

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.

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

VOLUME V

Pages 703-959

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TUESDAY MORNING SESSION

March 22, 1977

(Whereupon, the following proceedings were had and entered of record on Tuesday Morning, March 22, 1977 at 8:40 o'clock, A.M. in chambers:

MR. CROOKS: How on earth did that get made public? I understood that that was all going to be sealed, chambers things.

THE COURT: It has been sealed now.

MR. CROOKS: And I didn't see the report, but what's that about one of the jurors supposedly said she's prejudiced and I --

THE COURT: I think somebody by the name of Mr. Trudell of the defense group held a news conference and made a statement to the press that pretty much detailed what had taken place. And Ralph came to me about the middle of the afternoon and said the press wanted to know if I would comment on it. And I told them just informally that I had no comment.

MR. TAIKEFF: Your Honor may be interested in knowing that one reporter approached me and Mr. Lowe and asked us for details. And instead of giving details we denied that the incident occurred.

We have no knowledge of how that began, but we have refused to acknowledge even a semblance of truth to it, and give a flat denial that there was any such incident.

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MR. HANSON: I might mention, Judge. That when I advised the reporter of your no comment the reporter advised me that that's the third no comment that they received on it, implying that the Government has not commented on it and that the defense attorneys had indicated no comment.

THE COURT: Well, the jury is sequestered so I'm not particularly concerned. But the public I suppose will have to make up their own mind as to what may or may not have happened.

MR. CROOKS: I guess my inquiry was how did anybody find out about it because I understood that that was not to be made public by any party, and all at once here it -- maybe one of the witnesses made it public, I don't know.

THE COURT: Obviously somebody did. And as I say I didn't know that I need to go into that at this time because I don't know what would be accomplished.

MR. HULTMAN: Your Honor, the reason why we asked to meet with the Court is that in open court a request was made, I don't remember, Elliot, whether it was late Friday. I think it was Friday, yes because John was not there, that they have an opportunity specifically to interview four individuals by the name of Mike Smith, Mike Anderson, Wilford Draper and James Hardgill. And I indicated yesterday that they were going to, I would have a chance to visit with them last evening, the three that are in Fargo, and that is Mike Smith, Mike Anderson and Wilford Draper James Hardgill, he's under subpoena but he's {705} not here yet. And I indicated that this morning at 8:30 I would make these three individuals available and indicated to counsel, and they are in the witness room down at the end of the hall.

The small courtroom is locked, and so I got that room. There's a double room, it's an inner office and an outer office so there's two separate rooms in effect. You come in and out of a room and then like in your office, your inner is a second room, it's a separated room, and that's where the witnesses are in each of the three instances.

THE COURT: Excuse me. I'm just curious. You say the small courtroom. I don't understand that.

MR. HULTMAN: We couldn't get in it, Your Honor, and again this morning it was locked.

MR. CROOKS: The room he's referring to, Your Honor, is 212.

MR. HULTMAN: On the second floor.

MR. CROOKS: Which is down from our office. This is the room that I had mentioned earlier that the ag people had been in.

MR. HULTMAN: So now we have a room which is a double room down at the far end which is, is that right, is that the number, 212?

MR. CROOKS: Yes.

MR. HULTMAN: And it's adequate. As I say there are two separate rooms in it. You walk in the outer room. It would {706} be like coming in your outer office; and then there's a second room with an inner door that you do to the next room which is totally separate. So I've had those witnesses there, as I indicated to counsel yesterday, since about 8:15 this morning. Each of the three of them has indicated to me that they did not wish, from their determination, to talk to the defendant's counsel.

In no way do I indicate to the Court or to defense counsel, and I think this is in any way binding because that's, I'm just merely reflecting what it is. And that was certain, without any coaching or anything else. I just plain asked a straight out question this morning, do you or do you not.

Now, I realize that is in no way binding, but what I am concerned about, Your Honor, is that I want to make absolutely certain, and I think I have a legitimate request to the Court, that once that question is established, and only that question be established first by counsel before getting into any testimony of any kind, because the first level issue is a right of the witness. Do I or do I not wish to be interviewed. And I think that's a free and a fair determination. And counsel --

MR. TAIKEFF: We agree.

MR. HULTMAN: And the only reason I raise it is because at the last trial, and I'm going to refer to the record, we went through this particular proceeding at that time, and I want to read the first couple of pages of one of these two {707} witnesses, Mr. Draper; that we are referring to the interview that took place because I think one, it was never established -- questions were requested specifically about specific people. The very ultimate issues before there was any determination made as to whether or not anybody was willing or not willing to make a consent interview. That's the threshold issue that I feel there is a right for that determination first.

And, I would refer to, I don't know the exact -- it's page 1 of the transcript, of the interview in the last proceedings of Wilford Draper. And the first page here, page and a half, reads as follows, and I'd like to dictate it into the record:

"WILFORD DRAPER, taken at 12:45 p.m., June 6, 1976, in the Bankruptcy Courtroom, United States Courthouse, Cedar Rapids, Iowa, in the matter of the United States of America versus

Robideau and Butler. Present: John Lowe and William Kunstler, attorneys for defendants. Mr. Dale Williams, United States Marshal.

"MR. LOWE: My name is John Lowe and I represent Robideau. This is Bill Kunstler representing Dino Butler. This is Mr. Williams who is the United States Marshal. He is here to make sure everything is safe and secure, and this is Mr. Boudreau, Judge McManus's court reporter. Do they call you Wilford or do you have a nickname?

"THE WITNESS: Wishy or Will or anything you want.

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"MR. LOWE: Okay. Is Will good enough?

"THE WITNESS: Yes.

"MR. LOWE: We will call you Will. Judge McManus has indicated that we could have the right to have a consent interview with you. That is, that we could have a right to talk with you if you would be willing to, in order to help us prepare for the trial. You know Bob and Dino are on trial for their lives."

MR. HULTMAN: Now, I submit to the Court that that not only is not a statement of the law, it's an improper statement to state to any witness.

"MR. LOWE: They can get the death penalty . . . "

MR. HULTMAN: Again I say that is clearly not only a misstatement of the law, but it is a clear attempt to in some way influence a witness as to the seriousness of something way beyond; and it gets into a matter which is not a matter of what the law was in that case or in any case.

"They can get the death penalty out of this," and we simply want to find out what kind of evidence is going to be presented so we can do the best we can to defend them.

"MR. LOWE: We feel that the truth is going to help Bob and Dino if we can get the truth out in court, and so we are here today simply to ask you what the truth is as you know it and to ask you what you understand you will be testifying about, in court. We don't know for sure that you will be called {709} to testify but the Government gave us your name on a list. So we have to check all those witnesses out."

"MR. KUNSLER: You know Norman Brown?"

MR. HULTMAN: We are not getting into the very questions and the matters and the issues with reference to an interview, whether or not, there's been a determination that there was to be one or not to be one.

"MR. KUNSTLER: He was in here."

MR. HULTMAN: And so it goes and from that point on. Now, all I wanted to make absolutely certain is one, that the threshold issue be determined by counsel with the witness as to one,

whether or not they wish and consent to an interview, or whether they don't. And then secondly, we don't get into matters of this kind that are certainly highly prejudicial and a misstatement of law.

THE COURT: How do you propose that that would be accomplished?

MR. HULTMAN: Well, I have them, Your Honor, in those rooms available, and all I'm concerned about is that the threshold question be asked and determined.

I would have no objection, and I think it would only be fair for example if the Court made that determination as to whether they do or they don't, because that certainly would be in all fairness without any influence of any kind, any possibility of any misleading statement.

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I don't think the Government has the right to put somebody in the room to counsel, because counsel has the right to discuss with the witness. That's the only alternative I see to protect all the rights that are involved. For the Government to be present I can see the reason, and I feel without any question that's a legitimate request on the part of counsel.

But at the same time I feel that the Government has a right that that witness's rights be protected the same as practically every other witness out here has told me either directly or indirectly in the open court that one, not only do I have any right to go to talk to anybody, and particularly I could name certain witnesses, and some of them have in the open courtroom but I'm not going to be able to talk to them without their lawyer being present. And, in addition they're not going to tell me anything if I do ask.

And now I just merely say, and if, witnesses have those rights and have already exercised them in this courtroom I think these witnesses have some rights also.

MR. LOWE: Well, Judge, I think Mr. Hultman has changed his tune substantially since several days when the shoe was on the other foot and he had some witness who ostensibly, and he argued fervently, that he had the right to try to persuade them by any reasonable and ethical means to talk with him. It wasn't just a matter to have the Court talk to the witness and {711} then announced to the U.S. Attorney. And I'm afraid Mr Hultman is using a double standard here.

We have the right to confront the witnesses in a proper way. We already indicated that we desire to have the protection for the witnesses and the Court and us having the court reporter present so that the plan -- we did this last year, what we did in the last year, and it is entirely proper and I would add as a footnote it was a capital case. The statute called for capital punishment and Judge McManus has declined to rule that there was no constitutional basis. At this point we were dealing with a capital crime and it's entirely proper for us to suggest to the witness that the matter is an extremely serious case and that is another reason why he ought to in fairness talk with the defense counsel. There's not anything improper in that.

Mr. Hultman is just trying to justify his position. Now, the double standard is just not fair here. All we ask is an opportunity to have a room. We're willing to use a witness room, we don't even have to do it in our offices, where we can sit down with the court reporter in a proper and ethical setting talk to the witness.

Now, if we tell them that it's a consent interview and they say we don't want to talk with you, that's fine, and we stop. And that's no problem. But we don't have to just ask them one bald question, have them show reluctance and then pack our {712} tents and move away. It's certainly proper for us in a proper and noncoercive way to try to explain how important it is for us to prepare a defense in an important case like this. And to try to use some persuasion to have them talk with us. It will all be on the record.

I think Your Honor knows from dealing with Mr. Taikeff and me that we're not going to overreach ourselves in any unethical means. That's all we ask, and I think we're entitled to that.

THE COURT: Would they be advised that the decision as to whether or not they wish to talk to you is theirs to make?

MR. LOWE: Absolutely.

In addition if they want to have counsel, I think one or two of them last year did, that's perfectly proper I think Norman Brown had his mother with him last. We have no problem with that.

Mr. Hultman is acting like we're trying to closet ourselves and coerce them into relying --

MR. HULTMAN: I was just asking for procedure and or the record, John, I take total issue with your statement with reference to what the record will show from the last trial as to the status of the case, whether it was or wasn't a capital case, whether or not capital punishment was involved. I don't want to argue it.

MR. TAIKEFF: I'm glad because I'd like to be finished {713} with the last trial finally and try this case only.

MR. HULTMAN: Well, on the record, Your Honor, could I make a request. there. That I think it has been ruled that in the courtroom we're not going to be referring to the last trial, and I would request of counsel henceforth that we talk about testimony under oath and not testimony under oath at the last trial to bring it to the Court's record.

I think in all fairness that that is something that by the Court's ruling is the posture that it's in and I would make that formal request at this time on the record. And the use of transcripts from the last trial.

MR. TAIKEFF: I think that has to await the occasion for a ruling by the Court. But I will, as far as I'm concerned. I will not make any reference to there having been a separate trial without first approaching the bench and pointing out where I think it's appropriate to do so.

THE COURT: At this time there have been at least two or three references to another trial, and it is the ruling of the Court that in references to prior testimony counsel should not refer to the prior trial, refer to prior testimony under oath on or about such and such a date.

MR. LOWE: I think that what we're talking about is, I mean we're kidding ourselves because at least one of the jurors during voir dire mentioned it, there were no objections from counsel in

front of the other jurors, and if we think that {714} there's a juror that doesn't know there wasn't a trial last summer and doesn't know what the result is, we're just kidding ourselves.

THE COURT: One of the jurors mentioned it. Of course, obviously, he had no opportunity to object. The juror simply --

MR. LOWE: He could have objected to the whole panel, but it's obvious that there was a trial.

MR. HULTMAN: I don't accept that either, John.

THE COURT: Well, I think to refer to prior testimony as having been at the last trial just places undue emphasis on that and as Mr. Taikeff says I think we should get away from that.

MR. LOWE: As happened in other proceedings in any event, I usually say that.

THE COURT: That would be the proper approach on the question. The witness should be interviewed with the court reporter present.

MR. LOWE: Thank you, Judge.

THE COURT: Should be advised that they have the right to decline to the interview, and I would permit you to, when I say you, counsel for either side in interviewing witnesses, make a statement that, some general statement the effect that because of the importance of the case it is your desire to interview him; and I think with that foundation, or with those preliminary remarks, that the witness should then be {715} asked to state specifically whether they do or do not consent to an interview.

MR. HULTMAN: Your Honor, the Government certainly would accede to that. The Government's witnesses are available now, they are in, as I say, in the area that I referred to. There is a separate room in which that could take place and it would be the request of the Government, Your Honor. I know this is unusual, but the proceeding is unusual to start with. The posture that we are in, I would request of the Court that that determination at least at the threshold be made now, and that they be given an opportunity, because I would like to proceed with the calling of these particular witnesses, and I intend to proceed with the calling of these particular witnesses.

MR. TAIKEFF: We have no objection to proceeding that way. Your Honor.

THE COURT: Well, what do you mean by "now"?

MR. HULTMAN: I would like to at least establish that now, Your Honor, because --

THE COURT: All right. Let's say that they consent to an interview. Are you suggesting that we should hold up court for the forenoon to allow these interviews?

MR. HULTMAN: Well --

MR. LOWE: I think we ought to try and interview then this evening, Judge.

MR. HULTMAN: I am prepared to go forward now with the {716} testimony and I think that the Government's got a right to present its case in the order and the method. And I think that once that issue is established I think I have a right to go forward with the testimony.

I don't want to leave these individuals, Your Honor, and on the record again I'll make it very clear that these individuals are under extreme pressures and to the extent that they are left in the area with other people around to attempt to influence them in any way, I think is not in the interests of justice as far as this case is concerned. And that is why I would like to proceed with these witnesses.

I saw them last evening, the first time I've seen them. In fact, one of them I've never ever seen before, and I think that from the orderliness of a trial standpoint, that ought to be established right now. They are available, they're all here. Otherwise I think, Your Honor, that we're going to run into --

THE COURT: Did these witnesses testify in the last trial?

MR. HULTMAN: One of them did. Two of them did not, Your Honor. Two of them did not.

You see, my problem is they are not under protective custody and they could walk out of this courthouse this afternoon or this morning and I never see them again. And that I've had extreme difficulty to get witnesses, and I think it's imperative, {717} Your Honor, that I be given every opportunity to make sure that I continue to have certain witnesses available and that this jury have an opportunity to hear their testimony.

THE COURT: Well, we are still on the cross-examination of Robert Ecoffey.

MR. HULTMAN: Yes.

THE COURT: Which witness do you intend to call? Do you intend to call one of these witnesses?

MR. HULTMAN: I intend to proceed with the calling of these witnesses, that's exactly right, Your Honor. Because I run the risk in another day that one or more might not even be here.

THE COURT: How much time do you feel that defendants should have, the defendant should have to interview, counsel should have to interview?

MR. LOWE: Well, Judge, that's very difficult to say. We've got three witnesses. I certainly want to go down and make the witnesses comfortable and get the court reporter set up. Give him a little bit of preamble about who we are and what we are doing and why it's important to have an interview. Then explain to them that they have the right not to interview if they choose, if they object, and then attempt to have them interview and get the information that we want. And they're both witnesses that were eye witnesses. It's difficult to say to find out.

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THE COURT: Is this going to be done individually or with the three?

MR. LOWE: Individually, yes, sir, individually.

I also feel, Your Honor, that we, when we say no interview, presumably we're talking about the merits of the case, or the substance of their testimony.

I do feel that we ought to be able to, through proper questioning, not through overreaching with the court reporter present, make some inquiry whether any one of these are hesitant to talk with us to inquiry whether any one has suggested to them that they ought not to talk with us. I think that's reasonable inquiry for us to make and it does not get into what would be called an interview. And I would propose to do that on the record also so that we have some indication because if there has been some attempt by somebody to influence them not to talk with us I think that makes it a different situation, and I think that Your Honor would want to take some action to secure interview for us, or at least to purge the witness of the taint of such coercion.

MR. TAIKEFF: Your Honor, assuming that Your Honor is fully aware of how inept lawyers are in estimating time accurately I would say that we need about ten minutes for each of them in order to determine what their position is, and whether any further application to the Court is appropriate. If any one of them should agree to an interview, of {719} course that raises a separate time problem. But just to ascertain I think a fair statement would be ten minutes per prospective witness.

MR. LOWE: I would think that would get us into that point.

Now, we're geared up for today. The Government has given us material for a whole string of witnesses. We have scheduled our day and we would prefer to make this this evening when there is no pressure of time on the witnesses or on us or on the Court. And that's what we would propose.

God knows the Government has enough witnesses to take us through this day, and I can't examine that one day will make that much difference. We will yield to what you want to do, Judge. But Mr. Taikeff and I cannot of course conduct court proceedings and interview witnesses at the same time.

MR. HULTMAN: Your Honor, could I make a suggestion pursuant to what Mr. Taikeff has said? One, I think the threshold determination could be made, and that might save us all problems from that point on to the extent then that the threshold issue is determined that the individual was willing to have a consent interview and to go into any and all the matters that counsel wants. That would take additional time, and no question about it. And I certainly would agree with counsel. I think what we could do if we had the original proceeding we would, one, they would be able to make that deter{720}mination and could so indicate to the Court. And as it's been indicated there would be a record of it as to what that determination is. To the extent then that an interview has been determined, that the witness is willing and does want to have an interview, then I think that could be scheduled as counsel has indicated here in such a way that it would give them a proper amount of time in order to handle that interview.

On the other hand if one or more of them would indicate there is none, I see no reason why then at that point I should not be able to accomplish using that witness in going forward to meet the ends, the needs of the Government as well as the needs of the defendant.

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The ultimate issue is confrontation in the courtroom, and that's what I would hope I get an opportunity to do, and at the soonest time possible to make sure I do have witnesses in the courtroom that I know who are available.

MR. TAIKEFF: That sounds reasonable, your Honor.

THE COURT: I will delay convening court in order to give counsel an opportunity in the presence of the court reporter to interview those witnesses, and then report back to the Court as to the results of that interview.

Now, if you interview them on the question as to whether or not they will consent to an interview --

MR. LOWE: (Interrupting) If they consented, we could do that this evening after court.

THE COURT: Well, we will see what the situation is. The report should be brought back here and I will decide from that point.

MR. LOWE: With regard to that, we have an application. We are apparently not able to work something, out with the Government. I would like to make it now.

The Government advised us yesterday for the first time they have in protective custody -- I believe it was the first time, we knew it anyway -- one of the witnesses named Myrtle Poorbear -- we have desired to have consent interview with Myrtle Poorbear. Since she is in the control and custody of the Government, we asked she be {722} produced here so that we might have the opportunity to have a consent interview. She was one of the witnesses last summer and --

MR. HULTMAN: (Interrupting) She was not a witness last summer.

MR. LOWE: She was on the witness list.

MR. HULTMAN: That's different.

MR. LOWE: She did not testify. I did not mean to imply that.

She was brought to Cedar Rapids by order of Judge McManus, and we had an opportunity to confront her and ask for a consent interview. At that time she did not want to. I think she would be willing to give an interview but we won't know until we ask.

The Government has her, I guess, hidden away somewhere. That's the way it was last year. We have no way to even approach her except through the Government.

We would ask that she be brought here for the purpose of a consent interview.

MR. HULTMAN: The Government would meet any such request.

THE COURT: What is the name of that person?

MR. LOWE: Myrtle Poorbear. There are two State Troopers. We have worked that out. When they come in, we will have a chance to talk to them, so I don't think {723} we will have any problem.

MR. CROOKS: I might state, Your Honor, we have been informed through the Marshal's Service that Myrtle Poorbear is far from being hidden away. As a matter of fact, we were informed that the father, in the company of a member of the Wounded Knee Legal Offense-Defense Committee, did proceed to California where she is at and did conduct an interview of her within a few days ago.

MR. ELLISON: May I inquire as to the name of the person who was on the Offense-Defense Committee who interviewed her?

MR. CROOKS: I am not familiar with the name, but the Marshal has it.

MR. LOWE: Which Marshal?

THE COURT: Well, without getting into that at this point, Myrtle Poor Bear apparently is not here now.

MR. HULTMAN: No, no, no.

THE COURT: All right. You do intend that she will be brought here for trial?

MR. HULTMAN: Your Honor, a determination has not been made by the Government on that at this particular time.

THE COURT: If she is brought in, it would seem that the Defendant should have an opportunity to have his interview.

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MR. LOWE: Judge, we may want to call her, No. 1, and No. 2, I think it is unfair for the Government to bring her up the night before and throw her on the witness stand. One of the purposes of interviewing is so you can go out and investigate the information you get in time to use it when she is on the witness stand.

THE COURT: When do you intend to make the determination as to whether she will be brought in?

MR. HULTMAN: We would know in plenty of time so that there would be an opportunity --

MR. LOWE: (Interrupting) A week?

MR. HULTMAN: I wouldn't say a week, John. I hope the trial is -- certainly two or three days would be sufficient for you, would it not? You have known her, you have known her, you have interviewed her.

MR. TAIKEFF: Not interviewed her.

MR. HULTMAN: You tried, you had an opportunity to.

MR. TAIKEFF: Your Honor, I think the point is not whether the Government chooses to call her. I think the point is the Government has her in custody, and we may call her.

THE COURT: I understand the point, and the point I am making is that the Government should make a determination as to whether or not they are going to call her. If they are going to call her, then she should be brought {725} here in sufficient time so that the Defendant's counsel will have an opportunity to see whether she will consent to an interview. If the Government is not going to call her, then that should be made known, and then the Defendant's counsel can make the determination as to whether she should be called.

MR. TAIKEFF: Which, I assume, would include bringing her so we could attempt to interview her before we decide whether we are going to put her on the stand or not.

MR. LOWE: We are going to need her in any event, Judge. We have to talk with her in order to make our determination.

THE COURT: That's no different than any other witness.

MR. LOWE: Exactly. That's why we ask she simply be brought here now. In either event, we will have to talk with her. That will give us more time to prepare and make our judgment on the matter.

THE COURT: You know my attitude, counsel can work it out.

MR. HULTMAN: I understand, yes.

THE COURT: Why don't you make the contact with these three witnesses, do it individually?

MR. LOWE: Which court reporter do you want us to use?

THE COURT: There's the handiest one.

MR. LOWE: The room we are talking about is at the {726} far end?

MR. HULTMAN: It is on the far end. We started to walk down there one day, the second floor on the far end, if you go down the hall, on the Marshal's end.

MR. LOWE: I don't know the three men.

Mr. HULTMAN: I will walk down with you, just to walk down and I will leave.

(Thereupon, at 9:18, the proceedings in chambers were concluded.)

INTERROGATIONS OF WITNESSES

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(Whereupon, the following proceedings were had in the courtroom at 9:55 o'clock, A.M. without the hearing and presence of the jury:)

THE COURT: It has been reported to me that two of the witnesses that were mentioned in conference in chambers decline to be interviewed, one is willing to be interviewed and the problem is working out a time when that can be done. We'll not further delay court proceedings.

MR. HULTMAN: Your Honor, I think maybe we could agree with Counsel, visit about that and report a little later in the day.

THE COURT: The intention, as I understand it from defendant's point of view, is they would like to make arrangements for that interview sometime this evening.

MR. HULTMAN: We'll work with that, with the defendants, and report back to the Court on those guidelines, Your Honor.

THE COURT: Very well. May we bring the jury in?

Mr. TAIKEFF: Yes, Your Honor.

MR. HULTMAN: Yes, Your Honor.

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

THE COURT: Are you ready to proceed?

MR. TAIKEFF: I am, Your Honor.

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I believe we need a witness.

THE COURT: Maybe we're not ready to proceed.

MR. TAIKEFF: I'll get ready over there.

MR. HULTMAN: Mr. Ecoffey was still on the stand, I believe.

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION CONTINUED

BY MR. TAIKEFF:

Q Good morning, Mr. Ecoffey.

A Good morning.

Q Could you pull the microphone a little closer to yourself so we don't have any trouble hearing you. Thank you.

Do you recall last night I asked you a question about the distance between the place where you confronted the three young men and the BIA jail?

A Yes, I do.

Q And I believe your answer was that the distance, it was 13 miles, is that correct?

A That's correct.

Q Now you're a police officer, are you not?

A Yes, I am.

Q And could you tell us whether possession of a clip with bullets in it is a crime on the reservation?

A I'm not sure. But in a tribal statute I believe they have something concerning --

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Q You say you think they have something. You mean the near possession of bullets or a clip with bullets in it, is that your position?

A With a person under the age of 18. That's the tribal

Q I thought you told us yesterday you thought they were 19 or 20 years old.

A Late teens. I'm not positive.

Q Did you place any of those young individuals under arrest?

A No, I didn't.

Q Do you know that you share in a certain sense the law enforcement responsibility on the reservation with the FBI, right?

A That's correct.

Q You take care of certain crimes, they take care of other crimes, right?

A That's correct.

Q Is it your understanding that the FBI is authorized under the law to arrest somebody for possessing a clip with bullets in it on the reservation? I asked what your understanding is.

A Well, at this time I don't, I don't believe the three persons were under arrest.

Q I see.

Did they ask to go with you to the BIA jail?

A No. They were asked if they would.

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Q What did they say?

A Said "Sure."

Q And as far as you could tell they seemed perfectly happy to go along for the ride?

A Yeah.

Q They didn't seem angry?

A No.

Q Or annoyed in any way?

A Not as far as I could tell.

Q Were they searched before they were taken to the jail?

A No. I don't believe so.

Q Were they treated in a polite way?

A Yes. As far as --

Q As far as you could tell they were treated in a respectful way?

A Yes.

Q Now when you went to Wanda Sear's House, did you enter the house before you saw Wanda Sears or the person you were told was Wanda Sears?

A No, we didn't.

Q You knocked on the door?

A Yes.

Q And she was asked whether you, meaning you and the three officers with you, could come in, right?

A Yes.

{748}

Q They didn't push her around in any way, did they?

A No.

Q They didn't yell at her?

A No.

Q They didn't treat her in a disrespectful manner?

A No, they didn't.

Q As far as you're concerned they treated her politely and properly?

A Yes.

Q And she invited them into her house?

A Uh-huh.

Q They didn't push their way in?

A No.

Q They didn't threaten her with anything?

A No, they didn't.

Q I show you what has been marked Defendant's Exhibit 78A for identification and ask you to look on the several pages where you will see 12 photographs per page and tell me whether you see the photograph of any of the young people that you encountered that evening, the 25th.

A Photograph No. 11 on the first page.

Q And who was that?

A This is John Nelson. We call him Dusty Nelson.

Q Anybody else? Would you continue looking, please.

Anything else, sir?

{749}

A No.

Q Look at page 3. Look over all of those photographs again, please.

Do you see anyone you recognize?

A You mean that I seen on the 25th?

Q On the evening of the 25th.

A No, I don't.

Q Look at photograph No. 3.

Anything?

A No.

Q Okay.

May I have that back, please.

MR. TAIKEFF: May I confer with Counsel for a moment, Your Honor?

THE COURT: You may.

Q (By Mr. Taikeff) Mr. Ecoffey, did you write a report of your activities of the day, June 26th, 1975?

A Yes, I did.

Q And it was a special report, was it not?

A Yes, it was.

Q And it ran on for several pages, didn't it?

A Yes, it did.

Q I want to show you Defendant's Exhibit 87 for identification and ask you to look at it for as long as necessary so that you could answer the following question: does that document contain {750} a verbatim reproduction of the report you wrote concerning your activities of June 26th, 1975?

MR. HULTMAN: Counsel, could I just see the report? I would just like a chance each time to see which exhibit it is you're referring to. Could I see it?

MR. TAIKEFF: All right. I don't mind in this particular instance showing it to Counsel, Your Honor.

MR. HULTMAN: Without that knowledge, Your Honor, I'm in no position to offer any objections.

MR. TAIKEFF: Your Honor, I haven't offered it in evidence.

MR. HULTMAN: Even ask questions.

MR. TAIKEFF: I'm not questioning Mr. Hultman.

MR. HULTMAN: Thank you, Counsel.

Q (By Mr. Taikeff) I'm returning to you, sir, Defendant's Exhibit 87 for identification. I want to repeat my question in the event that I misspoke before. I'm asking you whether that document contains a reproduction of the special report you said you wrote concerning your activities on June 26, 1975. Yes or no?

A Yes, it does.

Q At the time you wrote the report, were those events fresh in your memory?

A Yes, they were.

Q And did you write the report with the intention of {751} recording your actual recollections truthfully?

A To the best of my knowledge; yes.

Q And did you write this report in the course of your official duties as a police officer?

A Yes, sir.

Q And in connection with your activities relating to the incident which is the subject matter of this lawsuit?

A Yes, sir.

MR. TAIKEFF: I have no further questions.

REDIRECT EXAMINATION

BY MR. HULTMAN:

Q I just have one question, Mr. Ecoffey. The various photos that were shown to you, you did not recognize them at the time, is that correct?

A That's correct.

Q And that was your testimony to Counsel?

A Yes, sir.

MR. HULTMAN: No further questions.

MR. TAIKEFF: Nothing further, Your Honor.

THE COURT: You may step down.

MR. HULTMAN: Government calls Michael Anderson.

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MICHAEL ERWIN ANDERSON,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HULTMAN:

Q Would you state to the jury your name?

A Michael Erwin Anderson.

Q Where do you live, Mr. Anderson?

A Fort Defiance, Arizona.

Q And how long have you lived there?

A All my life.

Q And what is your birthday, Mike?

A 9-19-58.

Q 1958? So how old are you at the present time?

A 18.

Q How old would you have been in June of 1975?

A 16.

Q All right, and who do you live with there?

A Where?

Q Where your present home is.

A My mom.

Q And where did you indicate that was located?

A In Fort Defiance, Arizona.

Q All right. Now, I want to ask you some questions beginning, Mike, with the year, 1975, and with reference to an event in New Mexico.

{753}

Did you have an occasion in May or June of that year to go from Fort Defiance to somewhere in New Mexico?

A Yes.

Q And where did you go?

A Farmington.

Q And why did you go to Farmington?

A I went to the AIM convention.

Q All right, and did you meet some people there at the convention?

A Yes.

Q And did you stay there at the convention?

A Yes.

Q And would you tell the jury who it was that you stayed with while you were there at the convention?

A I stayed there with Peltier, and I don't know -- there was a lot of people, all kinds.

Q Do you remember any others that you can recall at this part particular time?

A See, there was Butler and Robideau, and Arline Nichols and Bernie, Bernadine Nichols.

MR. TAIKEFF: We are not able to hear.

THE COURT: Would you turn the microphone towards you and then try to speak fairly close to it? Speak up to, please.

Q (By Mr. Hultman) were there any others that come to mind {754} at this time?

A Nilak, and I think that was all.

Q All right. When you referred to Peltier, do you see him here in the courtroom today?

A Yes.

Q And what is his first name?

A Leonard.

Q And would you point him out to the jury, please?

A Over there (indicating).

MR. TAIKEFF: The identification is conceded, your Honor.

MR. HULTMAN: Let the record show.

THE COURT: Very well.

Q (By Mr. Hultman) Now, did you have occasion then to leave Farmington and go somewhere early, either late in May or the early part of June?

A Yes.

Q And where did you go?

A South Dakota,

Q And where in South Dakota did you first go?

A Leonard Crow Dog.

Q Did you leave Farmington to go to Leonard Crow Dog's with some other people?

Q And who was it that you left with and in whose car?

{755}

A Leonard Peltier's green pickup, camper on it.

Q And was Leonard with you?

A Yes.

Q And who else left with you?

A Bernie and Darlene and Dino.

Q And when you referred to "Dino", is his name Butler, Dino Butler?

A Yes.

Q All right.

A And Nilak. I can't remember the other names.

Q Was Bob Robideau with you?

A Yes.

Q Did he leave with you?

A Yes.

Q Did Mike Anderson leave with you?

A Yes.

MR. LOWE: He is Mike Anderson, your Honor.

THE COURT: I beg your pardon?

MR. HULTMAN: Mike, I am sorry. I referred back to who was with Mike Anderson.

MR. LOWE: Excuse me. If counsel would not ask leading questions, we wouldn't have that problem. I would like to object to the form of the previous question about Mr. Robideau. I ask he ask an interrogative type question and not a leading question.

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MR. HULTMAN: Your Honor, will the record show I think the rules of these proceedings there is one counsel handling one witness.

MR. LOWE: This is my witness, your Honor, Mr. Hultman can deal with me.

THE COURT: The leading question that was asked will be allowed. It was preliminary.

Q (By Mr. Hultman) Mike, was Wilford Draper with you when you left?

A Yes.

Q Was Norman Brown with you when you left?

A Yes.

MR. LOWE: Your Honor, I am objecting to these leading questions. He is putting the words in the witness' mouth. He can ask who was there, and the witness can depend on his own recollection. The witness knows very well when he asked that question he wants an affirmative answer.

THE COURT: The objection is sustained.

MR. HULTMAN: All right, your Honor.

Q (By Mr. Hultman) Do you recall any other individuals that left with you?

A Norman Brown and Wilford Draper.

Q All right, and do you remember what women there were -- you mentioned, I believe, one woman. Was there any other {757} woman besides the ones that you mentioned?

A Darlene and Bernadine.

Q All right, so that's a total of three women, is that correct?

A Yes.

Q Who is Darlene and Bernadine, do you know them by any other name or any relationship?

A No.

Q All right. Now, you went to Crow Dog's, you say, and where did you go from Crow Dog's?

A Pine Ridge.

Q And where did you go at Pine Ridge?

A Ted Lame.

Q And where did you go from Ted Lame?

A Jumping Bull's.

Q All right, and where did you go when you went to Jumping Bull's, what part of Jumping Bull's?

A Down the wooded area.

Q And who was it that was down in the wooded area with you, if there were any other people?

A Me, Norman Brown, Wish Draper, Leonard Peltier, Dino Butler, Rob Robideau, Jeannie Bordeau, Jeannie Zimmerman and Jean Day, Anna Mae, and that's about all.

Q Was Joe Stuntz at any time in the tent area?

A Yes.

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Q Was he also one of them.

A Yes.

Q All right. Now, would you turn around and look at what has been marked as Government's Exhibit 71, and you will notice at the top of that exhibit is a drawing of where it shows a highway, 18, U.S. Highway 18; and then there is some residences, and there is some plowed fields and some woods, and some objects there; and then there is an area up in the upper right-hand corner that refers to tents; and I ask you whether or not you recognize the general area that's portrayed there?

A Yes.

Q And what is it?

A Tent area.

Q All right, what is the entire, the general area that's presented by all of 71, do you know whose property that is?

A Jumping Bull.

Q And when you referred to going to Jumping Bull, is it to that area that you went?

A Yes.

Q And when you referred to the tent area, is it the area which is located on Government's Exhibit 71 which has got some sort of wording, "Tents", is that the area you are referring to?

MR. LOWE: Your Honor, the leading questions have got to be stopped.

THE COURT: Sustained.

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Q (By Mr. Hultman) Mr. Anderson, would you just point out to the jury where the tent area is?

A In that dark part right there (indicating).

Q All right. Now, I wish to take you to the night of June 25th, 1975, and ask you whether or not you went to town that particular afternoon or evening?

A Yes.

Q And did you go with anybody?

A Wish Draper and Norman Charles.

Q And where did you leave from?

A From the houses.

Q All right, and when you say the "houses", are you referring to the Jumping Bull area?

A Yes.

Q Were all of you, the three of you living in the tent area or in the general area at that time?

A Yes.

Q And where did you and Norman Charles and Wish Draper that particular evening?

A Oglala.

Q If you were to turn around again and look at Government's Exhibit 71 and use the pointer, would you show the jury the route that you took, how you went there, where you started, or at least as far as the map, where you went?

A We went out this way (indicating).

{760}

Q And then you went out to 18, is that correct?

A Yes.

Q To Highway 18. Then where did you go from Highway 18?

A To Oglala.

Q About how far away was Oglala?

A I don't know, about three miles.

Q All right. Now, what, if anything, did the three of you do in Oglala?

A Went there to take a shower.

Q All right. Did you take a shower?

A Yes.

Q And did you, after taking a shower, start to return to the Jumping Bull area?

A Yes.

Q Would you tell the jury what, if anything, happened on the way back from taking a shower?

A On the way back we got stopped by two FBI Agents.

Q All right, and do you remember about where that was that you were stopped?

A Well, by a store.

Q By a store?

A Yes.

Q Do you know what the name of that store is?

A No.

Q All right. Is it a store in the general vicinity of {761} Oglala?

A Yes.

Q All right. Now, would you tell the jury in your own words what it was that happened at that particular time, just tell us in your own words?

A Well, they pulled over and stopped us, and they asked us if any of us were Jimmy Eagle. We said "no". They asked us for our names so we gave them an alias.

Q How many agents were there at that particular time?

A Two.

Q Two, and they asked you if any of you were Jimmy Eagle, is that right?

A Yes.

Q And none of you were Jimmy Eagle, is that correct?

A No.

Q Jimmy Eagle was not one of the three there?

A No.

Q They then asked you for your names, you indicated?

A Yes.

Q Do you remember whether or not the person who asked for names did anything as far as any action at that time?

A No.

Q At the time that you gave the names, you indicated that each of you gave specific names, is that correct?

A Yes.

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Q Do you remember what the names were that you gave that you gave at that time?

A No.

Q Did you give a name at that time?

A Yes.

Q And what name did you give?

A I don't know, I forgot.

Q Pardon?

A I forgot.

Q All right. You forgot.

Did the agent do anything at the time that you gave him the names?

A Yes.

Q What did he do?

A He write them down.

MR. TAIKEFF: I didn't hear the answer.

THE COURT: Repeat your answer.

THE WITNESS: He wrote them down.

Q (By Mr. Hultman) What did he write them down on?

A A piece of paper.

Q Do you remember how many names were given at that time?

A Three.

Q Three names, and did he write them down?

A Yes.

Q Did he ask for any other identification such as where you {763} lived or anything else?

A No.

Q All right. I am going to show you what has been marked as Government Exhibit No. 15 in this case, and I want you to look at it. Have you ever seen this before coming into the courtroom today, to the best of your knowledge; has any agent or anybody shown you this piece of paper?

A No.

Q All right. I want you to look at that piece of paper and look at the names or anything that is on it, the kind of paper that it is, and ask you whether or not your memory is refreshed in any way by looking at that Government Exhibit?

A No.

Q All right. Now, after the agent had asked you for your names and you had given names -- and I believe you said, you used the word "alias" -- is that what I heard you say --

A (Interrupting) Yes.

Q (Continuing) -- in response to my question. What do you mean by that response?

A Different name.

Q All right. You used a different name?

A Yes.

Q And did the other two of your companions also use a different name?

A Yes.

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Q All right. So that in response to the question, you didn't indicate, any of the three of you, that one of you was Mike Anderson, one of you was Norman Charles and one of you was Wish Draper, you gave another name, is that right?

A Yes.

Q Did you possibly give an Indian name?

A Yes.

Q Now, what, if anything -- tell us in your own words what happened next.

A Well, they just told us to get in the car, but we just tried to walk away; and they told us to get in so we got in.

Q Did they at any time use any force of any kind on you?

A No.

Q And did they tell you why they wanted you to get in the car"

A No.

Q Did you discuss it with them at any time?

A No. We just asked them where they were going to take us, but they didn't tell us.

Q All right. What, if anything, then happened?

A They just took us into Pine Ridge.

Q All right, and while you were there, before you got in the car, do you recall one of the agents asking any one of the three of you to look at anything?

A Yes.

Q And would you tell the jury in your own words what {765} transpired, how that came about?

A Well, they asked us to look at the towels, and we looked at the towels and found -- Norman Charles found the clip.

Q And do you remember the general description of what the clip was?

A Yes.

Q Did it have ammunition in it?

A Yes.

Q And do you know what kind of a weapon that it fit?

A Yes.

Q All right. I am going to show you what has been marked as Government's Exhibit No. 69-A, and I just want to direct your attention to a part of Government's Exhibit 69-A; and would you tell the jury what it is, to what I am pointing at this time, if you know?

A The clip.

Q That's a clip.

In looking at that particular clip, does it in any way resemble the clip to which you have now been testifying?

A Yes.

Q All right. So it was a clip of this kind that you were just referring to?

A Yes.

Q You don't know whether or not it was this particular clip or not?

{766}

A No.

Q There would be no way for you to know, is that right?

A Yes.

Q But it resembles the one --

A (Interrupting) Yes.

Q All right.

{767}

Q Now, who was it that had the clip?

A Norman Charles.

Q All right. And you indicated it was where, where did Norman have it?

A Wrapped in a towel.

Q All right. Now, you indicated you went where in the car with the agents?

A To Pine Ridge.

Q And where in Pine Ridge did you go?

A To the jail.

Q And what if anything did you do there?

A Told us to get out and go inside to the jail. And they asked the one officer at the front desk if any of us were Jimmy Eagle.

Q All right. So you got out of the car, you went into the jail at the desk; is that right?

A Yes.

Q Now, they didn't put you in jail, did they?

A No.

Q All right. And they asked you there, the man at the desk, whether or not any of you were Jimmy Eagle; is that correct?

A Yes.

Q And what if anything did the man at the desk indicate?

A No.

Q That none of you were Jimmy Eagle?

{768}

A Yes.

Q So what if anything happened next?

A Well, there was just another officer came in and took us back towards the Jumping Bull's place.

Q All right. During the course of that time did any of them hassle you or give you a bad time in any way?

A No.

Q All right. And so they took you back then, one officer did, where you wanted to go; is that right?

A Yes.

Q And where then did the three of you ask to be left off?

A Yes.

Q And where was it that you did get out of the car?

A About little ways down the road before the turnoff to Jumping Bull's.

Q All right. Could you show us approximately on Government's Exhibit 71 where it was that you got out of the agent's car.

A About here (indicating).

Q All right.

MR. HULTMAN: Let the record show that he indicated to the left of Government 71 about where Highway 18 and roads coming off intersect. The left edge of Government's Exhibit 71.

Q (By Mr. Hultman) All right. What did you do then?

A We just got out and walked back.

Q Were the three of you still together?

{769}

A Yes.

Q And you walked back to where, where did you go?

A Back to the tent.

Q Back to the tents?

A Yes.

Q All right. Would you show the jury on the map from the highway where you approximately got off the route that you took. Would you just start --

A This route right here (indicating).

Q All right. And would you just start and show us the route that you took from the highway, starting at the highway show us on the map approximately how you went and where you went.

A Well, we just followed the road down this way, came up through here and around there and went down (indicating).

Q All right. And went into where the tents were; is that right?

A Yes, sir.

Q How many tents approximately, would you describe to the jury how many tents were there in the area of where the tents were located.

A About five tents.

Q All right. And so you remember some of the people that stayed in specific ones?

A Yes.

Q Which tent did you stay in?

{770}

A The little orange pup tent.

Q Pardon?

A The orange pup tent. Orange pup tent; is that correct?

A Yes. Did you stay with somebody?

A Yes.

Q Who did you stay with?

A Jimmy Zimmerman.

Q Who else stayed in what kind of a tent in the area?

A Mela and Dino stayed in the teepee.

Q Any others that you recall?

A No, I can't recall the others.

Q All right. The others did stay there, but you don't remember which tent they stayed in, is that what you are saying?

MR. LOWE: Your Honor, objection to the form of the question. Whatever the word is, others is very indefinite here and it's a leading question to begin with.

THE COURT: Sustained.

Q (By Mr. Hultman) Who did you see when the three of you got back to the tent area?

A Peltier.

Q And what if anything took place when you saw Peltier?

A Well, we just told him we got stopped by the FBI.

Q And what if anything did he do or say?

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A We just got yelled at.

Q And what did he indicate to you when he yelled at you?

A We were dumb to get in the car.

Q Did you talk to anybody other than you remember that night?

A To Dino.

Q All right. And do you remember what you talked to him about

at all?

A No.

Q All right . I want to take you now to the next morning, which is the 26th, and I want to ask you, did you leave the tent area itself that morning and go anywhere to any of the buildings in the morning?

A Yes.

Q And where did you go?

A To June Little's place.

Q And would you point out on the map where it is, if it is there, that you went, and have referred to as June Little.

A Right here (indicating) .

Q All right.

MR. HULTMAN: Let the record show that is the residence that has been previously referred to as June Little.

Q (By Mr. Hultman) Who was there?

A June Little and his wife.

Q And do you know what her name is?

A Wanda Siers.

{772}

Q All right. Do you recall anybody else being there that morning?

A No.

Q All right. Did you see anybody leave in any of the vehicles that morning?

A No.

Q Were there vehicles that were in the tent area that people used from time to time?

A Yes.

Q And would you tell us what those vehicles were?

A Black and green Ford Galaxie and a red and white van.

Q All right. And who was it that drove the red and white van?

A I don't know. I think it was Peltier.

Q And do you know who the red and white van belonged to?

A Peltier.

Q All right. And who was it that drove the other car, the Ford that you've referred to most of the time?

A I don't know.

Q All right. But were there any other cars other than these two that were normally down in the tent area?

A No.

Q All right. Now, I want to direct you now to tell us in your own words what happened while you were at the Wanda Siers' residence.

{773}

A I was there and I went and ate breakfast there in the morning, and then they came back in the red and white van.

Q Who was it when you say "they"?

A Leonard Peltier and Joe Stuntz and Norman Charles I think it was.

Q All right. The three came back in the red and white van you say?

A Yes.

Q And what if anything happened following their coming back in the red and white van? Just tell us in your own words.

A They stopped over at Little's place and started talking; and I was sitting on top of the roof and then those two FBI agents' cars were coming. So they all hopped in the van and went down the hill.

Q And what if anything happened next?

A The FBI agents stopped over at June Little's place and asked if Jimmy Eagle was around. Then they seen the van going down the hill and they followed it.

Q All right. Then what if anything happened next?

A I don't know. I was behind the house.

Q All right. You were at what point as you look at the map here, would you point out to where it was that you were on top of the house.

A Right here (indicating).

Q All right. And show us the direction, tell the jury where {774} the red and white van came from and where it stopped with the three men.

A I don't remember which way they came in.

Q All right. Where did you first see it?

A Coming in about right here (indicating).

Q All right. And you indicated they stopped; is that right?

A Yes.

Q And then where did they go from there?

A They stopped here and went around this way and down this way (indicating).

Q All right. And it was at that time you say that you saw the FBI cars come; is that right?

A Yes.

Q And where did they go?

A They came around this way (indicating).

Q And did they stop?

A Yes.

Q And what if anything took place at that time?

A He just asked June Little if Jimmy Eagle was around.

Q And what if anything then happened?

A Well, I guess they seen the orange pickup going down that way and they followed it.

Q Now, when you say "orange pickup," is that the red and white van to which --

MR. LOWE: Objection, Your Honor. That's objectional, {775} it's an outrageously leading question and I object and ask that the jury be instructed, and counsel be admonished. He knows very well what he's doing .

THE COURT: The objection is sustained.

Q (By Mr. Hultman) Mr. Anderson, you just saw one vehicle come down the --

MR. LOWE: Objection, Your Honor, that's a leading question. Again he's putting words in this witness's mouth. If he wants to put a script, let him hand him one.

Q (By Mr. Hultman) Mr. Anderson, tell us what the car was --

THE COURT: Sustained.

A The orange and white and red and white van, that was going down the hill.

Q (By Mr. Hultman) And had you see that car before?

A Yes.

Q And whose car was that?

A Leonard Peltier's.

Q All right. Who was in it at this particular time?

A Peltier and Charles and Stuntz.

Q All right. Now, where did they then go?

A Down the hill.

Q And where did they go from there?

A They parked beside the fence.

Q Would you show us on the map where it was they parked.

A About right here (indicating).

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Q All right. Let me mark a "P" right here (indicating).

All right. So would you trace for the jury the direction that the vehicle that you've been describing went starting at Wanda Siers' residence and to where it stopped. Would you trace that part for me.

A Right around here (indicating) through to there (indicating).

Q All right. What if anything did you see next?

A I saw everybody hop out.

Q And what if anything did you see next?

A FBI agents went down the hill.

Q All right. What if anything did you see next?

A I don't know.

Q Did you hear anything?

A Yes.

Q And what did you hear?

A Gunfire.

Q And would you, you indicated you heard the gunfire, but you didn't see the gunfire; is that correct?

A Yes.

Q All right. Would you explain to the jury in your words what was the sound, the nature of the sounds, or describe it that you heard.

A It's about four rounds going off.

Q And would you describe what they sounded like to you.

A No, I can't.

{777}

It's one after the other, about four of them. Four shots, one after the other.

Q Were they close together?

A No.

Q All right. Did you, what if anything did you do next?

A I just ran back around and went back down to tent city.

Q Now, where did you see the FBI cars before you started to run? Where were the FBI cars?

A Down the hill.

Q All right. And will you, looking at Government's Exhibit No. 71, would you indicate where it was that you last saw the FBI cars.

A Right down here (indicating).

Q All right.

MR. HULTMAN: Let the record show that the witness has pointed out the location as indicated by the objects on the map.

Q (By Mr. Hultman) How many FBI cars were there?

A Two.

Q All right. Did you see, or when they stopped at Wanda Siers', how many agents there were?

A One in each car.

Q One in each car, all right.

Had you ever seen those agents before?

A Yes.

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Q When did you see them before?

A The night before they picked us up.

Q Was that the same two agents?

A Yes.

Q They picked you up the night before. That's the same two agents that had asked you about whether you knew Jimmy Eagle or where he might be; is that right?

A Yes.

Q All right. Now, you stated you then proceeded to go where?

A Around back down to tent.

Q All right. Would you again, taking the pointer, starting at the Wanda Siers' residence, and show the jury the route that you took.

A I ran around this way, around behind this house right here (indicating), around there and moved this way and then over this hill and down.

Q All right. And what if anything did you do there?

A I just picked up a rifle.

Q And what kind of a rifle, if you recall, did you pick up?

A 22 single shot.

Q All right. And what if anything did you do then?

A I ran back up the hill.

Q All right. And where did you run to, can you show us where {779} on top of the hill that you ran to.

A Right through this way, through here, came up this way and came out right here, and here up on this hill, here and ran over here (indicating).

Q All right. And to which house, as you are pointing out on Exhibit 71 what house did you run to if you recall?

A I think it was the white house.

Q And do you know whose house that is, by any other name?

A Harry Jumping Bull's.

Q All right. And had you been there before?

A Yes.

Q During this time that you were there, all right.

Now, who was there if anybody when you got back up to the white house, Harry Jumping Bull's?

A Charles and Brown and Stuntz.

Q Charles and Brown and Stuntz?

A Yes.

Q And where were they if you recall? Let's take them individually. Do you remember where Charles was?

A I think he was by the white house there.

Q All right. And where was Stuntz?

A By the green shack.

Q Would you point again with the pointer the buildings to which you are referring if you do see it represented on Government Exhibit 71.

{780}

A Right here (indicating).

Q All right.

MR. HULTMAN: Let the record show that is the house on the extreme right as you are viewing Exhibit 71.

Q (By Mr. Hultman) Do you know who lived there?

A Ivis. Ivis Long Visitor.

Q All right. And do you know what his wife's name is?

A Angie.

Q All right. And where was the third person to whom you just mentioned?

A I think he was at the white house, too.

Q All right. And who was that?

A Norman Brown.

Q All right. Now, did each of these three individuals or any of them have weapons?

A Yes.

Q And would you describe what kind of weapons as you best recall that each of them had.

A Norman Brown had a 22 rifle, and I think Stuntz had that 44 Ruger, and Charles had that 308 British.

Q All right. Had you seen these weapons before?

A Yes.

Q All right. And where had you seen them?

A Down in the tent area.

Q Now, when you refer to Charles and the 308 Ruger, I'm going {781} to show you what's Government's Exhibit No. 69A and ask you whether or not it resembled this particular weapon?

A Yes.

Q All right. You don't know whether or not this is the exact weapon or not?

A No.

Q All right. Now, what did you then do?

A Started shooting.

Q All right. And where were you shooting?

A Down at the cars.

Q All right. Was there, did you indicate at any particular time were there any cars coming in from the highway at this time?

A Yes.

Q And would you point out on Government's Exhibit 18 where it was that these cars were coming in.

MR. LOWE: Referring to Government's Exhibit 71?

MR. HULTMAN: I'm sorry, Government's Exhibit 71. I'm sorry. Thank you, Counsel.

Q (By Mr. Hultman) Would you point out to the jury where it was the cars you are referring to were coming in on that were shooting at?

A Right here (indicating).

Q All right. Now, do you remember what kind of a car it was at all?

{782}

A No.

Q Was there more than one car?

A No.

Q What if anything did that car do once you started shooting at it?

A Stopped and backed out of there.

Q All right. And where did he end up, could you still see him after he tried to back out?

A No.

Q All right. So he came in and when you started shooting at him he backed back out; is that right?

A Yes.

Q Would you show us approximately what direction he went back out again?

A I don't know. He just backed up, backed out like that. I don't know.

Q All right. Now, did you look at any time down the hill to where the agents' cars were when you last saw them before you ran to tent city and got your weapon?

A Yes.

Q And what was, what did you see the first time you looked down there when you were up on the hill firing?

A One guy was behind the trunk shooting a rifle, and the other one had a pistol.

Q All right. Now, as you looked down the hill to the two {783} agents' cars as you are looking down the hill at me at this moment, which car, was there anything about the two cars that you recall that was different, one from the other?

A They were parked different ways.

Q All right. Would you tell us how the two cars were?

A One was parked straight towards me and the other one was kind of sideways.

Q All right. And as you looked at them on which side was the one that was pointed or parked straight at you?

A On the right -- on the left side.

Q All right. And do you remember anything about that particular car?

A The trunk was open.

Q All right. So that if you looked at it, it was, you were looking straight at the front of the car; is that correct, it was pointed up the hill at you?

A Yes.

Q And trunk was open?

A (No response.)

Q Now, where was any of the two men that you observed, that you saw with relationship to that car?

A Behind the car.

Q And where with relationship to the trunk?

A Behind the trunk.

Q All right. Now, where was the other man?

{784}

A Behind his car.

Q And what kind of a weapon did he have?

A Pistol.

Q And it was the man then behind the trunk that had the other weapon; is that correct?

A Yes.

Q All right. Now, did you continue firing toward the cars that were coming into the Jumping Bull property?

A Yes.

Q All right. And where were you located at this time?

A By the log cabin.

Q All right. Now, did you have an occasion to at a later time look down to where the two men at the bottom of the hill were?

A Yes.

Q And what did you see at that particular time, the second time that you looked down the hill?

A One of them was hit.

Q Do you remember anything about the looks of the two?

A One had no shirt on.

Q One of them had no shirt on.

You said one of them was hit. How do you know one of them was hit?

A I don't know. I guess the guy with the shirt off was trying to help him, bandage him up or something.{785}

Q Were both of the men standing at this particular time?

A One was.

Q One was. Which one was standing?

A I don't know.

Q All right. But one of them was standing and one was not standing. Could you tell the jury what kind of a position the second one was in?

{786}

A No.

Q But he was not standing?

A No.

Q Now did you have another occasion to -- I withdraw the question. I'll restate it.

Did you stay at the very same position up on the hill by the white house all of the time you were doing the firing that you've referred to?

A No.

Q Would you tell us where you moved to?

A I just kept on running back and forth.

Q And you kept running back and forth to where?

A Log cabin.

Q So that you were running back and forth between the white house and the log cabin, is that correct?

A Yes.

Q Would you point out to the jury, if you can, on Government's Exhibit 71 where the log cabin is that you are referring to?

A Right here (indicating).

MR. HULTMAN: Let the record show that the witness has pointed out the residence that has been referred to as the log cabin.

Q (By Mr. Hultman) Did you continue to fire out at the highway and at any vehicles out there?

A Yes.

{787}

Q Now during the course of the time we're talking about, did you see anybody over in the tree line alongside of the area that you're referring to?

A No.

Q Did you see Mr. Peltier at any time?

A Yes.

Q And where was it that you saw him?

A In the tree line.

Q Would you show us on the map where it was, where it was that you saw Mr. Peltier.

A It was over here (indicating).

Q And what was he doing?

A I don't know.

Q Did you see him at any other place?

A No.

Q I'm going to mark here on the map, would you point out again so I make sure I place where it is that you pointed on the map.

A Right here (indicating).

Q Where Mr. Peltier was located.

MR. HULTMAN: I'm going to write that as "P1," and let the record so indicate.

Q (By Mr. Hultman) Now when is the next time that you looked down to where the agents' cars were? What did you see at the next time you looked down to the agents' cars?

{788}

A Nobody.

Q Was anything going on at that time?

A No.

Q Did you see any individuals down at the agents' cars at any time?

A Yes.

Q And tell us who it was you saw at the agents' cars.

A Butler, Robideau and Peltier.

Q And did they have weapons with them?

A Yes.

Q Would you tell us starting with Mr. Peltier what kind of a weapon he had?

A AR.

Q And how do you know it's an AR?

A Because of the handle.

Q Had you seen that weapon before?

A Yes.

Q And where had you seen it before?

A Down in the tents.

Q Who had you seen it with in the tent area?

A I seen it laying around.

Q Now I'm going to show you here what has been marked as Government's Exhibit No. 34AA and I just want to ask you whether or not the weapon you have just been describing was a weapon like this?

{789}

A Yes.

Q And you referred that it had a handle of some kind, is that correct?

A Yes.

Q To what are you referring to?

A The handle there (indicating).

Q Handle here (indicating)?

A Yes.

Q You don't know whether or not this is the weapon he had there, is that right?

A Right.

Q But it was one like this?

A Yes.

Q Is this what you're telling the jury?

A Yes.

Q And you had seen it on other occasions there?

A Yes.

Q Now who was the second person that you saw down at the car?

A Butler.

Q And did he have a weapon?

A Yes.

Q And what kind of a weapon did he have?

A M1.

Q And had you seen an M1 before?

A Yes.

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Q And where did you see an M1 before?

A Down at the camp.

Q Do you know what an M1 is?

A Yes.

Q Did you know what an M1 one was at that time?

A Yes.

Q Had you seen one before?

A Yes.

Q I'm going to show you now what has been marked as Government's Exhibit No. 29 and ask you to tell the jury what kind of a weapon this is.

A M1.

Q And was it a weapon like this that you saw Mr. Butler with, down where the two agents were?

A Yes.

Q You don't know whether or not it was this weapon, do you?

A I don't know.

Q Now you say there was a third person there. Who was the third person?

A Robideau.

Q And did he have a weapon?

A Yes.

Q Do you know what kind of a weapon it was?

A No.

Q Could you describe whether or not it was a long rifle or a {791} pistol?

A I don't know.

Q You just remember he had a weapon and that's all, is that correct?

A Yes.

Q Now did you have an occasion later to look down to the area of where the two cars and the agents were?

A Yes.

Q And what did you observe at that time down at the cars where the agents were?

A I don't know.

Q Pardon?

A I don't know. I didn't see.

Q Did you see any agents at that time?

A No.

Q What if anything did you then do?

A We ran back down to the camp.

Q Now during this period of time were you ever down where the agents' cars were?

A No.

Q You were up on the hill, is that correct?

A Yes.

Q And what was it that you were doing during the time that you were up on the hill? You indicated earlier by previous testimony that you had been firing towards Highway 18 or where {792} other cars were, is that right?

A Yes.

Q Did you do anything other than that during this time that you were on the hill?

A No.

Q Now when you left the hill and went back to the tent area, who was there as you best recall when you got back there?

A The girls and Jimmy and Leonard.

Q And what if anything took place back there?

A Leonard told me, "Load up the van."

Q And when he referred to the van, what vehicle was it that he was referring to?

A The red and white van.

Q What if anything did you do?

A I loaded up the van.

Q And do you remember what you loaded it up with?

A Sleeping bags, electrical equipment.

Q And when you referred to electrical equipment, could you describe it in any other words?

A Radios.

Q For the jury.

Radios?

A Yes.

Q And was there some equipment with the radios themselves?

A Yes.

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Q And would you describe to the jury what it was?

A Big steel boxes.

Q And do the radios go into those boxes?

A I don't know. I think so.

Q Now what if anything happened next in the tent area?

A Well, loaded up the van and we were going to make a run for it on out through the roadblocks.

Q Who indicated you were going to make a run for it?

A Peltier.

Q And what if anything happened next?

A Well, we decided not to do it.

Q Who was it that -- was everybody in favor of making a run for it?

A No.

Q Who wasn't in favor of making a run for it?

A I don't know. All the rest of us I guess.

Q Did you so indicate to Leonard that point of view?

A No.

Q Did anybody?

A No.

Q What if anything then happened?

A Well, we just decided to go out on foot.

Q And did all of you that were in the tent area then go out on foot?

A Yes.

{794}

Q Would you tell us who the people were that were there at the time we're talking about, starting first with the men.

A Leonard, Norman Brown, Norman Charles, Dino and Bob and myself and Jimmy Zimmerman.

Q Jimmy Zimmerman?

A Yes.

Q And what girls were there?

A Mela, Lynn and Jeannie.

Q Now did Jimmy Zimmerman go out with you?

A No.

Q What happened to Jimmy Zimmerman?

A He stayed there.

Q And what if anything did you then do?

A We walked out.

Q And would you tell us whether or not there were any other cars in the tent area that you saw before you left to go out?

A No.

Q As I recall your earlier testimony, you indicated that the red and white van was in this general vicinity where I marked a "P", is that correct?

A Yes.

Q Did you see it at any other place later in the day, the red and white van?

A Down in the camp.

Q And is that the same red and white van that you're referring {795} to with reference to loading it up?

A Yes.

THE COURT: The court will recess until 11:25.

(Recess taken.)

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(Recess taken.)

(Whereupon, the following proceedings were had out of the presence and hearing of the jury, the Defendant being present in person:)

THE COURT: You may bring in the jury.

(Whereupon, at 11:26 o'clock, a.m., the jury returned to the courtroom and the following further proceedings were had in the presence and hearing of the jury:)

THE COURT: You may proceed.

MR. HULTMAN: May it please the Court.

Q (By Mr. Hultman) Mike, I want to show you what has been marked as Government's Exhibit 12, and ask you whether or not you recognize the vehicle that's portrayed there in that photograph?

A Yes.

Q And would you tell the jury what it is?

A It is a van.

Q And what color is the van?

A Red and white.

Q And is that the same van that you have been talking about in your testimony?

A Yes.

Q And now I am going to show you what has been marked as Government's Exhibit 13-B, and ask you whether or not you have ever seen that vehicle before?

{797}

A Yes.

Q And would you tell us where it was that you saw it the last time?

A Down to the camp.

Q And what kind of a vehicle is that?

A It is a Ford.

Q And is that the -- excuse me?

A Ford Galaxy.

Q And is that the one you have been testifying to?

A Yes.

Q And are these two photos I have given you and the two vehicles represented there, the two vehicles that you indicated were down in the tent city area?

A Yes.

Q All right. Now, I am going to show you some photographs that have been marked as Government's Exhibit 55, and two pages of photographs, Page 36 -- first of all, these have been introduced into evidence here, and I want you to look at Page 36. Have you ever seen this before, have you ever seen these photos or this album before?

A No.

Q So you are seeing them for the first time then?

A Yes.

Q Would you tell me if you recognize what the object is, the major object that's on Page 36?

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A The van.

Q And is that the same van to which you have been testifying?

A Yes.

Q Now, I am going to show you what has been marked as Government's Exhibit -- Page 37 of Government's Exhibit 55, and there are a number of objects that are portrayed there; and first of all, I am going to ask you, have you ever seen the photographs before this very moment?

A No.

Q So you are seeing them for the first time?

A Yes.

Q I want you to look at them closely, and then I am going to ask you whether or not there is anything in those photos that you have seen before?

A Yes.

Q All right. Would you tell us, starting with any one photograph, what it is you recognize?

A This stuff I loaded up in the van.

Q All right. So that the things that are portrayed in each of these photographs are the things that you were loading up in the van you testified to?

A Yes.

Q All right. Would you tell me in looking at Photograph E, what it is that you loaded up, do you remember what that is?

A Radio.

{799}

Q All right, and if you look at Photograph F, and tell the jury what that is?

A Tire.

Q And do you remember anything about the tire?

A The van there.

Q Do you know where it came from?

A No.

Q Do you remember anything, about anything on the tire?

A No.

Q All right. What are the objects that are portrayed in Photograph D, if you know.

A The antenna.

Q All right. What were those antennas used for, if you know?

A The radio.

Q And how tall are those antennas when you put them together.

A I don't know.

Q You never put them together?

A No.

Q All right. Can you tell me what the objects are in Photograph A?

A No.

Q You don't recognize them as to what they are, is that right?

A Unh-unh.

Q All right. What about in Photograph B? This is Photograph {800} B here (indicating).

Q You don't recognize anything there. What about on Photograph C?

A No.

Q Now, would you explain to the jury where you went after you left the Tent City, where did you go upon leaving the tent area?

A Followed the river out.

Q All right, and would you indicate on Government's Exhibit 71 there with the pointer approximately where the river is and the direction that you went; would you take the pointer and point out for the jury?

A (Indicating) Be down this way.

Q All right, and did you generally follow the river itself?

A Yes.

Q Now, who was with you when you followed the river?

A Everybody.

Q All of those that you have mentioned before, is that right?

A Yes.

Q Was Jimmy Zimmerman with you?

A No.

Q All right. What happened to Jimmy Zimmerman?

A He stayed at the tent.

Q All right, and where the last time you saw Jimmy Zimmerman there, where was he?

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A In the tent.

Q Now, when you left, would you tell us what anybody took out with them, do you remember?

A No.

Q Did anybody take anything with them?

A No ? I don't remember.

Q Did you take anything with you?

A Yes.

Q And what was it that you took with you?

A A Ruger .44.

Q A .44 Ruger?

A Yes.

Q All right. I want to show you what has been marked as Government's Exhibit 33-A, and ask you whether or not you recognize this particular weapon?

A Yes.

Q And how is it that you recognize it?

A The crack.

Q And would you point out to the jury the crack to which you are testifying?

A (Indicating).

Q All right. Where was it that you saw this weapon the first time, as you best recall?

A Down at the camp.

Q And where was it that you saw it -- did you see it on the {802} 26th of June, the day we have been talking about?

A Yes.

Q Where was it that you first saw it on the 26th of June?

A Stuntz had it.

Q And where -- was that Joe Stuntz?

A Yes.

Q And where was Joe Stuntz when you saw him with this particular weapon?

A Upon the hill.

Q And was this during the time that you were up on the hill doing the firing?

A Yes.

Q All right, and what, if anything, happened to this weapon during the afternoon that you know of your own knowledge. if anything?

A I don't know. It didn't work so he took it back down to the camp.

Q All right, and did he come back with another weapon then of some kind?

A Yes.

Q What kind of a weapon, if you know, did he come back with after taking this one back down to the camp?

A 30, 30.

Q All right. When was the last time that you -- did you see that 30-30 later in the afternoon?

{803}

A No.

Q All right. Did you see it when all of you that you referred to went out along the river?

A No.

Q Anybody have it with them at that time?

A No.

Q All right, but you took this particular weapon out with you when you left?

A Yes.

Q All right. Is there any question in your mind about that at all?

A No.

Q Now, did Wish Draper carry anything out with him?

A I don't know.

Q Do you remember anybody carrying --

MR. LOWE: (Interrupting) I did not hear the response, whether it was "no" or "I don't know". He was very inaudible with his hand in front of his mouth.

THE COURT: Repeat your answer.

THE WITNESS: No.

Q (By Mr. Hultman) All right. Do you recall Robideau, Bob Robideau carrying any weapons out?

A I can't remember.

Q All right. Do you remember any other weapons at all --

A (Interrupting) No.

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Q (Continuing) -- being carried out?

A No.

Q Do you remember any pistols of any kind being carried out?

A No.

MR. LOWE: Your Honor, he just said he didn't remember any weapons being carried out. That's the second time he asked him. I object to questions that have been answered already.

THE COURT: Sustained.

Q (By Mr. Hultman) Did you see any weapons at a later time?

A Yes.

Q All right. Would you tell me where it was you saw some weapons?

A Going up the hill.

Q All right, and what weapons did you see at that time?

A A.R., and I don't know -- I can't remember the others.

Q All right, who had the A.R.?

A Peltier.

Q And was that the same weapon that you had -- was it a similar type of weapon that you had seen with him earlier in the day?

A Yes.

Q All right, and was it similar to the weapon that you saw that he had at the time he was down at the car where the agents were?

{805}

A Yes.

Q All right. Do you remember any other weapons that anybody had in going up the hill?

A Robideau had a shotgun and a pump gun.

Q All right. A shotgun and a pump gun.

Had you seen the shotgun or the pump gun before?

A No.

Q I am going to show you what has been marked as Government's Exhibit 36-A, and I just simply want to ask you whether or not the shotgun that you saw in any way resembled this shotgun that I have in front of me now?

A Yes.

Q And in what way, as you recall, does it resemble the shotgun?

A Padding.

Q First the pad, is that right?

A Yes.

Q Is there anything else?

A No.

Q Is it the general size and shape of the shotgun that you were referring to now?

A Yes.

Q But you didn't know whether or not this is the particular shotgun, is that right?

A Yes.

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Q All right. Now, I am going to show you what has been marked as Government's Exhibit No. 30-AA, and ask you whether or not you have seen a weapon similar to this or one that looks of this general description?

A Yes.

Q And where was it that you saw one?

A Robideau was carrying it.

Q And is that the time that you were referring to now?

A Yes.

Q Had you seen that weapon or the shotgun at any time prior to when you were going up the hill?

A No.

Q All right. You had never seen it in the camp at any time?

A No.

Q Or anybody with it?

A No.

Q Now, would you tell us, Mike, what happened as you went down the stream, tell us the route that you left by after you left Tent City and the tent area and went down the stream, just in your own words?

A Well, across the stream and followed it part of the way, and we left and walked towards the road, the dirt road. Crawled under a tunnel, went through a tunnel.

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Q All right. Was there a road that went over the tunnel?

A Yes.

Q That's how you passed the road by crawling under a tunnel; is that right?

A Yes.

Q Now, where was that tunnel, if we would look for a moment at Government's Exhibit 71, which is the Jumping Bull property and tent city to the right, would you show the jury in what general direction it is that the tunnel is located. You say you went down the stream; is that correct?

A Yes.

Q And would you just, if you can't see it on the map, just show us approximately what direction it would be where that tunnel was located.

A Here in the corner way up here (indicating).

Q Now, does that tunnel go under Highway 18, or does it go under another road?

A Under another road.

Q All right. Now, what if anything happened after you crossed through the tunnel?

A We went up the hill.

Q And what if anything happened as you were going up the hill?

A I guess somebody spotted us and starting shooting at us.

Q And what if anything happened next?

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A Returned the fire.

Q And did you do any firing at that time with the 44 Ruger?

A Yes.

Q All right. And what happened next?

A We just ran up the hill.

Q Did others fire, too, along with you?

A I don't know.

Q All right. So you ran up the hill?

A Yes.

Q And what happened next?

A We stayed up on the hill.

Q And were all of the people in a group during this period of time that you are referring to?

A No.

Q All right. Tell us who was with you and who wasn't specifically with you.

A Well, I don't remember.

Q All right. Did you all go the same general direction?

A Yes.

Q All right. But not all together at one time, is that what you are saying?

A Yes.

Q Or you tell me what it is.

A Well, some of us went in and some of us went up this way (indicating).

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Q All right. But then did you end up together at a little later time?

A Yes.

Q All right. Now, tell us what you did next after going up the hill and all of you getting back together again.

A Well, we just hid under the trees and stayed there for a while.

Q And where did you go next?

A We just got up and kept on walking. Stayed under the tree line.

Q All right. And where did you go to that night?

A We went out, went out and went across Highway 18 up into the hills.

Q All right. And what if anything did you do that night?

A Stayed out, stayed out in the night time.

Q All right. And what did you do the next day?

A We just slept under the trees and hid.

Q And where did you spend that night?

A Outside again.

Q Did you at any time go to anybody's house or cabin or any property that, during the time that you were up in the hills?

A That was the first night.

Q All right. And do you recall, tell the jury what it is you remember about that night.

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A We met Ted Lame and he took us to this place behind June Little's place, father's place, up into the hills.

Q And did all of you go there?

A Yes.

Q All right. And you stayed there that evening; is that right?

A Yes.

Q Who was there? You said Ted Lame picked you up. Who was at the house that you went to? Was there anybody there?

A No. Just an old man.

Q Just an old man?

A Yes.

Q Do you remember anything about the old man?

A He was old.

Q And he was alone; is that right?

A Yes.

Q Did you know what his name was at all?

A No.

Q Did anybody else there know or seem to know who the old man was?

A No.

Q All right. Now did you stay any other places during the time that you were up in the hills?

A No.

Q All right. About how long did you remain up in the hills?

{811}

A About four days I think.

Q All right. Did you go to any other house during the four days?

A Yes.

Q And do you know whose house that was?

A No.

Q Would you describe the people that were there.

A A lady and three girls.

Q And were there any men there at all?

A No.

Q And how long did you stay there?

A One night.

Q And where did you then go from there? Where did you go from the house with the lady and the three girls?

A I don't remember.

Q All right. Did you ultimately, after the four days, go somewhere else other than up in the hills?

A Yes.

Q And where was it that you went?

A Bear Runner's.

Q And how did you get to Bear Runner's?

A I don't know. Just some car picked us up and took us over there.

Q All right. Now, do you know was Bear Runner there?

A Who?

{812}

Q When you went to Bear Runner's house who was there at Bear Runner's house?

A I think it was an old man.

Q Pardon?

A The dad.

Q Do you know what his name was at all?

A No.

Q Had you ever seen him before?

A No.

Q And who went with you in the car to go to Bear Runner's? Who was with you when you went to Bear Runner's in a car?

A It was those younger guys and the girls.

Q All right. And when you refer to the "younger guys and the girls" would you tell the jury who those people are that you are referring to.

A Norman Charles and Norman Brown, Wish and me.

Q And then which of the girls? Who were the girls?

A Jeannie, Mela, Lynn.

Q All right. Now I take it then that Mr. Peltier did not go with you?

A No.

Q When did he leave?

A I don't know.

Q All right. Was he there when you left, or do you recall?

A Yeah, he was there.

{813}

Q All right. Now, I want to take you back just for a moment to the time when you were on the hill shooting. About how long a period of time were you on the hill itself shooting?

A I don't know. I didn't have no time.

Q You didn't keep any times as such; is that right?

A Yes.

Q Could you in any way give an approximation just in general terms of about how long at the most --

MR. LOWE: Your Honor, the witness said he didn't know, he didn't have any watch. I object to his answer already.

MR. HULTMAN: If it please Your Honor --

THE COURT: He may answer as to whether he can approximate the time.

Q (By Mr. Hultman) I'm referring, so that the witness understands the question, the total amount of time, not a specific time, but a total amount of time approximately if you can give me an estimate on how long you were up on top of the hill in the area of the green house and the white house and the log house when firing was going on.

A About twenty minutes.

Q All right. This is about the total maximum time that you were up on the hill?

A Yes.

MR. LOWE: Objection, Your Honor. He's putting words in the witness's mouth. Again I ask the Court to instruct {814} counsel not to lead the witness in this manner.

THE COURT: The objection is sustained. The last question and answer will be stricken.

Q (By Mr. Hultman) Where did you go after the period of time that you, by the previous question and response, gave to me and to the jury, where did you go from there? From the top of the hill where did you then go?

A Back to camp.

Q And approximately how long a total period of time were you down in the camp area?

A About an hour.

Q And did you, during this period of time you referred to, the total time that you were on the hill, did you at any time go back and forth between the hill and the tent area?

A I don't remember.

Q All right. Mr. Anderson, I'm going to show you what has been marked as Defendant's Exhibit 62C.

MR. LOWE: May we approach, Your Honor?

THE COURT: You may.

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

MR. LOWE: I object to the introduction of any inference concerning certain incidents at which an automobile exploded.

THE COURT: Excuse me. State that again.

{815}

MR. LOWE: We object to the introduction of evidence, particularly pictures concerning an incident in which an automobile exploded strewing the weapons and grenades and other items on the highway.

Mike Anderson was in that car, but it's highly prejudicial information. It's not relevant that Leonard Peltier was not there. They're willing to stipulate, and we've already indicated that we will stipulate chain of custody of weapons. There's no contest on that. In fact, that's one stipulation that the Government has accepted.

We believe that the information is relevant. Even if it were relevant the probative value is far outweighed by the prejudice, and we feel for these reasons that this information is not information that should go into evidence in this trial.

MR. HULTMAN: Are you finished yet?

MR. LOWE: I think basically.

MR. HULTMAN: Your Honor, the reason for the production of these exhibits and so the Court might know, is that we believe, it's extremely relevant, and it is of a probative value, specific weapons that were carried and handled. In fact, the last two, as an illustration, one of which, Your Honor, is ultimately traced to this event that is transpiring here, and in the position

[Transcriber's note: "possession" intended?] again of people who he has testified to just a few moments ago, and what weapons they had when they left.

{816}

We feel its probative value is evident for a number of reasons. First of all, because it clearly ties into the weapons. One in particular, that's a weapon the agent himself, one of the two who are deceased, and whose weapon was taken at the scene. It also is of --

THE COURT: Excuse me. You say that the evidence will show that one of the agents' weapons was recovered?

MR. HULTMAN: Isn't that correct?

MR. SIKMA: That's correct.

MR. LOWE: That's already been stipulated to.

MR. HULTMAN: Okay. And also another of the weapons that was fired in this particular area that particular day at Coler's car is one of the weapons that was in. Plus the individuals who are here are likewise, not in every instance, but in more than one the same people to which has been testified here.

THE COURT: Are you going to specifically tie up one of the weapons that was fired at the --

MR. HULTMAN: That is correct, that is correct, Your Honor.

MR. SIKMA: Two of them.

THE COURT: Two of them?

MR. SIKMA: The agent's gun, Special Agent Coler's gun. They've stipulated that it's his gun and one of the guns that was fired in the area of the vehicle was in this car as recovered {817} and tested by ballistics to show that that gun was fired at the scene of the crime right near the agents' cars.

THE COURT: And what individuals are associated with that car?

MR. SIKMA: Robideau, this individual, this witness and one other individual was with them I believe.

MR. HULTMAN: At least two. I can't remember for certain, Your Honor. I wouldn't want to put more than two on the record. But two of the people that this defendant has testified, including himself.

THE COURT: And what is your objection to that?

MR. LOWE: Well, our objection is first of all that we have entered into a stipulation already on chain of custody. There is no dispute. The can state that those weapons were found in Wichita; but knowing all of the details of the problem of the other objects found, they are not relevant, particularly where Mr. Peltier himself had nothing to do with this. He was not present.

They're obviously trying to inflame the jury with registration of explosives, of grenades, of a lot of irrelevant weapons that were present there.

We have no objection to stipulating. As a matter of fact they've accepted our stipulation on chain of custody of these weapons. I don't think there's any basis for them putting this in except to inflame and prejudice the jury. There's {818} simple no ther basis for that.

We'll stipulate that the weapon was there and they know we've, we'll stipulate to chain of custody. We'll stipulate to the identity of the people if they want, but Mr. Peltier was not present.

THE COURT: You've made you record. The Court's ruling on this will be the same on the other pictorial evidence, that it is relevant and the jury is entitled to know the facts, and the objection is overruled.

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

Q (By Mr. Hultman) Mr. Anderson, I am going to show you what has been marked as Government's Exhibit 62. They are some photographs and I want you to just take a moment and look. First of all, I want to ask you whether or not you've ever seen the photographs before this very moment?

A No.

Q All right. Now, I want you to look at each of the photographs, and without responding, first I want you to look at them before saying anything.

Now, I want to ask you first whether or not you have ever seen the scenes that are portrayed there. Do you recognize anything?

{819}

A No.

Q You don't recognize anything there at all?

A Yes, I do.

Q Would you tell the jury what it is you recognize.

A Station wagon.

Q How is it that you recognize the station wagon? Are you now referring to the station wagon that was portrayed on page 2 of this exhibit?

A Yes.

Q That's what we're now looking at.

Tell us how it is that you recognize this station wagon?

A All burned up.

Q And did you see it in this general condition?

A Yes.

Q And would you tell us where it was that you saw it and what was the occasion?

A Oklahoma.

Q About when was this?

A It was somewhere in Kansas.

Q Somewhere in Kansas?

A Yes.

Q Would you tell the jury a few words why it is you recognized the station wagon?

A I don't know, because I noticed it.

Q Were you in the station wagon?

{820}

A Yes.

Q Tell us where was it that you left from in this station wagon?

A The back seat.

Q And what area or what town did you leave in this station wagon?

A In South Dakota.

Q And about when would that have been?

A I don't remember.

Q Was it sometime after the events that we have been talking about here on the 26th of June of 1975?

A Yes.

Q Who was with you when you left in the station wagon?

A Bob Robideau, Bernie and Darlene, Norman Charles, Keith, Jeannie and I.

Q Now of the men that you have been referring to in that group, which of those individuals are the same people that you have been referring to in testimony here today back on the 26th of June, would you tell me which ones of those people?

A Bob and Norman.

Q And it's Bob who?

A Robideau.

Q And Norman, do you know his last name?

A Charles.

Q Norman Charles. Anybody else?

{821}

A And myself.

Q And yourself.

Now tell the jury what happened here.

A I don't know. The car just started smoking and we stopped and started blowing up.

Q Who loaded the car to go down there?

Where were you going, by the way?

A I don't know.

Q Who loaded the car?

A I don't know. I did I guess.

Q Pardon?

A I did I guess.

Q I'm going to show you now what has been marked as page 10 of Government's Exhibit 62 and ask you whether or not you recognize the objects that are there?

A No.

Q You don't recognize them at all?

A (Witness nods negatively.)

Q Let me ask you, what was in the car that day, what was loaded in the car that day?

A Dynamite and firearms.

Q And would you describe what kind of firearms?

A Rifles, pistols and, about all.

Q Did they resemble the firearms that are represented on pages 10 and 11 of this exhibit?

{822}

A Yes.

Q Do you remember anyone of these particular firearms with relationship to the events back on the 26th of June or the 27th, 8th and 9th, the four days that you left from the time you were here and the events that you have been testifying to and that you left, do you recognize any of these weapons in any way, to any of those weapons?

A No.

Q I'm going to show you what you've looked at a little earlier as Government's Exhibit 30A and ask you whether or not if the weapons that were in the station wagon that we've been discussing, if there was a weapon of this general type and description?

A Yes.

Q Now, do you recall where you first saw it with relationship to the station wagon?

A Down in the camp.

Q Do you remember who had the weapon that looked like this particular one?

A Robideau.

Q And is that the same weapon that you have been testifying to when you said that Mr. Robideau had two weapons when he was leaving?

A Yes.

Q And the other one resembled a weapon that he left with that {823} day, the one that I have on the counter, is that correct?

A I don't know.

Q You don't know?

A No.

Q You didn't see any weapon of this kind in the station wagon, is that what you're saying?

A No.

MR. LOWE: When you say "this kind," which one? You're holding one and pointing to one.

MR. HULTMAN: I'm sorry. Let the record show I'm asking you about this weapon here (indicating).

Q (By Mr. Hultman) Did you see any weapon of this kind in the station wagon that day?

A No.

THE COURT: I would suggest, Counsel, when you handle the weapons would you try to keep the barrel pointed towards the overhead.

MR. HULTMAN: Let the record show, so the Court will know this and the jury, all of these weapons have been made inoperable by the marshal's service and are in a condition they cannot be fired. I did not mention that in the Court's presence before. I will try to heed the admonition of the Court also.

Q (By Mr. Hultman) I'm going to show you again what you previously looked at and it's been identified as Government's {824} Exhibit 34AA and ask you whether or not there was a weapon of this general type and description in the station wagon on the occasion that you're talking about now?

A Yes.

Q You remember a weapon.

You don't know what the specific weapon was, is that correct?

A Yes.

Q But you know there was a weapon like this?

A Yes.

Q Where were you when the materials were loaded in the station wagon that we are discussing at this time as portrayed in Government's Exhibit 62, where were you when the station wagon was loaded? What town or area or what location were you when you loaded the station wagon?

A I don't remember.

Q Do you remember what state you were in when the station wagon was loaded?

A South Dakota.

Q Do you remember a general location of where you were?

A No.

Q Mike, how much education have you had?

A Eight years.

Q Have you ever prior to being in this courtroom today testified under oath?

{825}

A No.

Q This is the first time you've ever testified under oath?

A Yes.

Q And have you told us the truth here as you best remember?

A Yes.

MR. HULTMAN: I have no further questions.

MR. LOWE: May we approach the bench?

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

MR. LOWE: Your Honor, particularly in view of the one lawyer, with regard to witnesses, I need a little time to get set up here. I want to set up the screen and a projector. I'd like to go over the notes of what he said and in the absence of having been able to interview him it makes it particularly difficult to cross-examine. I wonder whether Your Honor would be willing to have an early lunch recess, same amount of time but move it up so we can have the lunch hour to prepare for cross-examination? This is obviously a crucial witness.

THE COURT: How would it be if I recess until 1:15 which would give us --

MR. LOWE: Fine.

THE COURT: Any objection to that?

MR. HULTMAN: No, Your Honor. I understand the reasoning and I know the Court would grant a similar request {826} with no objection on the part of the defense.

THE COURT: Very well.

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

THE COURT: We're going to recess a little early this noon. The noon recess will not be much longer than we usually have. The court will recess at this time and we will reconvene then at 1:15 rather than the usual reconvening time of 1:30.

The court is in recess.

(Recess taken.)

{827}

AFTERNOON SESSION

March 22, 1977

1:15 o'clock, P.M.

(Whereupon, the following proceedings were had in the courtroom without the hearing and presence of the jury:)

THE COURT: Mr. Lowe, are you ready to proceed?

MR. LOWE: Yes, sir.

MR. HULTMAN: Your Honor, there are some housekeeping matters, if the Court would give me just a moment. One is that the Court asked and I did talk with Mr. Taikeff for just a moment during lunch with reference to the one witness they wish to interview and he indicated that he felt that the end of the day, if the witness were available at the end of the day, and so I have made arrangements that he would be available as soon as we complete the matters here in the courtroom this afternoon.

Secondly, I also asked out of the presence of the Court, because we had already recessed for lunch, if Mr. Ecoffey might be excused as far as Counsel because he's in school and he's been out of school for a few days. Counsel indicated there was no objection so he was released.

I would just like to make one further request at this time. I'm not sure, Your Honor, which one I did request and I have a habit of not doing this and I apologize to the Court, but I'd like to move at this time on all witnesses who have appeared so far, unless Counsel has any objection, that those witnesses be excused at this particular point.

{828}

MR. TAIKEFF: I would assume that the government would bring back upon our request any employee of the Federal Bureau of Investigation.

MR. HULTMAN: No problem.

MR. TAIKEFF: If that is the case, we have no objection to all witnesses being excused.

THE COURT: With that understanding, the witnesses who have testified up to this witness who is presently on the stand are excused.

MR. HULTMAN: I understand, Counsel, there is an understanding, too, unless specifically requested I won't have to make a request in each instance as far as the rest of the witnesses to appear?

MR. TAIKEFF: That's correct, Your Honor. The burden will be on us to indicate we want someone held within the court's jurisdiction.

THE COURT: The record may so show.

MR. TAIKEFF: Your Honor, I have two very brief matters. I would like to notify the government upon the record that we will most likely require the appearance of two special agents as defense witnesses. Their names are Olen, first name, O-l-e-n, middle initial V., Harvey, H-a-r-v-e-y, and James E. Doyle, D-o-y-l-e. We trust the government will make some arrangements to have them available at the appropriate time.

The other matter, Your Honor, concerns the fact that {829} Mr. Lowe is going to conduct the cross-examination of this witness and make use of one of the newer pieces of equipment

available for trial counsel and I'm wondering if Your Honor would permit me to sit at the far end of the rail so that I could see what is projected on the screen.

THE COURT: Specifically where do you --

MR. TAIKEFF: As far beyond the prosecution table as one can get, in the corner.

THE COURT: I believe there is a marshal that occupies one chair over there.

MR. TAIKEFF: I would be perfectly happy to sit next to the marshal, Your Honor.

THE COURT: I wasn't suggesting that you wouldn't be, but I just wanted to be sure there is room for both of you.

MR. TAIKEFF: Yes. I think there might be room for additional counsel. I'm wondering, providing counsel remain quiet, as Your Honor can expect they will, if they can sit there and watch the screen?

THE COURT: Does the United States have any objection to that request?

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

MR. TAIKEFF: Thank you, Your Honor.

THE COURT: You may now bring in the jury.

(Whereupon, the following proceedings were had in the {830} courtroom in the hearing and presence of the jury:)

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. LOWE:

Q Mr. Anderson, my name is John Lowe. Have we ever met before?

A No.

Q We didn't? Did we meet earlier today?

A Yes.

Q Downstairs on the second floor?

A Yes.

Q And on the occasion that we met down there, did I tell you that the purpose of my coming down was to obtain an interview with you so we were able to tell what you knew about the case?

A Yes.

Q Did I tell you that all I wanted you to do was tell me the truth?

A Yes.

Q And did you refuse to do so?

A Yes.

Mr. HULTMAN: I object, Your Honor. It's a clear inference, the question immediately was he refused to tell the truth.

MR. LOWE: If you'll let me finish, Counsel, I'll finish questioning.

{831}

MR. HULTMAN: Your Honor, might I make my objection, please?

THE COURT: Proceed.

MR. HULTMAN: I object, Your Honor, to the question as being misleading; that it's leaving a clear inference with the jury that the response left an impression that he was not being truthful and I believe that is a clear misconception and I would ask to interpose a voir dire with one simple question.

MR. LOWE: Your Honor, I would like to finish my direct examination. I've asked simple, direct interrogatory questions which are proper. The witness has had no trouble in answering them and has not indicated he has any trouble in answering. There is a purpose in cross-examination and that is what Mr. Hultman wants to do. I do not choose to have him do his cross-examination in the middle of any direct examination and assist the witness. I would oppose having any voir dire at this point. The witness has indicated no trouble in my questions.

THE COURT: Proceed.

Q (By Mr. Lowe) Mr. Anderson, so in fact you refused to tell me anything, didn't you?

A Yes.

Q And you understood that there was court reporter sent down by the judge with us to make sure you were protected and what was done was proper and what you said was the truth would be {832} recorded?

MR. HULTMAN: Your Honor, I object.

THE COURT: I think that is a little misleading. The court reporter was not sent down to record your interview with this witness had he been willing to talk to you.

MR. LOWE: I understood, Your Honor, that was our request, of course, was to have the interview recorded so we would be protected from any claim there was an impropriety. I understand that's what Your Honor was doing?

THE COURT: It was my understanding the court reporter was just to be there for the time to determine whether or not the witness was willing to talk to you.

MR. LOWE: We misunderstood. Our request was clearly on the occasion we wanted the court reporter there.

MR. HULTMAN: Your Honor, I'm going to object to any further inquiry of any kind concerning this matter because it is incompetent and irrelevant and immaterial to any issue in this case. The witness is here, he is under oath. Counsel has the right to confrontation and cross-examination and I urge that this is highly prejudicial.

MR. LOWE: I daresay it's prejudicial if a witness refuses to tell the truth to Counsel when a request for interview is made. I think that's something the jury will properly weigh whether the witness is candid on the witness stand.

THE COURT: You may proceed with your interrogation.

{833}

MR. LOWE: Thank you, Your Honor.

Q (By Mr. Lowe) The following the events that you had described here, what was the first occasion on which you talked with a police officer or an FBI agent about what you knew or what you told them you knew about these events?

A I don't understand the question.

Q In June of 1975 this too, place near Oglala, South Dakota. You described that you and some other people were on the move for several days thereafter. You were not arrested, nor was anybody arrested in the group until you had actually disbursed, isn't that true?

A Yes.

Q What was the first time and occasion that you had to talk with a police officer or an FBI agent, whichever it was, about what you knew about this shoot-out?

A In Kansas.

Q In Kansas?

A Yes.

Q Was this following the incident you described in which you were in an automobile that had some problems in a fire?

A Yes.

Q And who was the agent or the police officer that you spoke with about this event?

A Gary Adams.

Q Was anybody else present?

{834}

A Yes. Another agent.

Q Do you know what his name is offhand?

A No.

Q And where was it that you were located when these agents talked to you?

A In Kansas.

Q I understand. Were you in a hospital, in a car, in a police station, in a motel?

A The federal building.

Q And in what town? Was that Wichita?

A Yes.

Q And how many other people were present in the room with you when you were interviewed by them, if any?

A Nobody. Two agents.

Q How many days was that after the car blew up?

A I don't really remember.

Q Was it the same day?

A No.

Q Was it the next day?

A I don't remember.

Q Were you under arrest at the time they talked with you?

A Yes.

Q What were you charged with?

A I don't know.

Q Were they state warrants or federal warrants that you were {835} arrested on?

A I think federal.

Q Do you know if any of the other occupants of the car were also under arrest at that time?

A No.

Q Had you been put in a jail in Wichita, some sort of a jail type facility?

A Yes.

Q Was that in the federal building or somewhere else?

A Somewhere else.

Q Were you brought up there by the agents or by someone else?

A By the agents.

Q And how old were you at the time?

A 16.

Q And did they tell you that they were investigating the alleged murders of two FBI agents?

A Yes.

Q And did they tell you that they had information that you were one of the people that was involved in the shooting?

A Yes.

Q Did they tell you that since you were one of the people involved in the shooting that it was possible you might be charged with the murder of the agents?

A Yes.

{836}

Q And did they suggest to you that if you cooperated with them that it would be possible you might not be charged with the murders?

A No.

Q They did not suggest that to you?

A No.

Q Did you realize in your own mind if you succeeded in giving them information which satisfied them that you might not be charged with the murders?

A No.

Q You didn't think so. You thought you might be charged with the murders anyway?

A Yeah.

Q Have you ever been charged with the murders of those agents?

A No.

Q If I were to suggest that you were arrested on federal charges relating to the interstate transportation of guns with obliterated serial numbers and the interstate transportation of unregistered explosive devices, would that sound like that refreshes your memory?

A No.

Q Were you ever called in front of a magistrate or a judge of any kind and explained what you were being held for by the FBI?

A Yes.

{837}

Q Do you remember what the judicial officer told you the charges were?

A I think it was transporting firearms and explosives across the state line.

Q And did you know that you had -- or let me ask you, do you know how many charges individually you had against you?

A No.

Q If I suggested that you had nine individual charges, would that sound about right?

A I'm not sure.

Q Do you know that you had a number of charges, however many they may have been, it wasn't just a single charge?

A Yes.

Q If I suggested to you that the judicial -- did the judicial officer tell you what possible punishment you could obtain under the conviction on those charges?

A I don't remember that.

Q If I suggested that he had --

MR. HULTMAN: If it please Your Honor, the question has been asked and the question has been answered and I would indicate that now Counsel is trying to put into the record his own remarks and I object for that reason.

Counsel, if you just wait until I finish my objection.

MR. LOWE: I thought you were threw, Mr. Hultman.

{838}

MR. HULTMAN: It is obvious, your Honor, the question was very simple that was asked, the response was very direct, and now counsel is by repetition, he is only trying to get matters into

the record which this witness -- it is very evident by his last response -- does not have the knowledge; and I object for that reason, it is repetitious.

MR. LOWE: I have just finished asking the witness whether he was charged with interstate transportation of weapons and explosive devices, and first he said "no". Then when I attempted to refresh his recollection, he himself stated it was interstate transportation of guns and explosive devices.

This is cross examination, and as long as I ask proper questions and I am not badgering or overreaching the witness, I think it is proper.

THE COURT: Proceed.

Q (By Mr. Lowe) I would suggest to you that the judicial officer advised you that the charges -- each of the charges against you carried 10 years in the penitentiary as a maximum punishment -- would that sound about what you were told?

A I don't remember.

Q You don't remember?

A No.

Q All right. Did Agent Adams and the other agent tell you {839} that you had a right to have an attorney before they talked with you?

A Yes.

Q How old did you tell them you were?

A 16.

Q Did they say anything to you about having any of your parents with you or find out where your parents were located?

A No, I don't remember.

Q O.k., and did you ask for an attorney?

A Yes.

Q And did they give you one before they talked to you?

A I don't remember.

Q You don't remember whether you had an attorney when you talked to them or not?

A I didn't have an attorney, wasn't there then when I talked with them.

Q You had asked for one?

A Yes.

Q And they simply had not gotten one for you?

A No.

Q Did they tell you that you had a right not to talk with them if you didn't want to?

A Yes.

Q Did they tell you it would be better for you if you did talk with them?

{840}

A I don't remember.

Q Did they make notes as you were talking to them?

A Yes.

Q Did you tell them the truth?

A No, not all of it.

Q Not all of it, but what you did tell them was true, is that correct?

A It is part of it.

Q I am not sure I understand your answer. Do you mean that part of what was true you told them?

A Yes.

Q But you just didn't tell them everything, is that what you are saying?

A Yes.

Q What you did say to them was true, is that also correct?

A No.

Q What you did say to them was true, is that also correct?

A No.

Q It is not, so you lied?

A Yes.

Q And how long did they talk with you on the first time that they talked with you?

A I don't know. I don't remember.

Q Well, was it a half an hour as opposed to all day long? Can you give me just an estimate of about how long?

A About an hour.

Q An hour?

{841}

A Yes.

Q And what happened at the end of that hour?

A Well, I was refusing to talk until Gary Adams said, "If you don't talk, I will beat you up in the cell."

Q Gary Adams told you that?

A Yes.

Q And the other agent was present when he said that?

A Yes.

Q And did that make you afraid?

A Yes.

Q And did you understand that you would get beat up if you didn't give him the answers that he wanted?

A Yes.

Q And did you then give him the answers that you understood he wanted?

A Yes,

Q When was the next time that Special Agent Gary Adams talked with you?

A I don't remember.

Q Was it while you were still in Wichita?

A I don't remember.

Q Did Special Agent Gary Adams in that first interview with you tell you that one of the dead agents was a good friend of his?

A Yes.

{842}

Q Did he seem quite angry about the fact that they had been killed?

A Yes.

Q Did he seem quite upset?

A Yes.

Q Do you recall an occasion when you were in the tent area on the 26th of June, 1975, when Leonard Peltier made a statement in your presence that anyone trying to surrender would probably get shot by the FBI or the police?

A Yes.

Q When he said that, did you believe that he was probably right?

A Yes.

Q When Special Agent Gary Adams threatened you in Wichita, did you recall what Leonard Peltier had told you?

A No.

Q Did you believe that Special Agent Gary Adams was capable of hurting you if you didn't do what he wanted?

A Yes.

Q When Agent Adams asked you questions on that occasion, did he ask you questions in this matter -- and I am quoting now I am acting as though I was Special Agent Adams -- did he ask, for example: Isn't it true that Leonard Peltier was carrying an A.R. 15, is that the kind of question he asked you?

A I don't remember.

{843}

Q You say you do not remember?

A No.

Q Did he ask you questions generally in the style of saying: Isn't it true that a certain fact is true, and then ask you to just tell whether it is true or not?

A Yes.

Q And by doing that, as a person being interviewed, did you understand that the substance of the question he was asking you is what he was looking for in your answer?

A Yes.

Q And did you understand that that was the type of information that he was threatening you to obtain, do you understand what I am asking?

A I don't understand, no.

Q All right. You said just now that you understood that the things that he was saying in his question and in asking you, isn't that true, was exactly what he was looking for. Now, I am asking you, did you understand that that was what he was telling you you should say or you would get beaten up?

A Yes.

Q Did you have any other agent or police officer talk to you, Mike, about this incident while you were in Wichita, or was that the only interview in Wichita?

A There was another guy from the Firearms Bureau.

Q All right. A Federal officer, do you know?

{844}

A Yes, Tobacco and Firearms.

Q And did he talk with you about the incident on the 26th, or just about the car?

A No. I just refused to talk to him.

Q All right. Where did you go from Wichita -- were you released, or did they take you somewhere in custody?

A Took me to the Detention Center.

Q Where is that?

A In Wichita.

Q How long were you there?

A I don't remember.

Q Where was the next place you went after the Detention Center in Wichita, if you remember?

A Downtown to Phoenix.

Q Phoenix?

A Yes.

Q Were you still under arrest, or were you released by then?

A Still under arrest.

Q Still under arrest. Were you on bond or were you in custody?

A Custody.

Q Where did they take you?

A To the Detention Center in Phoenix.

Q Do you know why they took you there, did they tell you?

A Yes.

{845}

Q Why did they tell you?

A I had some other charges in Phoenix.

Q O.k. What charges did you have in Phoenix?

A I don't remember.

Q If I suggested that there was a burglary charge there, would that help your recollection?

A Yes.

Q And did the FBI say they would try to see what they could do to help you on the burglary charge in Arizona?

A Yes.

Q Have you ever been prosecuted on that burglary charge or convicted?

A No.

Q Did the FBI tell you that they would try to help you on your charges in Wichita arising out of the exploded car?

A I don't remember.

Q Have you ever been prosecuted on those charges?

A No.

Q In fact, those charges have been dropped, haven't they?

A Yes.

Q Do you read, Mike?

A Yes.

Q Do you read very well?

A Yes.

Q I am just going to show you -- this is not an exhibit or {846} anything, just the Constitution of the United States, is what it happens to be; but I would like to ask you to just read, pick any paragraph, start out reading.

A Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

Q All right, that's fine, thank you. After Phoenix, where did you move, where did you stay?

A I went back home.

Q You were released then, weren't you?

A Yes.

Q And where is home? You may have said that, I just didn't remember.

A Fort Defiance, Arizona.

Q All right. When is the next time that you talked to an FBI Agent about this case?

A In Albuquerque.

Q In Albuquerque?

A Yes.

Q When was that, do you remember?

A Just the past week ago.

Q Just a week ago?

A Yes, I don't remember the date.

Q If I -- let me ask you this: Did you say it was a week ago -- you mean literally seven days or ten days ago, or might

{847} it have been a month ago?

A About a month ago, I think it was.

Q Who did you talk with then?

A Gary Adams and Jim Doyle.

Q The same Gary Adams that you spoke with in Wichita?

A Yes.

Q And did you tell them the truth then?

A No.

Q What you told them was true, just wasn't all of it?

A It wasn't all of it.

Q O.k., but what you did tell them was true?

A Yes.

Q Now, to be sure, before I pass on, before, you indicated in Wichita that part of what you told them was not true. Was part of what you told them in Albuquerque also not true?

A Yes.

Q And where have you been since then, did you go back home again from Albuquerque?

A No. I have been going to school.

Q Where did you go to school?

A In Albuquerque, Southwestern Polytechnic School.

Q And then you came up here for the trial?

A Yes.

Q And have you seen Special Agent Adams since you got here?

A Yes.

{848}

Q Did you talk with him again?

A No.

Q Did you talk with somebody, with Special Agent Adams present, that is, sitting in the room with you?

A No.

Q Where did you see Special Agent Adams, here?

A He picked us up.

Q He came and picked you up.

Now, I want to go back to June 25th, and I want to go back a little bit before then to get a little bit of background for what you have told us.

Would you say again about how many days before the shooting incident, did you arrive at the Jumping Bull area from Farmington, New Mexico?

{849}

A I don't know.

Q Was it about a week or two weeks or four days, just approximately?

A No. Approximately about -- I can't remember.

Q Was it more than two days?

A Yes.

Q Was it as much as two weeks?

A Yes.

Q Was it a month?

A I don't remember.

Q Okay. During that time did you live in the tent area?

A Yes.

Q Do you know who Jeannie Day is? Did you know such a person?

A Yes.

Q Who was Jeannie Day?

A A lady.

Q A lady. Do you know whether she had any particular friendships with anybody in the camp?

A No.

Q Do you know who Myrtle Poor Bear is?

A No. But I heard of the name.

Q You heard the name?

A Yes.

Q Did you ever see Myrtle Poor Bear in the camp, or the {850} Jumping Bull's to your knowledge?

A I don't know.

Q Did you know all the people that you did see in the camp at the Jumping Bulls'? Do you know there names?

A Yes.

Q Was one of them Myrtle Poor Bear?

A I don't know.

Q You had some disagreements with Leonard Peltier over the question of your drinking, didn't you?

A Yes.

Q Would it be fair to say that Mr. Peltier is, was trying to get people to stop drinking and was complaining when they did drink?

A Yes.

Q Would it be fair to say that he was trying to help you to straighten out on that?

A Yes.

Q Do you think he was looking out for your welfare and trying to help you?

A Yes.

Q Was ho doing that with other people also?

A Yes.

Q And on June 25th, the day before this incident in which you were confronted by some police officers and FBI officers on Highway 18 along with two friends of yours, at the time you were {851} stopped you were asked to identify yourselves, and I believe you said you all gave different names, although you didn't remember the names?

A Yes.

Q Do you remember whether one of the BIA officers who stopped you was named Ecoffey?

A No BIA officers stopped us.

Q Pardon?

A They were FBI agents.

Q How many men were with the party that stopped you?

A Two.

Q Only two people?

A Yes.

Q Do you know who they were?

A Willams and the other agent.

Q Coler?

A Yes.

Q Nobody else was with them?

A No.

Q How many cars did they have?

A One.

Q Just one car?

A (No response.)

Q So there was no BIA police officer there with you when you were stopped by the FBI agents?

{852}

A I think there was one sitting in the back. I'm not sure.

Q So there might have been one or more?

A Yes.

Q But they told you that they were going to take you to the BIA jail in Pine Ridge to see if anybody could tell if you were Jimmy Eagle; is that right?

A Yeah. They didn't tell us where they were taking us, but they took us there.

Q Did they tell you why you were being taken to see if somebody could identify you as Jimmy Eagle?

A Yes.

Q Did you know that?

A Yes.

No, I didn't know.

Q You didn't know that at the time?

A No.

Q Do you know Jimmy Eagle?

A Yes.

Q Do you look anything like Jimmy Eagle?

A No.

Q Did either of the other two?

A No.

Q Now, when they first pulled up in the car what was the first thing they said to you?

A Stop, I think it was.

{853}

Q Did they get out of the car before they talked to you, or did they talk to you from the car?

A I don't remember.

Q All right. Did you stop and turn around, face them?

A Yes.

Q Did they frisk you, put you up against the car?

A Yes.

Q Did they do the classic thing that we all see on television where you put your hands on the car and spread your legs and then they frisk you?

A I'm not too sure.

Q But they did frisk you?

A Yes.

Q Who frisked you, do you remember?

A No.

Q One of the people in the group?

A Yes.

Q Did they ask you for anything or did they simply take what they found?

A They just asked us to search our towels.

Q Okay. And I believe you said that they told you to get in the car and you started to walk away?

A Yes.

Q And then what did they say then?

A They told us to get in.

{854}

Q Did they say it rather sharply or did they say it like, "Hey, would you like to get in?" What did they say?

A Kind of sharply.

Q Did you have any understanding that you had any choice about whether you got in the car or not?

A Yes, I knew.

Q And what did you think?

A I said I didn't want to get in, but those other two had gotten in so I got in.

Q Did you think that they would have allowed you to walk away?

A Yes.

No, I don't think so.

Q In other words you didn't think you had any choice but to get in the car?

A Yes.

Q They were ordering you in.

Would it be fair to say that they were not courteous and polite to you, but rather forceful?

A Yes.

Q And when they took you down to the jail they took you inside the jail building. Was there an officer in there that they brought you before?

A Yes.

Q And what did they say?

{855}

A They asked the officer if any of us were Jimmy Eagle.

Q And this was one of the FBI agents that did this?

A Yes.

Q Did he tell the BIA officer that you were brought in front of that a BIA officer that had been riding with them know that you were not Jimmy Eagle before this confrontation? In other words did the FBI agents say anything to the second BIA police officer to indicate that he already knew you weren't Jimmy Eagle?

A No.

Q What happened to the clip that was in the towel?

A I don't know.

Q One of the FBI agents kept it, didn't he?

A Yes.

Q Did he try to explain to Norman Charles that he had some kind of a legal right to carry this clip?

A I don't know.

Q He just kept it?

A Yes.

Q Would it be fair to say that on the reservation Indians, particularly young Indians don't argue with FBI agents and challenge their authority?

A I don't know.

Q You certainly didn't, did you?

A No.

{856}

Q Do you remember an occasion in which a store had a fire in it prior to this occasion while you were just living in the area and got burned, the roof?

A Yes.

Q Did you or any of your friends in the encampment area there do anything about that?

A No.

Q You were not present if anybody else did that, is that true?

A No.

Q Were there pipe ceremonies held in the area while you were present during this couple of weeks when you got back from Farmington, New Mexico?

A Yes.

Q Did you attend some of those?

A Yes.

Q Are they religious ceremonies?

A Yes.

Q Do you believe in the religion of the pipe?

A Yes.

Q And were any of these attended by medicine men or special spiritual leaders, or was it just the people in the area?

A I don't remember.

Q Okay. Was there a sweat lodge in the encampment?

A Yes.

{857}

Q Explain what a sweat lodge is.

A Sweat lodge is made of cottonwood bent over and put blankets, or whatever on top of it to hold in the heat.

There's a hole dug in the middle, there's sagebrush spread all over the ground where you sit on and the rocks are heated and you put in the hole.

Q Does this have spiritual meaning to you who believe in the religion of the pipe?

A Yes.

Q Is this a purification procedure among other things?

A Yes.

Q And was the sweat lodge used during the weeks that you were living there in the encampment?

A Yes.

Q Was there conversation between people who lived in the encampment, including Mr. Peltier, and you and the others about religious matters and spiritual matters and the need to recapture your spirituality?

A Yes.

Q Was there also discussion about helping the people in the community to organize their efforts to help themselves and to make a good life for themselves?

A Yes.

Q And was Mr. Peltier one of the leaders in that regard?

A Yes.

{858}

Q In the time that you were living there over those several weeks would you say that it would be fair to indicate that people were afraid of violence from different groups on the reservation and everybody really went around constantly worried about violence?

A Yes.

Q Would it be fair to say that almost everybody on the reservation had guns to defend themselves?

A I don't know.

Q Did a lot of the people that you had contact with, both in the encampment and also in Oglala, have guns to protect themselves?

A No.

Q All right. Do you know what I mean when I talk about goons?

A Yes.

Q Was it, would it be true to say that the people in the encampment area that you were living with were afraid of attacks by goons?

A Yes.

Q Would it be fair to say that it was very bad blood between the goons and the people in the encampment area? That is, that they didn't like each other?

A Yes.

Q In the time that you were living there did you become aware {859} of incidents of violence in which people were shot or injured or beaten up?

A Yes.

Q Would it be fair to say that the people that live in Oglala in this general community around the Jumping Bull area were also aware of that type of violence on the reservation?

A Yes.

Q And would it also be fair to say that particularly the older people were very worried and afraid because of that violence?

A Yes.

Q You said that you had heard the name Myrtle Poor Bear. Where did you first hear the name Myrtle Poor Bear?

A I don't remember.

Q Is it possible that one of the FBI agents --

MR. HULTMAN: If it please Your Honor, this question has been asked and been asked here again. I indicate that it's repetitious and an attempt by counsel to get something in the record. Make himself, the witness --

MR. LOWE: It's cross-examination, Your Honor. I think I'm entitled to probe.

THE COURT: Well, you are entitled to probe, but you're not entitled to present evidence that isn't before the, in the record.

MR. LOWE: I'm just asking if it was, he has indicated {860} that he's had several interviews with FBI agents. I think it's proper if the FBI mentioned it to him.

THE COURT: You may ask him that.

Q (By Mr. Lowe) Is it possible that the FBI mentioned that name to you and that's where you heard it?

A I don't know.

Q Okay. You mentioned Jimmy Zimmermann. Do you know about how old Jimmy Zimmermann was?

A No, I don't remember.

Q Was he near twenty or was he older? Teenager, a young kid, what was he?

A A young guy. About ten years old.

Q About ten years old?

A Yeah.

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

THE COURT: You may.

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

MR. LOWE: This is an area that I'm not clear of, if your order circumscribes, but I want an abundance of caution to check with you first in some of the materials that he has given, the Government has given us pursuant to the thirty-five hundred disclosures.

Mr. Anderson listed an Anna Mae Aquash who is a person {861} who had been in the encampment area, I believe, and I'm not going to ask anything other than to see if he knows that person and can say whether that person was one of the occupants or visitors to that area

prior to the incidents. And I think that's a proper question. But I thought I should check with you first.

MR. HULTMAN: Your Honor, my objection is that this is no showing of any kind that this person in any way had anything to do with any of the events that are concerned in this trial, and that this again is an attempt to get a name before this jury.

Counsel makes no showing of any kind that this individual had anything to do, and I'm sure the record will likewise at the end of this trial indicate such. The mere fact that somebody lived in the area at one time or another, unless there was some showing or basis. Now, what has happened, Your Honor, so that the Court will know, this woman was later found murdered. There's been no showing, there was not in the last trial, there's no showing to my knowledge in any way, not one scintilla of evidence, that she in any way connected with these events at all.

That the only reason that counsel is attempting to get this name before the jury is in order to raise an issue which is not relevant and to prejudice the jury with an issue which has nothing to do with the trial. That is why I object {862} even to the raising of the question of the name of the individual.

MR. TAIKEFF: Your Honor, I believe that a document was prepared by the United States Government at the request of Judge Boeg which listed the name of every person who possibly might have been in the area on June 26, 1975. And I'm wondering if the Government would state whether Anna Mae Aquash's name appears on that list.

MR. HULTMAN: Your Honor, that document was prepared at the request --

MR. TAIKEFF: I didn't hear the answer to my question.

MR. HULTMAN: I'm going to answer your question to my leisure. I don't have to answer yes or no as some witnesses do.

MR. TAIKEFF: I see.

MR. HULTMAN: That request, Your Honor, was made by Judge Boeg. It was in a very early proceeding and the Government did its very best to put together a list of any possible people who could have even possibly been in or out of the area.

They did list -- did not state that these individuals were there. It was a massive list of anybody whose names came up any time of having been in the area at any time, and that's what the list consisted of.

In no way did it show or indicate that there was any relevancy as to any kind as to any of these individuals.

{863}

MR. TAIKEFF: Now, may I have the answer to my question, Your Honor.

MR. HULTMAN: I have answered the question to the best of my ability.

MR. TAIKEFF: I asked whether or not Anna Mae Aquash's name was on that list.

MR. HULTMAN: You've showed it to me.

MR. TAIKEFF: Well, I don't want to make a representation that I'm not sure of, and I'm asking -
-

MR. HULTMAN: I didn't know whether it was myself or not. I'm making the best representation.

MR. LOWE: Let me state, Judge, two things that make it relevant. First, there is going to be lots of evidence in this case of unidentified parties who are unidentified even today who escaped through other routes not with this group, as we've heard escaping; that there were many people. They will be identified by FBI evidence as having other people, because of the identification of weapons, of cartridge cases fired from other weapons.

We had at least one witness, Mrs. Long Visitor and her husband, who snuck away on a different route. This is in the FBI 302 forms. We believe that they are entitled to show the identities of any people who were living in or visiting to the area prior to this incident to lay a foundation for other evidence that may be relevant.

{864}

Now, we may not be able to connect them up, but this witness has stated to an FBI agent that Anna Mae Aquash was in this encampment area during the period he was there. And I think there's nothing objectionable to that. I realize that I cannot go into the incidents after June 26 without your authority, but I at least can ask this.

MR. HULTMAN: I'd just respond once more, Your Honor, and then I'll not in the future.

One, there is not any scintilla of evidence anywhere where I've seen in any document or any testimony that Anna Mae Aquash could possibly have been there that day, on the day we're talking about. If counsel will indicate to me that they have evidence that that if the fact then, Your Honor, I will take a different posture and a different position than what I have to this particular moment.

THE COURT: Well, I will permit counsel to simply ask the question if he knows, if this witness knows whether or not this particular person was in the area.

MR. HULTMAN: On the day of the event?

MR. LOWE: Or prior to it.

MR. HULTMAN: Well, John, the issue is whether she's there that day.

MR. LOWE: Curly, that's your issue, that's not just what happened on the 26th. You yourself have brought in a whole lot of days afterwards.

{865}

MR. HULTMAN: Your basis is the fact that there is a list showing or at least I got Elliot's observation that, and you said the same thing, that there are many people who are represented to be there that day.

MR. LOWE: That's one issue, that's true.

MR. HULTMAN: Well, is that the one were addressing, or isn't it?

MR. LOWE: This is cross-examination and if I can establish that she was there as this witness has told the FBI, I think I'm entitled to use that.

As I say there were unidentified people there on the 26th that we never have identified, nor has the FBI.

MR. TAIKEFF: Your Honor, here is a 302 dated September 9, 1975 by two special agents indicating that they were going around attempting to ascertain if witnesses could tell them whether or not Anna Mae Aquash was in the camp. So that surely the Government was interested in that question.

MR. LOWE: That's who that is, that's her married name.

MR. HULTMAN: And there's no showing as a result that she was. That's the point I'm trying to make that all investigation and if you will indicate to me any evidence, any scintilla of evidence that you are prepared to show that she was, then I will raise my objection.

MR. TAIKEFF: If we find out from these witnesses {866}

whether she was.

THE COURT: I'm going to permit that question be asked of this witness.

MR. HULTMAN: Is that going to be a limited question, Your Honor?

THE COURT: (No response.)

{867}

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

Q (By Mr. Lowe) During the time you were in the encampment area those several weeks, did you then or prior to that time know someone named Anna Mae Aquash or Ann Mae Pick Toe?

A Yes.

Q Was this a woman you personally had met or just the name you had heard?

A A woman I had personally met.

Q And was she from time to time in the encampment area?

A Yes.

Q Do you know whether or not she was in the encampment area on June 26th?

A No.

Q On June 26th, the day that the shooting took place, first of all, did you spend the night before in the tent area?

A Yes.

Q Were you sleeping in the tent with Jimmy Zimmerman?

A Yes.

Q What time did you arrive the next morning?

A I don't, I don't have a watch to tell.

Q Was it light when you got up?

A Yes.

Q Do you know whether it was early morning or mid-morning or late morning?

{868}

A I think about mid-morning.

Q Did you have any breakfast?

A Yes.

Q Was it cooked breakfast or cold breakfast?

A Cooked.

Q Who cooked it?

A I ate up at June Little's place.

Q Now in the past while living in the encampment, was that something that you did frequently, to go up to June Little's for breakfast or was this a special occasion of some kind?

A No. I just went up there that morning and they asked me to eat.

Q Did you normally eat in the tent area?

A Yes.

Q On that morning can you tell me who was living in the houses up around the Jumping Bull area called the residences? Describe the different houses and who you know was staying there?

A Well, there is old man and old lady Jumping Bull.

Q That's Harry and Ceclia?

A Yes.

Q Do you know which house they stayed in?

A They lived in the white house, the big one.

Q Is that the large white house in the center of Government Exhibit 71?

A Yes.

{869}

Q And let me ask you something.

MR. LOWE: May I approach the witness, Your Honor?

THE COURT: You may.

Q (By Mr. Lowe) I just asked you if the white house was the large house in the center of Government Exhibit 71 and you didn't even turn around to look. I'm curious, have you ever seen that exhibit before today?

A Yes.

Q When did you first see that exhibit?

A Little piece of paper.

Q How long ago was that?

A Last night.

Q Last night?

A Yes.

Q Who showed it to you?

A United States attorney.

Q Which one is that?

A The one in the middle.

Q The one in the middle. Mr. Hultman?

A Yes.

Q And did he go over that with you and show you the different things that were on the map, tell you what the different symbols meant?

A No. I already know what they were.

Q You did?

A Yes.

{870}

Q And how long did you look at that paper last night would you say from the time he showed it to you until the time you were no longer looking at it?

A I don't know.

Q Half an hour, two hours?

A About two hours.

Q Two hours.

Did he go over your story with you for that two hours?

A No. I just told him what the truth was and all.

Q And did he go over that sketch with you?

A Yes.

Q And did he go over it so much you remembered it without ever looking up there that there was a large white house in the middle of it?

A No. I remembered it.

Q You remembered. All right.

Turning around for a moment, to be sure we're talking about the same house, there is a symbol here which has a label that says "White House" on it. Is that the house you're referring to that Cecilia and Harry Jumping Bull lived in?

A Yes.

Q Who else, if anybody else, lived in that house with them?

A I don't know. I think that's all.

Q Do you know if they were there on the early morning of June 26th?

{871}

A No.

Q You don't know.

Do you know if they slept the night there?

A No.

Q There is a house here which is identified as a shed. Did anybody stay in that house, that shed?

A No.

Q There is a house here identified as "Green House." Did anybody live in that house?

A Yes.

Q Who?

A Ivis and Angie Long Visitor.

Q Do they have a child or children?

A Yes.

Q How many?

A Two.

Q Were they there over the night of June 25th to the morning of June 26th, do you know?

A Yes.

Q Did you see them on the morning of June 26th?

A Yes.

Q Then there is a house up here called "Log Cabin." Who lived in that house?

A Dennis and his wife.

{872}

Q How about this house here?

A Nobody.

Q And I believe you already stated this was the house of June Little and Wanda Sears?

A Yes.

Q How many people lived in there besides the two of them?

A Their two daughters.

Q Anybody else?

A I don't know.

Q How about Jumping Bull Hall? Nobody said anything about that. Did anybody live in Jumping Bull Hall?

A No.

Q Have you described all of the occupants of these houses in this general area of Jumping Bull Hall compound other than the tent area?

A Yes.

Q I believe you said that you were at, I think your testimony was that you were at the Wanda Sears house or the June Little house and saw the red and white van Pull in?

A Yes.

Q Did you see that yourself or did somebody tell you that happened?

A No. I seen it.

Q You did.

And where were you located when that came in?

{873}

A I was laying on top of the roof.

Q You were laying on top of the roof of the house?

A Yeah.

Q What time was this about?

A I don't know. I didn't have no time.

Q Was it mid-morning, early morning, early afternoon?

A Think it was mid-morning.

Q Mid-morning.

Would you say that it might be around 10:00 o'clock?

A Might have been.

Q How long was that after you had gotten up would you estimate?

A I don't know.

Q Ten minutes, two hours, hour, half hour?

A I don't know.

Q Did you go directly to the June Little residence after you got up or did you do some things in the camp area first?

A I went directly to the house.

Q You did?

A Yes.

Q Had they made arrangements the day before for you to come have breakfast with them or had they sent word to the tent area that morning?

A No. I just walked up there.

Q And so after you got up there you ate your breakfast?

{874}

A Yes.

Q Then you went and got up on the roof of the house?

A Yes.

Q Now if I was to suggest to you that there -- strike that.

You saw the red and white van come in and where did you see the red and white van go or stop when it first came in there and you were on the roof?

A Stopped behind a house.

Q Now when you say "behind a house," are you referring to this house, first of all, the residence?

A Yes.

Q And on which side of the house are you referring to?

A Trees on this side (indicating).

Q Over here. There are some trees shown on what is the north side of this residence. Are you speaking about in those trees?

A Yes.

Q And that's where you saw the red and white van stopped?

A (Witness nods affirmatively.)

Q Where did the people go that were in there?

A They all got out and started talking.

Q Who was in it?

A Leonard and Norman and Bill.

Q And they just got out and started talking.

How long were they standing there talking?

{875}

A I don't know. I think about five minutes.

Q About five minutes.

Then you said you saw somebody else come in.

A Yeah.

Q And where did they come?

A I don't know which way they came through but just come down the road.

Q And they drove right by the house, didn't they?

A Yes. They drove in front of the house.

Q And did you jump off the roof when you saw them drive by?

A Yes.

Q How high is the roof?

A Not too high.

Q Well, how high is not too high; ten feet?

A I don't know. About. Yeah, about ten feet.

Q Not as high as this ceiling?

A No.

Q And did you then walk around by the various houses you described to go back to the tent area?

A No. I went inside the house and hid in there.

Q You went inside of the residence?

A Yes.

Q And hid in there.

And who did you see inside the residence when you did that: anybody?

{876}

A No.

Q You didn't see anybody in there at all?

A No.

Q You didn't see June Little or Wanda Sears or their two daughters?

A June Little and Wanda was there and their kids.

Q I thought you just said you didn't see anybody in there.

A Well, they were home already. They were there.

Q That's not what I asked. I asked you, did you see them when you went in the house?

A Yeah.

Q At that time?

A I saw them in the house. When June went out and started talking with them, FBI, because they stopped in front of the house and they both got out and walked to the door and asked if they seen Jimmy Eagle around.

Q I thought you said you got down off the roof when they went by.

A No. That's when they were coming, then I jumped off before.

Q So you jumped down before they got to the house?

A Yeah. Then I went in the house.

Q Then you went inside. Then they drove past the house after they talked with June Little, is that your testimony?

A Yes.

Q That's when you got out and walked around the top of the {877} crest of the plateau there?

A Yes.

Q Now what I want to do here, I've got a sketch here. Can you see that all right from where you are?

A Yes.

Q This is nothing more than a copy of Government Exhibit 71 which we made from a piece of paper that the government gave us. I suspect probably the same kind you looked at last night. And what I want to do, be sure I understand exactly where you say you went, what route you took and where you did various things. So what I'm going to do is I'm going to mark where you tell me on here. If I put a mark in the wrong place, you tell me that, too. It will be better than putting a lot of marks up on that exhibit because that's the government's exhibit.

The first thing we're talking about, I circled in red there, that's the house you were in when you started to leave after the FBI drove by, am I correct?

A Yes.

{878}

Q And if I understand your testimony correctly, you said that you walked generally around this way (indicating), is that correct?

A Yes.

Q O.k.

A Along the fence.

Q Along the fence, did you say?

A Yes.

Q All right. There is a fence along this field?

MR. HULTMAN: Your Honor, I believe it is a misstatement of the record. I think the record will show that he didn't walk, he ran.

MR. LOWE: The witness is testifying on cross examination. Mr. Hultman can take him on redirect.

MR. HULTMAN: It is a clear misstatement of the record, that's the point I wish to make, and ask the witness -- may I voir dire one question, your Honor?

MR. LOWE: I don't want redirect in the middle of my examination, your Honor.

THE COURT: Just a moment.

Members of the jury, you may recall that I have previously instructed you that if counsel do misstate the evidence, you should disregard it, and that it is your own recollection which will be controlling on this matter; {879} and if the statements by counsel on either side are at odds with your recollection, it must be your recollection that controls. You may proceed.

Q (By Mr. Lowe) Were you walking or were you running over to the fence?

A Running.

Q You were running?

A Yes.

Q The fence is along this field here (indicating), is that right?

A Yes.

Q All right. So you went over the fence, and you walked along the fence, something like that (indicating)?

MR. HULTMAN: I object again, your Honor. The record shows he was running, and counsel again is saying he was walking.

MR. LOWE: I will strike that, your Honor.

THE COURT: Very well.

Q (By Mr. Lowe) Now, were you running or walking when you got to the fence?

A Running.

Q All right. You were running along the fence, but you followed this route as you were going along the fence, is that correct?

A Yes.

{880}

Q Did you go behind the houses?

A Yes.

Q And I believe you said that you cut over in this general direction (indicating), is that correct?

A Yes.

Q And if I am tracing where you pointed, I believe you said you just took a route across here (indicating), over to the tent area, is that correct, something like that, is that correct?

A Yes.

Q Now, what I want to do, we have a measuring stick here, with your assistance I want to try and see if you can tell me about how far that is; and this is marked off in feet from zero to twelve hundred feet; and if you will watch while I do that, I am going to try and scale this off so we can tell about how far you went. I am going to start by putting the zero on the house. Would you say that you went over on a fairly straight line from the house to the fence?

A Yes.

Q All right. That measures about 300 feet over to that line, is that about where you went?

A Yes.

Q All right. So 300 feet, then I am going to turn here so we can get it to go down the fence line, that's what you said you did. you went down the fence line?

A Yes.

{881}

Q To a point behind the house, measures 900, and actually did you go practically a straight line across then?

A Yes.

Q All right, and let's just put it up -- I will do it to a thousand, that's a little easier, put it on the zero again.

A Stayed on top of the hill all the way up to the top.

Q Stayed up here (indicating), up to here, that's 2,000; and it looks like it is about another 500 to the tent area. So it is about twenty-five hundred feet, you agree that's about the distance that you went along the route there?

A Yes.

Q All right. Twenty-five hundred feet. There are 5,280 feet in a mile. That's pretty close to a half mile, isn't it?

You will have to answer because the court reporter can't take down a nod.

A Yes.

Q Did you run the whole way or did you walk some?

A Well, when I was almost there, I walked some.

Q O.k. How long would you say it takes you to run and walk that distance, the way you did it on that day?

A Well, I don't know.

Q Do you think it would take 10 minutes?

A Yeah, about 10 minutes.

Q About 10 minutes.

Then when you got down into the tent area, what did you do, {882} did you talk to anybody, did you do anything, sit down in the tent?

A I don't remember. I just picked up a rifle and ran back up.

Q O.k. How long would you say you were in the tent area before you actually started running back up again, were you there, let's say as much as five minutes?

A I don't know.

Q Could it have been longer than that or less than that, do you have any idea?

A No.

Q O.k. So then you ran back up with the rifle. Who was there when you got there?

A Charles and Stuntz and Brown, I think it was. I'm not too sure.

Q Charles and Stuntz and Brown were there?

A Yes, on the hill.

Q Oh, on the hill, I'm sorry. Let me clear up what I am asking, you misunderstood.

When you got to the tent area, who was in the tent area?

A The girls, Dino, Wish, Jimmy, and I think that was all.

Q By "Wish", you mean Wilford Draper?

A Yes.

Q And did anybody else grab a gun and run up with you?

A No. I ran by myself.

{883}

Q And what route did you use to run back up, can you take the pointer and indicate on Exhibit 71?

A (Indicating) Ran back this way along the river here (indicating), and then I went over here to about here (indicating).

Q All right. Was there a particular place you ran to up there?

A Yeah, I think it was behind the white house.

Q All right. So when you got into the tent area, you then left, went by the road, down to here (indicating), and then cut up behind to the white house, is that approximately the route that you described?

A Yes.

Q All right. Now, we will go up and see if we can figure out about how far that is. I don't know if we had any testimony about that or not, what we were talking about.

Could we say you ran out in this direction (indicating) from the tent to the road?

A Yes.

Q That would be about 450 feet down to here (indicating), it makes it about eleven hundred feet to there (indicating), and up in the back would add another about 500 feet. Would you be satisfied that was about sixteen hundred feet that you ran?

A Yes, I think so.

Q O.k. So we have about sixteen hundred feet that you ran {884} and how long would you say it took you to run that, you had your gun, you had just run a half mile, do you have any recollection?

A No.

Q Now, when you got up to the back of the white house -- is that where you went?

A Yes.

Q What did you first see when you got to the back of the white house or hear?

A I heard shooting.

Q Pardon?

A I heard shooting.

Q All right. Let's stop at that point when you heard shooting.

Up until that point as you were running along the back of the fence, down to the tent area, first of all, during that period of time did you hear shooting?

A Yes.

Q About how many shots did you hear before you got to the tent area the first time?

A About four.

Q Four shots only?

A Yes.

Q All right, and between getting your gun and running up to the back of the white house, how many more shots did you hear {885} in that period?

A I don't know.

Q Did you hear any?

A Yes.

Q Was it only one or two, as opposed to 10 or 20?

A Yeah, about 10 or 20

Q 10 or 20?

A Yes.

Q When you got to the back of the white house, did you see anybody that you recognized up there?

A Charles and Stuntz.

Q And what were they doing?

A Shooting.

Q And who were they shooting at, or what direction were they shooting?

A Down on the cars.

Q Down on which cars?

A The FBI cars.

MR. LOWE: May I have a moment, your Honor?

(Counsel confer.)

Q (By Mr. Lowe) Tell us again what weapon you picked up in the tent area.

A .22 caliber.

Q What kind of weapon did Norman Brown have?

A .22 caliber.

{886}

Q You had two .22 calibers?

A Yes.

Q What kind of gun did Norman Charles have?

A Something like a 308 British.

Q The 308 British?

A Yes.

Q Where have you heard the term, 308, who told you that, or where did you learn that?

A I don't know. I just looked at it.

Q You looked at it?

A Yes.

Q It says "308"?

A Yes.

MR. LOWE: May I have that weapon?

Q (By Mr. Lowe) I show you Government Exhibit 69-A. Is this the weapon you were referring to?

A Yes.

Q Would you please examine this to satisfy yourself you have looked it it enough time, and tell me where on there you see "308"?

A (Examining) I don't know. It don't say it on there. I don't see it on there.

Q You don't see it on there. Isn't it a fact that the first time you first heard the term, "308", was from the Government?

A Yes.

{887}

MR. LOWE: Thank you. Can we stipulate this is not a "308"?

MR. HULTMAN: John, the record will show at this time, I believe correctly, that he did not identify this particular weapon. He might have seen one similar or like it.

MR. LOWE: His testimony was just heard by the jury. My question is: Can we stipulate that's not a 308?

(Counsel examines exhibit.)

MR. LOWE: You find it is a 302?

MR. HULTMAN: 303 Infield.

MR. LOWE: I know what it is.

MR. HULTMAN: It is a British Infield, isn't that correct?

Q (By Mr. Lowe) What kind of weapon did you see Joe Stuntz using?

A A .44 Ruger.

Q How do you know it was a .44 Ruger?

A Because it was short.

Q How do you know it was a .44, for example?

A Well, I noticed it, and he showed it to me.

Q How do you know it was a Ruger?

A Because he showed it to me.

Q He told you?

A Yes.

{888}

Q Isn't it true, Mr. Anderson, that the Government told you that was a .44 --

MR. HULTMAN: (Interrupting) I object, your Honor. I clearly object. This question has been asked, and it has been answered. It is an attempt by counsel to get something before this jury that is not a matter of record here.

MR. LOWE: All he has to do is deny that. It is a proper cross examination question.

THE COURT: He has answered that Joe Stuntz told him.

MR. LOWE: I want to know whether the Government also told him. It has been almost two years.

THE COURT I did not understand you to put in the word "also".

MR. LOWE: Again on cross examination -- I will rephrase it if the Court desires.

THE COURT: You may.

Q (By Mr. Lowe) Didn't the Government also tell you that was a .44 Ruger?

A Yes.

Q In fact, the Government was very helpful when they interviewed you?

MR. HULTMAN: I object, your Honor, as this is clearly an action on the part of counsel which is inappropriate.

THE COURT: The objection is sustained.

{889}

Q (By Mr. Lowe) Now, you have told us of a number of people who were at the Jumping Bull area on June 26th when the shooting took place. Isn't it also true that Jimmy Eagle was at Jumping Bull's on the 26th?

A I don't know. I didn't see him.

Q You didn't see him?

A No.

Q Do you remember telling one of the agents that he was there on the 26th?

A Yes.

Q You say you got behind the white house, we had gotten to that point, and at that point you heard -- between the tents and the white house, you heard 10 to 20 more shots. You were up there with your .22.

What, if any firing, did you do from that position?

A I had to move up and go shoot down toward the cars.

Q Towards the cars. Were you shooting at the cars, or were you shooting at the two people down there?

A The cars.

Q The cars. You realize it would be pretty serious stuff if you were shooting at the people, don't you?

A Yes.

Q And how about Joe Stuntz and Norman Charles, what were they doing, who were they shooting at?

A I don't know.

{890}

Q Were they shooting --

MR. HULTMAN: (Interrupting) I object, your Honor. There has been no foundation laid in any way as to the capability of this witness knowing who the two other individuals were shooting at. He has been asked on foundation, and the question has been answered that the witness does not know.

Now, this is an attempt on the part of counsel again to put words into the witness' mouth; and I submit that this is not proper examination at this point. Once the foundation has been laid, it has been laid by counsel.

MR. LOWE: That's absolutely false to begin with. If we can have the question read back, the question had nothing to do with that. I think if Mr. Hultman would listen to the question before he objects, he would realize that.

THE COURT: The reporter will read the question back. I am not sure that a question was ever asked.

MR. LOWE: I did ask a question. Mr. Hultman jumped on top of it.

(Question was read by the reporter.)

MR. LOWE: That was the question in its entirety: Were they shooting? That is my question, I think it is proper question.

THE COURT: That is a proper question.

{891}

MR. LOWE: Thank you.

Q (By Mr. Lowe) Do you understand what the question is?

A No.

Q Let me state it again. Were Joe Stuntz and Norman Charles shooting?

A Yes.

Q What direction were they shooting in?

A I don't know, down towards the cars, I guess.

Q Towards the cars, and by that you mean the two agents' cars, as opposed to the cars on Highway 18?

A Yes.

Q O.k. so whether or not you could tell exactly where they were aiming with their sights, they were shooting generally in the direction of the two cars, weren't they?

A No, I don't know.

Q Well, were they shooting down into the little valley there, the bowl?

A Yes.

Q That's all I am asking.

As I understood your testimony and as I tried to make notes on it, you said that at that time one Special Agent was standing behind the uplifted trunk of his car, is that correct?

A Yes.

Q I am not sure if you said the trunk was up or you were just saying he was behind the trunk. Was the trunk up or down?

{892}

A Up.

Q And you indicated that the other person you saw was shooting a handgun, is that correct?

A Yes.

Q And that that was the first time you saw either of the two cars or the two men down there, that's what they were doing?

A Yes.

Q How many shots did you observe them to fire from their various weapons the first time you looked down and saw them shooting?

A I don't know.

Q Well, was it 10 shots, was it two shots, was it 20 shots?

A I don't know.

Q Well, about how many?

MR. HULTMAN: I object, your Honor. This question now has been asked and answered twice, that the witness does not know, and further question would be repetitious, and again an attempt on the part of counsel -- the question has been fairly asked and fairly answered twice.

{893}

THE COURT: But the witness has twice that he does not know.

Q (By Mr. Lowe) Isn't it a fact, Mr. Anderson, that the first time you saw two people down by those cars, they were lying prone and you thought they were both dead already?

A The first time?

Q The first time.

A No.

Q Isn't it true that you only appeared on the hill and saw the cars for the first time after the agents had been killed?

A Yes.

Q That is true, isn't it?

A Where, on the hill? I don't understand the question.

Q By the houses, by the houses.

A I don't understand the question.

Q All right. Let me back down a little bit.

Let's get something straight here because you've used the area, and maybe we're all misunderstanding. Would you point on Exhibit 71 using the pointer. When you saw "the hill", tell the jury what you are referring to, point to it.

A This hill (indicating).

Q That hill there?

A Yes.

Q When you went up the first time you say you were by the white house. Were you on the hill or were you down off the hill?

{894} How does that hill relate to the white house? Was the white house on the hill?

A No. The white house is over here (indicating) and the hill is right here (indicating).

Q All right. Is the hill behind the white house then?

A Yes.

Q But the white house is not on the hill?

A No.

Q It's off of the hill?

A It's on the hill over here, on this one.

Q All right. So when you have said from time to time that you were on the hill you are referring to the hill behind the white house?

A No. The hill where the house is.

Q The hill where the house is?

A Yes.

Q Well, I just asked you if it isn't true that the first time you appeared on the hill, referring to the one the white house is on, that's what I thought I was referring to that the agents had already been killed. Now, can you answer that question?

A When's this?

Q The first time you appeared on the hill where the white house is, isn't it not true that the agents had already been killed?

{895}

A No.

Q Is it not true that the first time you saw the two men that one of them was firing a rifle and the other was firing a handgun?

A Yes.

Q Well, which one was firing the rifle?

A The one behind the trunk.

Q So he was not just standing behind the trunk, but he was behind the trunk firing a rifle; is that correct?

A Yes.

Q Did the agents shoot at you?

A I don't know.

There were all kinds of bullets flying around all over.

Q Could you hear bullets coming by where you were?

A Yes.

Q Is it not true, Mr. Anderson, that about 11:30 that morning you were in the tent city preparing the noon meal, or preparing to eat the noon meal, when you first heard shots, and that you then grabbed your gun and ran up to the hill, isn't that the truth?

A No. I don't know what time it was.

Q Well, what time, at any time that day, did you prepare to eat the noon meal?

A We didn't have the noon meal.

{896}

Q That was my question. What time were you preparing, where at any time on that day did you prepare to eat the noon meal?

A In the camp.

Q Pardon?

A In the camp.

Q In the camp?

A Yeah.

Q And that's what I'm referring to as tent city, that's what you call the camp?

A Yes.

Q So that is where you were preparing to eat the noon meal, isn't it?

Q No. We didn't eat a noon meal.

Q Were you, you were getting ready to eat the noon meal there, weren't you ?

A Yes.

Q Okay. Now, you described the first time you looked down at the two cars, and you've just described what you say as one was standing firing a rifle from behind the trunk and one was

shooting a handgun, and you don't know how many times they shot. Were you looking at them while you saw this?

A Yes.

Q Did you see any puffs coming from their guns?

A No.

{897}

Q Would you have been able to hear gunshots if you were looking at them and they fired their weapons?

A Yes.

Q Do you know if they fired at all while you were looking at them?

A No.

Q Well, then why did you say that one special agent was shooting a pistol, or shooting a handgun?

A Well, they just kept on going like that (indicating).

Q Well, what do you think he was doing instead of shooting

A I don't know.

Q Was it, did it reasonably appear to you that he was shooting a gun?

A Yes.

Q All right. After that did you turn away or move away at some point to where you were no longer observing those cars?

A Yes.

Q What did you do at that point?

A I moved to the log cabin.

Q All right. You moved to the log cabin.

Now, let's, looking on here, referring to Government Exhibit No. 71, the log cabin is this house right here (indicating); is it not?

A Yes.

{898}

Q All right. How did you move, did you move along behind the houses to go there?

A Yes.

Q All right. So if I can draw a green line here, is that where you went?

A Yeah.

Q All right. And what did you do when you got over to the log cabin?

A Sat there and started shooting towards the road.

Q Why were you shooting towards the road?

A Because there were cars trying to come in.

Q Did you know who they were?

A Yes.

Q Who did you think they were?

A The police.

Q And did you hit any of the cars, do you know?

A No, I don't know.

Q Has anybody at any time, whether it's Special Agent Adams or anybody else, suggested to you that you could be charged with attempted murder for shooting at those cars?

A No.

Q Do you know that you could be?

A Yes.

Q Does that worry you a little bit?

A Yes.

{899}

Q How long did you start shooting, or how many shots did you fire at those cars would you estimate?

A I don't know.

Q Fifteen minutes, would you say?

A I don't know.

Q Was it more than that, or less than that do you think?

A I don't know. I didn't have a watch.

Q You have some idea about time. Was it a short period of time or was it a real long period of time or you just don't know?

A I just don't know.

Q All right. Did something occur to make you move again to another position, or back to where you were before?

A Yes.

Q What happened?

A Gunfire just started coming from the road all over.

Q Meaning heavier gunfire?

A Yes.

Q And what did you do then?

A I moved back to the white house.

Q And when you got back to the white house did you once again see the cars down below?

A Yes.

Q And as I made notes you said that the second time you saw the cars one of the special agents, one of the people down there {900} that you saw, had no shirt on; is that correct?

A Yes.

Q And he was tying a bandage on the other person; is that true?

A Yeah, I think so.

Q What made you think he was tying a bandage on?

A I don't know. The other guy got hit. I didn't see him sitting up or anything.

Q Was he tying it on his leg, arm or head?

A I don't know.

Q Why would you say he was tying a bandage on if you can't even tell what part of the body he was looking at?

A I don't know. I didn't know what he was trying to do.

Q Well, did you see him take his shirt off?

A No.

Q Did you see him holding his shirt in his hand?

A No.

Q Did you see the other agent with the shirt on him somewhere?

A No. I didn't see the other agent.

Q Well, can you tell this jury anything that you saw that makes you now testify that you thought the one agent was tying a bandage on the other?

A Well, I don't know, because I didn't see the other guy sitting up or anything.

Q Isn't it a fact, Mr. Anderson, that the Government suggested {901} something about a bandage to you?

A No.

Q You never heard that from the Government?

A No.

Q And you have nothing you can tell this jury that would give them any idea why you would think there was bandaging going on?

A No. Just that I didn't see the other agent.

Q And you say one of the agents, one of the people that you saw down there, was standing, but you don't know which one; is that correct?

A Yes.

Q You don't even know whether it was the one with the shirt on or the shirt off, is that true?

A The one with the shirt off, he was standing.

Q The one with the shirt off was standing?

A Yes.

Q Well, then you do know which one was standing, the one with the shirt off was standing?

A Yes.

Q You couldn't see the other one at all, is that your testimony?

A No -- yes.

Q What was the agent who was standing without the shirt on doing? Was he firing, aiming?

{902}

A I don't know.

Q Did you hear any gunshots?

A No.

Q Was he yelling or calling or just standing there, or crouching or hiding? Can you tell anything of what you saw?

A I don't know. I didn't see him. He was hiding I think.

Q Now, wait a minute. I thought you just said you saw him standing there with no shirt on.

A I saw him standing there with no shirt on.

Q Well, now was he standing or was he hiding?

A Standing.

Q I must have misunderstood what you said a moment ago. I thought you said he was trying to hide. Take a minute. I mean I want you to take the time that you need to give a proper answer.

What was he doing?

A He was standing behind the car. Standing behind the car?

A Yes.

Q Standing behind which car? What color?

A The one with the trunk open.

Q What color was that, do you remember?

A No.

Q Do you remember the trunk was open, but you don't remember the color?

{903}

A Yes.

Q Special Agent Adams asked you about the car with the trunk open?

A I don't know. I don't remember.

Q Possible he did?

A I don't remember.

Q Did you shoot down there at that time?

A No.

Q What did you do next? Did there come a time when you turned away?

A I just stood around for a while because I was scared.

Q How long would you say you stood there and looked at the agent while he was standing up there without a shirt on? Ten or fifteen minutes, two or three minutes, half hour?

A Five minutes.

Q About five minutes?

A Yes.

Q And then what did you do?

A I don't know. I don't remember.

Q You don't remember?

A No.

Q What's the next thing you do remember?

A I don't know. I think I ran back down to the camp.

Q You think you ran back down to the camp?

A Yes.

{904}

Q When you were testifying on direct examination my notes indicate that you said that you kept running back and forth between the white house and the log cabin. Was that true when you said it? Does that jog your memory?

A Yes.

Q So after you saw the agent standing without the shirt did you run back to the log cabin; is that your testimony?

A Yes.

Q Are you sure about that now, or are you just guessing?

A Yes, I'm sure.

Q You are sure?

A Yes.

Q All right. How long -- what happened when you got over to the log cabin?

A I just started shooting out towards the Jumping Bull Hall.

Q At people?

A No. At the hall.

Q Just at the hall?

A Yes.

Q Why would you shoot at Jumping Bull Hall?

A I don't know.

Q Was there anybody in Jumping Bull Hall?

A No.

Q Let me understand the first time you shot at the log cabin you were shooting at people, and the second time you were {905} shooting --

MR. HULTMAN: That's an incorrect statement of the record, Your Honor. Again I object. He said he was shooting at cars. I think he made it very clear. Not at people.

MR. LOWE: I'll clarify that.

Q (By Mr. Lowe) Mr. Anderson, were those cars driving themselves or were there people driving those cars?

A There were people driving them I guess.

Q And you were shooting at those people in the cars, weren't you?

A No. At the cars.

Q Just at the cars. But you were being careful not to shoot at the people, only the cars?

A Yes.

Q But at this time you were shooting at the house and there was nobody in the house?

A Yes.

Q And you were careful before to shoot at the cars and not at the two men in the lower meadow?

A Yes.

Q During this whole day you shot at only inanimate objects, not people; is that your testimony?

A Yes.

Q Now, we've got this green line, and because I can't make a whole lot of green lines there, what I'm going to do is I'm {906} going to put one for the first trip and now we've got a second trip. That's two I'll just put there. And on that occasion how long did you stay out there and shoot from the log cabin would you say?

A I think about twenty minutes.

Q Pardon?

A I'm not sure.

Q Did you say thirty minutes?

A About twenty I think.

Q Twenty minutes.

Well, now could it have been more than twenty minutes?

A I don't know. I don't remember.

Q Okay. I'll take your twenty minutes, and let's talk about that for a moment. During the twenty minutes, do you know about how many times you shot?

A No.

Q All right. What happened? You indicated before you kept running back and forth and I believe your next testimony was you went back. I believe you indicated that you came back to the white car, white house, and you said you first, you said you saw nobody in the tree line. Is that correct, that you didn't see anybody in any tree line? That's what you said the first time it was asked?

A In the tree line?

Q Yes.

{907}

A No.

Q It's not true?

A Which tree line?

Q Well, pick any tree line at all along -- point it out here. As you are looking here there's a tree line that runs right along here all the way down here and around the back. So as you are looking down from the houses. Did you ever see anybody shooting from any of those tree lines?

A No. I just seen Peltier down there.

Q By where the junked cars?

A Yes.

Q But you said that the third time you looked at the cars, which is -- you are back now at the white house again I guess. You saw nobody?

A No.

Q Is that correct?

A Yes.

Q You didn't see anybody down by the cars at all and then I gather you went back over to the log cabin again, is that what happened?

A No. I went down to the camp.

Q You went down to the camp.

All right. Taking the pointer, will you point and indicate where you went when you went back to the camp from the white house after the third look at the cars.

{908}

A Ran back down this way, down here (indicating).

Q And went back into the tent area?

A Yes.

Q All right. I'll mark that here in purple. And we measured that before to be about 1600 feet. And can you tell me about -- did you run down there or walk down there or how did you go down?

A We walked down.

Q You walked down. How long does it take you to walk a quarter of a mile, a third of a mile like that back to the tent area? How long do you think it took you?

A I don't know.

Q Ten or fifteen minutes?

A I don't know.

Q What happened when you got back to the tent area? What did you do then?

A I was told to load up the pickup. They have a van, a red and white van.

Q Okay. Mr. Peltier was in the tent area, wasn't he?

A Yes.

Q And you then described in your direct testimony a fourth time that you looked at the FBI cars; and did you run back up from the tent area, or walk back up from the tent area again to the white house for that fourth look?

A No.

{909}

Q How did you get back up there?

A I don't remember that.

Q You don't remember that?

A No.

THE COURT: Court is in recess until 3:25.

MR. LOWE: All right, sir.

(Recess taken.)

{910}

THE COURT: Bring the jury in.

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

Q (By Mr. Lowe) Mr. Anderson, you have identified a number of people by name who you saw were in the area and who were involved on this particular day and you've identified them by name. I show you Defense Exhibit 79A which are some pictures and I show you on page 3, photograph No. 3 and I ask you if you know who that is and if so will you state who it is?

A No.

Q I call your attention to the second row from the rear back there and there is a man sitting in the middle of that row. I ask you if that is the Dino Butler you referred to being in the encampment area on the 26th of June?

A Yes.

Q Is the woman sitting on his right Nilak Butler, the Nilak you spoke of?

A Yes.

Q Is the next young woman Jeannie Bordeau, the woman you referred to?

A Yes.

Q Now at the beginning of the recess or when we recessed, we were talking about your various trips back and forth between the white house and the log cabin and we had talked about, just to refresh where we are because I don't want to confuse you as {911} to where we were, on the first occasion you said you saw the FBI car, someone was standing behind the trunk and someone was shooting with the handgun. The second look you said you saw someone standing with no shirt on and you did not see the other one. Then you said you kept running back and forth, you said, on the third trip, I think we were talking at that point about the third trip and I will refresh your recollection. Going back a couple of questions just before the break to try to keep the continuity here, that I had pointed out to you that you were asked about seeing anybody in the tree line and in response to my question you said that you saw Mr. Peltier in the tree line at a point I believe Mr. Hultman marked as "P1" on Government Exhibit 71 and I think it was just about that point that we took our recess. What I was getting to and I want to get to now is that when you were asked these questions this morning, the questioning that went about the tree line, and you indicated that you saw Mr. Peltier at the tree line and you said, Mr. Hultman said, "And what was he doing?" And you answered, "I don't know"; the question: "Did you see him at any other place?" Answer: "No." Then Mr. Hultman said, "I'm going to mark the map," and then he went up and marked the exhibit, and then he said, "Now when is the next time that you looked down to where the agents' cars were? What did you see the next time you

looked down to the agents' cars?" And your response was, "Nobody," and he asked you, "Was anything going on at that time?" And you {912} said "No."

Now is that your recollection so far?

MR. HULTMAN: Your Honor, I would object at this time on the grounds that the record, as I clearly understand it from this morning, was that on the third occasion in looking down that there was a specific reference to people seen and on the fourth look down there was none. That's as I clearly understand the record.

MR. LOWE: Which stands for the proposition that's why we should have court reporters in the courtroom instead of Counsel remembering. I'm reading from a transcript this morning and that's exactly what the court reporter took down. I haven't finished it, if Mr. Hultman will allow I'll continue my questioning and go through the rest of it also. May I?

THE COURT: Proceed.

Q (By Mr. Lowe) Do you remember the question that is before you, do you remember when Mr. Hultman said, "What did you see at the next time you looked down to the agents' cars?" And you answered anybody, excuse me, "Nobody," and then the question was, "Anything going on at that time?" And your answer was, "No." Do you remember that much?

A Yes.

Q And that was, am I correct in the way your answers were there that that was what you were observing at the time you saw Mr. Peltier in the tree line, that nothing was going on at the {913} agents' cars, is that correct?

A I don't get the question.

Q When you saw Mr. Peltier at point "P1" you told us about that, is that when it was that you observed nothing was going on at the agents' cars right at that point?

A No. That was the second time.

Q You say that was the second time.

If I understand correctly, the second time you told us you saw the agent standing there with no shirt on so this must have been the third time, am I correct? The first time you were shooting over the trunk, second time he was standing there with no shirt on, the third time you said there was nothing going on and you didn't see anybody. Am I correct about that?

A Yes.

Q Now then Mr. Hultman asked you, "Did you see any individuals down at the agents' cars at any time?" And then you said, "Yes." And am I correct in presuming that this was a fourth time you were referring to and you described seeing, Butler, Robideau and Peltier?

A Yes.

Q Peltier couldn't be up at the tree line and down at the cars at the same time, could he?

A No.

Q Between the third time when you saw Peltier in the tree {914} line and saw nothing happening down at the FBI cars, between that time and the time that you saw the three men down at the FBI cars, where had you gone or what were you doing in between those two time periods? Had you gone back to the log cabin?

A Yes. I think so.

Q Do you know on that occasion about how long you stayed back at the log cabin?

A No.

Q Do you know at the time that you were observing Mr. Peltier at the tree line and observing that nothing was happening and you couldn't see anybody down at the FBI cars how long were you there at that time?

MR. HULTMAN: Your Honor, might I have an opportunity to voir dire just on one question and that is --

MR. LOWE: Judge, I object to this. I ask we have a side bar. I don't want any signals to this witness.

MR. HULTMAN: I think Counsel is misleading the witness.

MR. LOWE: There is a proper time for that on redirect. I don't want this witness to get any signals from --

THE COURT: Counsel approach the bench.

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

THE COURT: I have given defendant unlimited voir dire on examinations from when a witness is under examination. I don't quite understand your objection to any voir dire at all. {915} I'm trying not to interfere with the way you want to present your case but on the other hand --

MR. LOWE: Judge, my understanding of voir dire is normally used to inquire about the basis for introducing an exhibit. That's when we used it primarily with pictures and things of that nature. I'm not --

THE COURT: Normal use of voir dire is for purposes of laying the foundation for an objection to the question.

MR. HULTMAN: That's correct, Your Honor.

MR. LOWE: None of these questions are objectionable. What Mr. Hultman is trying to do is redirect.

THE COURT: This is why I've called you to the bench. What is the voir dire?

MR. HULTMAN: Your Honor, I would like to lay the foundation --

MR. LOWE: Be quiet. I don't want the witness to hear. The witness is listening.

MR. HULTMAN: I think it's very clear the witness referred on direct testimony to four specific times and he did not match them up as Counsel is now in examination matching them up. All I would like to do for the purpose of preparing for an objection is to find and indicate from the witness as to what was the simple sequence of the four and that is the part Counsel very carefully left out the third one in his examination which this morning's total record indicates his {916} third observance is when the three people are at the car and that's the basis for my questioning on voir dire.

MR. LOWE: That's redirect, Judge.

THE COURT: That can be brought out on redirect.

MR. HULTMAN: All right.

THE COURT: As long as you're here, though, I will say and I will advise Counsel on both sides, I do object to Counsel in asking a question asserting, making an assertion that is not supported by evidence in the case. For example, Mr. Lowe, at the beginning of your examination you made some comment about were you there when Leonard Peltier said thus and so. There is no evidence, probably will never be evidence as to what Mr. Leonard Peltier said.

MR. LOWE: This witness said that. In our creating that question, I got this out of the FBI 302 that attributed that statement to the witness. That's why I asked it.

THE COURT: But it was not stated on direct examination and it is not evidence in the case until it's brought out.

Anyhow, I just cite that as an example. I did not do anything about it.

MR. LOWE: We'll try and rephrase it in a different form.

THE COURT: All I'm saying is Counsel should not make an assertion not supported by the evidence. In other words, present matters which might be needed by the jury as statements {917} of evidence if they're not supported by the record.

MR. LOWE: Very well.

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

Q (By Mr. Lowe) I believe where we left off, Mr. Anderson, you had just been at the white house and had observed Mr. Peltier in the tree line and observed no activity at the cars, had gone back to the log house and now, as I understand from the question I was referring to, you indicated there was a fourth occasion when you did see Butler, Robideau and Peltier. I'll ask you where were you located when you made that citing?

A At the white house.

Q At the white house again.

Now I want to be sure, some question has been raised, I want to be sure that I understand, that I have not misstated these trips. That so far we have talked about four specific times that you looked down and saw the cars. The first time, going in order now, the first time you saw a man firing standing behind the trunk of one weapon, one car, and the other man was shooting a handgun. That was the first time in sequence. The second time you observed one of the agents with no shirt on and for reasons that you concluded that he was trying to tie on a bandage or do something and you don't know where the other agent was on that one. That was the second time.

MR. HULTMAN: Your Honor, I would object at this time {918} because again Counsel's attempting to do the same thing. I would suggest and I would have no objection if Counsel would ask, that's why I asked the opportunity to voir dire, if he would just ask the witness to tell the sequence of the four events and I would have no objection of any kind.

MR. LOWE: I'm on cross-examination. This is perfectly cross-examination. I'm trying in a very fair way to corroborate what this witness has said and make sure there is no confusion in his mind or the Court's mind and I think I'm entitled to phrase my questions my way as long as they are proper.

THE COURT: Proceed.

Q (By Mr. Lowe) That was the second time. The third time was when you saw Leonard Peltier in the tree line and looked down and saw no activity at the cars, nor did you see anybody at the cars and that was the third time. Then the fourth time you saw Peltier, Butler and Robideau down at the cars and those are the only four times that's talked about so far. Did I correctly summarize those four times?

A I can't remember that now. I think it was the third time I saw the three standing down there by the car.

Q Was that before or after you saw Mr. Peltier in the wood line?

A Before.

Q It was before you saw him in the wood line?

{919}

A Yes.

Q What did you do when you saw the three of them down at the cars, where did you go from there?

A Back to the white house. Went to the cabin.

Q You went back to the cabin again?

A Yes.

Q I thought you went back to the tent area. You didn't go back to the tent area?

A Confused.

Yes. I went back down to the tent area.

Q This is after you saw them down at the cars?

A Yes.

Q So after you saw them down at the cars you went to the tent area. Do you know what they did down at the cars after you left to go to the tent area?

A No.

Q Did you go directly from the white house to the tent area at that time when you saw them down by the cars?

A Yes.

Q Mr. Anderson, if you left the white house while you saw them down at the cars and went directly to the tent area, will you tell the jury how you could thereafter see Mr. Peltier in the tree line?

A I think that was there the second time.

Q That was the second time?

{920}

A Yes.

Q Now the second time you told us you saw one of the agents with no shirt on and he was bandaging somebody. That wasn't the time you saw Mr. Peltier in the tree line, was it?

A I don't know. I can't remember.

Q Just a moment ago when I gave you the sequence and you said, no, you thought I was wrong, that the third time is when you saw the three men down at the cars and you said you saw Mr. Peltier in the tree line after that. How could you have seen Mr. Peltier in the tree line after that if he went back to the tent area?

A I don't know.

Q I don't either.

When you arrived in the tent area, I thought you told us that Mr. Peltier was there and he told you to load the red and white van.

A Yes, he was.

Q Now will you tell the jury if you were at the white house and saw the three men at the two cars down there and you went directly to the tent area, will you tell the jury how Mr. Peltier could be at the tent area when you got there if you had left him at the three cars?

A I don't know. But that red and white pickup was there. I don't know how that got there.

Q Where did you see the red and white pickup back there at {921} the tent area?

A Parked in the tree line.

Q Parked in the tree line?

A Yes. Yes. By the camp.

Q Excuse me a moment.

{922}

(Counsel confer.)

MR. LOWE: Do you have the Government Exhibit 12 or does the Court have that?

Q (By Mr. Lowe) I show you Government Exhibit 12, and ask you if you can state for the record what that is?

A It is a red and white van. Tell the jury what is the difference between a red and white pickup and a red and white van, where you saw those two different vehicles.

MR. HULTMAN: Well, I object, your Honor, there is nothing in this record that indicates that he saw two different vehicles. The record is very clear that there was one vehicle.

MR. LOWE: As much as Hultman might not like it, he has talked about a van and a pickup. Everybody on the jury knows there is a difference between a van and a pickup. It is apparent to the naked eye. I think it is proper to ask him about those two different vehicles.

A That's what I meant, the van.

Q (By Mr. Lowe) Do you know what a pickup is?

A Yes.

Q Does that look like a pickup to you?

A No.

Q Why do you call it a pickup?

A I don't know.

Q Did the Government suggest to you that a red and white {923} pickup was involved in this case?

A No.

Q Why would you call it a pickup?

A I don't know. That's what I called it before.

Q You meant the red and white van instead of the pickup?

A Yes.

Q When you got back, you have no explanation how Mr. Peltier could get from the FBI cars down there, as you go down the road to the tent area and when you arrive in the tent area, he is there ahead of you?

A Yes.

Q Now, during the time you were running back and forth from the white house to the cabin, the log cabin, you said you kept running back and forth. Was there any shooting going on during that time?

A Yes.

Q Where was the shooting taking place?

A Coming from the river.

Q Is that the only place you heard shooting during that time?

A And going towards the road.

Q Shooting towards the road?

A Yes.

Q That's the only two places you heard any shooting?

A Yes.

Q And is that true until you got back to the tent area?

{924}

A Yes.

Q O.k. Now, just to be sure we are clear here, I marked that little green area, and at one point I marked "1 and 2". I am going to take that off now because there just wasn't two spaces I wanted to show you. I was doing that in case we used this slide again.

When you got back to the Tent City, were there any women there?

A Yes.

Q They were already there when you got there?

A Yes.

Q And who were the women that were there when you got back there?

A Jeannie and Lynn.

Q And when you observed Mr. Peltier, Mr. Butler and Mr. Robideau down by the two cars, were they the only people down there that you saw, no women, for example?

A No.

Q Do you know approximately what time you got back to the tent area?

A No.

Q You don't know from anybody else making any comments or anything like that?

A No.

Q Do you know how long it was from the time you got back to {925} the tent area until the time you all actually went down into the creekbed and started to leave?

A No.

Q You wouldn't even have an estimate on that?

A Unh-unh.

(Counsel confer.)

Q (By Mr. Lowe) Now, during the time that you all were exiting this area in your group -- and you were, I believe you said, you went down the creekbed and went under a conduit and through some woods on a hill, and then you described being on the move at various times and in various groups for three or four days -- during this period of time did different people take turns carrying different weapons and other things that you were carrying?

A Yes.

Q O.k. Do you have any way of knowing whether -- who ended up with what weapons, or you just know from time to time who you saw with different weapons?

A I just know from time to time.

Q O.k. To your knowledge there was some shifting of weapons back and forth though?

A Yes.

MR. LOWE: Excuse me.

Q (By Mr. Lowe) I show you Government Exhibit 37-A for identification, and I ask you if you have ever seen that weapon {926}

A Yes.

Q Was that one of the weapons carried out by somebody in the group you went with when you left the creekbed and went out the way you have described?

A I don't know. I don't remember.

Q You don't remember?

A No.

Q Now, you described this car episode in Kansas. Mr. Peltier was not in that car, was he?

A No.

Q Now, during the march-out in the four or five days, three or four days, whatever it was you were all on the road, was there conversation about the fact that -- anything about what the FBI would do if they caught up with the group?

A I don't know.

Q You don't know whether there was or not?

A No.

Q In all of the time that you were up on the hill area around the house or the log house, the white house or the log house, in all that time shooting, can you tell about how many shots were fired from your weapon?

A I don't know. I don't remember.

Q Was it more than 10?

A Yes.

Q More than a hundred?

{927}

A No.

Q Somewhere in between?

A Yes.

Q Did your weapon have a telescopic sight on it?

A Yes.

Q Pardon?

A Yes.

Q Were you able to use the telescopic sight when you fired the weapon?

A No.

Q Did you keep the scope on the weapon the whole time?

A No.

Q What happened?

A I took it off.

Q What did you do with it, do you know?

A No.

Q From the time you first ran from Tent City up to the white house, that is, after you came all the way around and you described hearing some shots, and then you grabbed a rifle and ran up, from that time until the time you finally got back to Tent City and they were loading the red van, how many times in that period did you go back and forth between Tent City and the white house?

A I don't know. I don't remember.

Q Do you remember whether you did at all?

{928}

A Yeah.

Q What is your remembrance?

A I remember that I kept on going back and forth between the white house and the log cabin.

Q O.k. How about between rrent City and the white house though?

A No.

Q "No" meaning you didn't go back and forth?

A I did.

Q You did?

A Yes.

Q How many times?

A About three times.

Q All right. Now, you have described to us the shooting from the white house and running back and forth to the log cabin, with these three or four different times that you observed the FBI cars. How do these three trips back and forth to Tent City fit in there, when did they take place?

A I don't remember.

Q Did they take place between some of the sightings of the FBI car?

A Yes. I think some of them -- I am not sure though.

Q With all this activity from the time you got up to the white house the first time -- you have described these various times that you were there -- and the log cabin, and now you {929} tell us there were some occasions when you were back into Tent City during that time, up until the time you finally saw Mr. Peltier and Mr. Robideau and Mr. Butler, would you say that the time that elapsed from when you were sitting on the roof of the house was more or less than an hour?

MR. HULIMAN: Well, I object, your Honor, to this. I have no objection to asking if the witness knows, but he has been asked the questions about -- at least a half dozen times, and he has indicated that he had no watch.

MR. LOWE: I am asking for an estimate. The witness has handled that question well before. If he says he doesn't know, why, all right.

THE COURT: You may answer.

A I don't remember.

Q (By Mr. Lowe) Because it may be quite important at some point, particularly with other witnesses, will you take the pointer please and turn around and one more time, as closely as you can with the red tip of the pointer, outline the route that you took from the white house back to the tent area on the last time that you went back there?

A (Indicating) Down this way, around down this way (indicating), around this way (indicating), and across up here (indicating).

Q So you generally followed the road to where it says "Special Agent Williams' car", where it is written there and {930} not the symbo], and you cut over to the tent area?

A Yes.

Q Were you running while you did that?

A No.

Q Walking?

Q Yes.

Q Walking fairly fast?

A Yes.

MR. LOWE: May I just have a moment, your Honor? I am very close to finished.

(Counsel confer.)

Q (By Mr. Lowe) I understand from your answer, Mr. Anderson, that because you had no watch or other time refereces you are unable with any certainty at all to give us any time references other than the ones you have already testified to, that is, you have no way of saying where you were at any particular time, like 4:00 o'clock, 1:00 o'clock, or 7:00 o'clock, but only can testify as you have already, am I correct in that?

A Yes.

Q The finally area I want to make brief inquiry, you gave me an initial answer to this but I wanted to get some more detail. I believe you told me that you believe the religion of the pipe, is that correct?

A Yes.

{931}

Q And this is the -- do you believe in the ancient Indian ways and religions?

A Yes.

Q And do you practice the traditional Indian religion?

A No, not very much.

Q Not very much, but you believe in it?

A Yes.

Q I call your attention to this object which is on the defense table, and ask you if you know what it is?

A Yes.

Q What is it?

A Pipe.

Q Is that the sacred pipe?

A Yes.

Q And you told me when you -- well, let me ask you this way: When I told you this morning we were going to be talking with you and you were asked whether you would take your oath on the pipe, weren't you?

A Yes.

Q You didn't do that, did you?

A No.

MR. LOWE: I believe that's all I have, your Honor.

(Counsel confer.)

MR. HULTMAN: I have no further questions, your Honor.

THE COURT: You may step down.

{932}

(Witness excused.)

MR. CROOKS: Your Honor, if it please the Court, the United States would now call Mr. Don Van Fleet; and I might state to the Court that Mr. Van Fleet is being called a little bit out of sequence, and counsel has gracefully consented to have him come in at this time because of personal problem of his.

THE CLERK: Give the name?

MR. CROOKS: Don Van Fleet -- Van Pelt, I am sorry.

THE COURT: Excuse me, Van Pelt?

MR. CROOKS: Yes. I misspoke, your Honor. Van Pelt, not Van Fleet.

{933}

DONALD VAN PELT,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS

Q Mr. Van Pelt, would you again give your full name for the record, please.

A Donald Van Pelt.

Q And where do you live now, Mr. Van Pelt?

A Windsor, Michigan.

Q And is that in the Detroit area?

A The suburban area of Detroit.

Q The suburban area of Detroit.

Calling your attention back to September, October; September or October of 1975. Where were you living at that time?

A In Denver, Colorado.

Q And what was your employment during that period of time?

A Automobile salesman.

Q And who were you working for?

A Bill Krouch Chrysler-Plymouth.

Q All right. Mr. Van Pelt, I would like to hand you Exhibit No. 40, and this is 40C, and ask if that's a document you can identify?

A Yes, it is.

Q And what is it?

A This is a contract that we normally write up for automobile {934} sales.

Q And is it a contract you are personally familiar with from having had a part in the sale?

A Yes, it is.

Q And I'm not, I don't you to read from a record now, but would you briefly describe the circumstances under which that sale took place.

A Well, at the time I was, it was my turn to be up on the floor and for whatever customer that comes in, and at the time this gentleman was the first one to come in.

I took care of him, showed him what I had as far as an automobile went, and we sat down and tried to discuss price. And we had the price settled, we took the car for a drive, came back and filled out the paperwork on it.

Q All right. Now with regard to this Exhibit No. 40C. This would be Bill Krouch Motors' retained copy, the original copy, would it not?

A Yes, it is.

Q And I have shown you that prior to coming into court today, have I not?

A Yes.

Q And do you have any problem identifying that as one of the sales records of Bill Krouch Chrysler-Plymouth?

A No, I don't.

MR. CROOKS: Your Honor, United States would offer {935} Exhibit No. 40C.

MR. TAIKEFF: Your Honor, at this time we object because of the lack of any annexus with the case. We don't dispute the authenticity of the document and we don't claim that it doesn't stand for what it says on its face but so far there's no question with the case.

MR. CROOKS: Well, perhaps counsel's objection is well taken because this man is out of order. I realize that this series of events has not come through.

The United States would offer it subject to a representation that it will be tied up by other testimony, Your Honor.

MR. TAIKEFF: Then on that basis, Your Honor, we'll withdraw the objection.

THE COURT: Very well. 40C will be received conditionally and the condition is that it will be, annexus on the case will be established.

Q (By Mr. Crooks) All right. With regard to Exhibit No. 40C now, Don. Would you state what was the name given to you by the individual who purchased that automobile?

A The one the day of the purchase?

Q Yes. He gave you the name as appears on the record?

A Yes, he did.

Q What is that?

A Louis Martinez.

{936}

Q All right. And with regard to that sale what type of vehicle was it?

A Plymouth station wagon.

Q And what year?

A '69 I believe. I don't recall exactly.

Q Is it on the record there in front of you?

A No, it is not. Not that I can see.

Q All right.

A Yes, 1970.

Q 1970?

A Yeah.

Q Plymouth station wagon.

All right. Insofar as the individual who bought that car from you, using the name Louis Martinez, do you see that individual in the courtroom today?

A Yes, I do.

MR. TAIKEFF: I object.

THE COURT: What is the basis of the objection?

MR. TAIKEFF: May I come to the side bar?

THE COURT: You may.

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

MR. TAIKEFF: It's my understanding, Your Honor, that the witness was shown a single photograph of the defendant, and can only assume at this the that if he can make an identifi{937}cation in this courtroom it's based upon seeing that photograph. And I'd like to examine him in that connection in the presence of the jury.

THE COURT: In the presence of the jury?

MR. TAIKEFF: In the presence.

MR. CROOKS: Well, I can state, my understanding that it was not one photograph it was a wanted flier. But there were others shown.

Now, whether it was more than one other one, but there were others shown.

I have no objection if counsel wishes to examine.

THE COURT: You may voir dire for purposes of objection in establishing a basis for an objection.

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

MR. TAIKEFF: Mr. Van Pelt, the transaction that is reflected in that document took place on what date?

THE WITNESS: 9/9/75.

MR. TAIKEFF: That's roughly a year and a half ago?

THE WITNESS: Roughly, yes.

MR. TAIKEFF: Now, when was the last time you saw the individual with whom you dealt in connection with that particular transaction?

THE WITNESS: It was on a Friday. Now, the date I can't give, but it was --

{938}

MR. TAIKEFF: Was it in the same month and year?

THE WITNESS: Yes, it was. It was in the same week, only the Friday.

MR. TAIKEFF: So then I would suggest to you that it has been at least a year and a half since the last time you saw the person who bought that particular vehicle?

THE WITNESS: True.

MR. TAIKEFF: And since that time how many customers have you seen in your business?

THE WITNESS: Quite a few.

MR. TAIKEFF: Did you any time after making that particular sale have a visit from the FBI?

THE WITNESS: Yes, I did.

MR. TAIKEFF: And did they show you a photograph?

THE WITNESS: Yes, they did.

MR. TAIKEFF: How many people were depicted, how many different people were depicted in what they showed you on the occasion of their visit?

THE WITNESS: What I was shown, they brought two, you know --

MR. TAIKEFF: Pieces of paper?

THE WITNESS: Yeah, photographs of two different people. And they asked me, you know, which one did I sell an automobile to after they had to explain what they were there for, and I showed them the one that I sold the car to.

{939}

MR. TAIKEFF: Were there any names printed on the --

THE WITNESS: No, it was not.

MR. TAIKEFF: There were none, all right.

I withdraw my objection, Your Honor.

THE COURT: Very well.

Q (By Mr. Crooks) I just might ask again before I re-ask you the question, on the occasion that you had met and dealt with this individual, approximately how long a period of time were you with him, either giving him the demonstrator ride or seeing him the next Friday? Basically how long did you have to observe?

A Well, when I first had the gentleman, I was with him for I'd say about an hour and a half the first time. The Friday that he came back to pick up his papers I was with him, I'd say probably an hour.

Q So a couple of hours that you were with him?

A Yes.

Q Now, I'll ask you again, do you see the individual in the courtroom?

A Yes, I do.

Q Who's connected with 40C?

A Yes, I do.

Q Where is he seated?

A Right there (indicating).

MR. CROOKS: Let the record reflect that the witness {940} has identified Leonard Peltier, the defendant.

We have nothing further, Your Honor.

MR. TAIKEFF: No questions, Your Honor.

THE COURT: You may step down.

MR. CROOKS: United States would next call Mr. Charles Stull.

CHARLES W. STULL, JR,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS

Q Mr. Stull, would you repeat your name again for the record, please.

A My name is Charles W. Stull, Jr.

Q Where do you reside?

A I reside in Chicago, Illinois.

Q What is your employment?

A I'm employed as a special agent of the Federal Bureau of Investigation.

Q Mr. Stull, calling your attention back to June of 1975, did you have occasion to be in the Pine Ridge area of South Dakota?

A Yes, sir, I did.

Q And at the Pine Ridge area did you, as part of your assignment, search the area for various items which may or may not have been connected with the matter which we're trying here?

A Yes, sir, that is correct.

Q I would show you Exhibit No. 69D. Ask if this is an item {941} that you can identify.

A Yes, sir, I can.

Q And what is it?

A It is a spent 303 caliber cartridge.

Q And with regard to that, is that an item that you found in connection with the examination of the crime scene?

A Yes, sir, it is.

Q And would you show the jury with turning to reference Exhibit No. 71, would you show them the approximate location where that was found using the pointer, if you would.

A Found the spent cartridge in this area right here (indicating).

MR. CROOKS: Let the record show that he's indicating an area immediately to the east of the small plowed field and short of the parked wrecked cars.

United States will offer Exhibit 69D.

MR. TAIKEFF: No objection.

THE COURT: 69D is received.

Q (By Mr. Crooks) With regard to the shell casing, I might ask you a couple further questions. What was the condition of that shell case at the time that it was found?

A It was lying on the ground along an embankment covered by trees.

Q And this shell casing appears to be in a tarnished condition {942} now. Was it in the same condition at the time it was found?

A As near as I recall, it is approximately the same color, yes.

Q All right. And was the shell casing over the, there's been testimony of an embankment down into the bottom. Was it over the embankment or was it on the higher ground?

A It was about halfway.

Q All right. So it was somewhere along the tree line, would that be correct?

A That is correct.

Q All right.

MR. CROOKS: We have nothing further.

MR. TAIKEFF: No questions.

THE COURT: You may step down.

MR. CROOKS: Call Special Agent Robert Thompson.

ROBERT L. THOMPSON, JR.,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS

Q Mr. Thompson, would you again give you full name for the record, please.

A Robert L. Thompson, Jr. is the full name, sir.

Q And where do you live, what area?

A I live in Cheyenne, Wyoming.

Q And what is your employment?

A I'm a special agent with the Federal Bureau of Investigation.

{943}

Q Mr. Thompson, calling your attention back to the month of June, 1975. Did you proceed to the Oglala or Pine Ridge, South Dakota area in connection with the investigation of this case?

A Yes, I did.

Q And as part of your duties while so assigned did you make a search of a general crime scene area for the purposes of ascertaining various items that might be in some way connected to the crime scene?

A Yes, I did.

Q I show you first of all what has been already received into evidence as Exhibit No. 41A. Ask if that is an item that you found and if so where did you find it?

A I did find this item. It was on the hood of a 1967 Ford sedan parked in the area where there were several tents erected.

Q I show you Exhibit 13A. Ask if that is a photograph, in fact, of the rifle that you are talking about?

{944}

A Yes, sir. It appears to be the same.

Q I now hand you what has been marked for identification as Exhibit 34F and ask if that's an item you can identify.

A Yes, sir, I can.

Q What does that item purport to be?

A That's a caliber 223 rifle cartridge casing which I found on the hood of the same automobile and this is my handwriting and initials up here on the piece of paper which I placed in the envelope with a cartridge.

Q Would you point out for the jury with reference to Exhibit No. 71 the location the automobile was in when the shell was found on the hood of it?

A Exhibit 71, sir?

Q Yes. Exhibit 71 is the one behind you. I'm sorry. The large map.

A This is the exhibit?

Q Yes.

A The automobile was parked in this area right here which is where the tent area was (indicating).

Q So it would be in the area where the green sticker is already there showing Exhibit 41A in that area?

A Yes, sir.

Q I now hand you Exhibit 2LA and ask if that's an item you can identify?

A Yes, sir. This is a ski mask which I found in the tent area {945} and it bears my initials which was placed on it at the time I found it.

Q Where in the tent area was that found?

A This was inside of a tall teepee style tent.

Q And would that be the same tent area which you referred to earlier where the '67 Ford was parked?

A Yes, sir, it would.

Q In the general vicinity of that?

A That's correct. To the rear of the '67 Ford.

Q I don't know that I asked you on either occasion what was the date these items were found, the rifle and the other two items?

A All three items were found on June the 27th, 1975.

Q This would be the day after the deaths of the agents?

A That's correct.

MR. CROOKS: The United States would offer Exhibit No. 21A and Exhibit 34F.

MR. TAIKEFF: Your Honor, we object to the introduction of the ski mask which is 21A because it was found amongst the personal property in a teepee in which other people lived, not the defendant. According to the testimony we heard so far other people were living in that teepee and therefore there is no connection with the defendant. Not relevant to this case. We have no objection to Government Exhibit 34F.

THE COURT: Exhibit 34F is received.

{946}

MR. CROOKS: Your Honor, I can state that there is relevance to this item. I don't think I should do it from Counsel table though.

THE COURT: Counsel may approach the bench.

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

MR. CROOKS: Well, basically insofar as the United States' belief that this is relevant is simply that there are going to be witnesses who would testify during the course of this trial that various individuals involved in the shooting were wearing ski masks and it's, the obvious relevance of that is apparent.

MR. TAIKEFF: I don't believe there will be any testimony that anyone identifying the defendant as having worn such a mask will --

MR. CROOKS: I'm not representing the Court that the evidence will necessarily say Mr. Peltier but we're talking about a considerable number of shooters and the fact that the shooters were wearing; ski masks certainly has a direct bearing on their state of mind and intent. It seems obvious. There will be testimony to that effect.

THE COURT: If there is testimony to that effect, the ruling of the Court will be that it will be admissible because it would be relevant to whether or not this defendant who has now been established as to have been in the area on the day of {947} the shooting was aiding and abetting.

MR. TAIKEFF: I understand.

I don't believe there will be any testimony connecting this man to the ski mask.

THE COURT: Could I just reserve ruling?

MR. CROOKS: No objection, Your Honor. If we don't tie it up there is certainly no prejudice from the ski mask. We simply take it back out again.

THE COURT: I'll reserve ruling.

MR. TAIKEFF: That seems to be appropriate.

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

THE COURT: The Court's ruling on Exhibit 2IA is reserved at this time.

MR. CROOKS: We have no further questions.

MR. TAIKEFF: I have a brief cross-examination, if I may, Your Honor.

THE COURT: You may.

CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Agent Thompson, there is a report that you wrote or a 302 that you wrote in connection with the finding of certain things at the scene.

A Yes.

Q So-called crime scene, is that correct?

A There is a 302 which I dictated.

{948}

Q How did you dictate that: on recording equipment?

A No, sir. Personally to a stenographer.

Q And do you recall the date on which you dictated it?

A No, sir.

Q Is this the 302 in question?

A I dictated this 302; yes, sir.

Q Now having looked at it, does it refresh your recollection as to when you dictated it?

A Yes. It would have been dictated on June the 30th because that's the date on the 302.

Q And where did this dictation take place?

A Dictation was done on the Pine Ridge Indian Reservation, one of the buildings. I believe it was the BIA building. I'm not familiar with the reservation.

Q Was that a temporary office that was set up by the FBI?

A We were using the space as the office; yes.

Q And do you recall whether the final typed report came back to you the same day?

A I don't recall; no, sir.

Q You think if you looked at it it would help your recollection any?

A No, sir, I don't.

Q Why is that?

A That's not the only 302 I dictated and I can't say whether it came to me the same day. It was within a day or two I would {949} think, or a few days.

Q Would you want to look at it and see if it affects your recollection?

A I don't mind looking at it but I don't think it will make any difference.

Again I can't say if this was returned to me typed on the same day I dictated it or not.

MR. TAIKEFF: No further questions.

MR. CROOKS: We have no redirect and ask the witness to step down.

MR. SIKMA: Plaintiff calls Robin Montgomery, Your Honor.

ROBIN MONTGOMERY,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIKMA:

Q Would you please repeat your name for the jury.

A Robin L. Montgomery.

Q What is your occupation?

A I'm a special agent with the Federal Bureau of Investigation.

Q And where is your place of assignment?

A Omaha, Nebraska.

Q I direct your attention to the 27th of June, 1975. Where were you on that date?

A I was in the vicinity of Jumping Bull Hall.

Q On the Pine Ridge Indian Reservation?

{950}

A That's correct.

Q I direct your attention to the afternoon of that day. Did you have occasion to make any particular search on that particular afternoon?

A That's correct.

Q And in what area particularly were you searching on the afternoon of June 27, 1975?

A I was searching the grounds directly beneath where the bodies had been found of the two agents.

Q I ask you to turn around and look behind you. There is a large map which is marked Government's Exhibit 71 and there is a pointer there on your right. Would you take that pointer and point to the jury where it was that you were making an examination.

A Right here (indicating).

MR. SIKMA: May the record reflect that the witness pointed to the area just to the right of what's marked "Coler's Car."

Q (By Mr. Sikma) Mr. Montgomery, was there anything on the ground that attracted your attention or did you make a visual inspection of the ground in that particular area on that day?

A That's correct. The ground had some, still some blood on the ground, flies. We dug, I dug underneath the ground to try and obtain some type of evidence possibly.

Q Were there any cars parked in that particular area on the {951} afternoon of the 27th?

A There were not. No cars there.

Q And this was a day after the bodies of Special Agents Williams and Coler had been released?

A That's correct.

Q I will show you what has been marked as Government's Exhibit 54 on page 1 and also on page 4. I ask you to look at page 1 and page 4. Do you recognize the area which is depicted in those photographs?

A That's correct.

Q Now can you tell me whether or not you can relate the area depicted in that photograph to the area which you were testifying about searching the grounds?

A This is the area which there was some deep tire tracks. The grass was matted where the bodies had lain and this is the area which we dug up at the time.

Q And did you find anything while you were digging in the ground in this area?

A That's correct.

Q And what did you find?

A Found a piece of metal that was of an unusual configuration.

Q I will show you, after showing Counsel, Government Exhibit 34H for identification.

I will show you Government Exhibit 34H for identification and ask you whether or not you can identify Government Exhibit {952} 34H?

A This is the piece of metal that I recovered from digging underneath where the body had lain.

Q And what did you do with this item?

A After recovering it, I placed it in an 1A envelope and made out what we call a green sheet and submitted it as evidence to the evidence room at that time.

MR. SIKMA: Your Honor, I would offer into evidence Government Exhibit 34H.

MR. LOWE: No objection.

THE COURT: 34H is received.

Q (By Mr. Sikma) Now when you testified that you found Government Exhibit 34H and you also looked at Government Exhibit 34, did you find that in the area which is depicted in the photographs on page 1 and 4 of Government Exhibit 54?

A That's correct, I did.

MR. SIKMA: I have no further questions at this time.

MR. LOWE: May we have a moment, Your Honor?

THE COURT: You may.

BY MR. LOWE: CROSS-EXAMINATION

Q Special Agent Montgomery, at the time you examined this ground, what did you have to assist you? Did you have any mechanical items to assist you? Did you probe it?

A I had a knife, what we call a K-bar I guess you might call it. It was a large knife I used to separate the ground and some {953} cardboard that I placed the dirt on in doing that.

Q Did you use a metal detector to determine whether there was any likelihood of metal in the area or did you just take a guess?

A I did not.

Q How large an area did you probe in?

A Probed in an area where the blood was the thickest and probably a three foot by four foot, something relatively small area.

Q Were you there when the bodies of the two dead agents were found?

A I was.

Q Did you see them before they were moved?

A I did.

Q Did you see them before they were turned over?

A I did not.

Q Do you know whether they were turned over or not?

A I did not; no.

Q When you saw the two agents and they were still there, were they laying facedown or faceup?

A I couldn't make that determination. I was too far away.

Q And you would not have any way of knowing whether the spot you were probing was on an area which was underneath one of the dead agents when he was lying there prior to the arrival of the FBI force or not, would that be true?

{954}

A Could you repeat that again.

Q Taking the agents as they were before any other FBI agents came upon them --

A Yes.

Q -- and disturbed the area at all or moved them, they were both there. You have no way of knowing, I gather, from your own knowledge whether the area in which you found the remnant was located under one of the bodies or not or whether it was just off to the side of one of their bodies?

A Once again, where the majority of the blood was was where the search was conducted. That's the best answer I can give.

Q As to whether the blood was there under the agent or when they rolled him over?

A I don't know where.

Q You have no way of knowing, do you?

A I have no way of knowing that.

MR. LOWE: Excuse me a moment.

No further questions, Your Honor.

MR. SIKMA: That's all I have at this time, Your Honor.

THE COURT: You may step down.

MR. SIKMA: Special Agent Michael Byrne, B-y-r-n-e.

MICHAEL BYRNE,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIKMA:

Q Would you please repeat your name for the jury.

{955}

A Michael E. Byrne.

Q And what is your occupation?

A Special Agent with the Federal Bureau of Investigation.

Q And where do you live?

A Chicago, Illinois.

Q Was that your occupation in June of 1975?

A Yes, it was.

Q I would direct your attention to the 29th of June, 1975. Do you recall where you were on that date?

A Yes, sir.

Q Where were you?

A I was on the Pine Ridge Indian Reservation.

Q And I direct your attention to that particular day. Did you have occasion to search any particular place on the Pine Ridge Indian Reservation?

A Yes, we did.

Q You conducted a search of the particular area?

A Yes.

Q Where was that area?

A It was near the Jumping Bull property.

Q I ask you to turn around and look at what is marked directly behind you as Government Exhibit 71. Do you recognize that particular area?

A Yes. Yes, I do.

Q Now with relation to Government Exhibit 71, can you tell {956} me what direction it was from there or on that particular map where you were searching?

A It was the southwest of --

Q And approximately how far southwest of that area were you searching?

A Aproximately a mile, mile and a half.

Q Were there any roads in the area where you were searching?

A It doesn't show on the map but there is a road that runs, would be down in this section down below (indicating). It runs between Oglala Lake and 18.

Q So there is, to the bottom below the map there would be a lake, is that correct?

A The lake would be down here but the road comes around the lake and meets up with 18 up here on the, be up on the southeast side.

Q Okay.

And approximately how far to the right? Going to the right of the map, approximately how far from the area which is depicted as "tents" on the map would the road run?

A Maybe a mile.

Q Now with relationship of that, with that road, where did you start your search on that day? I'm talking of the road which you're talking about, a mile off of the edge of the map. Which direction did you start searching with regard to that road?

{957}

A That would be south of the road, southwesterly.

Q And in what direction did you walk from the road?

A Southwesterly.

Q How did you have occasion to find anything while you were walking off of the road?

A Yes. I found a 44 casing. 44 magnum.

Q I would show you what is marked as Government Exhibit 33H.

MR. SIKMA: I'll show it to defense counsel.

Q (By Mr. Sikma) I'll ask you to examine Government Exhibit 33H and tell me whether or not you know what that is.

A It's a 44 magnum casing.

Q You recognize that?

A Yes, sir.

Q And what is it?

A It's a shell casing.

Q Now was that the shell casing that you found on the occasion which you're speaking of?

A I believe so; yes, sir.

Q What did you do with the shell casing, 33H?

A When I found it I picked it up with a pencil, wrapped it in note type paper, possibility of it having fingerprints, and when we returned to Pine Ridge I turned it over to our evidence man, marked it as evidence.

MR. SIKMA: I would offer it into evidence, Government {958} Exhibit 33H.

MR. LOWE: No objection, Your Honor.

THE COURT: 33H is received.

Q (By Mr. Sikma) Can you tell me whether or not on the road you were speaking of, a road that meets Highway 18 which you said was to the south and west of the area depicted on Government's Exhibit 71, what kind of road is that?

A It's a gravel type road.

Q And are you familiar with the culvert in that road?

A I think the culverts would be on the east side of the road. I don't, I was up on the slope, the slope starting the hill.

Q Approximately how far is it from the culvert that you found this government Exhibit 33H?

A Maybe half a mile.

Q Is that going up the hill? If you start at the culvert would you be going up the hill?

A Yeah. I was on an incline going up the hill.

MR. SIKMA: I have no further questions.

MR. LOWE: No questions, Your Honor.

THE COURT: You may step down.

MR. HULTMAN: Your Honor, the next witness would be of considerable length.

THE COURT: I just closed my book.

The court will recess until 9:00 o'clock tomorrow {959} morning and again I'll remind the jury that you must keep an open mind, do not form any conclusions and you must discuss the case.