow their hair long.

A Okay. I'm sorry.

Q Do you associate long hair with any people?

A No. I know a lot of long-haired people that don't believe or follow or whatever.

Q Is it fair to say that there came a time when you discovered or believed that the people in tent city were AIM people; yes or no?

{484}

A Yeah.

Q When did that thought occur to you or fact occur to you?

A You mean tent city?

Q Yes.

A I didn't know about tent city until after it happened but I, I knew that there was one, well, there was some AIM people around the area, I mean, that were living around there.

Q Isn't it a fact that you told the grand jury that you had assumed that the people in tent city were AIM?

A Yeah.

Q Well, as of when did you first make that assumption?

A You mean like if I -- I went down there a few times, you know I seen some people around there, you know, and --

Q Have you finished your answer?

A Yeah.

Q On June 26, 1975 there was a shootout at the Jumping Bull area, correct?

A (Witness nods affirmatively.)

Q How many people died?

A Three.

Q Before that happened did you know that there was an AIM encampment on the Jumping Bull property?

A I'm having trouble with thinking, I mean, I don't know what you mean by the camp.

Q By encampment. Did you know that there was an AIM group -- {485} living on that property?

When did you first find that out?

A You mean AIM camp living on the property? I knew that there was AIM people in the area but I never knew that there was an AIM camp in -- yeah.

Q When you were before the grand jury did they question you about who was living on the Jumping Bull property or who had been living on the Jumping Bull property?

A I think they did; yeah.

Q And did you tell them that there were AIM people living on the property?

A Yeah. I suppose.

Q You suppose?

A Well, yeah. I told them that. Okay.

MR. CROOKS: Your Honor, could I have the reference to which counsel is making?

MR. TAIKEFF: Yes, Your Honor. It's page 46 beginning around line 16.

Q (By Mr. Taikeff) Do you know whether the defendant in this case has anything to do with AIM?

A Yeah.

Q I didn't hear your answer.

A I never seen him before so I don't know.

Q Do you have any belief as you sit there whether he has anything to do with AIM?

{486}

A What's he on trial for?

Q Does that make a difference?

A Yeah. If he's on trial for, for what he, for killing the officers and the AIM people were there, well, I suppose he must be involved with them somehow.

Q So your assumption is that if something happened on the Jumping Bull property it had to be done by people associated with AIM, is that correct?

A Yes.

MR. TAIKEFF: I have no further questions.

MR. CROOKS: We have nothing further and we'd ask that Mr. Rooks be excused, Your Honor.

MR. TAIKEFF: No objection, Your Honor.

THE COURT: You may step down and you are excused.

MR. CROOKS: If it please the Court, the United States would call as its next witness Mr. Robert A. Bunch.

ROBERT A. BUNCH, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS

Q Special Agent Bunch, would you again give your full name for the record.

A Robert A. Bunch.

Q What is your occupation, Mr. Bunch?

A I'm a special agent with the FBI.

Q What is your present assignment?

{487}

A Monterey, California.

Q And how long have you been assigned as a special agent in that area?

A About six months.

Q Where were you assigned prior to that?

A Santa Cruz, California.

Q Calling your attention back to the summer of 1975, what was your assignment during the month of June, 1975 or prior thereto?

A I was assigned to the Colorado Springs Resident Agency out of the Denver office.

Q How long had you been in the Colorado Springs office, Mr. Bunch?

A Just about six years.

Q During your time at the Colorado Springs office were you assigned with another special agent of the Federal Bureau of Investigation by the name of Jack R. Coler?

A Yes, sir, I was.

Q Had you known or -- well, first let me ask, how long had Mr. Coler been assigned to the Colorado Springs office?

A Approximately three years.

Q And how many man office was the Colorado Springs office?

A While he was there I think it was from six to eight.

Q All right. So he was one of approximately eight agents including yourself?

{488}

A Yes, sir.

Q Had you known Special Agent Coler prior to his coming to the Colorado Springs Resident Agency?

A No, sir.

Q During the period of time that you worked with him, I believe you stated approximately three years, did you have occasion to work with Mr. Coler?

A Yes. I did.

The last year we were assigned as a team, two partners.

Q And how would you describe your personal relationship with Special Agent Coler?

A We were close friends.

Q Now did there come a time when Special Agent Coler was placed on a temporary assignment in another resident agency?

A Yes, sir.

Q And approximately when was that?

A April, I believe it was, 1975.

Q And where did he get the assignment to?

A To Pine Ridge, South Dakota.

Q And are you personally familiar with how long the assignment was to have been?

A Yes. I believe it was either a sixty or a ninety day assignment. I believe sixty.

Q And he was assigned in April?

A April or May or 1975; yes, sir.

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Q So in June of 19, June 26, 1975 he would have been approaching the end of his tour, would that be correct?

A Either that or almost; yes, sir. Maybe even halfway through. I'm not sure.

Q Now insofar as Special Agent Coler was concerned, you indicated that you were, in addition to being a fellow worker, a close personal friend.

Did you take care of any of Mr. Coler's personal things such a car, mail and so forth in his absence to the Pine Ridge area?

A Yes, sir. I did.

Q And will you describe, not in detail but in general, what kind of personal things you could take care of for him.

A Well, mail, for instance that would come to his residence and to the office and the upkeep and maintenance of his residence as well as his vehicle.

Q All right. And during the time that he was in Pine Ridge did you have occasion to talk to him by the telephone on occasion concerning personal matters as well as business matters?

A Yes, sir. Quite often.

Q And could you give any kind of an estimate as to how often this would be, say, on a weekly basis or some estimate of that nature?

A At the minimum, two times a week. Probably averaging around {490} three or four. Close to every other day.

Q All right. Special Agent Bunch, I would hand you Exhibit No. 28 and ask you if this is the individual identified or your friend, Special Agent Coler?

A Yes, sir. It is.

Q All right. Now during the time that he was at Pine Ridge were there occasions when you would have to visit with him about cases that you'd worked on together at Colorado Springs?

A Yes, sir. Quite often.

Q Calling your attention specifically to June 26 of 1975, the day of Special Agent Coler's death, did you have occasion to talk with him on the telephone?

A Yes, sir. I did.

Q And when did that telephone conversation take place?

A Approximately 9:00 a.m on the 26th.

Q All right. Would you, first of all, describe generally what the -- well, first of all, how long did the conversation, telephone conversation last?

A I'd say from, anywhere from twenty minutes to half an hour, thirty-five minutes.

Q Would you mention just briefly some of the subject matters that were part of the conversation without going into the complete details?

A Yes, sir.

I was in Denver at the time when I received the call {491} and it dealt with the things that I mentioned before about personal items about mail, had I forwarded mail. Also some cases that we had worked together in Colorado Springs that were pending trial and whether or not he would be subpoenaed to testify for those cases.

The work here, excuse me, in Pine Ridge, he discussed the cases that he was working, the people that he had contacted, a number of persons he had contacted.

{492}

Q During that telephone conversation did Special Agent Coler indicate how things were going for him insofar as the Pine Ridge assignment was concerned?

A Yes, sir, he did.

Q And would you relate just generally what he told you in that regard?

A He said he enjoyed the work. He mentioned this before, and he contacted a lot of people that he enjoyed working with and that he had contacted during investigations, and he enjoyed his assignment.

Q Did he say anything about -- during that conversation, concerning the people that he had met, law enforcement and lay type people?

A Yes, he did. He liked -- as far as I could tell, he liked just about everyone he came in contact with.

Q And during the course of the conversation did he relate to you anything concerning possible transfer to the Pine Ridge area or to the Rapid City area?

A Yes. He thought that he would consider changing his office of preference in order to work there and move from Colorado Springs.

Q All right. During the conversation did he indicate any particular problems with regard to any of the cases he was working on?

A No, sir.

{493}

Q Did he discuss specifically the case he was working on at that time?

A Yes, he did. He told me that -- I believe it was just about as soon as he was finished with this -- the conversation that he and I were having on the phone -- that he intended to assist another agent in the location of a subject they had a warrant for. I believe it was a kidnapping charge.

Q All right. I don't want you to give the details, but do you recall him going into any of the details of the crime?

A Yes, sir, I do.

Q And I don't want you to go into that.

Did he mention the name of the individual who he was seeking?

A Yes, sir, he did.

Q And who did he say the individual was?

A Jimmy Eagle.

Q Now insofar as the name, Jimmy Eagle, was there any particular reason that you would recall that name having been given to you that morning?

A Yes, sir, there was because subsequently, as I learned more and more about the details of what later occurred that day, that name was repeated a number of times, that this was a particular case that Jack and the other agents were working.

Q And approximately how long after your conversation with your friend and fellow agent did you learn of his death?

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A I would say it was five to six hours.

MR. CROOKS: We tender the witness for cross examination, your Honor.

MR. TAIKEFF: May I have just one moment, please, your Honor?

THE COURT: You may.

(Counsel confer.)

MR. TAIKEFF: No questions.

THE COURT: You may step down.

(Witness excused.)

MR. HULTMAN: Your Honor, the next exhibit will be the showing of a 170 feet of Super millimeter movie film concerning the area. It would take us -- and I think it ought to be done at this time, your Honor, because I think it is illustrative and counsel is in agreement.

It will take us a short time in order to get the screen set up and the projector and so forth, so I would request of the Court that maybe we would stand at ease for five minutes, or whatever time it takes, in order to do that; and what will then follow, your Honor, will be the showing of the film; and I will read a brief script with it which again counsel has stipulated to and will be made a part of the record along with the film itself; and I am trying to find the film's number here as an exhibit number -- Exhibit No. 10, and the script with it will be {495} Exhibit 10-A.

THE COURT: Are you offering those exhibits in evidence?

MR HULTMAN: Yes, and I am offering them both at this time too.

MR. TAIKEFF: No objection.

THE COURT: Exhibits 10 and 10-A are received.

(Plaintiff's Exhibits Nos. 10 and 10-A, having been previously duly marked for identification, so offered in evidence, were received.)

THE COURT: You may set it up.

The question has been raised by the court reporter as to whether counsel would desire that the dialogue apparently that you are going to read --

MR. HULTMAN: (Interrupting) Yes, your Honor.

THE COURT: (Continuing) -- in the showing of the film should be reported.

MR. HULTMAN: I will give a copy of it as an exhibit, and it will not in any way be different, your Honor, from what the exhibit is. I see no reason for the reporter to, if counsel agrees.

MR. TAIKEFF: I am agreeable to that, your Honor.

THE COURT: Very well, it will not be necessary to report it.

MR. HULTMAN: She can make it a part of the record, {496} of course, and she can use the script, the Exhibit 10-A.

Now, your Honor, there is agreement of counsel that the operator -- and this is a very neophyte operation, beginning with the film and everything concerning it, it is the best there is -- that the operator will run it forward a short distance in order to get the focus and so forth, and run it back; and then I will do the narration if counsel is in agreement.

I think we are going to have to have some lights or we aren't going to see anything.

(Plaintiff's Exhibit No. 10-A during the showing of the movie was read by Mr. Hultman as follows:)

"The following is a verbal description of approximately 170 feet of Super 8mm movie film depicting the area around the Jumping Bull Hall vicinity and an area commonly referred to as 'Tent City.' "Directions and information furnished herewith will be described from the point of view of being behind the movie camera.

"This is a view looking in an easterly direction from the Jumping Bull residence sweeping to the north direction showing the Wanda Siers residence with a dirt road in front. The sweep continues from north to northwest down the dirt road into a valley which is due west of the Jumping Bull and Wanda Siers residences. The view shows a {497} corral which is at the edge of a wooded area at the far western section of the valley. This shows the area where the dead FBI Agents, Ronald A. Williams and Jack R. Coler were found on 6/26/75. Sweep continues from west to west-southwest to include as a close-up on the bottom part of the screen a root cellar, continuing in a southwesterly direction to include six wrecked vehicles in the valley and thereafter in the foreground what appears to be a white propane tank and a pile of wood. Continuing now in a southerly direction showing a wrecked car and green roofed and green sided house which is at this point in a due southerly direction from the camera. The sweep continues from south to south-southeast to show another out-building, a shade and then the main residence of Harry and Cecelia Jumping Bull. Sweep continues to show another out-building with a whitish colored roof, the sides being of hewn logs which is now in a due easterly direction. The sweep continues from east to east-northeast to show a white and black Chevrolet pickup truck and a turquoise colored vehicle. Camera sweep continues to again include the Wanda Siers residence which is due north. Another film strip of the green roofed, green sided house which is south-southwest from the Jumping Bull residence and in the due southerly direction from the camera. From the green house the camera sweeps from south to south-southeast {498} and again to east-southeast and due east to include the residence and general surroundings of the Jumping Bull residence. The camera then reverses and goes back to an east-southeast direction to again include the area around the Jumping Bull residence. At this time close-ups are shown of the Jumping Bull residence and several nearby buildings thereto. The camera then sweeps from east-southeast to an east-northeast direction showing close-ups of previously filmed areas. The film now switches to show the area several yards due east of the Jumping Bull residence shooting in a southerly direction and sweeping in a southerly direction to include vehicles and the Jumping Bull residence. The film now depicts an area to the south of the Wanda Siers residence panning an area overlooking the valley to the west of that residence and sweeping in a southerly direction to include the Wanda Siers residence and a distant shot of the Jumping Bull residence. Continuing sweep from south to east to include the road entering by the Jumping Bull Hall into the Wanda Siers and Jumping Bull residences from Highway 18. This view shows a vehicle traveling in a northerly direction on Highway Route #18. The film now depicts a front view of the Wanda Siers residence a northerly direction and sweeping to the west and back again to the Wanda Siers residence, and again panning an area in the westerly {499} direction from the Wanda Siers residence. Film now showing the west side of the Wanda Siers residence with the camera facing in a northeasterly direction and sweeping to the north and north-northwesterly direction on to the west depicting the valley due west of the Siers residence. Continuing with a sweep of this valley in a direction of west to south. Again the film shows the corral in the valley, and previously mentioned wrecked vehicles in the distance which is in a due southerly direction and again panning to the direction south to the Jumping Bull residence and from south to east, back again to a due southerly view from the general area of the Wanda Siers residence into the valley below. With another pan back from south to west direction showing the rising terrain west of the Jumping Bull general area. The film now depicts the dirt road leading approximately 50-60 yards in a south-southwest direction from the Jumping Bull residence which road generally follows the tree line in a south and southeasterly direction from this residence. This view is taken with the camera pointing in a northerly direction at first and then swinging, following the dirt road along a fence line into a heavily wooded area which at this point would be filming in a southeasterly direction. Following down this dirt road into a heavily wooded area and then viewing a red and white van type {500} vehicle parked in

the middle of the dirt road in the heavily wooded area, which is the area commonly known as Tent City. The camera then pans the general area of this red and white vehicle showing some of its interior and general surroundings. This vehicle was facing in a generally northwesterly direction. The camera now pans an area commonly known as 'Tent City' showing some tents and another vehicle also parked facing in a north or northwesterly direction and pans the general area surrounding these tents, this vehicle and items found to be in the vicinity. The camera now views an individual uncovering a weapon which is covered with heavy pieces of bark. The camera shows a close-up of this weapon on the ground and continues to pan the underbrush and foliage in this general area to show other weapons found therein and being held in the air for the camera by individuals. The camera then shows a green olive-drab duffle type bag which was found near the green vehicle which was located parked in this area. The camera continues to pan the general area of the foliage and underbrush and other items in the area known as 'Tent City.' The camera now moves to an area due north of the area known as Tent City approximately 20 yards into a small rise where we see movies of the FBI vehicle known to have been assigned to SA Ronald A. Williams. The camera pans the general area where this {501} car was located and of the interior and exterior of the vehicle. Immediately upon leaving the scene of Agent Williams' vehicle, the camera shows another view of the Jumping Bull residence facing a northeast-north direction panning to the north and then from north to north-northwest again showing the valley to the due west of the Jumping Bull residence, with a zoom-in on the corral located in the far western section of this valley and then showing a general overlay of the valley facing in a generally western direction which was the death scene of SA's Williams and Coler. Panning from the west to the south the camera shows the dirt road and the wrecked vehicles to the west-southwest of the Jumping Bull residence and the road entering into the heavily wooded area to the south, going toward Tent City, again facing in a southerly direction showing the green house known to have been inhabited by Ivis and Angie Longvisitor and continuing the sweep from south to east showing other out-buildings and the main residence of Harry and Cecelia Jumping Bull with the camera pointing in a generally easterly direction with a continued sweep from the east to the north. The sweep goes back again showing the residence of the Longvisitors with the camera facing south and views of the general area surrounding the Jumping Bull residence from both north and west sides. The camera then shows the plowed field {502} east-southeast and due east of the Jumping Bull residence and continues to pan from east to north showing Jumping Bull Hall, a large shade and then the black and white pickup truck and turquoise colored sedan from several angles. The camera, again facing a westerly direction, makes a quick sweep of the valley from the Wanda Siers and Jumping Bull residences to include the Siers residence and a distant shot of the Jumping Bull residence area. Again sweeping after the Jumping Bull residence from south to east, the camera shows the main entrance road from Highway 18 coming in from an east to west direction toward the Jumping Bull residence with a large butte in the background, showing a vehicle traveling in a northerly direction on Highway 18. There are again other views of the Wanda Siers residence facing in a northerly direction and sweeping to the west showing the general area around this residence. The camera, again facing in a westerly direction sweeps part of the valley which is west of the Wanda Siers residence, continuing a sweep from west to south to show the corral on the far western edge of the valley, the dirt road entering the valley from the north to the south to again include the wrecked vehicles at the far southern edge of this valley west of the Jumping Bull residence. With a continued sweep to the south the camera shows part of the Jumping Bull residence area, and back {503} again from south to south-southwest to again show the valley located directly west of the Jumping Bull and Wanda Siers residences and one of the roads entering this valley from north to south."

{504}

MR. HULTMAN: The government, Your Honor, calls Horace Heafner next.

HORACE HEAFNER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HULTMAN:

Q Would you state to the jury and the Court your name, please.

A Horace James Heafner.

Q And where is your home, Mr. Heafner?

A In Fairfax, Virginia.

Q What is the nature of your occupation?

A I'm employed with the Federal Bureau of Investigation, Washington, D.C.

Q And approximately how long have you been an employee of the Federal Bureau of Investigation?

A 29 years.

Q And what has been the nature of your experience with the Federal Bureau of Investigation?

A I prepared visual aids for investigation, training and other uses.

Q And as a result, are you called upon in your capacity to make various charts, exhibits with reference to possible upcoming exhibits in trials?

A Yes, I am.

Q In this particular case that we are hearing here, were you {505} called for such assistance?

A I was called to prepare charts and a mockup of a scene on the Pine Ridge Indian Reservation in South Dakota.

Q Would you go back for the jury and indicate what were the things that you did in this instance in order to prepare to make the various exhibits that you and I are going to discuss for a few moments. For example, the making of aerial photographs and so forth.

A Yes.

I arranged with a company in Rapid City, South Dakota, to make aerial photographs of the area that you see in back of me. And then I went on the scene and made measurements of this area.

Q So that the base for which you start to make the various charts and so forth that are here was first an aerial photograph of the area itself?

A Yes. That's right.

Q And is that a fairly accurate representation, an aerial photograph of whatever that piece of ground might well be?

A Yes, it is.

Q Would you tell us then what you did next?

A Then I took this material back to Washington and prepared the charts and the mockup of the area.

Q Now in addition to the taking of the aerial photographs, I believe you indicated that you went to the area itself in {506} person, did you not?

A Yes, I did.

Q And referring to Government Exhibit 71 which is an exhibit you did prepare yourself, is it not?

A Yes, it is.

Q Would you indicate to the jury what area and what you did in terms of being physically on the ground.

A In this matter I went to the area and took measurements of the buildings and certain places at the site and took them back to the office for use in preparing this chart.

Q And basically you had aerial photographs of the area, personally walking and measurements that you personally took from the area on the ground itself?

A That's correct. In addition to photographs.

Q Would you then just in general terms tell the jury what it is that Government's Exhibit 71 represents. Not in terms of any evidentiary factor but only the objects that are portrayed there or attempted to be portrayed there.

A In this exhibit it's a diagram of an area called the Jumping Bull Hall area on the Pine Ridge Indian Reservation in South Dakota and it portrays the layout of the area with the structures at the scene showing connecting roads. And then an area to the right that shows the location of the tents. In addition there are cards and tags with items on it.

Q Do you have a pointer that is prepared for use with this {507} exhibit?

A Yes, I do.

Q Would you go to that pointer and relate the pointer to the exhibit.

A This is the exhibit?

Q Yes. Exhibit 71.

How is the pointer itself connected to this exhibit for anyone who might use the exhibit?

A This pointer is scaled so that you can take and measure off any distance on here to give you an approximate distance on the ground.

Q Now what is the scale of Government's Exhibit No. 71?

A In this case, since this is an enlargement of the area, the scale is set forth at the top here. It would be about two and a half inches equals 100 feet if you measured it out.

Q And if someone used the scale at the top or used the pointer scale that you have, you can measure with a relative degree of accuracy the distance between various points and objects on this exhibit, is that correct?

A That's correct.

Q For example, would you measure an approximation for me from the point on Government's Exhibit 71 wherein we have referred to, and on the exhibit is a green house which is located at this point on the map (indicating). Would you measure the distance approximately from that point for me down {508} to the point on the road which would indicate, or the location of what the object is known as Coler's car.

A All right.

Q Just by way of illustration to the jury.

A That measures about 600 feet.

Q And it's 600 feet, that would be approximately how many yards?

A 200 yards.

Q And would you do the same thing for me, because Counsel had asked a question the other day of measuring from the same green house to a point where, which is illustrated as Special Agent Williams' car up in the upper right-hand corner and tell us approximately what that distance is.

A That would be about 1400 feet.

Q And approximately how many yards would that be?

A Be about 700 yards.

Q 1400 feet and approximately how many yards?

A Excuse me.

MR. TAIKEFF: We'll stipulate, Your Honor, it's 467 yards.

Q (By Mr. Hultman) All of us on the moment do make an error now and then, don't we, sir.

Are the various objects that you have portrayed there, the houses, the roads, are they in the relative position and in the relative distance that are portrayed on the aerial photo {509} from which you began your work?

A Yes, they are.

Q Now I would now direct --

MR. HULTMAN: And I might ask Your Honor if the witness might go to Government's Exhibit 20.

THE COURT: The witness can approach Government Exhibit 20.

MR. HULTMAN: Your Honor, I might ask if it would be possible at this time, maybe the jury could leave the box to be at a point where they could see, to be somewhere for a brief explanation of this exhibit. If Counsel has no objection.

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

THE COURT: The jury may step down from their jury box and view the exhibit as the witness testifies.

MR. HULTMAN: Might I remain here with the witness, Your Honor, to ask these few questions?

Q (By Mr. Hultman) Now referring to Government's Exhibit 20, Mr. Heafner, and would you explain in general what this exhibit is and how you prepared it.

A This is the three dimensional model of the area at the Pine Ridge Indian Reservation called the Jumping Bull Hall area. It was prepared from aerial photographs and the topographic studies and on site measurements of that area.

Q Is this prepared to a scale also?

A Yes, it is. It's one inch on here equals ten feet on the {510} ground.

Q So ten feet on the ground in distance is represented on this exhibit by one inch?

A That's right.

Q Now do you have also a scale on this same pointer, the other side of this pointer which measures distances as far as this model is concerned?

A I do.

Q Now in addition to being a representation of a part of the area, the center part area primarily of Government's Exhibit 71, this also gives some dimensions in terms of showing generally what the elevations are which cannot be shown or seen on Government's Exhibit 71, is that correct?

A That's correct.

Q To show what is relatively higher or relatively lower in comparing one spot or one area with another?

A Yes.

Q Now so that the jury might be oriented, they have been observing Government's Exhibit No. 71 and if we would look and I would direct the jurors' attention and the witness to that exhibit. If we would look at the left-hand upper corner we would see Highway 18 and where it begins on the left side of that exhibit. Where in relationship now is that point where you start in to Jumping Bull Hall as you leave Highway 18 and start in to Jumping Bull Hall, where approximately on or off of {511} this exhibit would that be?

A It would be east of this area here (indicating). Highway 18 would come in at this angle (indicating).

Q And is this the road that comes in from Jumping Bull Hall?

A From Highway 18.

Q Highway 18. All right.

What is the first building as represented both on Government's Exhibit No. 71 and the first object on this end of Government's Exhibit 20 which is the extension, so the record will show, of this exhibit, which is this building portrayed here?

A It's referred to as Jumping Bull Hall.

Q So that that lone building there, that is referred to on Government's Exhibit No. 71 which says, as you leave Highway 18 and go, the first building is Jumping Bull Hall so referred there. Is this object on the extension?

A Yes, it is.

Q Now would you then, starting at Jumping Bull Hall and going down the road point out various objects that are shown on this mockup.

A Well, I can refer to this as the Sears' house.

Q All right. That is the Sears' house.

MR. HULTMAN: And let the record show that he is pointing to a house which is colored in what way?

A Well, this is the front part is stucco and the back part, {512} it's a red asbestos type brick.

Q Have you used colored combinations for the buildings to try to portray that thought?

A Yes, I have.

Q Now if we were to continue on down through the cut here, would you be going from a fairly level elevation or a flat area to a lower elevation?

A Yes, you would.

Q And you would be going down that road then toward some objects that are represented there at the present time which appear to be automobiles, is that correct?

A That's correct.

Q Now the first object there is an object with sort of a grey automobile in color, is that right?

A That's right.

Q Would you tell the jury what that object is so that we leave no confusion in anybody's mind?

A This would be an abandoned automobile.

Q A single abandoned automobile.

Does that also appear on Government's Exhibit No. 71?

A Yes, it does.

Q And is so pointed out there in wording, is that correct?

A That's correct.

Q Now if you move on farther down, you come to another vehicle, a yellow or gold looking vehicle, and would you tell {513} the jury what that represents.

A That, I'm told that that vehicle represents one of the agents' cars.

Q And this was the location through analysis that was the area at which the automobile was found, is that correct?

A Yes.

Q Now would you point out then where corrals are in that general vicinity.

A All right. We go down in this lower portion here to Whiteclay River.

Q There are in effect what appears on both Government's Exhibits 71 and 20 here sort of two corrals, separate corrals, one larger and one smaller?

A Yes, sir.

Q Are those again so represented on Government Exhibit 71?

A They are.

Q Now if you continue on around the road that sort of circles it and you got to the far edge of this Exhibit 20, there appears to be a row of about, well, six specifically, again, cars, is that correct?

A Yes.

Q That's what that represents?

A Yes.

Q Now is that the same object that is also represented on Government's Exhibit No. 71 where there is a cluster of cars?

{514}

A Yes, it is.

Q Now if you were to continue on that road toward a number of jurors and toward the wall, would you continue on in a direction to go to the area which is the tent area as is shown on Government's Exhibit 71?

A Yes, you would.

Q And then what, if you came on back up the hill, are the various buildings that are represented in a cluster here? Would you start with the far building. It's green in color and tell us what it is.

A I understand that is a green house which is covered in green tar paper.

Next to that would be a shed and then this house here is a stucco type frame house.

This is a log type house and then you have another green tar paper house.

MR. HULTMAN: Might I for the record, and I would think without any objection by Counsel, that the green house is the house that we referred to and has been referred to and will continue to be referred to as the green house.

Q (By Mr. Hultman) The center white house with trees in the area is the Jumping Bull residence and the log house then is the next residence this way. Would you point out the log house.

A Right here (indicating).

Q This is the log house. So that the objects here, generally {515} buildings are, this is Jumping Bull Hall, this is the Wanda Sears' residence, the bottom of the road where the vehicle as represented there of the FBI agents, the two corrals, the abandoned automobiles, the green house, the Jumping Bull residence and the log house (indicating). Those are the major items as far as buildings in the area, isn't that correct?

A That's correct.

Q And then there is one other additional small building between the log house and the Wanda Sears' house?

A Yes.

Q Now generally speaking is the terrain between Highway 18 and where you can see here it drops off pretty much a flat, very flat table top area?

A Yes, it is.

Q And you have got it portrayed here?

A Yes. It's quite flat in here (indicating).

Q Then it drops away as is generally shown in this exhibit down to the creek area, is that true?

A That's true.

Q Show us where the creek area would run beginning, for example, beyond the Wanda Sears' house and show the general direction that the creek would run.

A This creek actually connects Oglala Lake and starts back over this way and runs in a winding direction over in that area, back up off the model towards the tent area (indicating).

{516}

Q Now you have here on this exhibit 20 some things that portray trees or bushes and then areas that have none. Is it a fair assumption on my part that in the areas where there is none there are no trees of any kind and that's why they are portrayed there as being an open area?

A That's right.

Q And where you have shown foilage, that is an area where there is, consisting of trees and foilage, is that correct?

A Yes. That's correct.

Q Now Counsel has asked me to ask you for the defendant further questions. Would you relate with reference to north and south here and relate it on with relationship to Exhibit 20 what is portrayed and which you have been on the ground and seen, as you have indicated, the area known as the tent area. Would you point and show approximately where the direction would be from where you're standing at the Wanda Sears' residence and moving on to the Jumping Bull property with relationship to this exhibit where the tent area would be.

A It would be in a south, I'd say more of a southeasterly direction.

Q And that is the direction you are now pointing, is that correct?

A Yes. That's correct.

MR. HULTMAN: I do not recall what the correction was when we measured it, and you corrected it, corrected the witness, {517} Counsel, the approximate distance from the green house to the automobile and the tent area, do you recall?

MR. TAIKEFF: Approximately 12 feet.

MR. HULTMAN: But in yards.

MR. TAIKEFF: It was 1400 yards.

MR. HULTMAN: 1400 feet.

MR. TAIKEFF: 1400 feet.

Q (By Mr. Hultman) Could you indicate approximately with your present measurement at Counsel's request, approximately generally how far away from the green house, make the same measurement to show on the table beyond or in that general direction about where the tents and the tent area would be located 1400 feet.

A It would be about here at this glass (indicating).

Q About where the glass is located on the second table?

A Yes.

MR. HULTMAN: I have no further questions.

Does Counsel have any questions?

MR. TAIKEFF: No.

MR. HULTMAN: I believe we could return, Your Honor.

Your Honor, I would offer into evidence Government's Exhibit 20.

MR. HULTMAN: Is that subject to a special understanding that Counsel have concerning its usage or should we approach the bench and explain to the judge possible predicaments.

{518}

MR. HULTMAN: I would suggest, Elliot, if we do come to that point we meet it at that time.

MR. TAIKEFF: At this time, Your Honor, anticipating no difficulties, should a problem arise, we won't object.

THE COURT: Exhibit 20 is received.

MR. HULTMAN: I have no further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Have you ever seen the film which is Government's Exhibit No. 10, I believe, the color film of the area?

A Yes, I have.

Q And in that film did you notice any people whom you recognized as FBI agents?

A I don't recall. Offhand I don't recall. I was looking more at the terrain. I wasn't conscious of individuals.

Q Do you recall whether there were any people in the film who appeared in khaki clothing, military type garb?

A I believe I saw some; yes.

Q Do you know whether they were FBI agents?

A I don't know who they were.

Q Is it customary for FBI agents to wear khaki or military type garb on the reservation?

A I'm not familiar with that ruling.

Q Now you went personally to this area to make certain measurements on or about July 7, 1975, did you not?

{519}

A On July 8, 1975.

Q While you and your colleagues were there preparing sketches and taking measurements, were you accompanied by members of the Denver, Milwaukee and Chicago S.W.A.T teams?

A Yes, I was.

Q What is a S.W.A.T. team?

A Well, it's my understanding it's agents that are specially trained in situations that require manpower to come in and secure an area or provide protection or take over an area.

Q Do you know what S.W.A.T. stands for?

A Special Weapons Attack Team.

Q Were three of those teams there with you at that location?

A There were men with me; I don't know what teams they represented.

Q Putting aside the names of the cities involved or possibly involved, how many such people were there in the area when you went to make measurements?

A I didn't ask. I don't know.

Q And what kind of clothing did they wear?

A Various types of clothing. Some had fatigues.

Q You say fatigues, you're talking about khaki colored or military type clothing?

A Green. Yes.

MR. TAIKEFF: I have no further questions.

MR. HULTMAN: No further questions, Your Honor, and I {520} have run out of witnesses as well as film.

THE COURT: The timing was quite good.

You may step down.

Is the United States ready at this time to, I'm going to recess the court as far as the jury is concerned. It's 5:00 o'clock. I was wondering if the United States was ready to respond to some of the matters mentioned by defense counsel.

MR. HULTMAN: No. The government is not, Your Honor. All of us have been here in the courtroom and I would like an opportunity at least until Monday morning to look at those various items and I think they would agree.

MR. TAIKEFF: No objection.

THE COURT: Very well.

The court will recess then until 9:00 o'clock Monday morning. And I again remind the jurors that you are not to discuss the case or form any opinion in your minds until it has been submitted to you for your deliberations.

The court is in recess.

(Whereupon, at 5:00 o'clock, P.M. court was adjourned until Monday, March 21, 1977, at 9:00 o'clock, A.M.)