

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

CR NO. C77-3003-01

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

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

VOLUME VII

Pages 1209-1446

{1209}

THURSDAY MORNING SESSION

March 24, 1977

Pursuant to adjournment as aforesaid, at 9:00 o'clock, a.m., on Thursday, March 24, 1977, the Court met, present and presiding as before; and the trial proceeded as follows, the Defendant being present in person, outside of the presence and hearing of the jury:

MR. TAIKEFF: May counsel approach the bench?

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, I asked to approach because the matter to which I want to address myself was taken up by your Honor in chambers, apparently because your Honor felt it was of a sensitive nature.

I made inquiries last night concerning the so-called sighting of a certain person sitting in the audience that your Honor observed. Your Honor did not state to counsel what it was that your Honor observed, and I would like to report to your Honor what I learned by making my inquiries last evening.

I was told that apparently your Honor has misinterpreted something which he has seen, and here is what I was informed: That he wears around his neck a leather thong on which is a medicine bag, and that he is a holy {1210} man who frequently prays; what he does when he prays is that he holds that medicine bag and then recites a prayer. If your Honor saw that, your Honor was not seeing any signal but your Honor was seeing something which he has done frequently and for a very long time. There is nothing new or special in this courtroom.

MR. HULTMAN: Could I respond, counsel?

Your Honor, I don't in any way wish to imply I am an expert in the area, but my wife is of Indian heritage and I do have some knowledge of some of the customs and so forth.

From that standpoint, as well as from an educational reading and so forth, I have no disagreement with what counsel is saying; but I would like to point out on the record that this very act in the presence of someone who likewise believes in the same things has an impact on that individual if he is observing it at that moment; that that has something to do with that individual also in terms of what is right, what is wrong and what is true and what is untrue.

Now, so what I am saying is it is like if, for example, someone were to stand and bow his head and make a prayer while any one of us were on the stand in our presence, that would have a relationship to any one of us sitting in the witness chair at that stand; and I submit {1211} that in the case of an Indian witness, this very event would have far, far more significance than the one to which I refer.

So what I am saying is merely that the acts themselves, if the witness is in a posture of where he is seeing them, that even though there is nothing intentional about it in any way, that it does have an impact on that witness.

MR. TAIKEFF: I appreciate what Mr. Hultman said. I do want to point out to your Honor that I took yesterday's colloquy to mean that there was some sort of prearranged signals that would indicate to a witness whether an answer should be negative or positive, and I was offering that to assure the Court to the extent that my inquiry would, that there was absolutely no such thing. As to the merits of what Mr. Hultman says, I don't know exactly how I feel about it. It seems to me that if each person's God were present in the courtroom so that a witness could see his own God and be reminded of the seriousness of what was going on and the necessity of telling the truth, I don't know that I would necessarily object to that. There are many courtrooms where it says "In God we trust." That's a constant reminder of the seriousness of what goes on in our courtrooms. I don't mean to resist the comment by Mr. Hultman in any way. I just wanted to assure all, if that were {1212} possible, that this was not some kind of a prearranged situation.

THE COURT: Well, the motion that he made that I observed was not the type of a motion that you just described. As I mentioned the Clerk had been advised about it. I had suggested to the Clerk that he watch for that kind of thing because it had been reported that it was going on the day before, and the Clerk reported to me that this particular individual was signaling. I did not ask the Clerk as to what type of signal it was, but I observed the individual when the next question was asked, and the signal immediately went up; and I have not advised the Clerk as to what signal I observed. I do not know what he observed. I will ask the Clerk at this time to state the type of signal.

THE CLERK: It was, as Mr. Taikeff indicated, going to this throat. Just to mention one thing, that would start when the question was asked and the hand would remain there until the answer was given and then it would be dropped, and then when the next question was asked, he would again go to his throat; and then apparent eye contact with the witness. It would remain there until the answer. In both cases, I think it was negative answers he was giving.

{1213}

MR. TAIKEFF: I wonder if Mr. Hanson would state for the record if he has revealed that fact to anyone prior to this moment?

THE CLERK: No.

THE COURT: He had not revealed it to me.

MR. TAIKEFF: I specifically wanted it to reflect the record whether any of the defense counsel could have known what his observation was.

MR. HULTMAN: Or any of the Government, we had no knowledge.

THE COURT: The signal I observed, his hand went to his forehead, something like this (indicating), and kind of drew it across, and it went up after the question was asked. This person's hand went up to his forehead, and he made some kind of a motion on his forehead and then dropped it.

MR. LOWE: Your Honor, could you state whether that was an isolated occasion or did that happen more than one time?

THE COURT: This is the only time I observed it because the Clerk had been advised to watch for it. I was not paying any attention to the audience. It had been reported that signaling had gone on the day before, and the Clerk reported to me and I watched the individual when the next question was asked. The hand signal went up {1214} to the area of his forehead and his eye.

MR. HULTMAN: Counsel, might I put on the record the things that I observed the day before and to which I had specific reference to Dino Butler and the person sitting next to him, and there were none of the things --

MR. TAIKEFF: (Interrupting) I think that's clear on the record. I wanted to offer what I discovered last night.

THE COURT: I appreciate that information.

MR. TAIKEFF: While we are here, I understand counsel has arranged for the witness, Norman Brown, and I trust by one mechanism or another the defense counsel would have an opportunity to confer with Mr Brown's counsel about possible interview in the presence of his counsel sometime prior to the Government calling him to the stand?

MR. HULTMAN: Your Honor, I would suggest that we do that now because I do intend to call this witness as my next witness.

THE COURT: What do you mean "now"?

MR. HULTMAN: Well, as I say, I am ready to call him, and I intend to call him as soon as we finish with this.

THE COURT: Mr. Coward is to be cross-examined?

MR. HULTMAN: Yes, and when Mr. Coward is finished, I intend to call Mr. Brown as the next witness; and I think we could probably dispose -- at least go to Step 1, {1215} that counsel visit with counsel and determine whether or not he wishes to or not; and that might resolve matters very quickly. If then there is an agreement to do it, then we would have another problem in terms of when that would be then be done; but I would suggest we did not, as in the case of the two or other three requests, we had none, so we were prepared to immediately proceed.

MR. TAIKEFF: Would your Honor prefer that we go do that before the jury comes in so we can continue without interruption?

THE COURT: On the other hand, I would like to minimize the time.

MR. HULTMAN: If we did that, we might speed things up.

MR. TAIKEFF: I would be prepared, in spite of the fact that I need a break, like everybody else, and so does Mr. Lowe, if the answer is "yes", to conduct that interview during the morning recess. The witness will probably be cross-examined during that time, so there will probably be not any extra break in the proceedings.

THE COURT: Well then, the procedure would be to recess at this time to give you an opportunity to confer with Brown's lawyer.

MR. LOWE: Are they here?

{1216}

MR. HULTMAN: I haven't seen them, but the lawyer is here, and they are in the witness room, the same place that you were before.

THE COURT: The Court will recess for five minutes. (Whereupon, the following proceedings were had in the courtroom:)

THE COURT: The Court is in recess for five minutes.

(Recess taken.)

{1217}

MR. TAIKEFF: May I report to Your Honor?

THE COURT: You may.

MR. TAIKEFF: We have spoken with Counsel and he has indicated his willingness to have us confer with his client in his presence and upon our suggestion he asks Your Honor that a court reporter be sent so that the matter can be taken down.

THE COURT: And when would you intend?

MR. TAIKEFF: At the morning recess.

THE COURT: You would expect to get it completed in that time?

MR. TAIKEFF: We're certain we can accomplish what we have to accomplish during that period of time.

THE COURT: Very well.

A court reporter will be asked to attend. Does the United States intend to call another witness at this time or will Mr. Coward be called?

MR. SIKMA: Mr. Coward would be recalled, Your Honor.

THE COURT: Mr. Coward may be recalled. The jury may be brought in. (Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

{1218}

BY MR. TAIKEFF: CROSS-EXAMINATION

Q Good morning, Mr. Coward.

A Morning, sir.

Q Mr. Coward, in June of 1975 where was your permanent assignment, your regular assignment?

A Rapid City, South Dakota.

Q And as such where would you say you spent most of your time?

A On the Pine Ridge Indian Reservation.

Q Would it be fair to say that essentially all of your working time was either on the reservation or in connection with matters that arose on the reservation?

A That's correct, sir.

Q How many agents were there like you functioning in that capacity at or about that time?

A There were 12 of us assigned to the resident agency at Rapid City, South Dakota.

Q And did that account for all the agents who were working in a full time or near full time capacity on the reservation at that time?

A On the Pine Ridge Indian Reservation?

Q Yes, sir.

A Yes, sir.

Q Were there other reservations within the jurisdiction of your office?

A Yes, sir.

{1219}

Q And were there other agents assigned to those reservations?

A Yes, sir.

Q Approximately how many?

A Well, I believe there was approximately four at that time that were assigned to Pierre, South Dakota resident agency.

Q And where were they working?

A They would work the Rose Bud Indian Reservation.

Q That is in some sense or another adjacent to the Pine Ridge, is it not?

A It's contiguous; yes.

Q And were there any outside agents, that is to say agents normally or permanently assigned to other offices who were on temporary duty?

A Yes, sir.

Q How many were there?

A You're speaking of June of '75?

Q In the spring of '75 before this incident in particular.

A Okay. Occasionally people would come in and out and give us a hand; yes.

Q Could you give us some sort of an average figure representing in the spring of 1975 the number of FBI agents who were employed essentially full time on those two reservations in South Dakota?

A There are approximately 16 men employed full time working {1220} out of those two particular offices.

Q And any people on temporary assignment in addition to those?

A Well, that was sporadic. When the need arose we would ask for additional help.

Q And what was your actual experience in that regard? How often and how many?

A Well, several times we'd ask for help and received it.

Q In what numbers of people: two people, ten people, twenty people?

A The most at any one time would be six people and that would have been the week preceding the day that the two agents were killed.

Q Do you know the exact or approximate combined population of those two reservations?

A I do know that Pine Ridge Indian Reservation at that particular time was approximately 12,000 people.

Q Do you have any idea what the comparable figure was for Rose Bud?

A I don't. But I believe it was smaller.

Q Based on your own knowledge and experience, if you possess such, would you say that the number of agents per thousand residents was comparable to or substantially higher than most parts of the United States?

A I don't quite understand what you mean.

{1221}

Q Well, let's say in New York City there are about eight million people and maybe 100 agents. On the Pine Ridge and Rose Bud there may have been 20,000 people and 25 agents. Do you have any idea whether that was in the FBI's point of view a high crime area that required a higher ratio of agents to people than a place like New York City?

A That's an administrative decision as to how many people are required in what particular location.

Q You don't have any information on the subject for comparison purposes, I gather.

A The only thing I can tell you is that years ago I think as far as police records were that you had to have 1.1 or 1.3 percent policemen per thousand.

Q How long did you work the reservation, how long were you assigned there?

A I came there during Wounded Knee in 1973.

Q And from that time until June of 1975 did you find that was a relatively high crime area?

A My opinion?

Q Yes, sir.

A Yes.

Q And in the main would you say that those crimes were crimes of violence as opposed to white collar crimes or other such crimes?

A Well, that was the particular crimes that our responsibility, {1222} that was my responsibility; yes.

Q We're talking now about assaults, murders, things of that sort?

A Yes, sir.

Q Are you or have you ever been a member of a S.W.A.T team?

A I am.

Q Would you briefly tell the court and jury what special function that is, what that means.

MR. SIKMA: Your Honor, I'd object to this as totally irrelevant to the case.

THE COURT: What is the relevancy?

MR. TAIKEFF: The relevancy, Your Honor, is to give the jury some idea of what life is really like on the reservation so they won't get some notion it's like living in Fargo or Moorhead.

MR. SIKMA: Your Honor, I would submit that there is still no relevancy shown. There are S.W.A.T. teams all over the United States.

MR. TAIKEFF: I would call to Your Honor's attention the fact there has been considerable evidence concerning the possession of weapons by the defendant and others whom he was living with and I think Your Honor would recognize that for those of us who live in more conventional environments that may have certain implications and I think the defendant should have an opportunity to show why such a thing occurred.

{1223}

THE COURT: This is a matter to be resolved by the Court if the defense determines to offer evidence in the case.

MR. TAIKEFF: I'm willing to adopt the witness for that purpose as my own witness if Your Honor chooses to allow.

THE COURT: Then it's out of order because the cross- examination is limited to the subject of the direct examination.

MR. TAIKEFF: That's conventionally true, but it's within the Court's discretion to allow the other side to adopt the witness as its own in order to permit the trial to flow more smoothly and not require the witness to wait around for a week or two. I would abide by whatever Your Honor's suggestion is.

{1224}

MR. SIKMA: Your Honor, I would nonetheless admit that whether it's counsel's witness or any other witness that it's, it remains totally irrelevant to the subject at hand. It does not, this agent's training or other agent's training, does not develop a legal right or obligation on the part of those persons in the area where these agents are working to have an opportunity or a right to carry an exceptional or additional number of firearms.

THE COURT: On the objection of counsel that it is irrelevant, the witness will be, the cross-examination will be limited to the scope of the direct examination.

MR. TAIKEFF: Yes, Your Honor.

Q (By Mr. Taikeff) Were you one of those who participated in the investigation which followed the events of June 26, 1975?

A Yes, sir, I was.

Q And during the six months that followed the incident, that is to say for the balance of the year 1975, do you know how any special agents of the FBI were involved in that investigation?

MR. SIKMA: Your Honor, once again I would object as totally irrelevant.

MR. TAIKEFF: Now, Your Honor --

MR. SIKMA: Question of guilt or innocence of the defendant.

{1225}

MR. TAIKEFF: It is not in any way irrelevant because it is crucial with respect to the role played by this particular witness. And I will develop that. This is really a foundation question for other matters to be gone into on cross-examination.

THE COURT: I will allow you to proceed.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Do you recall the question, sir?

A Would you repeat it, please.

Q I'll restate it if I can. I asked you in the latter part of 1975 after the incident if you had any knowledge as to how many special agents of the FBI were involved in the investigation of these deaths?

A No, sir, I do not.

Q How many agents did you work, or come in contact with in connection with that investigation?

A Well, I worked with the members of the Rapid City resident agency.

Q Was Agent Adams one of those people?

A Yes, sir.

Q Was Agent Hughes one of those people?

A Yes, sir.

Q Who were the other people? Agent Price?

MR. SIKMA: Your Honor, I would object. The question is too broad.

{1226}

MR. TAIKEFF: It couldn't, Your Honor, have an answer that exceeded more than nine names. According to the testimony there are only twelve agents assigned.

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) The names of the other people you worked with on this case?

A Well, there was Agent Price, Agent Skelly, Agent McCarty, Agent Wiley, Agent O'Clock. Those were some of the members of the RA that I worked with.

Q How about Agent Waring?

A Did I work with them personally?

Q Yes.

A Yes, I had. Yes.

Q And he was working on this case, was he not?

A Yes, sir, he was.

Q And did you have occasion from time to time to confer with these people that you've named?

A Yes, sir.

Q About the facts of the case?

A Yes, sir.

Q Did you read each other's reports, 302's?

A I did not.

Q Do you know of your own personal knowledge whether there as any exchange of information by reading each other's 302's?

{1227}

A Personally? No.

Q Have any conferences in groups of three or four?

A Well, we had several conferences, yes.

Q How often, let's say during the month following the incident?

A We had conferences every day.

Q And on the average, I'm not looking for you to be precise, just give us an idea, how much time did you spend with each other in conference about what was being developed concerning the case?

A Well, it was our practice to have one in the morning and one in the evening so we could just keep up, you know, everything together.

Q Now, I'm not asking you for details, just a general statement. Did you discuss from time to time a developing theory of what happened?

A Well, we were trying to determine, you know, what happened. But I wouldn't call it a theory.

Q Well, I gather that you collected facts and as time went you collected more and more facts; isn't that true?

A That's correct.

Q And there came a time early in the investigation, didn't there, when what information you had gave you some idea of what may have taken place that day?

A Well, that's true, yes.

{1228}

Q Do you object to my referring to that as a theory of that moment, at that moment as to what had occurred? Can we use that as a shorthand?

A Yes, we can.

Q Okay. Now, was there an agent or two or more who were, if not in an official capacity, at least by virtue of what they were doing, in charge of the investigation other than the agent who was in charge of the entire office?

A Well, there were people who, you know, were our bosses, yes.

Q Okay. But in terms of a subboss, was there some person or were there some persons who were the key agents investigating this case?

A Well, there was a man who was assigned the case.

Q Who was that?

A Dean Hughes.

Q So nominally he was the head agent on this case?

A Yes.

Q Was he one of those people with whom you met from time to time?

A Yes, sir.

Q Who were the agents who were present most of the time in those morning and evening meetings?

A Well, of course those who were there in town that weren't doing other things. But everybody who was there working on the {1229} case was there every day.

Q Was Adams frequently there?

A Yes, he was.

Q Was Waring frequently there?

A Yes, sir.

Q Was Skelly frequently there?

A Yes, sir.

MR. TAIKEFF: Excuse me one moment, please.

Q (By Mr. Taikeff) Did you have any personal relationship with either of the two agents who died?

A Yes, I did.

Q With one of them or both of them?

A Both of them.

Q Did you consider them to be your friends as well as your professional colleagues?

A Yes, sir, I did.

Q So I assume then that you viewed this as both a case you were working on and a matter of personal concern?

A Yes, sir.

Q Is it fair to say that you were quite angry about the loss of your colleagues and friends?

A I don't think you could say I was angry.

Q It was worse than that?

A Well, I was upset at the loss.

Q Severely upset?

{1230}

A I wouldn't say severely.

Q Intent upon cracking or solving this case more than most?

A No. I wouldn't put it that way.

Q You approached this case with the same coolness and objectivity with which you approach any of your cases, is that what you are saying?

A I tried to do that, yes, sir.

Q You tried to make sure that your personal feelings didn't get involved in your work in any way, is that --

A That's correct.

Q Did you ever before in your career as an FBI agent investigate the alleged murder of a friend and colleague?

A I participated.

Q Someone you knew?

A Yes, sir.

Q How much of your working time during the month following June 26th did you devote to this case?

A Sometimes better than twelve hours a day.

Q That's more than a hundred per cent of your ordinary working time, supposed working time I assume. You're supposed work eight hours a day, but on your job you usually end up working more?

A I did this particular case.

{1231}

Q (By Mr Taikeff) I am handing you Defendant's Exhibits 77-A, 78-A and 79-A which are not in evidence, and marked for identification, so they would be withheld from the jury's view, and ask if you have ever seen those before?

A These particular copies?

Q Or anything that was essentially identical to it or them.

A I have seen -- this is a copy, it appears 77-A, I have seen that; 78-A looks familiar, and 79-A looks familiar too.

Q Did those prepare those or something just like it?

A I prepared 78-A. It appears to be a copy with my initial on it, and the other two.

Q Did you prepare any name lists in association with those documents?

A I was assisted, yes, sir.

Q Do you know the identity of the people who are depicted in these photographs?

A You mean if you were to show them to me right now?

Q Yes.

A Possibly some.

Q I am showing you Defendant's Exhibit 78-A, the page marked Page 3; and I am pointing in particular to the photograph in the upper right-hand corner designated Photograph No. 3. Do you know the name of that person?

A No, sir, I don't.

Q I show you Defendant's Exhibit 78. Would you tell me, sir, {1232} whether that is the companion name list?

A (Examining) Let me look here. Page 3 is, yes.

Q What is the name of that person?

A Of the one you say, No. 3?

Q Yes, sir, on Page 3.

A It says Norman Charles.

Q I realize that it says that on Exhibit 78. I am asking you if, after examining 78, and 78-A, you can tell us whose picture that is, not whose name appears on the list, do you understand my question now?

A No, I don't.

Q O.K. This is a list which purports to name the people?

A Um-hum.

Q And I acknowledge that on that list it says a certain name?

A That's correct.

Q I assume you and I can both read the name. The question is, having looked at the list and having looked back at the photograph, does that in any way confirm to you, of your own knowledge, from some basis other than looking at this list, the name of that person?

A I don't know if it is Norman Charles.

Q You don't know?

A No.

Q O.K. On June 26th, 1975, your professional activities were in {1233} one sense or another integrated with those of other law enforcement agencies, is that correct?

A That's correct.

Q And amongst them would be the Bureau of Indian Affairs police?

A Yes, sir.

Q Called the BIA, or the BIA police?

A Yes, sir.

Q And the South Dakota State Police, is that right?

A South Dakota Highway Patrol, yes, sir.

Q Highway Patrol. Did you ever receive or have occasion to review any report written by any of those law enforcement officials?

A Yes, sir.

Q Were there many, say, more than 15 or 20 in number, the reports?

A Well, I had read several, yes.

Q Did you ever read a report by a person named Ecoffey?

A Which Ecoffey?

Q I need a moment in order to give you his first name. Robert Ecoffey.

A That's possible, sir, but I don't recall that particular statement.

Q Do you recall whether the report of Robert Ecoffey was incorporated in a 302 verbatim with nothing more than a {1234} preamble paragraph that said "The following" -- in essence: "The following is a copy of the report by Officer Ecoffey of the Bureau of Indian Affairs"?

A You mean, do I know that one exists?

Q Yes.

A A statement?

Q Yes. Are you aware that one exists?

A Personally, I don't personally know.

Q I show you Defendant's --

MR. SIKMA: (Interrupting) Your Honor, I would object to this. The witness has just stated that he is not familiar with such a document. He had Mr. Ecoffey on the stand and didn't ask him any questions about this. I to see the relevancy further from the standpoint of this particular case.

MR. TAIKEFF: First of all, your Honor, Mr. Sikma must have been sleeping if he says I did not ask Mr. Ecoffey about this report. The record is clear that I laid a sufficient foundation to introduce it into evidence when I am ready to offer it.

Secondly, I want to make sure that the witness has exhausted his memory on the subject, and I think I am entitled to show him a document to see if his memory is affected by that showing.

THE COURT: You may show him the document for that {1235} purpose.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) I show you Defendant's Exhibit 87 for identification and ask, sir, after you have a chance to look at it, whether you ever have seen that document, a copy of it or any document which it may refer to?

A (Examining).

Q It is not in evidence, and its contents should not be revealed at this time.

A I don't recall ever seeing it.

Q Do I understand that to mean you have never seen that 302?

A No. I can't say that. What I am saying is, I don't recall ever seeing that particular 302.

Q O.k. Have you ever seen the document which is referred to in the 302 or duplicated in the 302?

A (Examining) No, sir.

Q Do you know a person by the name of Edward M. Moreland?

A I know the name.

Q In what context?

A Well, I believe there was an agent there during that investigation by the name of Moreland.

Q Special Agent of the Federal Bureau of Investigation?

A I believe so.

Q Working out of the Rapid City office?

A He wasn't working out of the Rapid City office, no.

{1236}

Q Working on this case in South Dakota?

A Assisting, yes, sir.

Q On a temporary basis?

A Yes, sir.

Q I show you Defendant's Exhibits 93 and 94 for identification. Those are also not in evidence, should not be displayed to the jury at this time, and ask whether what is depicted in those photographs is familiar to you in any way?

A (Examining) Any way?

Q Yes. I am not ask you whether you know generically what the object is, but specifically is it familiar to you?

A Yes, it is.

Q In what connection are you familiar with the object?

A You want me to answer that?

Q Please.

A I saw this particular object, oh, sometime after the shooting I mean, days after, maybe even weeks.

Q Where?

A I believe it was in Pine Ridge. I can't say for certain (examining).

Q Would you be kind enough to direct your attention to Government Exhibit 71 behind you, and I ask specifically whether you know what these little black rectangles represent at or near the point where there is a letter "P" and a "P-1" on Government Exhibit 71?

{1237}

A (Examining) Basically they appear to me to be automobiles.

Q Do you have any knowledge from your presence at the scene whether in fact they are automobiles, or were automobiles there?

A I recall seeing automobiles the next day.

Q That is to say, on the 27th of June?

A Yes.

Q Do you recall how many?

A I just recall that there were some.

MR. TAIKEFF: Do you have those photos, Mr. Hanson?

Q (By Mr. Taikeff) I am bringing to you, sir, Government Exhibit 56 which is in evidence, and ask whether you would be kind enough to look through the album. I think there are three or four pages of photographs in there, and then I will put a question to you.

A (Examining).

Q I would like the record to reflect the fact that as you looked through that album, you looked over your shoulder at Government Exhibit 71, am I correct about that?

A Yes, sir.

Q O.k. Now, do you recognize in the photograph or any of the photographs the area which I referred to before around these automobile emblems?

A Yes, sir.

Q And in looking at those photographs, do you have -- or after looking at the photographs do you have any recollection {1238} concerning what vehicles you saw there the following day on June 27th at that spot?

A Well, I saw vehicles, but I can't tell you what the vehicles were in my own mind.

Q O.k. Now, I ask you to look at Defendant's Exhibits 93 and 94 for identification, and ask whether what you see in those photographs was present amongst those vehicles?

A These here (indicating)? No, sir. (Examining) unh-unh, not that I can see, not that particular object (indicating).

Q All right. When you say "that particular object," you are referring to the object depicted in the two photographs, 93 and 94 for identification?

A These two particular -- 94 and 93, not that I can see are in this photograph.

Q O.k. Where in Pine Ridge did you see the object which is depicted in 93 and 94 for identification?

A These two particular, 94 and 93, not that I can see -- are in this photograph.

Q O.k. Where in Pine Ridge did you see the object which is depicted in 93 and 94 for identification?

A That would have been at the building in the utilities yard.

Q Of what?

A Well, in the Bureau of Indian Affairs' buildings.

Q As far as you know, was that object the property of the {1239} Bureau of Indian Affairs?

A Not to my knowledge, it wasn't.

Q As far as you know, was it there as evidence in connection with some official activity of the Bureau of Indian Affairs?

A I later learned that it was, yes.

Q And from whom did you learn that?

A Well, the conferences, the general passing of information, that the vehicle was over in the B and U Building.

Q At the time that you just referred to, what was your understanding as to the role of that vehicle?

A Well, as I understood it, that that -- I can't say, not specifically that vehicle, but all the vehicles that we got out of there were somehow connected with the people involved in the shooting.

Q All right. I am bringing to you, sir, Government Exhibit 55 which is in evidence, and I ask you to look at Page 11, Photograph C, photograph of a vehicle, Page 12, Photograph B, that's the same vehicle as the one I just pointed out to you, isn't that correct, sir?

A It appears so.

Q And then there is Page 23. That appears to be the same vehicle as the two you just looked at?

A Yes.

Q How about that vehicle, did you see that vehicle in that location at the BIA Building at or about that time?

{1240}

A I don't recall.

Q I now show you Page 31 which has a single photograph, and Page 33 which has a single photograph, and Page 34 which has a single photograph. First, I ask you whether or agree that the same vehicle appears to be depicted in those three photographs?

A It appears.

MR. TAIKEFF: All right. If I may, your Honor, I just want to hold those photographs up to the jury so they can follow the questioning.

(Counsel displays exhibit to the jury.)

{1241}

Q Going back to page 31, sir, that's a red and white Chevrolet, is it not?

A It's white over red Chevrolet panel; yes.

Q When you say "panel," you mean a panel truck?

A That's correct.

Q Would you agree that the word "van" might describe that type of a vehicle?

A No, I wouldn't.

Q You'd call it a panel truck?

A Yes.

Q Would you call it a pickup? Yes or no?

A No.

Q Did you see that panel truck at the BIA building?

A Eventually.

Q If I tell you that we thus far in this case have referred to that vehicle as a van, would you permit me on that basis to call it a van without objection from you so the jury is not confused about what vehicle we're talking about? Just for purposes of this trial. I understand you call it a panel truck.

A That's correct.

Q But I may refer to it as a van without objection from you? A (Witness indicates.)

Q I just wanted to get some ground rules with you. That's all. Now when that van was at the BIA building, were there {1242} any vehicles near it?

A Yes, there were.

Q Can you describe those vehicles?

A I do recall seeing this particular panel truck but --

Q Can we call it a van, please. I understand the problem we're having but I want to make sure we use a consistent terminology so we don't create any unnecessary confusion.

MR. SIKMA: Your Honor, I'd object to that. The witness can call it whatever refreshes his recollection.

THE COURT: The jury has, I think it can distinguish between the two. The witness will be permitted to call it a panel if that's what he considers it.

MR. TAIKEFF: All right, Your Honor.

Q (By Mr. Taikeff) Go ahead, sir. I think I interrupted your answer. I apologize.

A There were other vehicles there but I can't specifically state what they were.

MR. TAIKEFF: If I may have just a moment, Your Honor, please.

THE COURT: You may.

Q (By Mr. Taikeff) The photographs I'm about to show you are not in evidence and should be withheld from the jury.

MR. SIKMA: Your Honor, I wonder if we might have an opportunity to view the photographs which are being shown. I don't know whether I've seen them or not. Also, perhaps, to {1243} raise a possible objection if that's necessary, but it's not possible to do that without knowing what the witness is being shown.

MR. TAIKEFF: Your Honor, without conceding that the government has a right to see them, under the circumstances I'll be happy to show them to the government.

THE COURT: Very well.

MR. SIKMA: Your Honor, I think the reciprocal discovery ordered in the case, and I would hope that Counsel would in that respect give us an opportunity to see the items which he has as exhibits.

MR. TAIKEFF: Your Honor, I would like to point out there is no misunderstanding, reciprocal discovery refers to evidence to be offered in the defendant's case in chief. This is cross-examination and the use of these photographs is part of the lawyer's work product and is not required to be shown to the government. But in spite of that fact, under the circumstances of this particular cross-examination I have done so.

Q (By Mr. Taikeff) First I'm going to show you Defendant's Exhibit 96 for identification. Do you recognize the object in those photographs?

A Well, I recognize; yes.

Q I assume you recognize the fact that's an automobile?

A That's correct.

{1244}

Q Do you know which automobile?

A Well, based on what you have showed me thus far, it appears to be the one you showed me earlier. I can't say that unequivocally based on this particular photo alone.

Q Okay. I am returning to you Government's Exhibit 55 which is the album of photographs from tent city which is in evidence and showing you page 11, photograph C which shows a green automobile and ask whether the photograph you're holding is of that automobile?

A Looks similar.

Q Okay. By the way, there came a time, did there not, when that green automobile was at the BIA building, right?

A I believe it was towed in but exactly where it ended up I do not know.

Q And the towing in was in connection with the official investigation that was going on with reference to this case, right?

A Yes, sir.

Q Now, sir, I show you No. 97 for identification and ask you whether in fact that depicts that green automobile which you see in Government's Exhibit 55?

A I can say this much: that it, this particular Exhibit 97 bears the same license plate as in your album here identified {1245} as Government's Exhibit 55.

Q How about the make of the vehicle?

A Same.

Q How about the color of the vehicle?

A Well, depends on the light here.

Q How about the number and position of the windshield wipers?

A I don't think that's -- well, it appears to be the same.

Q How about the grill work?

A You can't tell. One's the forward and one's the rear.

Q I show you Defendant's Exhibit 103 for identification and ask you whether you are able now to say whether or not that's somewhat similar vehicle that was at the BIA place -- withdrawn. Whether you can say that the somewhat similar vehicle in the photographs I have been showing you which are not in evidence are of the vehicle which was at the BIA place?

A Well, it appears that the vehicle in Exhibit 103 and Government Exhibit 55 appear to be the same vehicle.

Q I see. Would you say that the vehicle in Defendant's Exhibit 98 for identification is also that same green Ford, and specifically whether it is at the BIA building?

A Well, I can say it appears to be the same vehicle but I can't say specifically if that's the BIA building.

Q Do you notice that there are people in the photograph?

A Yes, I do.

{1246}

Q Do you recognize any of them?

A Yes, sir.

Q Who are they?

A Dean Hughs, Jack Schwartz and Joe Goss.

Q And other than Hughs whom you already told us about, who are the other two gentlemen?

A Well, Joe Goss is a special agent for the FBI.

Q Yes, And the other gentlemen?

A Jack Schwartz?

Q Yes, sir.

A Well, I understood him to be an attorney.

MR. TAIKEFF: At this time, Your Honor, I offer into evidence Defendant's Exhibits 96, 97, 98 and 103.

MR. SIKMA: Your Honor, I object on the grounds of relevancy. No relevancy here has been shown in any respect. Might I ask one question, Your Honor, for the purpose of posing a further objection?

THE COURT: You may.

MR. TAIKEFF: No objection to that, Your Honor.

THE COURT: You may.

MR. SIKMA: Can you tell me whether you and other agents involved in this case pursued many leads which turned no evidence at all in the case?

THE WITNESS: Yes, sir.

MR. TAIKEFF: I object to that question and move to {1247} strike it at this time because it has nothing to do with the voir dire on the offer of proof. It's a cross-examination question which goes to the weight of the evidence which has been offered .

MR. SIKMA: I think it goes directly to the weight, Your Honor.

MR. TAIKEFF: Well, then, if Your Honor does not sustain my objection, I would like to ask a counterpoint question.

MR. SIKMA: I have one further question in addition to this one, Your Honor, if you do not sustain the objection to the question.

THE COURT: You have one additional question you want to ask of this witness?

MR. SIKMA: Yes. On voir dire, Your Honor.

THE COURT: Before I rule on the other objection you may ask the additional question.

MR, SIKMA: Mr. Coward, did this turning up leads include the examining of a number of junked vehicles?

THE WITNESS: Yes, it did.

MR. TAIKEFF: I'd like to ask one question which I think will resolve the matter.

Q (By Mr. Taikeff) Did the vehicles in question to which Mr. Sikma made reference come from the area known as the Jumping {1248} Bull area? Yes or no?

A What junked vehicles?

Q Any vehicles that you had there in the BIA lot. Did it come off these premises which are depicted in Government Exhibit 71? Yes or no?

A I don't understand your question. If you would, in relationship to his question is where I'm confused.

Q All right. Mr. Sikma asked you whether you were exploring every possible lead.

A That's correct.

Q In the course of your investigation.

A That's correct.

Q And did that include exploring leads relating to vehicles which were found on the premises which is depicted in Government's Exhibit 71? Yes or no?

A Yes, sir.

Q And amongst the several vehicles that you may have investigated, do the photographs which I just offered in evidence depict one of the vehicles which you pursued in that manner?

A Yes, sir.

MR. TAIKEFF: Your Honor, I renew my offer.

MR. SIKMA: Your Honor, I would again interpose an objection that there is still no showing of relevancy whatsoever.

THE COURT: Counsel approach the bench.

{1249}

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

THE COURT: Not having seen the pictures, I would like --

MR. TAIKEFF: They are of the Ford, Your Honor, which was found in tent city at the BIA building.

THE COURT: And then the same photo, or apparently the pictures of this same auto appear at Exhibit 55?

MR. TAIKEFF: That's correct.

MR. SIKMA: Yes. This is the green car that was found in tent city. I think that in the background here he's referring to Photograph 98 is the other car which I can state for the record at this time, I believe, from his questioning of it, one of the cars which we referred to as a junked vehicle.

MR. TAIKEFF: And in addition, in the background of 97 is the red van. So that ties them altogether at that location and it is a critical piece of evidence for the defense that they were all there. I make that as a representation to the Court. It will be developed in great detail in the course of this trial.

MR. SIKMA: Your Honor, I say that the vehicle that was found or that red vehicle that was towed in was examined. However, I would also state that particular vehicle before it was towed in was necessary by way of offer of proof to {1250} put a battery in it before they could start it.

MR. TAIKEFF: I don't deny that that's the fact. It's what role is played at a certain point. This is significant. I will not make a contention at any time in the course of this trial that that vehicle was actually used. You need not fear that. I will be bound by that in connection with the proof I offer.

MR. SIKMA: Then I fail to see the relevance.

MR. TAIKEFF: I don't have to explain my entire theory to the government to get in a photograph of this vehicle that is already in evidence in another photograph.

THE COURT: Well, actually are seeking to put these photos in evidence to show the proximity of other vehicles, I presume, is that it?

MR. TAIKEFF: I'm seeking to show that that vehicle was taken in and I will eventually use that as a springboard to show that certain other vehicles were taken in which is a process of accretion by which I will prove my case, although there is no burden upon us to prove anything. And the question of relevance, I think, is obvious .

MR. SIKMA: Your Honor, this is really a waste of time as far as this witness is concerned because he really can't say with any certainty as to where it is and --

{1251}

MR. TAIKEFF: He has said where it is. He said it's in the BIA lot.

MR. SIKMA: He said he believes he saw it.

MR. TAIKEFF: That goes to the weight of the evidence, not its admissibility.

MR. SIKMA: Certainly not shown to be relevant at this time, Your Honor.

THE COURT: I'm going to admit the exhibits.

MR. TAIKEFF: Thank you, Your Honor.

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

THE COURT: Exhibit 96, 97, 98 and 103 are received.

Q (By Mr. Taikeff) I'm placing those exhibits before you, sir, placing closest to you Exhibit 97 and then next closest to you Exhibit 98 in evidence. Do you see another vehicle in 97?

A Yes, sir.

Q What vehicle is that?

A Well, it's a red vehicle.

Q It's a red vehicle or is it a particular red vehicle?

A It appears to be a particular red vehicle.

Q And to be specific, what particular red vehicle is it?

A It's not --

Q I beg your pardon?

A Which photograph are you referring to?

{1252}

Q 97 I said was put closest to you and I asked you to look at that first.

A Okay.

Q Sir?

A It appears --

Q Yes, sir.

A -- that they are the same.

Q In other words, it appears that the vehicle which is in the background behind the green Ford is the vehicle I have referred to as the Chevrolet van which is on page 31 of Government Exhibit 55, is that correct?

A That's in reference to Defendant's Exhibit 97 only?

Q That's correct, sir.

A It appears to be.

Q Now I ask you to look at Defendant's Exhibit 98 tn evidence along with the Defendant's Exhibit 93 and 94 for identification. Now with respect to the picture which is in evidence, you see the green Ford?

A Yes, sir.

Q Yes or no, do you see another vehicle in the background?

A Yes, I do.

Q Can you identify the vehicle that is in the background and if you can, if it is possible for you to do so in terms of 93 and 94 for identification, first tell us whether you can make any identification.

{1253}

A Well, I can make an identification to certain references in this particular photograph.

Q Whatever the basis of your opinion, I ask you to offer us your opinion, not how you did it.

A Well, Defendant's Exhibit 98 has a broken windshield in it.

Q No, sir, don't tell us the details. Just tell us the answer if you have one.

A Well, to me they appear to -- the one in 93 appears to be identical to 98, but I can't say positively.

Q Show you Defendant's Exhibit 95 for identification, not evidence. Can you tell us the location at which that photograph was taken? Yes or no.

A Yes, I can.

Q What is the location?

A It's the police BIA parking lot. It's a secured evidence parking lot to the west I believe of the police station.

Q That's the same place where Defendant's Exhibit 98 shows, isn't it?

A See, this confuses me. I don't know where that background is.

Q Well, look now at Defendant's Exhibit 95 and tell me if you see a vehicle in the background of that.

A Yes, I do.

Q And do you recognize that vehicle?

{1254}

A It's a green vehicle.

Q Well, is it that green Ford which was in tent city?

A It appears to be, yes.

Q Well, isn't it a fact, sir, that the vehicle which is depicted in the background of Defendant's Exhibit 98, the one in Defendant's Exhibit 95 for identification, 93 for identification and 94 for identification, are all the same vehicle?

MR. SIKMA: Your Honor, this question has been asked and answered a number of times. Furthermore counsel is becoming argumentative with the witness. He said it appeared to be, and I think that's his answer.

THE COURT: I will allow the witness to answer.

A Well, it appears that Defendant's Exhibit 93, 95, 98, the red vehicle appear to be the same vehicle. But as far as saying what 94 goes to, I can't say hat.

Q (By Mr. Taikeff) All right.

THE COURT: I didn't hear the last answer.

THE WITNESS: As far as, Your Honor, as far as Defendant's Exhibit 94, I can't specifically say how this fits into these three particular photographs. There's not enough there for me to make an identification.

MR. TAIKEFF: All right. Your Honor, I make no offer with respect to Defendant's Exhibit 94. But I now offer into evidence Defendant's Exhibit 93 and 95, and I'm showing them {1255} to Government counsel.

MR. SIKMA: No objection, Your Honor.

THE COURT: Exhibits 93 and 95 are received.

Q (By Mr. Taikeff) I show you 95 and I ask you whether you would describe that vehicle as a red pickup? Yes or no.

A A pickup?

Q A red pickup.

A Well, the first thing that comes --

Q Just tell me yes or no.

MR. SIKMA: Your Honor --

MR. TAIKEFF: It is a simple question, Your Honor.

THE COURT: Just a moment. Are you able to answer it yes or no?

THE WITNESS: No, sir, I'm not.

THE COURT: All right.

MR. TAIKEFF: Now, Your Honor, I'd like to note that Mr. Sikma just said he can't answer the question yes or no. I am impressed with Mr. Sikma's ability to read the witness's mind.

MR. SIKMA: Your Honor, I would object to counsel's statements and move that it be stricken from the record. Counsel knows full well that I have an obligation to object to improper questions and to the improper examination of a witness.

MR. TAIKEFF: Your Honor, the proper way to state an {1256} objection is to say I object and state the legal grounds; and the legal ground, there was incompetence, not to state that he can't answer the question and tell him what the answer should be.

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

MR. TAIKEFF: The federal rules of evidence provide for that.

THE COURT: Just a moment. The witness has stated that he cannot answer the question yes or no. You may answer the question, or you may, you may restate your question and the witness may answer it in his own way.

Q (By Mr. Taikoff) Remember the question?

A You asked me if it was a pickup.

Q I asked you if it was a red pickup.

A Okay.

Q Didn't I?

A Okay. Red pickup.

Q Okay.

A The first thing that comes across my mind is not being a pickup.

Q Why not?

A It's not, it's not a pickup.

Q What is it?

A It, it's some other type of vehicle. I believe it's an International Harvester.

{1257}

Q Yes. That's the manufacturer's name. Take a look at 93 in evidence. Is that the same vehicle?

A Appears to be.

Q Now, look at that and tell me whether it's a red pickup or not.

A That's my same answer, my initial reaction to these photographs is this vehicle being a pickup, it's not a pickup.

Q All right. What do you understand the word pickup to mean when we refer to a vehicle?

A Well, a pickup to me is a two wheel drive. You use the -- it's a half ton, three-quarter ton. Use it to haul wood, gravel. Use it to work around the farm. Doesn't have a detachable top, you know, it's all one body. I don't believe that meets that criteria. Q Isn't a pickup a vehicle that has a cab and a carrying compartment in the back which is open?

A Well, I think that could probably be true. But you asked if I thought it was a pickup, and to me my reaction to those photographs is it's not a pickup.

MR. TAIKEFF: Your Honor, I just want to make sure I do not make any error. Is 95 in evidence? May I ask the Clerk?

THE CLERK: Yes.

Q (By Mr. Taikeff) I show you Defendant's Exhibit 95 and ask {1258} you first, is that the same vehicle we've been talking about for the last few minutes?

A Yes. I've seen this particular exhibit, yes, sir.

Q And you say that that is not a pickup in your opinion; is that correct?

A Now, you are asking me in my opinion is it a pickup?

Q Well, looking at that vehicle, if you were broadcasting a transmission as a law enforcement officer or someone said to you red pickup, and you saw that vehicle, would you think that maybe that was what the person was talking about?

A Well, to answer that question, that would be true, yes.

Q All right.

MR. TAIKEFF: Now, Your Honor, may I have that picture circulated amongst the jurors?

THE COURT: You may.

MR. TAIKEFF: Thank you.

MR. HULTMAN: Your Honor, could we approach the bench while the jury is looking at the photos at this time?

THE COURT: You may.

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

MR. HULTMAN: Your Honor, the reason for approaching the bench is that we are constantly being placed in a situation where counsel is demanding a yes or no answer. And all of us know that there are many, many responses by witnesses many {1259} times where it cannot be a yes or no answer. And when that witness has indicated such hesitation, the Government has every right in the world to make that objection. We have and we will, and I want it made the opportunity in the future without any remarks being made in the presence as to whether or not the Government is conducting misconduct at that time or that they don't have such a right. That's the point to which I'm objecting at this time and I want the record clear.

MR. TAIKEFF: Your Honor, first of all we have a highly experienced and well-trained FBI agent who in addition to his experience in the field has, like all the other agents, been trained in the proper way to conduct himself in a courtroom. He knows full well that when a question is put to him in such a way that the question wants him to limit himself to a yes or no, and the question cannot be answered yes or no to say so. The witness does not need signals from counsel. Now, the proper way to state an objection, as I understand it under the federal rules of evidence, is to rise, say objection and state the legal grounds. Not to make a factual argument within the hearing of the jury and the witness. If the witness could not answer, the legal ground would be competence. And if that has to be elaborated upon, the appropriate place for it is at the sidebar. {1260} And as long as the Government continues in its course of conduct, which I interpret as an effort to throw signals at a witness, I'm going to resist their efforts unqualifiedly.

THE COURT: This practice of asking a witness yes or no can be a misleading practice because a witness may not be able to answer the question yes or no, but may feel compelled under the circumstances in the atmosphere of the courtroom to answer the question yes or no. I have been inclined many times, and I have refrained from doing so, to interpose a suggestion to the witness, if you are able to do so.

MR. TAIKEFF: I would be happy at the beginning of each cross-examination to advise the witness of that fact so there's no misunderstanding between me and the witness. But I do not want anything that even may appear to be a signal from adverse to a witness under cross-examination.

MR. HULTMAN: Well, Your Honor, if counsel is indicating by the mere fact that we don't have a right to make an objection, and that in and of itself then becomes a signal, I resist this whole --

MR. TAIKEFF: That's not my point.

MR. HULTMAN: We have a right to make an objection for whatever reason counsel has to make an objection, and I want that opportunity without interposing of a speech by counsel as to what the motive of the Government may or may not {1261} be.

MR. TAIKEFF: It's only when the Government makes speeches of this kind that I feel the necessity of responding. The rule is clear-cut. One states an objection and the legal grounds. One does not make short or long speeches in connection with an objection, and I don't object to the Government taking its position as often and vigorously as it deems appropriate. It is the manner in which it is done that I find inappropriate.

MR. HULTMAN: Well, then, Your Honor, I would put on the record that I will expect to abide by it, and I also expect all counsel for the defendant to equally abide by it.

MR. TAIKEFF: I am sure that that will occur.

THE COURT: Very well.

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

MR. TAIKEFF: Does Your Honor wish --

THE COURT: I'm going to declare a recess as soon as the jury is finished viewing the photos.

Court is in recess until 11:00 o'clock.

(Recess taken.)

{1262-1277} INTERROGATION OF WITNESS

Pages 1262-1277

{1278}

MR. TAIKEFF: Sorry about the delay, Your Honor.

THE COURT: Very well. Jury may be brought in.

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

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) On how many separate occasions have you been to the Jumping Bull area? Do you know what I mean by the Jumping Bull area?

A Jumping Bull community?

Q Or the Jumping Bull community, yes.

A I've never been there before with the exception of that day.

Q Just once?

A That's correct.

Q I show you Exhibit 93 in evidence which depicts that red vehicle we've had some testimony about. And that's not the red and white panel truck, is it?

A No, sir, it's not.

Q Can you tell from looking at that photograph where that vehicle is standing in that photograph?

A No, I can't.

Q More specifically is that photograph not taken in the area of the Jumping Bull community?

{1279}

A You're speaking to me if it is?

Q If, from looking at it, you could say whether it is.

A I can't.

MR. TAIKEFF: All right. Your Honor, I believe the Government has offered a stipulation.

MR. SIKMA: Your Honor, I believe that we'll stipulate that it is in the area by what we have referred to as the junked cars I believe in other testimony.

MR. TAIKEFF: I think that's the area marked with the letter "P".

MR. SIKMA: Yes, Your Honor.

THE COURT: The stipulation --

MR. SIKMA: To the right.

THE COURT: -- is received.

Q (By Mr. Taikeff) Now, sir, on June 26, 1975 you had occasion to work with a team of law enforcement officers, some of whom were from the FBI and some of whom were from the BIA; is that correct?

A Yes, sir.

Q Could you tell us the names of some of the BIA people you were with.

A Marvin Stoldt, Ely Conroy.

Q Could I have that second name again, please.

A Ely Conroy. Terry Weston and an Officer Pacer I believe.

{1280}

Q Now, beginning at what time did you come into contact with those people from the BIA? What time of day?

A At approximately 1:20 P.M.

Q And for how long did you remain in a position where you were working with them or coordinated with them, that specific group?

A Oh, until approximately 5:30 P.M.

Q Did you confine your activities to a certain area, relatively small area compared to that Chart 71 in evidence, or did you find yourself in numerous places that afternoon?

A I wouldn't define it as numerous.

Q How many?

A Two different other -- three different other locations than where I arrived initially.

Q Now, I would like to perhaps repeat some information concerning a highway known as Highway 35. Such a highway is in the area; is that correct?

A Yes, sir.

Q And if this Chart 71 in evidence were to be expanded to include Highway 35 it would have to be extended downward from the lower edge, is that correct thus far?

A Yes, sir.

Q And it would have to be expanded to the right?

A Yes, sir.

Q And possibly the right-hand half of the upper edge might have {1281} to be extended upward?

A Yes, sir.

Q Now, if that were done a sufficient distance, I gather that, and if it were drawn accurately, we would find somewhere over here (indicating) off the lower left-hand corner of 71 an intersection between Highway 35 and Highway 18; is that correct?

A That's correct.

Q And then that road in some manner of arc or curve would continue along below what is now the lower edge of the chart, coming up on the right-hand side and eventually would intersect Highway 18 again?

A Yes, sir.

Q How far down do we have to come in actual distance, not in inches of chart, before we would see Highway 35, let's say, directly below this wooded area which is the center bottom of the existing chart? And I'll help you with that by telling you that the distance between the white house and the bottom of the chart seems to be about a thousand feet.

A Oh, maybe a thousand yards.

Q About three thousand feet?

A No, one thousand yards.

Q I said about three thousand feet.

A Yeah, okay. Three thousand feet.

Q You were at one time somewhat closer to those residences {1282} than a thousand yards away, correct?

A Yes, sir.

Q And it is fair to say that you were fairly close, though, but not at Highway 35, almost due west of the residences?

A (No response.)

Q Which is the lower part of the chart.

A Yes.

Q I say that only for the record, not because I don't think you understand.

A Yes, yes, sir.

Q Is it accurate to say that you were approximately a half mile on a straight line from the residences when you were in that vicinity near Highway 35?

A Approximately a half a mile.

Q Yes, that's my question. A fair statement?

A Roughly.

Q Now, I think our point of departure a moment ago was your saying that you believe you were in three different areas in the course of that afternoon?

A Yes, sir.

Q I've already questioned you about one of them?

A Yes, sir.

Q Could you, using the pointer if you prefer, or by describing t, tell us the other two areas in which you were located that afternoon.

{1283}

A I'll use the pointer. From the position due west of these residences known to me as the Jumping Bull residence, the first time I was almost due north. I left there probably, oh, maybe five hundred yards from that location due north.

Q And how long did you remain at what I will refer to as the second location?

A Twenty minutes possibly.

Q And what time of day was that, sir?

A That was shortly after 4:30.

Q And how about the third location?

A Well, I would have been down here (indicating).

Q You are pointing to a place off the chart?

A Off the chart.

Q Which is south of tent city at the same latitude as tent city approximately. And how far south of the center of tent city were you approximately, just for the record primarily?

A I didn't know where tent city was at that particular time.

Q Well, now that you know it, could you give us an estimate?

A Well, I can't because I don't know the relationship between tent city and the Rooks residence.

Q Could you put it in terms of Highway 35, does that help you in any way?

A Yes. That's where I was.

Q You were at 35?

{1284}

A Yeah. I went south on 35.

Q I see. So you were sufficiently far out of what we now know to be tent city, so as to be in the vicinity of Highway 35?

A That's correct.

Q Okay. Would you be kind enough to resume your seat. What was that time of day?

A That was shortly after 5:30 P.M.

Q So most of the day you spent at the location I questioned you about approximately a half a mile west of the group of residences?

A Yes, sir.

Q Now, other than what you may have seen in the immediate vicinity of the residences, did you see any people who were, as far as you understood the facts to be, not law enforcement people in the area that day?

A Yes, I did.

Q In the woods?

A In the woods?

Q Yes. Did you see those people in the woods?

A Yes, sir.

Q On how many separate occasions did you see people in the woods in the course of the afternoon? And let me tell you, so there's no confusion in anybody's mind, I'm trying to discover from you some information about how many people there were around there and where they were and at what time of day. That's {1285} the purpose of asking you these questions.

A The woods meaning, not the -- or the area confining, or around this Jumping Bull --

Q I'm trying to exclude the area which is essentially at the center of Exhibit 71, and I'm trying to deal with people who may have been on the various slopes or in the woods or in the ravine or along the stream who were not known or believed by you to be law enforcement personnel.

A Well, at each location I went to and during the day I saw several people.

Q And what were they doing?

A Well, I could see people across the highway on top of a butte standing.

Q With guns?

A I couldn't tell if they had guns.

Q You couldn't say that they didn't have guns?

A That's correct.

Q Is that equally true?

A That's equally true.

Q All right.

A I saw people down by the -- I saw people behind me.

Q Excuse me. For the benefit of the record I think your first description was accompanied by pointing in the upper left-hand corner of Exhibit 71?

A That's correct.

{1286}

Q All right. Would you continue, please.

A Then shortly after in the afternoon when I left the first time from my present location I viewed two people up on top of a hill.

Q Can you give us some idea of where that hill was?

A Well, if you took my position west, you would go directly across the road. And west of me up the hill there's a rise.

Q West of you, which would be further down on this chart?

A That's correct.

Q If it were extended it would have to be extended further west?

A Yes, sir.

Q We would have to extend it to show Highway 35?

A Yes, sir.

Q And you saw two people there?

A Yes, sir.

Q What were they doing?

A Well, they were shooting.

{1287}

Q With rifles?

A With weapons.

Q Go on, tell us any other sightings that you made?

A And then after the response at 5:30, after 5:30 when I went down to the other location on Highway 35, and I saw approximately 10 individuals.

Q Moving south?

A Well, I would call it west.

Q Going this way (indicating), to the right on the chart?

A I went south, and if I was going south, they were off to my right-hand side, moving up the hill west, in a westerly direction, we will call it.

Q So in terms of the chart, you were moving off the right, towards the right, and these people were moving towards the bottom of the chart?

A This way (indicating), would be over here to my right (indicating).

Q Well, were they traveling a line which would -- if it were extended -- go down toward the bottom of the chart?

A No. You have to go up. Where I saw them, it was down by the culvert, by the Rooks' place, when I saw them. Of course, I was going on Highway 35, and they were going up the hill to the right, on an incline up the hill, so I would call it in a westerly direction.

Q I see. Which way on the chart do you believe west is {1288} depicted?

A That's north (indicating), that's south (indicating), and that's east (indicating), and that's west (indicating).

Q So west is toward the bottom of the chart?

A To me south is here (indicating), east and west -- I can see it now. O.k., the road goes that way (indicating). Well, from where I was on the road they were running in a westerly direction

Q Direction -- o.k. Did you see any other non-law enforcement people in the course of that afternoon, say, between 1:30 and 5:30 or 6:00?

A Yes, sir.

Q Could you tell us whether or not on two separate occasions that afternoon you either personally spotted two Indian men or were told by the group, or member of the group you were working with, that two Indian men had been spotted on two separate times that afternoon?

A Yes, sir.

Q Do you have any reason to believe that they were the same two people both times?

A I have reason to believe that.

Q What is the basis of that belief?

A Well, earlier, before I arrived at this initial place, initial spot, two of the Bureau of Indian Affairs policemen that were in the car, in the group that we were with, advised {1289} Marvin Stoldt that they had just seen two individuals running up the hill about 200 yards off the roadway, down along a ravine.

Q Where were they as far as you could tell from the description in terms of the chart?

A Well, again it would have been west of the road.

Q Further down on the chart if it were extended?

A Further down, yes.

Q And that was about 2:00 o'clock in the afternoon?

A Roughly, yes, sir.

Q And then again two men were spotted at what time?

A Well, after 4:30.

Q Where were those two men spotted?

A Well, I never spotted them.

Q But you received information?

A Yes.

Q From your colleagues?

A Yes, sir.

Q Where do you believe they were spotted?

A Well, I understood them to be down in the creek area, which would be along this wooded area (indicating).

{1290}

Q Could you point with the pointer so I could state it for the record, please?

A Well, there is a creek that goes along this wooded area (indicating).

Q Yes.

A And it leads up into the dam.

Q Which is off the lower left-hand corner of the chart?

A Right.

Q Roughly where, along -- I am not asking for an exact location.

A It would have been north of my location.

Q North of your location?

A Right.

Q That would put it both below the lower edge of the chart and left of center of the center line of the chart, is that correct?

A It would put it in this area somewhere (indicating), that's what I was informed.

Q All right. You have just pointed to the wooded area which is in the lower left of the chart, about a foot and a half to two feet from the lower left-hand corner. Were those people carrying guns?

A I didn't see them, sir.

Q Was it reported that they were carrying guns?

A I did not hear that.

Q Now, you wrote one or more reports which you refer to in the FBI as 302's, right?

A Yes, sir.

Q Did you take notes in the course of the afternoon?

{1291}

A Me personally?

Q Yes, sir.

A No, sir.

Q Did you write your report with the assistance of any notes?

A No, sir.

Q Did you write the report based on your own recollections of what took place that day?

A Yes, sir.

Q Did you copy information from anybody else's 302?

A No, sir.

Q Before writing your report, did you collaborate in any way with another FBI Agent or law enforcement officer?

A No, sir.

Q I show you what has been marked Defendant's Exhibit 91 for identification, and ask you, sir, whether that is the report you wrote concerning your official activities on the afternoon of June 26, 1975?

A (Examining) It is a copy, yes, sir.

Q And it is part of your official duties to complete such report or document after you have performed your official duties?

A Yes, sir.

Q And documents such as that are kept as a permanent record of the agency for which you work, isn't that correct?

A Yes, sir.

{1292}

Q And in fact, it is considered an official document of your agency, not for public dissemination?

MR. SIKMA: Your Honor, I would object to this as irrelevant and also calling for a legal conclusion on the part of the witness.

MR. TAIKEFF: Your Honor, I am trying to lay a foundation as required by the Federal Rules of Evidence.

THE COURT: Proceed.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) Do you recall the last question, sir?

A Would you restate it, please?

Q Yes. I asked whether the document was an official one which was confidential in nature and not for public dissemination generally?

A That's correct, sir.

Q And as far as you know, based on your experience as an Agent of the Federal Bureau of Investigation, it is a regular part of the routine, so to speak, of the FBI to maintain reports of that kind in their files?

A Yes, sir.

Q And that report is specifically such a report, that was maintained in that way after it was prepared by you?

A Yes, sir.

Q Did you type the report yourself?

A No, sir.

{1293}

Q Did you dictate it to a stenographer?

A Yes, sir.

Q Did you dictate it personally or through some dictation device?

A No, sir. I personally -- to answer that question -- I dictated it personally.

Q Face to face with the stenographer?

A Face to face.

Q Who took it down in shorthand?

A Yes, sir.

Q And again on some later time you got the typewritten report back?

A That's correct, sir.

Q And you initialed it?

A I did initial it.

Q And that is the report?

A That's my report.

MR. TAIKEFF: I offer it in evidence.

MR. SIKMA: Your Honor, may we approach the bench?

THE COURT: You may.

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

MR. SIKMA: On the same grounds as stated earlier, the Government objects. This is not -- I haven't seen any showing that there is anything -- any inconsistent {1294} statement. He has gone over it with this witness a number of times. I think that there has to be some showing of a prior inconsistent statement of the witness before it is admissible in evidence. He has the witness on the stand to testify, and that cannot be substituted for his written report.

MR. TAIKEFF: As the Government well knows, it is only possible to put evidence in in a linear fashion, and I cannot put in everything concerning his report at one time. This witness can only tell us what he has just told us, and I will connect it. If your Honor feels that I have not laid a

sufficient foundation on the testimony already, I would ask your Honor, in the alternative, take it subject to connection.

THE COURT: Well, I think the objection is more basic than that, and that is, that a 302 report is not admissible on the record before this Court.

MR. TAIKEFF: He has testified that he has not collaborated with anyone in the writing of that.

THE COURT: I am not ruling on that basis.

MR. TAIKEFF: I am going to show that he did collaborate at a later time.

THE COURT: I see, excuse me

MR. SIKMA: He is not stating that. He said he had conferences and a lot of other things, that they discussed {1295} things with other evidence. He asked him if he collaborated with anyone in the writing of this particular report.

MR. TAIKEFF: That's correct.

MR. SIKMA: And it says "Frederick Coward" here, and it indicates who he was accompanied by and so forth, and I see no showing of inconsistency in that respect; but in addition to that, I would object to it on the more basic reason as to its admissibility, as ruled on earlier by the Court.

THE COURT: The ruling of the Court is that the report is not admissible, at least at this time, and so the offer is denied.

MR. TAIKEFF: Thank you.

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

THE COURT: The objection to Exhibit 91 is sustained.

Q (By Mr. Taikeff) Returning your attention for a moment to the report which is Exhibit 91, is it accurate to say that to the best of your ability you recorded in that report every detail that you could recall of what you saw and heard and did that afternoon to the extent that at the time you wrote the report you thought it had some relevance to your official duties?

A I can answer that, yes.

Q And in fact, it is your understanding that when you write {1296} a 302, after you have been in the field, so to speak, that you should report as much peripheral detail as possible concerning anything you in your opinion think is significant relating to your activities?

MR. SIKMA: Your Honor, I would object for the reason that the question calls for irrelevant information, No. 1, and No. 2, the question basically has been asked and answered. It is repetitious.

THE COURT: It may be. I will allow counsel to proceed to some degree.

MR. TAIKEFF: I believe, your Honor, that was going to be my last question on the subject.

THE COURT: Very well.

MR. TAIKEFF: I am afraid I would have to ask the court reporter to read the question to make sure that it is stated the second time exactly as it was stated the first.

THE COURT: The court reporter may read the question back.

(Question was read by the reporter.)

A Yes.

Q (By Mr. Taikeff) Is it not a fact that late that afternoon, perhaps 5:30 or later, you received notification via the FBI radio that there was firing going on in a certain area?

{1297}

A Yes, sir, I did.

Q And do you remember the name of the person who communicated that over the FBI radio?

A Yes, I do.

Q What is the name of that person?

A J. Gary Adams.

Q Now, you said before that you made some other sightings, is that correct?

A Yes, sir.

Q And I gather that you meant by that, at a place or in places other than the three places we have discussed in detail?

A Yes, sir.

Q Do you remember what day of the week June 30th, 1975, was?

A June 30th?

Q Yes.

A Let's see. The 26th was a Thursday, as I recall.

Q I believe that's correct.

A Friday, Saturday, Sunday -- I believe it was a Monday.

Q As far as you know, did you work that day?

A I worked every day.

Q Do you normally work every day?

A No, sir.

Q But at that time you were working every day?

A Yes, sir.

{1298}

Q And for how long after June 26th, 1975, did you continue to work every day without taking a day off?

A Two months.

Q Did you meet with your fellow agents who were working on this case on June 30th?

A I met them every day, sir.

Q Was there anything different about that day in connection with your morning or evening discussions with your colleagues?

A On that particular day?

Q Yes.

A Not that I recall.

Q I put it to you, sir, and you tell me whether this is correct or incorrect: That on June 30th, 1975, you and one or more of your fellow agents sat down and decided from the evidence you had gathered up to that point what had happened that day, and to a considerable extent wrote

reports which reflected not what you had seen and heard but what you believed had taken place, what you believed as of that time had taken place, true or false?

{1299}

A False.

Q I put it to you, sir, and you tell us whether I am right or wrong: That you wrote certain portions of your report purely on the basis of fiction, motivated by what you then believed occurred on June 26th, 1975, is that true or is that false?

MR. SIKMA: Your Honor, I would object. This question has been asked and answered No. 1; No. 2, it is misleading; No. 3, it is argumentative as far as this witness.

THE COURT: Sustained.

Q (By Mr. Taikeff) Did you not write in your report something about seeing Leonard Peltier that day?

A That's correct.

Q And isn't it a fact that it is false, that you did not see Leonard Peltier that day?

A That's incorrect, sir.

Q Which way were you looking when you saw Leonard Peltier that day?

A Well, I was looking in a northeasterly direction.

Q Generally speaking in the direction of the residences?

A You mean when I saw him specifically?

Q When you claim you saw him, yes.

A Well, when I saw him specifically I was looking east.

Q And you were in the position off the chart, west of the houses, about a half mile away?

A Well, I was approximately 700 yards when I made the viewing of Leonard Peltier.

Q Isn't it a fact, sir, that you were a half mile away?

A From --

Q (Interrupting) When you were at the place from which you say you saw him.

{1300}

A Well, if you take the place where I was and measure the distance to the houses, it is approximately 800 yards which is less than a half a mile. If you take where I was and where I made the observation, it would be approximately 700 yards.

{1301}

Q I show you Defendant's Exhibit 92 for identification and ask you, yes or no, if you are able to answer yes or no, do you recognize that?

A Yes, sir, I do.

Q Is it an affidavit?

A Yes, sir.

Q And did you sign that affidavit?

A Yes, sir.

Q And did you swear to the truth on its contents?

A Yes, sir.

Q And does it have certain attachments to it which you referred to in the text of your affidavit?

A Yes, sir.

Q And when you signed that affidavit and swore to it, did you understand that you were incorporating the attachments by reference and thereby swearing to the accuracy of the attachments and the statements you made about them?

A Yes, sir.

Q Was there a map attached?

A Yes, sir.

Q Made perhaps from an aerial photograph?

A There was a map attached, however it was made I don't know.

Q And on that map did you indicate the place where you say you saw Leonard Peltier?

{1302}

A May I see the affidavit, please?

Q Well, can you tell me from memory, first?

A I think the general area is probably indicated but I'm not specifically sure.

Q Do you recall whether you marked on that map and said in your affidavit that you had marked on that map the place where you were and the place where Leonard Peltier was allegedly seen?

A I believe I did but I would have to see the affidavit.

Q Now I return to you Defendant's Exhibit 92, I'm showing you the last page. I'm also placing before you a blue index card with a straight edge. Do you have a pen or a pencil with you?

A No, sir, I do not.

Q I'm also placing before you a fountain pen. Do you see two marks on that last page?

A What do you mean "marks"? On the map itself?

Q A mark with A and a mark with B.

A Yes, I do.

Q And is one of them, according to your affidavit and your present recollection, the place where you say you were and the place where you say you saw Leonard Peltier? Yes or no, if you can answer it yes or no.

A That would be a yes, sir.

Q Is there a scale on the map which tells you the equivalent {1303} of how many feet per inch?

A Uh-huh.

Q Would you, sir, use the blue card and the pen, if necessary, and the scale and tell us the distance between the place where you said you were and you said you saw Leonard Peltier. Have you determined a distance?

A Yes. 2600 feet.

Q How many feet are in a mile, sir? Is it 5,280 feet?

A I believe so.

Q Would you concede that short 40 feet the distance was a half a mile?

A I would concede that.

Q Now when you were looking through this distance of a half mile, how many individuals do you say you saw?

A I saw four.

Q And were they standing still or moving?

A They were running.

Q And in which direction?

A Well, southwesterly direction.

Q In a southwesterly direction. Trace on the chart with the tip of the pointer the approximate route they were running as you viewed it.

A Well, when I viewed it?

{1304}

Q I'm talking about only your own personal sighting.

A That's right. When I viewed it it was in this area right like this (indicating).

Q Let me describe that for the record. That's about a half an inch to the right of the arrow that's designated "body of Joe Stuntz" on the road or path?

A Well, they weren't on the road.

Q No. Your pointer is on the road.

A Well, what I'm saying is --

Q Perhaps east of the road?

A Yes.

Q All right. And now trace out their path for a short distance.

A Well, went this direction (indicating).

Q Mostly in a southerly direction?

A Right.

Q And you were looking which way?

A Looking east.

Q You were looking east and they were moving south?

A (Witness nods affirmatively.)

Q Okay. Will you sit in that chair and assume for the moment that the back of the courtroom is to the south -- correction -- is to the east.

{1305}

A Okay.

Q Then facing the jury would be to the south?

A That's correct.

Q Now when you saw, or when you say you saw Leonard Peltier running in the direction of the jury, was he running that way and looking that way (indicating) or was he looking at you so you could get a good look at him?

A He was running that way.

Q So you could see only his profile?

A Basically; yes.

Q And from a half a mile away looking through the telescopic sight of a rifle, you were able to recognize the defendant in profile while running?

A Yes, sir.

Q Have you ever performed that feat at any other time in your life?

A No.

Q Now you were not the only person who accomplished something like that that afternoon, isn't that true?

A I later found that out; yes, sir.

Q When you say "later," when was that?

A Well, the first time I had heard that was a couple months after my report. I was not cognizant of it.

Q Isn't it true that you just forgot to put it in your report?

{1306}

A No. That's not true.

Q The identity by name of the people other than law enforcement officers who were present that day was exceedingly important to your investigation, a correct proposition or an incorrect proposition?

A I lost you. Could you restate it, please.

Q Yes. I asked you whether the following hypothesis or proposition is correct; the identity by name of the people other than law enforcement officers who were at or near the Jumping Bull community on the afternoon of June 26th, 1975, was exceedingly important to your investigation, true or not true?

A True.

Q Agent Skelly was one of those agents you worked with? Yes?

A Yes, sir.

Q Agent Waring was one of those agents you worked with? Yes?

A Yes, sir.

Q You met with them every morning?

A I met with everybody that was there.

Q I understand. But I have to be precise. You met with those two agents every morning and every evening in the days following June 26, 1975?

A I saw them; yes.

{1307}

MR. TAIKEFF: May I have this marked for identification please.

Q (By Mr. Taikeff) Between June 26th, 1975 and the end of your working day on June 30, 1975, did you and your fellow I agents talk about people who had been identified positively as being present that afternoon at the Jumping Bull community?

A Yes.

Q Did anyone mention the sighting of Leonard Peltier?

A I did.

Q Were you the only one?

A That I was aware of; yes.

Q Did anyone mention the sighting of Jimmy Eagle?

A Yes.

Q Who mentioned the sighting of Jimmy Eagle?

A You mean the agent?

Q Yes.

A Or who in particular?

Q You don't know?

A (Witness nods negatively.)

Q As far as you know, as of June 30 that sighting was common knowledge amongst all of them?

A As far as I knew. I was aware of it.

Q Did you not tell us before that you were working with the BIA officer by the name of Marvin Stoldt? Yes, sir.

{1308}

Q Did you have any conversations with Marvin Stoldt?

A All day.

Q Did he tell you that he claimed to have spotted Jimmy Eagle in that same group of four people?

A Yes, sir, he did.

Q That was an important fact, wasn't it?

A Yes.

Q Is it in your 302?

A Is it in my 302?

Q Yes.

A It's in one of them; yes.

Q I return to you Defendant's Exhibit 91 and perhaps you can assist me with the possible oversight. Can you tell me the page and paragraph?

A It's not in this particular 302.

Q Oh, I'm sorry, sir. Did I fail to hand you your report of the activities of June 26, 1975?

A These are mine. These are my observations, no one else's.

Q But that is your report concerning what happened on June 6th, 1975, isn't it?

A That I personally did; yes.

Q Only what you personally did is in that report. Yes or no?

A Well --

Q Yes or no.

MR. SIKMA: Your Honor. I'd --

{1309}

MR. TAIKEFF: I offer it in evidence again, Your Honor.

MR. SIKMA: Same objection as stated by the side bar.

MR. TAIKEFF: Now, would Your Honor examine the exhibit, please.

MR. SIKMA: Your Honor, the objection is the same for the same reasons.

MR. TAIKEFF: The basis is entirely different this time, Your Honor. If I may hand it up to the Court --

MR. HULTMAN: You're going to the side bar.

MR. TAIKEFF: I'm not going to say anything.

THE COURT: Counsel approach the bench, please.

(Whereupon, the following proceedings were at the bench;)

THE COURT: Specifically why do you feel that --

MR. TAIKEFF: Your Honor, the report details in the most precision imaginable the activities of everybody with whom he was working, not just himself, and every time he mentions another person's name it is in capital letters. Your Honor doesn't even have to read the words, Your Honor only has to read the names which are boldface. This report impeaches his statement as to the explanation why the Jimmy Eagle sighting is not in there, because it doesn't refer to anybody else's activities.

MR. SIKMA: Your Honor, that refers to things that {1310} he personally observed other people do.

MR. TAIKEFF: And what people told him.

MR. SIKMA: That is not -- what does it show other people told him?

MR. TAIKEFF: There are eight or nine pages of what other people told him throughout.

MR. SIKMA: There are things that people said on the radio but not interviews.

MR. TAIKEFF: That's not true at all.

MR. HULTMAN: Let us finish on this side, please. Might I make a request?

THE COURT: The report will not be received. It can be used in the cross-examination of this witness to point up any discrepancies between his testimony and the --

MR. TAIKEFF: I'm going to have to read every single word in the report which is going to be the equivalent of offering it into evidence.

MR. SIKMA: Your Honor, I object to that. He's been through this 50 times. I think Counsel's trying to delay the trial.

MR. TAIPEFF: Not in this case he's not been through it. He hasn't begun getting through it yet.

THE COURT: The ruling of the Court is that this exhibit will not be received.

MR. LOWE: A point of inquiry just to clarify. This is {1311} a general, not relating only to this exhibit, but general use. If Your Honor says that this is not admitted into evidence but it can be used in cross-examination, Your Honor is not precluding the reading of portions of it to a witness then, for example, is that correct? I'm not clear whether you do or don't. I'm going to make sure we don't offend Your Honor's understanding of what proper use can be made of it in cross-examination.

THE COURT: You may show it to the witness, ask him to read a certain portion and if that is clearly within conflict with what he has testified, then it may be brought out.

MR. LOWE: Well, I guess my question, Your Honor, and this is general, but we're going to hit this on other occasions in this trial. If the witness has said, assume, number one, he said this only contains what he saw or did and there are portions here which clearly by any objective reasoning give other information, namely what other people have told him, it seems to me we're obviously entitled to have the jury look at the document for themselves to judge the candor and credibility of the witness. That's the point I'm making. Mr. Taikeff showed it to you to offer, to let you see the clearly inconsistencies.

MR. SIKMA: There are no prior inconsistencies.

MR. TAIKEFF: Now we have the inconsistencies and that's {1312} the basis for offering it in evidence, to let the jury view it and use it as part of the data upon which they judge this witness' credibility.

MR. HULTMAN: Your Honor, now Mr. Lowe referred to two Counsels, I'd like to be heard.

MR. TAIKEFF: NO objection.

MR. HULTMAN: Your Honor, this is a bald attempt in order to get all kinds of hearsay into this record and before this jury. The very limited purpose that Counsel legitimately understands the rules concedes he has now done, that in no way then puts a document with all of these various items, all of us here know that that 302 represents two things basically; one, what it is that person may have seen or observed that day and, two, whatever it is by way of information in a general way likewise came to his attention.

MR. TAIKEFF: That's precisely my point.

MR. HULTMAN: But in no way does it allow the document itself to come on as the best evidence. The best evidence is the man sitting right there that's asking the questions.

MR. TAIKEFF: I'm on the adverse side of the case. I don't have to accept his answers.

MR. HULTMAN: You do as far as the inconsistencies, you have shown those out and used the document.

MR. TAIKEFF: I haven't begun. I need the document in {1313} order to do that.

MR. HULTMAN: You've used it. That's what you have been doing.

MR. TAIKEFF: Your Honor, I understand Your Honor's ruling and I will proceed.

THE COURT: My ruling is you may state to the witness what you understand his testimony to be and to go over what he has said and if he agrees that's what he has testified. You may ask him to read a specific portion of that you consider to be in conflict what that testimony and go on from there.

MR. TAIKEFF: I understand, Your Honor.

THE COURT: I'm not going to allow that report to go into evidence on the basis of the record at this time.

MR. TAIKEFF: I understand Your Honor's ruling and I have no quarrel with it except I respectfully accept from it, other than that I have nothing else to say about it.

THE COURT: Yes.

{1314} (Whereupon, the following proceedings were had in the courtroom in the hearing and presence of the jury:)

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

Q (By Mr. Taikeff) Before we get back to Defendant's Exhibit 91 I want to ask you a few more questions. You said that Marvin Stoldt, S-t-o-l-d-t, a BIA officer, you subsequently learned also made a sighting of someone that day, right?

A What are you referring to, I mean?

Q I'm talking about the afternoon of June 26, 1975. I'm talking about a look through a distance of approximately a half a mile in roughly an easterly direction during which time you say you saw Leonard Peltier running in profile and recognized him at that distance by looking through a telescopic sight.

A That's correct.

Q Now, do you know whether a similar sighting was made by Officer Stoldt of that group in which he identified amongst others possibly James Eagle?

A Yes, sir.

Q And do you know what Officer Stoldt used to make his sighting?

A I later found out they were binoculars.

Q And do you know where he was relative to you when he ostensibly made his sighting?

{1315}

A Well, he was at the window to begin with.

Q Of a house?

A Of a house. He made an observation and called me over, at which time I made an observation. While I was doing that he was gone.

Q And can you tell us the words he spoke to you when he called you over to the window?

A The words, no, I can't. But basically --

Q Paraphrase him.

A Well, I was sitting in the corner looking out the window and he said, he called me by name and said, "There's some guys running, you know, over by the houses." Pointed it out to me. But when I got there, my naked eye, I could see the four people running away.

Q Okay. What was he doing at the time he called you over? What did you see?

A Well, I had noticed that he was there and he had his binoculars. And he was --

Q Around his neck, in his hand?

A Well, you know, when he was looking at him he had them in his hands.

Q Was there a strap on them?

A I don't recall.

Q What color were they?

{1316}

A Thing that comes to my mind is black.

Q What color was the strap?

A I don't know if there was a strap or not.

Q Can you show us with your hands the overall size from the back lens to the front lens approximately?

A Well, they were pretty good size. They had a lot of power to them.

Q You don't know that they had a lot of power, you know that it was a pretty good size?

A Well, they were big.

Q It was big, right?

A Right.

MR. TAIKEFF: I move to strike the portion of the answer that they had plenty of power on the ground of incompetence.

THE COURT: That they had a lot of power?

MR. TAIKEFF: Or a lot of power.

THE COURT: That part will be stricken.

MR. TAIKEFF: Thank you, Your Honor. (By Mr. Taikeff) Now, how big were they from front to back, front being the big lens to the front, back being the little lens that you put against your eye. I mean, I wasn't paying that much attention to his binoculars. I know he had binoculars, and I know that he was adequately seeing --

{1317}

MR. TAIKEFF: Objection, Your Honor, on the grounds that he's interpreting what was in somebody else's mind. Move to strike.

THE COURT: It will be stricken.

Q (By Mr. Taikeff) Go on, sir.

A All I can say he had a big set of binoculars.

Q Okay. Do you have a big set of binoculars, sir?

A Personally?

Q Yes.

A No, sir.

Q Did he then say something to you?

A At what point?

Q Sometime between the time he raised the binoculars to his eyes and the time he lowered them from his eyes?

A Well, the only conversation we had was the fact that he told me to come over there. He asked me to come over there. He said there was some activity and he saw people running, and I responded.

Q And then what happened immediately after that? He said nothing?

A Nothing.

Q Didn't tell you that he saw Jimmy Eagle?

A Didn't say a thing.

Q Didn't tell you that he saw Leonard Peltier?

A (No response.)

{1318}

Q Do you know as of that date how long Marvin Stoldt had been a police officer?

A How long?

Q Yes.

A For some time, several years.

Q More than five years?

A I don't know personally, but he's been --

Q Would you estimate his age as of that date?

A Age?

Q Yes.

A My age, upper thirties.

Q On that day, talking about the afternoon of June 26, 1975, did you know that Leonard Peltier was an AIM activist?

A An AIM activist?

Q Yes. An American Indian Movement activist, a political person? Yes or no.

A No.

Q You had heard the name before, though?

A Oh, yes.

Q Did Marvin Stoldt, up to the time he put the binoculars to his eyes, that is to say from the day you first met him until the moment he picked up those binoculars to his eyes, did he ever mention the name Leonard Peltier to you? Yes or no.

A No.

Q Did Marvin Stoldt say anything to you following the time he {1319} put down his binoculars?

A No. Because when I was doing my thing and later done, I turned for him and he was gone. I don't know where he went. He left the building.

Q Did you see him again that day?

A Yes.

Q Did you tell him that you saw Leonard Peltier running in profile at a distance of approximately a half a mile? Yes or no.

A No.

Q Is it your testimony that on June 26th, June 27th, June 28th and June 29th none of the agents with whom you were working said anything to you about Marvin Stoldt having identified one or more of the four people who were running?

A Somehow I don't understand that. Could you rephrase that, please.

Q Yes. Be happy to. I'll put it in the form of affirmative statement. You tell me whether it's true or not. Up to the time that you wrote your report, your 302, which is Defendant's Exhibit 91 for identification, none of the agents you were working with said anything to you about the alleged sighting made by Marvin Stoldt?

A The other agents, no.

Q Did anybody prior to the time you wrote Defendant's Exhibit 1 for identification?

{1320}

A Well, Marvin Stoldt told me.

Q When?

A Well, he told me about Jimmy Eagle in the car on the way back to where we had located the bodies.

Q He told you that he had seen Jimmy Eagle?

A Yes. That's what he said.

Q Didn't you tell us a little bit earlier that you didn't learn about that for several months?

A No, I did not.

MR. TAIKEFF: Excuse me one moment, please.

Q (By Mr. Taikeff) What did you say to him when he told you that news?

A I wasn't saying anything. I was listening to what he had to say. I was driving the vehicle.

Q Did you discuss that news with any of your fellow agents up to the time you wrote your report?

A Yes, sir.

Q Am I correct that when Marvin Stoldt told you what he did in the car that you considered that to be an important piece of information in connection with your investigation?

A Yes, sir, I did.

Q And is it fair to say that the report you wrote on June 30, 1975, which is now Defendant's Exhibit 91 for identification, contained many things that people had told you that afternoon?

A Yes, that's true.

{1321}

Q I thought you told us a little while ago that your report only contained things that you did. Are you changing your testimony in that regard?

MR. SIKMA: Your Honor, I would object on the grounds that it's argumentative and also a misstatement of the witness's answer some time ago.

MR. TAIKEFF: Perhaps Mr. Sikma would like to state what it is just to help counsel, Your Honor. What was that earlier answer. I would appreciate the assistance.

MR. SIKMA: Your Honor, I believe he indicated at that time what he had seen on that, and what he did in his conversations with people on that particular afternoon.

Q (By Mr. Taikeff) Was that your earlier answer?

A Yes, sir.

Q But in fact in addition to that your report contained what numerous people told you in the course of that day, isn't that true, sir?

A Yes, sir.

MR. SIKMA: Your Honor, I object to counsel's harassment of the witness here. It's obvious that he's being sarcastic and I would object to this, Your Honor.

THE COURT: This sarcasm will be disregarded.

THE WITNESS: Yes, Your Honor.

Q (by Mr. Taikoff) Then, sir, would you please tell us all why you didn't write in your report on June 30th this very {1322} important piece of information which Marvin Stoldt allegedly told you four days earlier?

A Well, to begin with the little items that people told me things in my 302 pertain to the movements and the commitments that I would make.

The particular observation by Marvin Stoldt to me was a significant piece of evidence and observation, if you will. On the way back it was my position as an agent when interviewing people as to what had transpired that day, and keep in mind that everybody who was with me would be interviewed, their statements would be made known on 302's.

It was at that time coming back in the car that that specific observation, this piece of evidence, was to be made in a separate 302 trying to determine what his observations were. And that particular observation and the things surrounding that particular conversation were listened to and incorporated into a 302.

Q I want to make sure I understand your answer. You said in essence that that was very important so you wanted to make sure you got it down in a separate 302? Yes or no.

A Well, that's true, yes.

Q Okay. Well, why didn't you interview him in the car while his memory was freshest?

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

Q Well, I was suggesting to you, sir, that I didn't understand {1323} it either, and I wanted you to explain why you didn't take the occasion right then and there in the car to say, "Okay, Mr. Stoldt, here are my credentials, I'm an FBI agent. I want to interview you because you've just told me something very important. Now, tell more about it in detail."

A Well, the formality, really didn't need to go through that, we've been through it all day. We were on our way back to go assist the guys that were recovering the bodies that were doing the crime scene, and that's where we were going.

We didn't have time to do a formal interview. We were making, we were trying our thoughts.

Q How long did that ride take before you got to your destination?

A Well, I left from the area where we had chased the group of people into the hills, and it was dark, and like less than five minutes probably. We drove back to the residences, the area where the rest of the people were, agents, police people. Didn't take long.

Q So you were busy that day?

A Very busy.

Q And that stood in the way of your getting on paper so that it would become a permanent part of the FBI files, the most important piece of evidence you acquired that day? _

MR. SIKMA: Objection, Your Honor. That calls for an {1324} opinion, conclusion of the witness.

THE COURT: Sustained.

Q (By Mr. Taikeff) Was it not --

MR. SIKMA: Same objection, Your Honor.

MR. TAIKEFF: I didn't finish the question yet. Do I understand the Government to object before I finish the question?

THE COURT: You may state your question.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) Was it not a Thursday?

MR. TAIKEFF: Do you object to that question?

MR. SIKMA: Your Honor, I object to counsel --

THE COURT: The remark of counsel will be disregarded. It is wasting time. Proceed.

Q (By Mr. Taikeff) Tell us, sir, in your opinion as a professional law enforcement officer, other than your supposed sighting of Leonard Peltier and Stoldt's supposed sighting of Jimmy Eagle, was there any other piece of evidence concerning the solution to the case that you gathered that afternoon by sight, sound or otherwise.

MR. SIKMA: Your Honor, I would object. That calls for a conclusion of the witness and invades the province of the jury.

MR. TAIKEFF: Of course I'm asking for his conclusion.

THE COURT: That objection is overruled.

{1325}

A No.

Q (By Mr. Taikeff) How many pages did you write on June 30, 1975 concerning your activities on June 26, 1975?

A Well, I didn't write any pages. My statement was typed and it consisted of eight.

Q Did you think that question suggested that you typed the report? Is that your understanding of my question?

A Yes, sir.

Q I'm sorry, I phrased it incorrectly. How many pages long is the report that you dictated and somebody else typed?

A Eight pages. Almost eight.

Q Single spaced or double-spaced?

A Single.

{1326}

Q Now, that report does contain a paragraph which refers to your alleged sighting of Leonard Peltier, does it not?

A My sighting, yes.

Q And when you were dictating the words which eventually were created by the typewriter into this paragraph, were you then and there reminded of the fact that Marvin Stoldt told you that he too sighted somebody?

A What do you mean, reminded by someone?

Q When you were dictating this paragraph, didn't you dictate this paragraph, this big paragraph on Page 2?

A I dictated everything, sir.

Q But specifically you dictated that paragraph, didn't you?

A That's correct.

Q That paragraph refers to your alleged sighting through the telescopic sight, doesn't it?

A That's correct.

Q When you were dictating that, was it in your conscious mind that Marvin Stoldt had had a similar experience that afternoon?

A I don't recall, but it possibly did.

Q Any reason why you didn't say: Marvin Stoldt, a BIA officer, also made a similar sighting, but I have to interview him yet and details will follow?

A I don't know if it come out that way, but it probably crossed my mind.

{1327}

Q Is there anything, even one word, in Defendant's Exhibit 91 making reference to any sighting by any person other than yourself? "Yes" or "no".

A I would have to look to be --

Q (Interrupting) Please do (handing).

A Sure. Well, o.k., sightings of people.

Q At a distance?

A Yes.

Q Identifying somebody by name? "Yes" or "no".

A By name?

Q Yes.

A No. No, sir.

Q By the way, when did you get around to interviewing Marvin Stoldt?

A Well, I had a conversation with him on the way, like I said, to the crime scene.

Q No, no. I mean an interview in the sense that warranted the writing of the 302.

A Well, I guess it was a couple of months later that Marvin Stoldt came into the office.

MR. TAIKEFF: May I have a piece of paper marked for identification, please?

Q (By Mr. Taikeff) So he came into your office and tell us what happened when he came into your office.

A Well, I interviewed him.

{1328}

Q And then you wrote your report?

A Yes, I did.

Q And are you able to state the date of that interview?

A If I may look at the 302, I can.

Q I would be happy to show it to you, but my question is: Without looking at anything, can you tell us the date? "Yes" or "no".

MR. SIKMA: Your Honor, the question has been asked and answered.

MR. TAIKEFF: I have not asked that question before.

MR. SIKMA: Your Honor --

THE COURT: (Interrupting) Are you able to state the date?

THE WITNESS: Not for sure, sir.

Q (By Mr. Taikeff) Would it help you if I suggested that it was on September 4, 1975?

A Yes, if that's what it says on there

Q Now, did you say before that it wasn't necessary for you to go through the formality of identifying yourself as an FBI Agent to Mr. Stoldt whom you had worked with?

A Men -- I mean Marvin and I worked together for a long time. He knew who I was.

Q Well, when he casually dropped into your office in September of 1975, did you go through a formal identification procedure at that time?

{1329}

A No.

Q Would there then be any reason for you to have said so in a report you wrote of that interview?

A Well, you know, shaking hands and saying "Good to see you", and yes, well, that's an identification.

MR. TAIKEFF: May I have this piece of paper marked for identification? (Counsel confer.)

MR. SIKMA: Your Honor, may we approach the bench?

MR. TAIKEFF: No, your Honor, I ask that I not be interrupted at this point in my cross examination.

THE COURT: You may approach the bench.

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

THE COURT: Mr. Taikeff, I am running the court.

MR. TAIKEFF: I think the Government is running the court, your Honor. They do it at a time, in a critical point in the defense cross examination. That was totally unnecessary. I was just about to impeach him, and they know it.

MR. SIKMA: Your Honor, the type of information if -- I am sure that -- I am sure that the witness knows what type of information is coming with regard to a point that's totally irrelevant, concerning whether or not he identified himself as an FBI Agent. m is matter is so totally {1330} irrelevant that it does not merit the time that this counsel is taking on this type of examination.

THE COURT: Mr. Taikeff, that is the concern that the Court has, and that is that the requirements of the formal request may be such that when the report is written, that it shows that an identification has been made whereas in fact, if the report is from somebody, that is, on an interview with someone that is well-known in actual practice, the meeting may be much in the same form; and I think that type of impeachment is of no probative value and has a tendency to be misleading.

MR. TAIKEFF: He can certainly explain it, your Honor. I think it is just one more instance of the variation between the recorded facts and what he has testified to.

MR. SIKMA: Your Honor, I would object to it as irrelevant and waste of time.

THE COURT: It is irrelevant. It is a minor detail, as I say, that is misleading; and I think under Rule 611 it should be excluded.

MR. LOWE: Your Honor has seen the page we are talking about?

THE COURT: No, I have not seen the passage. I am talking about the questioning, as to how they meet, when the interview was conducted.

{1331}

MR. TAIKEFF: He said it was an informal visit, and that's the paragraph. That's Exhibit 106 which the Court is looking at for identification.

(Court examines document.)

THE COURT: All right. The report reads: That subsequent to the identification of the interviewing agent, furnished the following information.

Now, I can conceive that in any type of an investigative organization a report would make a statement of that kind.

MR. TAIKEFF: I just want to ask him whether it was a fact or whether it was merely recorded.

THE COURT: It has no probative value, and I think that is exactly what Rule 611 reaches. It is in the nature of lint-picking, and it is wasting time.

MR. TAIKEFF: It is taking much more time to decide rather than getting the answer to the question.

THE COURT: I think that is true.

MR. TAIKEFF: Would you want to give in this instance only -- I can see no general need for an instruction -- for the witness not to discuss with anyone his testimony during the recess? I am fairly close to finishing. I don't want anyone to speak with him about his testimony.

THE COURT: I will not give that kind of an {1332} instruction in this case, I am going to have to give that instruction all through this trial.

MR. HULTMAN: I object strenuously. I have a right to talk to a witness any time.

THE COURT: I have overruled it.

MR. TAIKEFF: Thank you, your Honor.

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

MR. TAIKEFF: Is it your desire to recess? I have more than just a few minutes.

THE COURT: You have more than just a few minutes?

MR. TAIKEFF: Yes, I do.

THE COURT: All right. The Court is in recess until 1:30. (Whereupon, at 12:31 o'clock, p.m., the trial of the within cause was adjourned until 1:30 o'clock, p.m.)

{1333} AFTERNOON SESSION

March 24, 1977

1:30 o'clock, P.M.

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

THE COURT: For Counsel's information, the Court will have to recess at 4:30 this afternoon. The reason for the early recess is that one of the jurors has a personal matter that has to be attended to.

You may bring in the jury.

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

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Agent Coward, I am placing before you an object which has been marked Defendant's Exhibit 107 for identification, and a blank piece of paper which I am placing underneath it and I'm putting it in a certain position for you.

MR. TAIKEFF: Perhaps I should show it to government counsel, first.

Q (By Mr. Taikeff) Now, sir, if it is necessary for you to do so, I would encourage you to look at the central part of Government's Exhibit 71 with particular emphasis on the Y intersection that has been referred to as having the letter "P" {1334} on it and I ask you to look at the exhibit marked for identification which I just placed in front of you and ask whether you recognize that that is a drawing which purports to approximate the area around or near the residences and Y intersection.

A It appears that, sir.

Q Now I'm giving you a special marking pen which I think you will find writes in red and I ask you to look at Defendant's Exhibit 107 for identification, decide what the path was of the person whom you saw in the group of four and after you've made that decision put a dotted line showing as much of the path as is represented by what you saw from the time you first saw the group until you last saw the group.

A (Indicating.)

Q Do I understand from the way you marked that that by the time the people reached this area on the right-hand branch of the Y (indicating) almost at the tree line, that was the last you could see of them?

A Uh-huh. That's correct.

Q Now tell me if I am correct as to the following: that when you first saw the group you saw them with the naked eye?

A That's correct.

Q Would you then put near that dotted line the number "1" to represent where the group was. I realize the group wasn't in one point, but as close as you can get it because that's a {1335} small diagram. Put the number "1" where the group was when you first saw it.

A (Indicating.)

Q Now put a "X" to designate that you could no longer see the group, wherever that place was.

A (Indicating.)

Q And is it your testimony that you watched the group traverse that entire distance from "1" to "X" along that line?

A That's correct.

Q And would you put a "W" where -- withdrawn. Did you see the person you say was Leonard Peltier travel over a distance?

A Yes, sir.

Q Put a "W" where you say he was when you first saw him.

A Well, when I first saw Leonard Peltier would have been the first time that I saw the group.

Q I know. But where you first identified him. I stand corrected.

A Just shortly before the "X."

Q And might I assume then that you continued to see him until you couldn't see anymore?

A That's correct.

Q So he went from the position marked "W" to the position marked "X" and disappeared?

A That's correct.

{1336}

Q And would you say that was roughly half the total distance traversed by the group?

A Roughly.

Q When you and Officer Stoldt were on your way to another location from the Jumping Bull community, were you traveling in an automobile?

A Any location or another?

Q Well, I think you said that there came a time in the afternoon when Stoldt told you about his sighting. You were in an automobile at that time. Weren't you going to some other location?

A Yes. Officer Weston reported a sighting and we responded to it.

Q I'm talking about that incident. You traveled in an automobile?

A Yes, sir.

Q And you were there and Stoldt was there I'd assume.

A That's correct.

Q Who else?

A Special Agent Vincent Breci.

Q That's B-r-e-c-i?

A Yes. And a BIA officer Eli Conroy.

Q Now I want to make sure that I have not misheard or misunderstood you. I'll very quickly click off some key facts. {1337} You say the sightings took place in the late afternoon of the 26th?

A Which sightings?

Q Yours and Stoldt's..

A You mean of the four people?

Q Yes. I'm talking about the sightings through some kind of telescopic sight, binoculars or other aid.

A It was approximately 3:45 as I stated before.

Q Okay. Sometime after 3:45 but before you quit working that night Stoldt told you about his making a sighting?

A Of the four people; yes.

Q And the fact that he had seen Jimmy Eagle?

A That's correct.

Q That was in the car?

A That was in the car.

Q That-because you were preoccupied or busy you did not interview him in depth so that you could write a 302 about it?

A At that time; no.

Q My statement is factually correct?

A I didn't write a 302 at that time.

Q And that was because you were preoccupied and busy?

A That's correct.

Q And that you did not do so until he came to your office sometime several months later in the month of September of 1975?

{1338}

A That's correct.

Q You're certain of that?

A You mean when he came there?

Q Yes.

A Couple months ago?

Q Yes.

A I can tell you this: I hadn't seen him until that time.

Q And you're certain of that?

A Yes.

Q As certain as the fact that you saw Leonard Peltier through your telescope?

A Yes.

Q Now this morning do you recall whether in substance when first asked about it you said that you did not know about the Stoldt's sighting for a long time?

A Of Leonard Peltier. That's correct.

Q Well, let's explore that. Am I to understand that when you were questioned this morning and you said that you hadn't heard about it for a long time, you were talking about the sighting by Stoldt of Peltier?

A That's correct.

Q But not about the sighting by Stoldt of Jimmy Eagle?

A That's correct.

Q You're sure of that?

{1339}

A That's what I said this morning.

O Okay. I want to read some questions and answers to you and they'll be followed by another question that I will put to you now. Question: "And from a half a mile away looking through the telescopic sight of a rifle you were able to recognize the defendant in profile while running?" Answer: "Yes, sir." Question: "Have you ever performed that feat at any other time in your life?" Answer: "No." Question: "Now you were not the only person who accomplished something like that that afternoon, isn't that true?" Answer: "I later found that out; yes, sir." Question: "When you say `later,' when was that?" Answer: "Well, the first time I had heard that was a couple months after my report. I was not cognizant of it."

My question to you, sir, is that the series of questions and answers in which it is your testimony that you were telling this Court and jury that you were thinking about the sighting of Peltier by Stoldt, not the sighting of Jimmy Eagle by Stoldt?

A Those questions there are referring to questions that you were asking me, I believe a few questions before those questions that you just read we were discussing whether we had a discussion about a sighting of four individuals, one of {1340} which was Jimmy Eagle. That's true. But there was never a discussion about Leonard Peltier being in that one of four at that time and it is true that I first learned of that when the interview was conducted a couple months later.

Q Are you telling us that it is your recollection that prior to this portion of the interrogation this morning we had been talking about a sighting by Stoldt of Jimmy Eagle?

A Well --

MR. SIKMA: Your Honor, I'd object to this, It's repetitious. The questions have been asked and answered a number of times.

MR. TAIKEFF: I've never questioned him about this.

MR. HULTMAN: Wait until the objection is finished, please.

MR. TAIKEFF: I don't understand this claim of the government when something is repetitious when it is occurring clearly for the first time in this courtroom.

MR. SIKMA: Your Honor, Counsel has been going over this matter with the witness a number of times for an hour or so and I think that it's totally repetitious and completely irrelevant at this point.

THE COURT: He may answer the last question.

THE WITNESS: Would you repeat it, please.

THE COURT: The reporter will read it back.

{1341}

(Whereupon, the last question was read back.)

A No. That's not it at all. Your question is to me did Stoldt ever talk to me about seeing Peltier during the sightings of those four people?

Q (By Mr. Taikeff) Let me rephrase my question so there can be no misunderstanding.

A Okay.

Q I just read some questions and answers to you. Just before that this afternoon you told us that in your mind was the subject of Stoldt sees Peltier, not Stoldt sees Eagle, correct?

A That's true in both cases.

Q I'm only talking about one case. I'm talking about the question I put to you this morning. This question: "Now you were not the only person who accomplished something like that that afternoon, isn't that true?" Answer: "I later found that out; yes, sir."

A That's correct.

Q Now you were asked that question and you gave that answer, right? Yes or no?

A That's yes. That's correct.

Q Now when I spoke about an accomplishment something like that, what did you understand that to mean when you were asked that question?

{1342}

MR. SIKMA: Your Honor, I would object to this as Counsel playing with words. It's a matter of semantics. It's argumentative and it's a waste of time.

THE COURT: Again I'm going to permit the witness to answer the question. The reporter may read the question back.

(Whereupon, the last question was read back.)

A You summed it up as an accomplishment and I summed it up as something that I observed. You asked me if I had ever done it before and I have not.

Q (By Mr. Taikeff) And then I asked you whether there was anyone else who did anything like that that afternoon and you in essence said no, you didn't find out about it for a couple of months. Didn't you say that this morning?

A Well, it's possible if that's what it says.

Q Well, if you said that, that wasn't factually correct, was it?

A I think the line of questioning was concerning the particular knowledge of me knowing whether Marvin Stoldt had told me about the sighting of Peltier and my questioning of, my answers to that questioning, questions are in line with that.

{1343}

Q Aren't they in line, aren't your answers in line with your effort in the latter part of June to fabricate evidence and write false reports?

MR. SIKMA: I object, Your Honor.

THE COURT: The objection is sustained. It's argumentative.

Q (By Mr. Taikeff) In your work on the reservation did you become apprised of the fact, if it was a fact, that the American Indian Movement was opposed to the person known as Wilson who was the tribal leader at that time?

MR. SIKMA: Your Honor, I object to this as irrelevant beyond the scope.

MR. TAIKEFF: It's a foundation question, Your Honor.

MR. SIKMA: Beyond the scope of the direct examination.

T B COURT: It's irrelevant and the objection is sustained.

Q (BY Mr. Taikeff) Was it not decided amongst the agents working on the case on or about June 30, 1975 that this was an opportunity to eliminate one of the AIM leaders, namely Leonard Peltier?

MR. SIKMA: I would object to that, Your Honor, as clearly improper, no foundation and argumentative.

THE COURT: Sustained.

Q (By Mr. Taikeff) Did you and the agents reach such an {1344} understanding between yourselves and embark upon a course of conduct --

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

THE COURT: The objections are sustained. The subject will not be gone into any further with this witness. It is beyond the scope of the direct examination. The Court has ruled that it is irrelevant and we are wasting time.

Q (By Mr. Taikeff) Didn't you perjure yourself in this courtroom when you said that you did not interview Marvin Stoldt prior to September, 1975? Yes or no.

MR. SIKMA: Objection, Your Honor. This is legal question, calls for a legal conclusion on the part of the witness.

MR. TAIKEFF: I'll withdraw the question as stated.

MR. SIKMA: It's argumentative.

Q (By Mr. Taikeff) Did you not lie in this courtroom?

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

THE COURT: Not at this time.

Q (By Mr. Taikeff) May I have an answer to my question? Did you lie in this courtroom when you said that you did not interview Stoldt prior to September of 1975 on the subject of his sightings, long distance sightings? Yes or no.

A No.

{1345}

Q I show you Defendant's Exhibit 105 for identification, which is not in evidence, but you may look at it. What is it?

A It's a 302.

Q Of what?

A Marvin Stoldt.

Q What do you mean "of Marvin Stoldt"? Do you mean an interview of Marvin Stoldt?

A Yes, sir.

Q By whom?

A By myself and Vincent Louis Brecci.

Q And according to that 302 what was the date of the interview?

A June 28, 1975.

Q And what was the subject matter of the interview?

A Well, basically it was a sighting by him at approximately 3:45 P.M.

Q Of?

A Of Jimmy Eagle.

Q Now, sir, I ask you again, when you told us with the same certainty with which you say you saw Leonard Peltier that afternoon that you did not interview Marvin Stoldt on that subject until September, were you telling us the truth?

A That's correct, I was.

Q Would you explain the piece of paper which is in front of you.

A As I explained earlier the ride back from the Pumpkin Seed {1346} house on this particular day --

Q On which particular day?

A That's the 28th.

Q Yes. Not the 26th, friend.

A That's wrong.

Q What's wrong?

A That date.

Q It is wrong?

A It is.

Q You know the name of the typist who typed it?

A I don't know. It says DL.

Q There are three dates on every 302; isn't that correct?

A That's correct.

Q The date it's typed?

A That's correct.

Q The date it's dictated?

A That's correct.

Q And the date of the interview or activity?

A That's on there, too.

Q And what in the case of that exhibit is the date in each and every instance?

A It's the 28th of June, 1975.

MR. TAIKEFF: I offer it in evidence, Your Honor.

MR. SIKMA: Same objection, Your Honor.

THE COURT: Sustained.

{1347}

MR. TAIKEFF: May I come to the sidebar?

THE COURT: You may.

THE CLERK: Would you identify the exhibit.

MR. TAIKEFF: Yes. It has been identified, but I'll identify it again. It's 105.

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

MR. TAIKEFF: May I ask Your Honor the leading basis for the sustaining of the Government's position, so that I know whether or not I perhaps have overlooked something in laying the foundation for the introduction of this document.

THE COURT: You may state the legal basis as to why you feel that document is admissible.

MR. TAIKEFF: Because it provides graphic illustration that contradicts important testimony strongly adhered to by this witness. It impeaches him in a significant way, and I also want to be able to read the contents of it to the jury. It ties in with other evidence which will be coming in this case, and I'm left with something in a black bag that I cannot refer to in its text if I am not able to introduce this report. It is surely relevant.

MR. SIKMA: Your Honor, may I respond?

THE COURT: You may respond.

MR. SIKMA: Your Honor, the only testimony that this witness gave essentially on direct examination was, number {1348} one, that he sighted Leonard Peltier; and in addition he talked about seeing some other individuals which were fleeing from the area. And I guess there was one other point where he indicated that he went down to the wooded area, that there was some shooting in that area. And that he had sighted two individuals.

Now, the other one thing that's significant about this: is while he's testified to this, the defense counsel in opening statements said that we'll have no people to dispute essentially with the fact that Leonard Peltier was in this area on the --

MR. TAIKEFF: That's true, Your Honor.

MR. SIKMA: -- on the 26th of June. I fail to see what the use of spending about four hours of the time in court cross-examining this witness on a very insignificant issue. This particular thing, the witness has testified that he believes there's any accuracy -- inaccuracy on the date. I do not see where that is an important and impeaching matter.

I think that it is a very insignificant matter of perhaps typographical error or something of this nature. But it certainly is not worth the time and effort that's been gone into in this.

Second thing is that it is also very misleading concerning its importance in this trial the fact that counsel is, for what reason I don't know, but spending a considerable {1349} amount of time on a witness that took about fifteen minutes on direct examination, if that long.

MR. TAIKEFF: Your Honor, the answer to the main point made by Mr. Sikma, which I think could be called out of his statement, is that we don't dispute his presence. The point is that when this document was prepared in June of 1975 the Federal Bureau of Investigation did not know that that was not going to be an issue in the case that they were planning against the defendant, and we are going to prove before this trial is over that the FBI has manufactured evidence and

witnesses against the defendants in this case, or that the defendants in these cases, and this is the beginning of that proof.

MR. SIKMA: Your Honor, I would point out a rather credible, incredible fallacy in the defendants, counsel's argument. They've indicated that we have manufactured evidence.

MR. TAIKEFF: Not you, Mr. Sikma. The FBI.

MR. SIKMA: The FBI. This man stated on direct examination that he made that observation, made a record of it very shortly thereafter of identifying this person.

He has stated that as far as this person is concerned he did not, he did not discover that someone else had also identified this individual until some time later, that is, the defendant, Leonard Peltier. And I can't see where that {1350} shows evidence of manufacturing evidence.

I just fail to see where that -- totally irrelevant. If we don't call this witness, I would like to see what difference it makes. Totally irrelevant whether it's corroborated. It's corroborated practically by the defense themselves.

MR. TAIKEFF: We are calling Stoldt when they took Stoldt off the witness list, we gave them notice that we were calling him, and we will call him.

MR. SIKMA: Well, we could still call him, but you know they're complaining about it and now they want to call him as a witness. They're saying that he's unreliable and that we've manufactured that witness. And now they want to call him as a witness. I think it's totally absurd.

MR. TAIKEFF: The case is absurd. Our position is not absurd.

MR. SIKMA: We would like to proceed in our case. They've already had overnight to prepare this cross-examination. We've been delayed in putting on another important witness, and I think that this is a delaying tactic on the part of counsel here.

MR. TAIKEFF: Let me assure you that we're anxious for Norman Brown to take the stand. And if necessary be happy to work late into the night to keep him as late as he has to be on the stand.

{1351}

THE COURT: That of course is not possible as I've already announced.

MR. SIKMA: It's no wonder. Counsel knows it's not possible, Your Honor.

THE COURT: The offer of Exhibit 105 is denied. Court finds in view of the witness's testimony that its impeachment value would be very slight.

Further finds that the question that preceded the offer was placed in terms of the witness lying, which the Court views as an improper question; and the receipt of the exhibit will simply emphasize the improper suggestion in the minds of the jury.

MR. TAIKEFF: Your Honor, yesterday morning at the beginning of the court day in colloquy with the Court I suggested that it had been my experience that there were times when law enforcement officers took the stand and had convenient lapses of memory. And Your Honor was offended by that suggestion.

THE COURT: That is something for counsel to present to the jury in argument. It is not a proper interrogation. You may interrogate him as to whether they have made conflicting statements. When the case is argued you can argue as to whether or not they were lying, and were they lying. But for counsel to stand up and make these insinuations is improper in my opinion.

{1352}

MR. TAIKEFF: I understand that Your Honor is not a fact finder in this case, but if Your Honor is not already impressed with the fact that this witness has lied on considerable portions of his testimony, then Your Honor is absolutely immune to what is obvious. Because Your Honor just cannot believe that the Federal Bureau of Investigation has done and is doing the kinds of things which have been going on and are going on in this case.

And I want Your Honor to know that I sincerely believe that if that's Your Honor's position, it's because Your Honor has, with all due respect to the Court, is an incorrect one. And I would ask Your Honor to keep an open mind with respect to what has been done in this particular case.

Because if five years ago someone suggested to Your Honor that the revelations of 1973 and 1974 were going to be made, I'm sure Your Honor would, as I would have at that time, never believed it possible. But Your Honor, we will prove before this case is over a criminal conspiracy on the part of the FBI to convict this defendant. And Your Honor is frustrating that effort with rulings that are legally incorrect because Your Honor, in good faith, just cannot accept the proposition which we offer in this case.

And I assure Your Honor that we know what we are talking about. We have proof of it and it's going to develop {1353} in the course of this trial.

MR. SIKMA: Your Honor, this is the same, I heard this same speech before. I suppose we are going to get into matters of 1960 and early 1970. Totally irrelevant --

MR. TAIKEFF: No, we're not.

MR. SIKMA: -- to the defense, to the guilt or innocence of this defendant.

We have brought witnesses here, we intend to present our evidence on the basis of physical evidence. This argument made by counsel, the Government contends, is totally out of line. I've heard this sort of thing over and over, and all it does is delay in getting the evidence before the jury. And I think this is a delaying tactic on the part of counsel, and I would urge the Court to keep this case moving along.

MR. LOWE: May I ask a point of inquiry? I'm not clear when you say about the lying. And I have a witness later on, so I want to understand what you said.

THE COURT: The record is closed. I have made my ruling.

MR. LOWE: I understand. May I ask just the general effect of what you said so I do not offend what you said here at a later time.

THE COURT: You may proceed at a later time. I'm not ruling any further. I've made my ruling, I'm not saying anything more.

{1354}

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

Q (By Mr. Taikeff) How many times did you interview Officer Stoldt concerning the subject matter of his long distance sighting?

A Two times.

Q And when did those interviews take place?

A Well, the first one which I have stated before, I never completed.

Q That was on June 26th?

A That's correct. We're in the car talking.

Q And the second one?

A Was a couple months later.

Q And Defendant's Exhibit 105, which I show to you, is the report of your interview with him?

A That's correct.

Q But you say it has the wrong date on it?

A The date that the conversation took place with Vince Breci and myself who were the two in the car on that particular day.

Q No. But the date, June 28, you say that you believe that's a mistake, it should be September?

A No, no, no, no. The June 28 is a mistake as far as the day that the interview took place.

Q You are saying that it should be June 26th on the line that says "interviewed on"?

{1355}

A That's correct. That's what I'm saying.

Q I see. So that of the three dates, you have no quarrel with the fact that it may have been transcribed on June 28?

A Oh, no, no.

Q And you have no quarrel that it may have been dated or dictated on June 28th. You say that it should be shown interviewed on 6/26/75?

A That's correct.

Q I see. I thought you said you didn't write a 302 concerning the interview in the car?

A Well, you asked me if I took notes, and I did not take notes.

Q Didn't I ask you whether there was a report or a 302, and you said you didn't have time to do it in depth because of other commitments?

A That's correct. On that particular day, that's correct.

Q Oh, you mean you did it on a subsequent date?

A That's correct.

Q I see. Now, when Stoldt came to your office in September what was the nature of the conversation you had with him then?

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

THE COURT: Why?

MR. TAIKEFF: I have not asked that question before.

THE COURT: I beg your pardon?

{1356}

MR. TAIKEFF: I have not asked that question before. I'm referring now to a different, entirely different document.

THE COURT: Are you suggesting you have not questioned this witness about his interview with Stoldt?

MR. TAIKEFF: No. The content of the interview concerning that subject in September.

THE COURT: I'm aware of that. But you have asked this witness about the interview in September?

MR. TAIKEFF: Yes. I mentioned that subject before. I am now asking for the content of what did Stoldt say to him.

THE COURT: All right. He may answer that question.

A Well, he said several things.

{1357}

A Well, he said several things.

Q (By Mr. Taikeff) On the subject of the long distance sighting?

A Well, off the top of my head, without looking at that 302? Q Yes.

Q He told me that particular day that he had in fact observed Leonard Peltier in a group of four people that we both saw running into the vicinity which I pointed out up here earlier.

Q Now, on the subject of the long distance sighting, is that all he said to you on that day?

A There were several things. This was the first opportunity that not only myself but the investigation had to sit down with Marvin Stoldt and determine exactly what he did on that particular day.

Q All right. Now, focus your attention on what he said to you concerning the sighting, the long distance sighting. That's all I am focusing my attention on.

He told you, I gather, that he saw Leonard Peltier?

A That's correct.

Q Did he say anything else about long distance sighting that day?

A Concerning Leonard Peltier?

Q No, concerning long distance sighting.

{1358}

A I would have to recall my memory from that particular 302, sir.

Q Are you saying you don't recall?

A That's what I am saying, sir.

Q Did he say anything about Jimmy Eagle that day?

MR. SIKMA: Your Honor, I would object. The witness has answered the question.

MR. TAIKEFF: That's a specific question to see if it refreshes his recollection

THE COURT: You may answer.

A I believe it does. I would have to recall my memory from the statement, sir.

Q I show you what has been marked Defendant's Exhibit 106, and turning to Page 4, the first full paragraph from the top.

A (Examining) Yes, sir.

Q Have you read the paragraph?

A Well, to where it says "Jimmy Eagle".

Q Why don't you read the entire paragraph?

A (Examining) I have.

Q Now, reading that, does it actually refresh your recollection as to what occurred on that day in September, 1975?

A You mean as far as the interview of Marvin Stoldt, or what happened on June 26th?

Q I am talking about that portion of the interview of Marvin Stoldt which dealt with the long distance sighting.

{1359}

A No, it doesn't.

Q It doesn't refresh your recollection at all?

A No, it does not.

Q In reading the paragraph, would you say that it is factually incorrect?

A Well, that's what he told me.

Q O.k., but it doesn't refresh your recollection?

A Not as to the long distance sighting, it doesn't.

Q When you wrote this report, your conversation with Stoldt was fresh in your mind, wasn't it?

A Well, while he was --

Q (Interrupting) Just listen to my question. When you wrote the report, when you wrote that paragraph on Page 4 --

A (Interrupting) Um-hum.

Q (Continuing) -- was your conversation of that day in September fresh in your mind?

A When I did the report, it was, yes.

MR. ZAIKEFF: O.k. I offer that paragraph as a past recollection recorded.

MR. SIKMA: Your Honor, I would object for the same reason I objected earlier. It is, No. 1, hearsay; secondly, there is no indication here that it is anything that is inconsistent with what has been testified to here.

MR. TAIKEFF: He says he has no memory, so it {1360} couldn't be inconsistent, and it is a past recollection recorded which is an exception to the hearsay rule.

MR. SIKMA: That is my objection, your Honor.

THE COURT: Would counsel approach the bench?

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

MR. TAIKEFF: The Government has a copy of it, your Honor. I gave it to them.

MR. SIKMA: Which paragraph are you talking about?

MR. TAIKEFF: The first full paragraph on the page.

MR. SIKMA: This one (indicating)?

MR. TAIKEFF: Yes.

(Court examines document.)

THE COURT: Which paragraph were you talking about?

MR. SIKMA: This paragraph (indicating). I don't understand why it is necessary. It is perfectly consistent with what this witness testified.

MR. TAIKEFF: He has no memory of this event. The only way we can impeach the testimony is in getting the past record of what he said.

May the Court read it?

MR. SIKMA: Your Honor --

(Court examines document.)

THE COURT: What is your objection?

MR. SIKMA: Your Honor, this is Stoldt's statement. {1361} They are trying to put in Stoldt's statement through this witness. That's hearsay, and that is not an exception to the hearsay rule.

MR. TAIKEFF: I am not offering it for the truth. I can test the truth of it. It couldn't possibly be hearsay. I am putting it in to show it was written in a report. It is an utterance.

MR. SIKMA: That's irrelevant.

MR. TAIKEFF: That's irrelevant?

Your Honor, read 105 for comparison so that perhaps your Honor would understand the relationship between the two and why counsel feels it is important to introduce these two reports into evidence.

(Court examines document.)

THE COURT: I will reserve my ruling on this.

MR. TAIKEFF: Thank you, your Honor.

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

Q (By Mr. Taikeff) I am going to put before you Defendant's Exhibit 106 which is the document containing the paragraph I had you look at a moment ago.

Now, that exhibit is a report, isn't it?

A A report?

Q Yes.

A No, sir.

{1362}

Q What is it?

A It is a form as a result of an interview with an individual. Q Well, is it a memorandum?

A No.

Q Is it a record of the FBI?

A Is it a record of the FBI?

Q Yes, a copy of an FBI record?

A Yes, sir.

Q Does it relate events which occurred or which purportedly occurred?

A In regards to one person, yes.

Q O.k. Is the report based on information transmitted by a person with knowledge of those events?

A Yes, sir.

Q And is that report kept in the ordinary course of the regularly conducted business activity of the FBI?

MR. SIKMA: Your Honor, I would object as this is calling for a legal conclusion.

MR. TAIKEFF: Your Honor, I am asking factual questions as foundation pursuant to Rule 803, Subsection 6, of the Federal Rules of Evidence.

MR. SIKMA: I think the Rule has been held --

MR. TAIKEFF: (Interrupting) I am adding an additional legal basis for the introduction.

{1363}

THE COURT: You may complete the foundation.

MR. TAIKEFF: Thank you.

Q (By Mr. Taikeff) I think I asked you whether that document is and was kept in the course of the business activities or law enforcement activities of the Federal Bureau of Investigation?

A Of the Federal Bureau of Investigation, yes.

Q And was it the ordinary and regular practice of the Federal Bureau of Investigation to make such documents as that 302?

A Yes, sir.

Q And you have had how many years of experience with 302's?

A Over six, sir.

MR. TAIKEFF: I additionally offer that paragraph, your Honor, pursuant to Rule 803, Subdivision 6, of the Federal Rules of Evidence.

MR. SIKMA: Same objection, your Honor, pursuant to the cases cited earlier.

THE COURT: The ruling is reserved.

Q (By Mr. Taikeff) I showed you an affidavit before of your own which was marked Defendant's Exhibit 92 for identification. Do you remember that?

A I remember the affidavit, sir.

Q And that affidavit was filed in connection with proceedings in Canada, was it not?

{1364}

A Extradition, yes, sir.

Q In an attempt to persuade the Canadian Government to send Mr. Peltier to the United States to stand trial here?

A That's correct.

Q And when you signed your affidavit, you knew that the affidavit was going to be used in that connection, did you not?

A No, sir, I did not.

Q Did you read your affidavit before you signed it?

A Yes, sir.

Q And may I assume from that that you both looked at the exhibits which were attached and read the words which were typed on the page?

A Yes, sir.

Q And I assume that English is your first language?

A Yes, sir.

Q Well, would you be kind enough to look at Defendant's Exhibit 92 and tell me whether or not it clearly in the English language says what it is all about at the top?

A Well, it says what it is about, yes.

Q Didn't you read that?

A Yes, I did.

Q All right. Did you not understand what you read?

A I understood what I read.

Q So then you knew that your affidavit was going to be used in connection with an extradition proceeding in Canada?

{1365}

A I stated before I did not know it was going to be used for extradition. I knew it was used in connection with the extradition. Q That's what I asked you.

A All right.

Q Now, did you know that Marvin Stoldt submitted a comparable or similar type of affidavit under the same circumstances for the same purposes?

A No, sir, I did not.

(Counsel confers.)

Q (By Mr. Taikeff) Is it a fact or is it not a fact that Marvin Stoldt did not look through binoculars, but he looked through your rifle with the telescopic sight?

A That's not true.

Q Did he have a rifle with a telescopic sight on that day, June 26th, 1975?

A Not to my knowledge, he didn't.

Q You didn't see one, did you?

A That he had?

Q Yes.

A No, sir.

Q Do you know whether that afternoon at or about the time of the long distance sighting, he had access to a rifle with a telescopic sight?

A I do not know that.

{1366}

Q Now, sir, I ask you this: Did there ever come a time in 1975 when Marvin Stoldt came to you and said, "I now realize that I didn't see just Jimmy Eagle, that I saw both Jimmy Eagle and Leonard Peltier"?

A Yes, sir.

Q And do you know whether there was any connection between his saying that and the extradition proceedings in Canada, if there was any such connection?

A I have no idea, sir.

Q How large was the room that you were in with Mr. Stoldt on the afternoon of June 26th, 1975, the room that had the window that he was looking through, when he allegedly saw four people running?

A It wasn't very big.

Q 10 by 12?

A Possibly maybe even a little smaller.

Q Besides you and he, was there anybody else in that room?

A Not that I recall.

Q Was it decided on or about June 30, 1975, between you and your colleagues, that Bob Robideau, Dino Butler, Jimmy Eagle and Leonard Peltier killed the agent?

A No, sir.

Q Did you ever have any contact with a person by the name of Marvin Bragg?

A Yes, sir.

{1367}

Q Did you ever interview Marvin Bragg?

MR. SIKMA: Your Honor, I object to this as totally irrelevant and beyond the scope of direct examination.

THE COURT: Sustained.

MR. TAIKEFF: May I adopt the witness as my own?

MR. SIKMA: Your Honor, I would still make an objection to this as totally irrelevant.

THE COURT: In view of the objection that it is irrelevant, it is beyond the scope of the direct examination, and therefore, the objection is sustained.

If it is determined to be relevant, it would be a part of the Defendant's case.

MR. TAIKEFF: All right. In that case, your Honor, I am finished with my cross examination. I would like the witness held to be a defense witness.

MR. SIKMA: May I have just a moment, your Honor?

(Counsel confer.)

{1368}

MR. SIKMA: That's all I have of this witness at this time, Your Honor.

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

THE COURT: You may.

{1369}

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

MR. HULTMAN: Your Honor, the next witness which the government will call is Norman Brown. It's my understanding that he wishes through Counsel, I haven't talked to Counsel, but it's my information that he wishes some proceeding out, this is the wish of Counsel, his Counsel, now, not the wish of the government, that he have a proceeding outside of the courtroom and the jury to determine that he does have immunity. And he's making that request and that's why I bring it to the Court's attention at the side bar here prior to the witness actually coming in and we're starting my examination.

THE COURT: What has happened?

MR. HULTMAN: Well, Your Honor, immunity has been granted and I'm ready to proceed. All I'm saying to the Court is this is a request of his Counsel. I'm just relaying that information.

MR. TAIKEFF: May I ask a question? Was another judge the one who conferred the immunity to the request of the government?

MR. HULTMAN: We are at this particular point where evidently he's requesting the one question right now. There is sometimes an instance where in the minds of an individual they have received immunity for that testimony at that given {1370} time. Now we're at --

THE COURT: What Mr. Taikeff is asking, what judge has --

MR. TAIKEFF: Judge McManus?

MR. HULTMAN : I 'm not saying. He has been granted that immunity in communication and we have so communicated this.

MR. TAIKEFF: In other words, you have been authorized to ask the Court to confer it?

MR. HULTMAN: That's correct.

MR . TAIKEFF: We'll accept the government's representation as far as that's concerned and have no objection if Mr. Hultman --

MR. HULTMAN: The point is, at this point it's not the government or the defense that's raising the issue, it's the lawyer of the witness.

MR. TAIKEFF: I understand. My impression is it is the government has the power to ask the Court to confer him.

MR. HULTMAN: That's correct.

MR. TAIKEFF: If you say you will authorize pursuant to statute, we don't have --

MR. HULTMAN: I have a letter.

MR. TAIKEFF: I don't have to see the letter. You know your word is acceptable to me. If you say so, we will accept the authorization as existing and I trust the judge {1371} will confer immunity pursuant to the statute, Title 18, and we should proceed.

MR. HULTMAN: I have shown that letter also to Counsel for the witness so that he likewise had -
-

MR. TAIKEFF: Apparently the witness wants the judge to tell him he does have immunity.

MR. LOWE: Do that at side bar. Can't the judge call him to side bar and tell him?

MR. HULTMAN: What I'm saying, I'm not in any way binding a witness and Counsel, I'm merely bringing it to the Court's attention so the Court will know before I call the witness Counsel has made this request. That's all I'm doing is carrying a message from Counsel for the witness to the Court. That's my only purpose, Your Honor. I am ready to proceed but I don't want to proceed, I want to proceed only in good faith with Counsel for the witness being able to accomplish what he wishes to accomplish.

MR. TAIKEFF: Maybe the jury can remain in place and Counsel and the Court can retire to chambers.

THE COURT: I was thinking we would retire to chambers for about, shouldn't take more than ten minutes.

MR. HULTMAN: Would you, Ralph, notify them downstairs, the witness and his Counsel to come to chambers.

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

{1372}

THE COURT : It will be necessary for the Court then and Counsel to recess to chambers for just a few minutes but because the time that may be required is unknown and somewhat indefinite, the Court will declare a recess at this time until 2:50. In other words, we'll take a 15 minute recess.

(Whereupon, the following proceedings were had in chambers in the presence of Counsel and the defendant being present in person:)

MR. HULTMAN: Your Honor, I would raise the question whether or not this proceeding is one to be in the presence of Counsel. It has to do with a witness and that witness' right. I'm raising this issue that it ought to be explored by the Court and the attorney with that witness. I'm not in any way indicating that I have any feelings one way or the other but I think it's an appropriate matter.

THE COURT: I think it's properly an ex parte proceeding but the side that desires to offer the testimony of the witness and the witness and his counsel.

MR. HULTMAN: That is my point, Your Honor, and I would object to the defendant himself.

MR. TAIKEFF: The only objection I have, I found the couch very comfortable but we're ready to leave.

(Whereupon, the following proceedings were had in chambers in the presence of counsel for the government, David {1372} Maring, counsel for Norman Brown, and Norman Brown.)

MR. MARING: Good afternoon, Judge.

THE COURT: Mr. Brown, you may have a seat. Mr. Maring, you may state your petition or position.

MR. MARING: Your Honor, when I talked to the U.S. attorneys this morning I was informed and have a copy of a letter from Mr. Richard Thurnbore, I'm not sure how to pronounce his last name, assistant attorney general, criminal division, indicating that the U. S. attorneys in this matter have the authority to ask the Court for an order granting Mr. Norman Patrick Brown immunity to testify in this particular matter and related ancillary proceedings. It's my understanding under the rules that, excuse me, under the statute 18, U.S.C. Section 6,003 (b) that the Court can grant this immunity prior to the defendant being, or, excuse me, to the witness being asked questions and refusing to answer if the Court is aware that the witness would intend to invoke his fifth amendment privilege.

I would inform the Court at this time that Mr. Brown, if the questions were of a nature that would cause him to tend to incriminate himself, and we feel those questions will be of that nature, that he would invoke his fifth amendment privilege and, therefore, I'm asking the Court for an order at this time that he be granted immunity from prosecution for any testimony that he gives today on the witness stand or any {1374} ancillary or related proceedings connected herewith, Thatt the nature of my motion.

THE COURT: What is the position of the United States attorney?

MR. HULTMAN: Your Honor, this request for immunity has been made by my office and it has been, I received a letter which I have provided with Counsel and which I would give to the clerk and have him make a copy of same for the record. I would like to have the original back, if I could. That authorization request by my office has been officially and procedurally acted upon and that letter then in turn is the confirmation that that request of my office has been granted by the head of the Criminal Division of the Department of Justice and that is letter which I have now handed to the clerk to be made a part of the record here, Your Honor. If that is the request

of Counsel now at this time for the witness, before the witness does testify, I certainly would make that request and join in that request at this particular time.

MR. MARING: That is our request.

THE COURT: And you are requesting immunity from the Court? MR. HULTMAN: Yes, Your Honor.

THE COURT: Very well. It is ordered that pursuant to 18 United States Code {1375} Section 6003 (a) and on request of the United States attorney, in the case of the United States versus Leonard Peltier, Norman Patrick Brown is granted immunity from criminal prosecution arising out of any testimony or other information which he may be compelled to give in this case and no testimony or other information given by him may be used against him in any criminal case except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. The order of the Court is that the witness is compelled to testify, to answer questions and testify in this case.

Have I left anything out?

MR. HULTMAN: No, Your Honor. There are some things I would like to address to the Court --

MR. CROOKS: Your Honor, perhaps before the subject is changed, perhaps the Court could explain to the witness in a little more laymen's terms the meaning of the last part of that so that, I realize the Court is reading from the Statute which is very legalistic so the witness understands the limitation on it.

THE COURT: Mr. Brown, you are required to give testimony in this case. However, because, and I'm just explaining it to you in general terms, because you were apparently involved in this incident, normally any statement that you might give could be used against you as a basis for prosecution. Under the order of this Court compelling you {1376} to testify and compelling you to give up your right not to testify, you cannot be prosecuted on the basis of any information that you give. You are required to answer the questions that are asked of you and you are required to answer them truthfully. You are further required to remain within the jurisdiction of this Court, remain here until I have dismissed you, until I have released you. So if your testimony is not completed today you will have to stay over till tomorrow.

NORMAN BROWN: Okay. Okay.

THE COURT: You understand that?

NORMAN BROWN: Yes.

THE COURT: You understand if you did not testify truthfully you could be prosecuted for testifying falsely under oath, but that has nothing to do with the events that took place at Oglala.

NORMAN BROWN: Yes.

THE COURT: And if you should not stay here, if you should, for example, leave before I released you from these proceedings, you could be prosecuted for that. You do not have immunity from

those two things. You do have immunity from any acts that you may testify to relating to this June 26, 1975 incident.

NORMAN BROWN: Uh-huh.

THE COURT: Now do you have any questions?

NORMAN: BROWN: No.

{1377}

THE COURT: Mr. Maring, is there anything more you feel I should cover?

MR. MARING: No, Your Honor. I think what you've covered is accurate, as I understand it, and as Norman Brown and I have discussed it previous to this point in time.

To clarify my understanding of what has transpired in the past, I would like to ask the members of the U.S. attorney's office whether in fact Mr. Brown was granted immunity on prior occasions when he has given testimony in regard to this case. That is the understanding that I have.

MR. HULTMAN: On the record, Your Honor, I don't know officially because I was only in the case just before it started and Norman and I talked together the night before the testimony the last time. I told him then myself that very thing. So that the government would be bound by anything that I would say to him in that point on. I likewise in the very brief moments that I had an opportunity which he asked me some questions last evening and I asked him to ask me any questions. One of them was the matter that we are now discussing and I said to him that, "Yes, that is my understanding, and I will make certain that that is such the case on the record." That is the best response, Your Honor, I can give. I personally did not participate in any previous immunity officially as such but I represent that the government has been bound and is bound and will be bound as to anything that has to do with this {1378} transaction on the basis, of course, with the limitation that the Court has expressed, the limitation of perjury were perjury to be committed. That of course is not covered by immunity.

MR. MARIHG: Your Honor, may I inquire about a couple of other matters?

THE COURT: Mike, tell Counsel I'm going to extend the recess for an additional ten minutes and have the jury so informed also. Then we are going to recess this afternoon at 4:30. We'll go straight through until the end of the day.

{1379}

MR. HULTMAN: Your Honor, Mike, could I express one other item that I still think is in this line because maybe you're going to get two other matters.

Your Honor, there is one other matter that I think would be appropriate at this time that the Court might inquire to counsel and to Norman about. Norman asked me a question among those that he asked me in the short time last evening, whether or not he would have to ever appear again. Isn't that right, Norman, that's a question you asked me?

NORMAN BROWN: (No response.)

MR. HULTMAN: And I did my very best to explain to him that as far as I am concerned as the United States Attorney that that is exactly true. But I also indicated to him, and I would want him to know this in front of the Court, and if he has any questions that the Court or counsel be able to clarify them, that I indicated to him that there are some things over which I have no control in any way as an individual as a person, and I used, I believe an illustration with Norman that in the event there had to be some other proceedings ordered by someone to which, concerning this same event, that someone like another judge might require that he be there, that that would be something within the law over which I have no control. And that I wouldn't want him to think that this immunity in any way meant that because of his immunity here today in this courtroom that that meant that he had immunity, {1380} that he would never under any circumstances have to come back again.

And I did my very best, did I not, Norman, to explain in those words that that was the situation?

NORMAN BROWN: Yeah.

MR. HULTMAN: And if he does have any further question about that I would want that to be clarified in any way so that he knows exactly what I am doing, and that what the immunity here means in a very full sense.

THE COURT: I guess, as I understand what Mr. Hultman is saying, that it's very improbable that there will be further proceedings, further trials in this matter after this case. But he is not the person that has the final say in that respect. But even so there should be, it's possible that you might again sometime be called as a witness. It's probably improbable at this time.

However, you would have the same rights then as you have now, that you couldn't be prosecuted for, based on any information that you gave.

Now, Norman, do you have any questions?

NORMAN BROWN: No.

THE COURT: You understand you are satisfied?

NORMAN BROWN: Yeah. I understand.

THE COURT: All right. Do you, Mr. Maring, have anything more?

{1381}

MR. MARING: Your Honor, just one or two procedural matters. And number one would be what position I would take in the courtroom as a member of the audience or is there another place that the Court --

THE COURT: Is it your desire to be present during the testimony of this witness?

MR. MARING: Yes, it is, Your Honor.

THE COURT: Well, no. I would say that as a member of the bar you should not be seated in the audience particularly where you are involved in the proceedings. So you can, there must be an empty chair behind the United States Attorney's desk, isn't there?

MR. HULTMAN: I would suggest, Your Honor, so that in no way we show any partiality or any influence as far as Norman is concerned, that maybe counsel could sit at the end of the jury, close to the end of the jury box, and that way we would be entirely separate.

I have no objection of course to him sitting at counsel table, but I think it would be very inappropriate; and I think maybe Norman wouldn't like that either.

Is that a fair conclusion, Norman, for me to draw?

NORMAN BROWN: (No response.)

THE COURT: Is there any other place available for Mr. Maring that you can think of, Mike?

LAW CLERK: He could probably sit between the marshal {1382} that's attending the jury and right somewhere between that spot and behind your table I would think.

THE CLERK: I think that would give him good eye contact with the witness, too.

THE COURT: Would that be satisfactory?

MR. MARING: Satisfactory to me, Your Honor.

THE COURT: All right.

MR. MARING: One other matter would be that Norman and I have had an opportunity to converse this morning, and I think that he is very aware of what the nature of the proceedings and what he's doing.

However, if he does get confused or would like a short recess, or a moment or two to confer with me, I'd request that the Court consider that upon being asked by Mr. Brown for that privilege.

THE COURT: Norman, if at any time during the questioning you want to confer with Mr. Maring, you just turn around to me and tell me that you would like to talk to your lawyer.

NORMAN BROWN: Okay.

THE COURT: And I will permit you to do that.

NORMAN BROWN: All right.

MR. MARING: That's all I have. Thank you, Your Honor.

MR. HULTMAN: Your Honor, I just have one other item. {1383} I know the, I know the religious feeling of the young man because he's expressed it to me on both of the occasions that I have been with him. And I would like to know, Norman, whether or not, because of your feelings with reference to the pipe and your understanding of the oath, whether or not you have any wish of any kind, or whether it would have any influence on you in terms of the occasion itself, that you would take your oath on the pipe. Is that something that is very important to you?

NORMAN BROWN: Yeah.

MR. HULTMAN: I had a feeling of this, Your Honor, and that he had indicated a request indirectly of this in his discussion with me. And that's why I wanted to bring it to the attention of the Court at this time.

THE COURT: What is your response to that?

NORMAN BROWN: The pipe?

THE COURT: We don't have a pipe.

THE CLERK: May I make a suggestion in that regard, Your Honor? Rather than to put any undue influence on the inquiry of the man that gave a dissertation to the Court, a gentleman by the name of Mr. Peters regarding the pipe, if he would make a pipe available to me for this instance and I would have it at the bench when court reconvened.

I guess the point I'm trying to make, I think maybe place a little bit undue emphasis if a pipe from the table, {1384} or pipe that's currently in the courtroom that's used. I just throw that out as my suggestion.

MR. CROOKS: I might observe, Ralph, that I think the pipe Mr. Peters has been carrying is the pipe that's on counsel table.

THE CLERK: I would not refer to one in his possession but I believe there are other pipes in the courtroom. That's my understanding at least.

NORMAN BROWN: I think he wouldn't mind me holding the pipe.

THE COURT: Who would not mind?

NORMAN BROWN: Mr. Peters.

THE CLERK: Would not mind holding that pipe.

THE COURT: No. He said Mr. Peters wouldn't mind if you held the pipe.

NORMAN BROWN: Yeah.

THE COURT: You are talking just about to take the oath, is that what you are talking about?

NORMAN BROWN: Or to say to the pipe, like holding it.

THE COURT: But this is for the purpose of the oath that you are required to take?

NORMAN BROWN: Yeah.

THE COURT: You'll just take it to the pipe?

NORMAN BROWN: Yeah. Just like I'm holding it, but {1385} the pipe would be over here (indicating).

THE COURT: All right.

THE CLERK: You would wish to face the pipe? I will administer an oath to you to the effect that you swear on the holy pipe that you are about to tell the truth in all the proceedings in this case, and that would be the end of my oath.

NORMAN BROWN: Right.

THE COURT: Now, would you prefer to hold it, or would you prefer to hold the pipe when you do that?

NORMAN BROWN: No. I think we should ask him first what he would say then. If he says it's all right for me to hold it, then it's that way.

THE COURT: Well, Ralph, why don't you take care of that?

THE CLERK: Okay, sir.

May I do it right now, Your Honor?

THE COURT: Do it right now.

Does that take care of everything?

MR. HULTMAN: Yes, Your Honor.

THE COURT: I will make a brief explanation to the jury.

MR. HULTMAN: Yes, Your Honor.

I have nothing further.

THE COURT: We will adjourn to the courtroom.

{1386}

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

MR. HULTMAN: Your Honor, I do have a matter to approach the bench with all counsel before we proceed.

THE COURT: Mr. Hultman, did you state that you have a matter to take up at the bench?

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

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

MR. HULTMAN: Your Honor, I wanted to do this before anything did arise. I want to make the position of the Government clear that one, I think the events clearly indicate that the witness that is now to be examined is clearly a hostile witness to the United States. I think that goes without even saying.

The fact, for example, that an interview was granted very readily to counsel of which I am not privy, and the fact that I have had no such interview at the request of the witness himself, would indicate --

THE COURT: You have not interviewed this witness?

MR. HULTMAN: No. I have not. I have, as I have reported on the record, had a conversation with him in which there was no discussion of the events themselves into which the witness will so indicate.

{1387}

MR. TAIKEFF: We understand from our interview of the witness that when Mr. Hultman appeared the witness said he wanted counsel. And Mr. Hultman said, quite properly we wish to note, that if that's what you want, then I must leave until you get counsel; and the witness told us that Mr. Hultman left immediately and in no way acted in any improper manner and paid respect to his request for counsel.

So in fact there is no doubt about what Mr. Hultman is relating in that regard.

MR. HULTMAN: Secondly, Your Honor, I would want the record to reflect as again a basis for the request that I'm making that in chambers a moment ago when this witness came in the presence of the defendant himself, there was a very warm and a firm embrace immediately of the witness in crossing the room of the defendant himself.

MR. LOWE: There wasn't even any contact made.

MR. TAIKEFF: You are talking about in the Judge's chambers?

THE COURT: It was reported to me. I didn't see it.

MR. HULTMAN: Absolutely.

THE COURT: It was reported to me by one of my staff that there was a contact.

MR. HULTMAN: Firm embrace. The minute he walked into the room. I watched it all with my own eyes.

THE COURT: Just a moment.

{1388}

Mr. Suby, would you approach the bench.

(Mr. Suby approached the bench.)

THE COURT: You reported to me that there was some kind of a contact between the defendant and this next witness at the time they both came into chambers. Would you just state for the record the contact that you observed. You did not tell me, I don't know what the nature of it was.

MR. SUBY: That is correct, Your Honor. At the time the witness came in the room he approached the defendant, they embraced, shook hands. There was an exchange of words, lasted approximately five seconds or eight seconds or so, and they parted. And that was the extent of it.

THE COURT: Thank you.

MR. LOWE: May I ask something, because I just want to be sure of the time sequence, if we are talking about the same time frame. Was this about when we went to leave?

MR. HULTMAN: No. When the witness came in. The minute the witness came in.

MR. LOWE: The first time I saw the witness was when we were arising from the courtroom to go to the room. Was this an earlier time when he came into chambers?

MR. HULTMAN: No. It was the only -- the defendant was there.

MR. TAIKEFF: I never saw the witness. I don't dispute {1389} what Mr. Suby saw. I was just curious for my own place.

MR. HULTMAN: Plus the fact that there is an immunity matter to start with. There's no question this individual was there as a witness to participate in certain events. And for all of these

reasons, Your Honor, I think that I ought to be given a measure of latitude under those circumstances that normally would not be the case.

He is without any question a hostile witness if there ever was one.

MR. TAIKEFF: I would say this, Your Honor, and if he puts a question to him and he doesn't get any answers which he reasonably expects, and I think elaborate proceedings are not at the sidebar, because Mr. Hultman will, I'm sure, act appropriately in that regard, then I think in light of our interview the content of which we know, but Mr. Hultman doesn't know, it would be inappropriate for me to resist his application.

So if Mr. Hultman moves in that direction after he attempts to get certain answers which he thinks he's entitled to, I think we can go right to it and get the testimony in.

MR. LOWE: Your Honor, may I state for the record, because I don't want the Court to think that I misstated something factually, the Clerk has just advised me that what I saw was not an embrace or a touching, it was when we were getting up and we were already walking towards the door. And {1390} the Clerk, Mr. Hanson, advises that I am correct that there was no touching there. That the touching that he observed and apparently Mr. Suby observed was while Mr. Peltier was still seated.

MR. HULTMAN: Yes. He was seated.

MR. LOWE: And I was facing the Court, and I simply didn't see that. And that's why I reported it, and I was astounded that there was any touching.

MR. HULTMAN: Oh, no, John, he was seated at the couch, and the witness came in and embraced.

MR. LOWE: There was no contact made at that time.

MR. TAIKEFF: All right. Essentially we've agreed with Mr. Hultman, subject to his effort on one critical issue, to get an answer which he is dissatisfied with, and I think we would consent to him taking that position with the witness.

MR. HULTMAN: My point is without any question, and I'm going to have to do some leading that normally, for example, I would never have to do with a witness, other than of this kind and nature. I think counsel understands that.

MR. TAIKEFF: I don't think that you will go beyond proper limits. We'll try to make only objections which are appropriate under these special circumstances.

MR. HULTMAN: Very good. Thank you.

{1391}

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

THE COURT: The jury may be brought in.

(Whereupon, at 3:13 o'clock, p.m., the jury returned to the courtroom; and the following further proceedings were had in the presence and hearing of the jury:)

THE COURT: I have two bits of information to give to the jury at this time. One is that, due to a personal appointment of one of the jurors, the Court will recess this afternoon for the day at 4:30; and the second point of information is that the next witness to be called will take the oath in a little different form than that which is usually administered.

The law as expressed by the Rule states that before testifying every witness shall be required to declare that he will testify truthfully by oath or affirmation administered in a form calculated to awaken his conscience and impresses his mind with his duty to do so.

The next witness, because of his religion, has requested that he be permitted to take his oath on the pipe, and that permission has been granted.

The Government may proceed.

MR. HULTMAN: The Government calls Norman Brown, your Honor.

THE CLERK: Mr. Brown, you do swear on the sacred {1392} pipe that the testimony you are about to give will be the truth?

THE WITNESS: Yes.

THE CLERK: Would you be seated, sir?

NORMAN BROWN,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HULTMAN:

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

A Norman Brown.

Q And where do you live, Mr. Brown?

A Minifarms, Arizona.

Q And about how long have you lived in Minifarms, Arizona?

A All my life.

Q Do you have some brothers and sisters?

A Right.

Q And would you tell the jury how many brothers and sisters you have?

A Six brothers and three sisters.

Q Mr. Brown, I have not discussed the facts of this event with you since the time in open court, have I?

A No.

Q What is your birth date?

A March 17th, 1960.

Q So you were just last week 17, is that right?

{1393}

A Right.

Q And how old would you have been on the 26th of June, 1975, two years ago?

A 15.

Q How far in school have you gone?

A Sophomore.

Q Did you ever have an occasion during the year, 1975, to go from your home at Minifarms to some other place to attend any meeting of any kind?

A Yes.

Q Excuse me?

A Spiritual conference in Farmington, New Mexico.

Q And would you explain to the jury about when this was?

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

Q Do you remember who it was that you met there and saw there?

A Who? What do you mean?

Q Any persons that you knew or recognized?

A Yeah.

Q And would you tell the jury who it was that you recall specifically that you met there?

A Leonard.

Q Now, when you refer to "Leonard", would you tell the jury what his full name is?

A Leonard Peltier.

{1394}

Q And is he in the courtroom here today?

A Right.

Q And would you tell the jury where he is seated here in the courtroom?

A He is seated over there.

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

THE COURT: Very well.

Q (By Mr. Hultman) Had you known Mr. Peltier before?

A Yes.

Q And approximately how long had you known him?

A About four years then.

Q And where was it, if you recall, approximately four years before that you had met Mr. Peltier?

A Crow Dog sundance.

Q Was that a religious ceremony that you attended?

A Right.

Q And how old would you have been at that time?

A 13.

Q And how did you go to the ceremonial, Crow Dog's, on that occasion?

A What do mean?

Q Did you go by yourself or did you go with somebody?

A Yes.

Q You went by yourself?

{1395}

A Yes. You mean four years ago?

Q Right.

A Yes.

Q When was the next occasion you were with Mr. Peltier?

A In Farmington.

Q And that's the time which we are now discussing, is that right?

A Right.

Q All right. Who else that you had known before did you see in Farmington?

A Dino and Joe.

Q So the jury will know, who is Dino?

A Butler.

Q And what was the next name that you used?

A Joe Stuntz.

Q Joe Stuntz?

A Yes.

Q How long had you known Dino?

A About four years too.

Q And where, Norman, did you meet Dino?

A The trials in Minneapolis on Banks and Means.

Q And about how old were you at that time?

A 13.

Q Was the third person that you just mentioned named Bob, is that correct? I didn't quite hear. Was it Bob that you {1396} said?

A No.

Q Who was the third person?

A Joe.

Q Joe, all right.

A Yes.

Q Who is Joe?

A Stuntz.

Q And how long had you known Joe Stuntz?

A Four years.

Q And where did you first meet Joe?

A Sundance too.

Q And was that at Crow Dog's also?

A Right.

Q And had you known Joe then after meeting him at the sundance at Crow Dog's?

A Yes.

Q About how many times had you been with Joe?

A What do you mean?

Q About how many times or occasions had you been with Joe after that?

A Just in Farmington.

Q All right. Did you consider Joe to be a very close friend of yours?

A Right.

{1397}

Q Is he a brother of yours?

A Right.

Q Who else did you meet at Farmington that you had known before?

A Norman Charles.

Q Norman Charles?

A Yes.

Q And where had you met Norman Charles before?

A Sundance, Crow Dog's.

Q And had you had occasions to see him after that?

A Well, just in Farmington.

Q The next time was in Farmington. Who else did you see in Farmington that you had met before?

A That's all.

Q Now, did you meet some other people for the first time that you continued to know after being in Farmington?

A What?

Q Did you meet some new people that you continued to know after Farmington?

A Yes.

Q Would you tell the jury who those people were?

A Lynn.

Q And when you say "Lynn", do you know any additional name other than Lynn?

A No.

{1398}

Q All right.

A And Jean.

Q And do you know the person "Jean" by any other name?

A Bordeau.

Q How old was Lynn at the time you met her there to the best of your knowledge?

A Oh, about 17, 18.

Q And how old was Lynn?

A I just said that.

Q Who was the other person that you referred to?

A Jean.

Q How old is Jean?

A I don't know. I can't --

Q (Interrupting) Was she a young person?

A Right.

Q A young lady?

A Yeah.

Q All right. Who else did you meet at that time that you continued to be with for some period of time?

A Wish.

Q And does Wish have another name?

A Yeah, Wilford Draper.

Q Wilford Draper. You know him by "Wish", is that right?

A Yes.

Q Is that what his friends knew him by?

{1399}

A Right.

Q All right. Who else?

A Mike Anderson.

Q Anyone else?

A Norman Charles.

Q Norman Charles?

A That's all. Bob Robideau.

Q Bob Robideau. Had you known Bob before?

A No.

Q The first time you met Bob Robideau?

A Right.

Q All right. Would you tell the jury -- did you later leave Farmington and go somewhere?

A Yeah, went to Oglala, South Dakota.

Q And do you remember about what time of the year, 1975, that was, what month approximately?

A About June.

Q Sometime in June?

A May.

Q 1975?

A Yeah, about the second week in June.

Q Now, would you tell the jury who you left with -- did you leave with any other persons?

A Yeah, I left with all the people I named.

Q You left with the people that you have just named in {1400} response to my questions?

A Right.

Q All right, and would you tell the jury how you went, did you go in an automobile -- or automobile?

A Yeah, pickup with a camper on it.

Q All right, and who did that belong to?

A The pickup?

Q Yes.

A I don't know.

Q All right.

A Just got a ride.

Q Who went in the pickup with the camper, who were the persons?

A Joe and Leonard.

Q Was there anyone other than Joe and Leonard that went in the pickup?

A No, I can't remember.

Q Who did you go with -- did you go in that car?

A Yeah, I went in the pickup, yeah.

Q So you went with Joe and Leonard?

A Yes.

Q Now, the other people then basically went in a second car, is that right?

A Yes.

Q And do you remember what kind of a car that was or a {1401} description of that car?

A Well, it was an old car. It was a green car.

Q Now, where was it that -- did you go to a particular place once you got to South Dakota?

A Oglala, South Dakota.

Q And where in Oglala or in the vicinity did you go specifically?

A Jumping Bull, the ranch.

Q And had you ever been to the Jumping Bull ranch before?

A No.

Q Had you met the Jumping Bulls before?

A No.

Q What was it that you did once you got to Jumping Bulls?

A Got some tents and set up a place where we could stay.

Q And did the others that you have mentioned also participate and help you, and did you help them?

A Right.

Q I don't know whether I asked you specifically about Mike. Had you known Mike for quite some time?

A Yeah.

Q How long about -- when did you first meet or know Mike?

A About seven years ago, eight years ago.

Q And that's Mike Anderson?

A Right.

Q That I am referring to and you are responding to, right?

{1402}

A Right.

Q Where was it that you first met Mike Anderson?

A I can't remember where, but I met him a long time ago.

Q Would you know just generally where, for example, in what state?

A Oh, yeah, Arizona.

Q All right, and does he come from the same tribe or nation that you do?

A Right.

Q And do any of the others that you have mentioned come from the same tribe or nation?

A Right.

Q And which ones or ones would that be?

A Wish and Mike. Wish, be just Wish and Mike.

Q Wish, Mike and you come from that nation then?

A Right.

Q All right. What was the reason for setting up a camp at Crow Dog's?

A Crow Dog's?

Q I am sorry, at Jumping Bull's, I am sorry.

A We had no other place to stay, no room in the houses, and I don't know, just put up some tents.

Q I want you to turn around and look for a moment or two at what has been marked and entered as an exhibit in this case, Government's Exhibit No. 71; and ask you whether or not you {1403} recognize the general scene that's portrayed in that Government exhibit?

A What?

Q Have you previously seen a map of this kind and nature before, Norman?

A Yeah, right.

Q Now, I want you to look at it, and then I want to ask you whether or not you understand the area, the place that that represents?

A Right.

Q And would you tell the jury what it is or where it is?

A It is right up there (indicating) where it says "tents".

Q Is this generally a map of the Jumping Bull ranch that you talked about a minute ago?

A Yeah.

Q All right.

{1404}

Q And on that map can you show the jury where it was that you set up the tents that you have mentioned? There is a pointer and maybe that might be of a little help and assistance.

Would you point out to the members of the jury where the tents were set up.

A (Indicating.)

MR. HULTMAN: Let the record show that the witness pointed out the area on Government's Exhibit 71 which is portrayed there as "Tents."

Q (By Mr. Hultman) How many tents were set up at that time Norman?

A There was five tents.

Q Is that an approximation on your part?

A No. About six. No. Five. I don't know. Five or six.

Q Would you tell the jury starting with yourself who it was that lived in a particular tent. It was the same people, was it not, that came, that you went on the highway with from Farmington to live in the tent area generally speaking?

A Yes.

Q Tell the jury, first of all, what tent you lived in and with whom, if anyone?

A It was that box tent.

Q Did anyone stay with you in the box tent or you with them?

A Yeah.

Q Would you tell the jury who those people were.

{1405}

A I can't remember.

Q Maybe if we talk about some of the others for a minute it might help.

Was Wish in the tent area when you first set up the tents?

A Yeah.

Q And did he stay there in the tent area itself all the time you were there?

A No. I don't think so.

Q Did Wish leave at some time, as far as being right in the tent area that we're now talking about, did he go sleep some other place?

A Yeah.

Q Do you remember where that was?

A That was around Jumping Bull's place there at the housing.

Q And was that a tent in which he set up and he slept by himself, is that right?

A Yeah.

Q Do you know why Wish left the tent area and set up a tent of his own out by Jumping Bull's house?

A At that time I didn't but now I do

Q You know from your own knowledge?

A From reading the papers now I know.

Q Well, I don't want you to respond to anything you may have {1406} read.

A You mean then?

Q Yes.

A No, I didn't.

Q All right.

A No.

Q Would you tell the jury a bit or two about Wish Draper. Was he a person who handled guns?

A No.

Q What kind of a person is Wish Draper, as you've known him?

A He's quiet and stays to himself. That's about all.

Q Now do you remember who stayed in any other tents, for example, let's talk about Dino for just a moment. In what tent and with whom did Dino stay down in the tent area?

A Stayed in his teepee.

Q In a teepee. Was there anybody that stayed with him?

A Yeah. Neelock.

Q Now were there any other tents that you recall that certain individuals stayed in?

A There is a little pup tent.

Q Was it an orange pup tent?

A Yeah. It was orange. It was Mike and Jimmy stayed there.

Q All right. Mike and Jimmy stayed in the orange pup tent. Who is Jimmy? Do you know him by another name, additional name?

{1407}

A Jimmy Zimmerman.

Q Jimmy Zimmerman.

And how old at that time was Jimmy Zimmerman at the time we're talking about in 1975?

A 11, 12.

Q Approximately 11 or 12 years old?

A Right.

Q Was he close to the person he stayed with?

A Yeah.

Q Does this help in any way for you to remember who it was that you stayed with?

A In the green tent. In the orange tent, too, yeah.

Q Who stayed in that tent?

A Which tent?

Q In the orange tent we're still talking about. Did anybody else stay in the orange tent?

A Yeah. Mike and Jimmy.

Q Was there anybody else other than Mike and Little Jimmy?

A There was me. You know, that's, I slept where, I don't know just, I stayed with Jim some nights and some nights I'd stay in another tent. Like that.

Q All right. Did Leonard live down in the tent area?

A No.

{1408}

Q Where did he stay?

A In one of the houses up here.

Q Do you remember which one of the houses up there? Maybe I could ask you with a pointer to show the jury by each house, Norman, would you start here on this side and tell the jury and you point out the first house on the right-hand side. Do you remember, there is a green house on the right-hand side?

A Yeah.

Q Tell the jury who it was that lived in the green house.

A Ivis and Angie Long Visitor.

Q Do you remember what the next house over was then?

A Yeah. It was --

Q Maybe there was a shed of some kind in between.

A Yeah. There was a shed.

Q Did anybody live in the shed?

A No.

The next house is Jumping Bull's live there.

Q Do you remember what color a house that was?

A It was white.

Q What kind of white, was that sort of the largest house of all of them in the area?

A Yeah.

Q That's where Mr. and Mrs. Jumping Bull lived, is that right?

{1409}

A Yeah.

Q And was there another house then beyond where the Jumping Bulls lived?

A Yeah. Was a log house.

Q And would you point that house out to the jury so that the jury can see.

A (Indicating.)

Q And who was it that lived there?

A Dennis Banks.

Q Now is there another house then or a building of some kind still beyond the log house? Is there a house of some kind or a building over here?

A Right.

Q Was there anybody that lived in that place?

A No.

Q What was that? Do you know what that was, that building, at all?

A No.

Q Now down here to the, where I am now pointing is also on Government's Exhibit 71, a marking and some letters that refer to a residence. Do you remember who lived there?

A I knew it was Dusty lived there.

Q Was Dusty related in any way to anybody that you knew?

A Yeah. Jumping Bulls.

Q And was there a lady that, did his wife live in that {1410} residence, too?

A His wife?

Q Did he have a wife, Dusty?

A No.

Q Was there anybody else that lived there in that residence besides Dusty?

A Yeah. But I don't know the names. I saw the people around there.

Q Do you know how many people live there besides Dusty?

A About three other people I guess.

Q Now where was it that Leonard lived then up in the houses?

A I think it was that log cabin.

Q He lived in the log cabin.

Now what was it that you did during the time up until the 26th of June, the day when some events happened? What did you do during that period of time generally from day to day and during the weeks that you were there? What did you do?

A Chopped wood, hauled water and pulled security.

Q Who was it that gave you any instructions as to pulling security?

A Well, Leonard asked me if I wanted to pull security. He didn't tell me or nothing, he said, "Do you want to," and I said, "Yeah. I'll pull security."

Q Now what would you do when you pulled security?

A I just walked around the camp and looked out for the roads, {1411} watched the cars and see how everybody is. I'd watch the camp, you know.

Q Were you armed?

A Yeah. And what kind of an arm would you take on those occasions?

A .22.

Q And did you take ammunition?

A Yeah.

Q What did you do at other times that you weren't involved in security? What did you do other times?

A Hauled water.

Q And chopped wood, is that right?

A Right.

Q You've named the same people who came from Farmington, or you came from Farmington with. Was there anybody else during the time that you lived in the tent area that lived in the tent area for any period of time other than the ones that you've mentioned?

A No. Just --

Q IF there was you don't recall, is that a fair answer?

A Yes. Yes.

Q There wasn't anybody else that lived there for any extended period of time, is that right, that you know?

A No.

Q What would the others do that, let's talk about the men {1412} for a little while, the men and the boys. What would the boys do other than security during the time that you were there? How would you spend your time?

A What?

Q How did you spend your time, the boys, the young men that you have referred to?

A Like set up camp, cut wood for the tents and, you know, haul water for the camp.

Q What did the older men do during this period of time, Leonard and Dino and Bob?

A They were up there in this housing. I don't know what they done. I mean, what they did.

Q Were you at various times in and out of the houses there on Jumping Bull's ranch?

A Yeah.

Q Were you ever in the log house?

A Right.

Q Tell us what it was that you saw on occasions when you were in the log house.

A .30.30.

Q When you refer to .30.30, would you explain to me and to the jury what it is that you're referring to.

A Well, it's a rifle. There is a lever on the bottom that you move back and forth. You cock it.

{1413}

Q Now is this description you're now giving something that you saw and you observed and you know from your having seen it or something that somebody has told you?

A What?

Q I'm simply asking you whether or not an FBI agent or myself has told you that some gun that you saw at that time was a .30.30.

A No.

Q IT's because --

A Yeah.

Q -- you yourself have that knowledge, is that right?

A Right.

Q And you had it back at that time?

A Yeah.

Q Did you see any other weapons in the log house?

A Yeah.

Q Would you tell the jury what other weapons as you knew them and you observed them and not what somebody else may or may not have told you. What other weapons did you see in the log house during the time that you were there?

A There was one that looked like an M-16.

Q Now you say it was one that looked like an M-16. Did I ever tell you that a weapon of any kind looked like an M-16?

A No.

Q Tell the jury how it is that you are saying to them in {1414} response to my question that a weapon you saw in the log house while you were there looked like an M-16. Where did you first hear of an M-16?

A Radio. You know, news, pictures.

Q So that when you use the word "M-16," this is something that you knew back at the time you saw the weapon, is that right, from news or TV or whatever it is?

A Yeah.

Q And it isn't because anybody from the FBI or the United States attorney it was an M-16?

A No.

Q Now do you know whether or not it was an M-16?

A No.

Q Would you explain to the jury specifically what the object, the weapon looked like. Describe it to the jury for them, if you can. What color was it, for example?

A Dark color.

Q And do you remember anything else about it?

A Had a handle on the top.

Q Do you remember anything else about it?

A Clip on the bottom.

Q Do you remember anything else about it?

A That's all.

Q Did you see that weapon or a weapon of that kind on more than one occasion while you were there at Jumping {1415} Bull's? Did you see it more than just the time in the log house?

A Yeah. I saw it at that time.

Q Who did you ever see with that weapon?

A You mean who did I see? Leonard.

Q With Leonard?

A Yeah.

Q I'm going to show you now what has been marked as Government's Exhibit 34AA and ask you, Norman, whether or not the weapon that you have just been describing is the one which is of a general type and looks and description of the kind that you just told the jury. Was the weapon that you have been describing to the jury one that looked like this?

A Yeah. Right.

Q So that I might be very clear and not mislead you or in any way --

A Yeah.

Q -- ask you something that you don't understand, you understand and know the difference between, do you not, something that a weapon that looks like one different from one you know exactly is the one, is that right? Do you understand there is a difference between that?

A I don't understand you.

Q All right.

You don't know whether or not this weapon here is the {1416} one that you saw up there at all, isn't that right?

A Right.

Q It's just one that looked like it?

A Yeah. It looked like it.

Q Did you see any other guns in the log house?

A No. I don't think so.

Q Did you see any other guns in any of the other houses during this time, short time that you lived there in June?

A No. Not in any of the houses.

Q Did you see any guns in the tent area?

A Yeah.

Q Would you explain to the jury what guns you saw in the tent area during the time that you lived there.

A Well, I saw three rifles inside the tent where we kept our food and, you know, stuff like that.

Q And would you explain to the jury, let's take them just one at a time and I want to ask you what you remember about each one of them in terms of telling the jury to the best of your remembrance what they looked like.

A It's a rifle.

Q What do you remember about a rifle?

A Bolt action.

Q It was a bolt action?

A Right.

Q Do you know the caliber of weapon?

{1417}

A No.

Q Do you know the difference between a .30.30 and a .22 for example?

A Yeah.

Q Did you know at that time the difference between a .22 and a .30.30?

A You mean did I know if that was one or not?

Q Yes.

A I don't know. I just saw it. No. I don't think so, you know. If I saw it I'd know what it was.

Q But you don't recall now specifically what it was?

A Yeah.

Q But it was a rifle, is that right?

A Right.

Q Now what was the second weapon that you recall having seen there in one of the tents? The food tent I believe, as you described it, right?

A Yeah. Another rifle.

Q And would you describe to the jury what that rifle looked like.

A Well, it was the same as the other one. Bolt action.

Q Now would you describe to the jury what bolt action means. Is this something you're describing you knew at that time?

A Right.

{1418}

Q Tell us what it is you mean by bolt action, that you remember a weapon that was bolt action.

A Well, it moved from the side like this, you know (indicating). I don't know how to explain it, you know.

Q Well, is it one that you have to pull the bolts back?

A Yeah. Pull it back; yeah.

Q In order to fire it again, is that right?

A Yeah. That's right.

Q So there was a bolt action rifle there?

A Yeah.

Q That's the second one?

A Yeah.

Q What was the third one that you recall?

A It was like the other two.

Q It was like the other two?

A Yeah.

Q Do you remember seeing any other weapons of any kind until the day of the 26th in the tent area?

A No.

Q Do you remember having any training or any sessions with people that showed you how to use a weapon of any kind while you were there in the tent area at Jumping Bull's?

A Yeah.

Q Would you explain to the jury who was there at that time.

A Me and Norman Charles.

{1419}

Q Did you ever while you were there fire the black weapon that I showed you a little while ago that you referred to as looking like an M-16?

A No.

Q I want to take you now to the evening of the, afternoon or evening of the 25th of June. Do you remember that day what you were doing, what you did that day or that evening?

A That night; yeah.

Q Yes.

A Pulled security that night. June 26.

Q And did you talk to anybody before you pulled security?

A Yeah. It was Wish. I think it was Wish. Wish or Mike. One of them.

Q Do you remember any event of any kind during that period of time?

A I think it was Wish, he told me that, it was Mike, it was one of them. He told me that, it was either Wish or Mike, that they were hitchhiking to Oglala and he got picked up by FBI and took him to Pine Ridge. They questioned him and they said somehow a clip being taken away from Norman Charles and that's what he told me. And then they brought him back.

Q Do you remember talking to Norman at all that evening?

A Yeah. I think so. Yeah.

Q Did he indicate anything or do you recall anything about a possible conversation that you might have had with Norman {1420} that night about the events that you're talking about?

A Yeah. He told me that he took the clip from him. The clip (indicating).

Q Did he indicate what kind of a clip it was? I notice you're forming your hands. Was that as you remember what the clip looked like?

A Yeah.

Q Would you indicate to the jury the general shape of the clip that you remember being talked about at that time?

A About this big (indicating).

Q Now you didn't see the clip at that time, is that right?

A Right.

Q That's as you best recalled the discussion concerning it, is that right?

A Right.

Q You pulled security that night you said. Were you on security all night?

A Yeah. From about 8:00 to 10:00. It was, I think it was mostly the night, most of the night.

Q And would you tell the jury what specifically you did that night during the time that you pulled security? Tell us where you went and what you did.

A Well, like just walked around camp and looked, you know. Just walked around and see how everything was because, reason why we had security was because we were afraid of the goons.

{1421}

Q Had you ever seen a goon?

A Yeah.

Q When did you see a goon?

A We passed one and saw two cars and they were inside the cars, two cars and the goons.

Q Is that the only time you saw a goon?

A Yeah.

Q Did you ever see a goon down at Jumping Bull's property at all?

A No. You mean before June 26th?

Q Yes. That's what I'm referring to.

A No.

Q At the times that you were at, who was it that lived in the green house, the first house that you referred to as the green house? Do you remember who lived there during that period of time?

A Ivis and Angie Long Visitor.

Q Were you in and out of there, that house, during the time that you were there in June?

A Yeah.

Q Did you ever see any goons at any time when you were there?

A No.

Q Were you in and out of Jumping Bull's house while you were there?

A Yeah. Just, sometimes. Take the water, chop wood for him.

{1422}

Q Did other people come and go at times that you saw at the Jumping Bull's?

A Yeah. Some people came, some left.

Q Did you ever see any goons at Jumping Bull's?

A No.

Q From what you've already testified you had been in the log house on occasions, is that right?

A Yeah. Log house.

Q Did you ever see any goons when you were at the log house?

A No.

Q When you were over at, I don't recall the name of the gentleman that you referred to over at this residence. What was his name again you referred to?

A Dusty.

Q Dusty. At the times you were over at the house where Dusty lived, did you ever see any goons over there?

A No.

Q So is it fair for me, did you ever see any goons down in the tent area?

A No.

Q Is it fair for me to conclude, Norman, that you never saw up to the 26th, that's the time you said to me a minute ago, any goons at all in the Jumping Bull property area?

A No.

Q And the only time you saw a goon was this one time you {1423} a goon was this one time you referred to?

A Yeah. Goons.

Q Now what did you do in the morning when you got up in the morning on the 26th of June, 1975?

A I got up and Jim was up and Jean and Lynn were up and Jimmy was there, too. The girls, Jean and Lynn were cooking. Ready to have, I think it was lunch or breakfast. I don't know what time it was.

Q Would you tell the jury so that they might know, how many girls or women were in the camp?

A There was three.

Q There were three. And would you for the jury's sake tell the jury again who those three were.

A Lynn and Neelock and Jean.

{1424}

Q All right. Would you tell the jury approximately how old Lynn was?

A About seventeen, eighteen.

Q And how old approximately was Neelock?

A About twenty.

Q About twenty. And who was the third?

A Jean?

Q Well, you said Lynn, you said Neelock.

A And Jean.

Q And Jean, and how old was Jean about?

A I guess about fifteen, sixteen. Fifteen or sixteen.

Q Fifteen or sixteen. All right.

Those were the three women or girls that lived in the tent area and they were there that morning?

A Yes.

Q Those are the three you were referring to; is that right?

A Yes.

Q Was Leonard there that morning?

A No.

Q Did you see Leonard that morning in the tent area at any time?

A No. Not when I got up, no.

Q Again, I am going to ask you, did you see Leonard in the tent area at any time that morning, in the morning now I'm talking about?

{1425}

A You mean -- I can't remember. I think -- I don't know. I can't remember.

Q All right.

A I might have, I might have seen him, but I can't remember.

Q All right. Your best and most honest, that you can't remember; is that right?

A No, I can't.

Q You do remember other people specifically, though?

A Yeah.

Q All right. And he didn't live in the tent area, did he, as you said before. He lived up in the log house?

A Yeah.

Q All right. Did you see any of the fellows there at any time that morning? Do you remember when you first got up who the fellows were if any that you saw there?

A Just Joe and Jimmy.

Q And by "Joe," you are referring to Joe Stuntz?

A Right.

Q And Jimmy, Little Jimmy as you referred to?

A Yeah, Little Jimmy.

Q Now, I'm going to, was there any, did you do anything different that morning from what you had done any other morning? Anything unusual or different?

A We just, just like regular mornings. Like we just got up like we do every day.

{1426}

Q All right. Now, at a time during that day sometime did you hear some firing of some kind?

A Yeah. I got up and Jean and Lynn were cooking and I was talking to Joe for a while on top of that green car, on the hood sitting there talking.

And we heard some shots, about eighteen, eighteen, about twenty shots. And Joe said, "Let's go see, let's go see where the shooting is coming from." So we ran up to a little hill, and it was coming in the direction of the houses.

So he said, "Let's go run back and get the guns," he said. So we were running back and then he said, "There's a gun in the car there, that green car." So I picked it up. Then I went there. I told Dino. Dino come running out and we told him that there was shooting up there. And Bob came. Then we met right outside of camp. Then we told the sisters, we told them, you know, don't you run out of here because there's shooting going on.

At that time then we all started running up together. Then we split up, me and Joe went up to that housing and, you know, Bob went around this way (indicating), toward where that road is. That's what we done.

Q All right. Now would you take the pointer and point out to me, or would you tell the jury first where it was that you heard the shooting, where was it that you heard the shooting?

A Right over here (indicating).

{1427}

Q All right. In the general area you are making a circle of some kind; is that right?

A Yeah. Where the shooting was coming from.

Q All right. Now, you didn't see the shooting; is that right, at that time?

A No.

Q You heard shooting?

A Yeah.

Q All right. And you say you thought it was about twenty shots, is that --

A Yeah.

Q -- a fair characterization?

A Right.

Q Would you describe to the jury what the shooting sounded like since you couldn't see it, from the first shot that you heard through the approximately twenty? Would you describe to the jury

what it sounded like to you or how it happened, the twenty shots approximately? Would you describe to them what it was you heard.

A I didn't hear just twenty shots like that.

Q That's why I want you to explain how you did hear them, Norman.

A Well, I don't know. Just shooting, just -- I heard about five go at one time.

Q You heard about five at the first; is that right?

{1428}

A Yeah.

Q And would you tell us, tell the jury what it sounded like, those five.

A Not the first, but I heard it, I heard those five shots. I heard, first there was a shot, then a couple shots, and the five shots. Then a couple shots again, and then shots, and just taking turns like shooting. Just, just one right after another shots.

Q All right. And when you stated then that you separated, and I understand that you indicated that two of you at some point went one direction and two went another direction; is that right?

A (No response.)

Q Would you show me first of all, and show the jury where it was that you first went when you heard the first shots. You said that you left the tent area and you went somewhere. Would you start at the tent area and kind of draw where it was that you went.

A Right over here to this place (indicating).

Q And when you are marking that area, let me mark it with a pen so that we will, although I'm not quite that tall, so that's going to be a little bit impossible for me, would you point it out again.

A (Indicating.)

Q Would it be approximately in the area of the word "Plateau" {1429} that --

A Yeah.

Q This word right here (indicating)? It would be in that general area; is that right?

A Right.

Q All right.

MR. HULTMAN: Let the record show that the witness was pointing out an area where there is the word "Plateau" and it's the only word "Plateau" in the upper right-hand corner, or right-hand quarter of Governments Exhibit No. 71.

Q (By Mr. Hultman) Now, is that spot out in the open, or is that in the trees?

A It's in the open.

Q It's out in the open. As you look at Government's Exhibit 71, Norman, are the areas that show no little vegetation or little circles, is that basically an open area where there is no trees or bushes of any sights to where you can see literally everything?

A Yeah.

Q All right. Now, was that an area where you could see generally most of the area where there are no bushes on this map here?

A Yeah.

Q Now, tell us when you got there what did you do, and what did you see if anything when you got up to the point where you {1430} said you ran up to in the general area of the word "Plateau". Can you see good from there?

A Yeah.

Q What could you see from there?

A You mean me see from here (indicating)?

Q No. When you ran up to the plateau, right.

A Yeah.

Q Did you have any gun with you at that time?

A No. Ran through here, then they were shooting us from --

Q And where did you gather the shooting was coming from then?

A From around -- the sound was coming from here (indicating).

Q But did you see any specific shooting?

A No.

Q Still did not see any?

A No.

Q Did you observe any people at that very time?

A No.

Q All right. So what did you then do next?

A We ran back. Joe told me to get a gun inside of the green ar.

Q All right. So you testified earlier there were guns in he tent, in the supply tent, or the food tent; is that right?

A Yes.

Q Now, at this time the guns, or at least some guns are not {1431} in the tent, they're in a car, a green car; is that right?

A Yeah.

Q Now, had you ever seen that green car before?

A Yeah.

Q And where did you first see it, remember seeing that green car?

A Farmington.

Q Is that one of the cars you came back in?

A Yeah.

Q Do you know who the green car belonged to at this time? The time we're now talking about?

A No. Just some people just drove it, you know.

Q All right. Did you ever, who do you remember seeing driving it?

A The green car?

Q Yes.

A I don't think anybody, because I mean --

MR. TAIKEFF: Your Honor, because the witness is turned, we can't hear. Could the microphone be put near him.

I don't mind that he's turned, but I'd like to hear the answer.

MR. HULTMAN: I don't think he's given an answer yet, Counsel.

A I can't remember.

MR. HULTMAN: The answer is he can't remember.

{1432}

Q (By Mr. Hultman) Did you in fact at that time then pursuant to what you did at that time secure a weapon of some kind?

A Yeah.

Q And where did you get it?

A From that green car there.

Q All right. And would you describe to the jury where was the green car in relationship to the tents.

A It was right there (indicating).

Q All right. About where there is an object at the present time; is that right?

A Yeah.

Q An object that indicates green car; is that right?

A Right.

Q And have you ever seen this map here with any of these objects in front of it before in the courtroom here today?

A Yeah.

Q Did you see one that was similar at sometime in the past?

A Yes.

Q Have you seen one in the last seven, eight -- six, seven, eight months at all?

A Yeah. It was Cedar Rapids.

Q You haven't seen any since then; is that right?

A No.

Q All right. Now was there any other weapons in the green {1433} car?

A No.

Q And would you describe to the jury the weapon that you got from the green car.

A It was a 22.

Q Well, now did you know at that time that it was a 22?

A Yeah.

Q Then it is not something that somebody told you since, or put any words in your mouth or anything?

A No.

Q All right. So is it fair for me to conclude, Norman, that at the time we're talking about that you had a general knowledge of weapons of one kind or another?

A Yeah. Just kind of like most everybody has.

Q All right. Now, would you describe that 22 as you've called it to the jury. Tell them what you remember about it.

A It was bolt action. It was a single shot.

Q And had you ever seen it before?

A No.

Q All right. Do you remember anything else about that particular gun on that particular day by way of anything other than it being a 22? Do you remember anything about the weapon that you would remember?

A You mean the one I took?

Q Yes.

{1434}

A It was a single shot.

Q Single shot. Do you remember anything else about that --

A Yeah. It had little rounds.

Q Little what?

A Rounds.

Q Little rounds?

A Yeah.

Q It fired small rounds?

A Yeah.

Q All right. Do you remember anything else about that particular weapon, anything that you would remember that weapon by as being different from some other 22?

A You mean --

Q Well, was there anything about any of the parts of it that you would remember?

A Yeah. It was a single shot.

Q It was a single shot, all right.

Anything else that you remember?

A No.

Q All right. Now, I'm going to -- the FBI or nobody told you those at any time, those are things you remember, right?

A Right.

Q Those are the things that you are talking about are the things that you remember from that day, all right.

I'm going to show you what has been marked as Govern- {1435}ment Exhibit 41-A, and I want to ask you whether or not in looking at 41-A is there anything about this weapon, does it generally resemble the weapon that you are talking about?

A Yeah. I think that's the one.

Q You think that it's the one?

A Yeah.

Q All right. Now, in saying that you think it's the one, that doesn't mean that you know exactly this is the one; is that right? Is that fair for me to conclude?

A Yeah.

Q All right. Now, what is it that makes you think that it's the one?

A Well --

Q And I'll let you look at it. I don't mean in any way to be -- it's inoperative.

A Yeah. I think it was this thing here on that (indicating). I think that's the one.

MR. HULTMAN: Let the record show that the witness pointed out some carving that is very unique and distinct as a part of the stock of this particular weapon in looking at it.

Q (By Mr. Hultman) Did I ever at any time before right this very second ever show you or indicate to you that there was anything in particular about this weapon that was unique or unusual?

A What?

{1436}

Q Have I ever, have you ever pointed this out to me before?

A No.

Q All right. And the FBI hasn't told you it was there, and to point it out, have they?

A No.

Q All right. It's because you remember; is that right?

A Right.

Q All right. Anything else about this weapon that looks, make it such that you think maybe you had seen it before, or like the one on the time you are talking about?

A Well, I think it was that scope there (indicating).

Q All right. It did have a scope on the one that you had?

A I think that's the one, yeah.

Q All right. And it is a bolt action type of the kind that you described, is it not?

A Yeah. That's right.

Q All right. Now, what is it then that -- did you get any ammunition?

A Yeah.

Q Where did you get the ammunition?

A From the car. It was, it was in the socks. I don't know how many rounds in there. It was about half full. I can't remember where I got it, but it was inside a sock, boots there.

Q All right. Now, I believe you then said that somewhere you saw Dino and Bob. When was it that you first saw Dino and {1437} Bob after the shooting, or with relationship to the shooting, when was it that you first saw Dino and Bob?

A Well, I told them that, I told Dino that there was shots coming from around the house. And he got up.

Then as we got my gun, then he met up with us. I think he was with Bob. Yeah, Bob. Bob was -
- we met up with them, though.

Q You know you met up with them?

A Yeah.

Q Do you remember where it was that you met up with Dino and Bob insofar as a place?

A Right here (indicating).

Q All right.

MR. HULTMAN: And let the record show that the witness is pointing out an area just below the words "SA Williams' car," which is along the small road.

Q (By Mr. Hultman) Did they have any weapons at that time?

A Yeah.

Q All right. Let's start with Dino, and that's Dino Butler; is that right?

A Right.

Q Now, would you describe for the jury the weapon that Dino Butler had.

A It was a big rifle. Had a big stock. It was just big.

It was long, it was long. About this long (indicating). {1438} And it had -- it was just a big rifle.

Q All right. And was there anything else descriptive about it that you remember that was different from other rifles?

A There was a clip on there.

Q And where was the clip, what with relationship? Does it come from the top or from the bottom?

A I think it was from the top.

Q All right. Do you remember about the size or the length of the clip?

A I don't know. I think it was about five rounds, ten rounds.

Q All right. Now, do you remember what kind of a weapon that Bob had at that time?

A It was a -- I don't know what kind of a gun it was, but --

Q I want you to describe. You didn't know what kind of a gun. Would you please describe it to the jury.

A Well, it had a long clip, and it had a handlebar trigger.

Q When you say "long clip," you mean that one -- would you show about how long it is to the jury.

A About this long (indicating).

Q All right. And is that the way that it goes to the weapon, the way you are now describing it?

A Yeah, it goes in like this (indicating).

Q What kind of shells does it fire, the shape or the size of them?

{1439}

A I think it was a 45 or 44.

Q Now, is that something that you knew at that time, or is that something that somebody has told you since then?

A Yeah, since then.

Q All right. Would you describe the size of the, of those shells, compared, for example, to a 30 caliber. Do you know what the size of a 30 caliber shell generally is?

A Yeah. About this big (indicating).

Q All right. How in size, in either length or in fatness or thickness?

A It was pretty fat and it was small.

Q All right. Now, where did you, where did you go from there?

A After I met up with them?

Q Yes.

A Okay. We met up with them. We started, me and Joe ran up here, and Bob and Dino went on this trail here (indicating).

Q All right. And where was the last point that you saw Bob and Dino? Would you point out on the exhibit where it was the last spot that you saw Bob and Dino?

A About right here (indicating).

Q All right.

A Along this road (indicating).

Q All right. Along the road?

A Yes.

{1440}

Q Now, you drew a line along the road. Would you show the jury where it was you recall you, they left you, or you parted, and how far down that road did you see them?

A It was about, I saw them about right around here somewhere (indicating).

Q And where was the last spot that you saw them, to the best of your recollection? Where were they, Bob and Dino, at the time you last saw them?

A It was on this road here (indicating). And I last saw them when I split up.

Q You split up?

A Me and Joe were up here, and Bob and Dino went on this road here (indicating).

Q Did you see them after you split up along the road at any place?

A Yeah. It was, I think it was down here somewhere, down this area here (indicating).

Q All right.

MR. HULTMAN: Let the record show that the witness encircled an area that includes at the left edge the letter "P" as it now exists on the map and included the road and the edge of the woods itself.

Q (By Mr. Hultman) Now, where did you go then? You say you split back there, and then you went someplace. Would you show the direction that you went.

{1441}

A Towards the housing right here (indicating).

Q All right. Did you run across ground then? You didn't follow any road; is that right?

A No. We just ran across on top.

Q You ran across on top.

And was there firing going on at this time?

A Right.

Q Was there firing going on all the time that you were running from the tent area with the weapon that you are now describing?

A Just off and on.

Q Off and on?

A Right.

Q All right. And would you describe the nature of the firing that you heard off and on. Did you hear a few rounds, or many rounds or approximately how many rounds?

A Yeah. I heard a few rounds then off and on. I heard one time about eight rounds go off once.

Q Eight rounds go off all at once; is that right?

A Yeah.

Q Well, does that mean they were very close together when you say "go off at once"?

A I think it was eight. There was, it was pretty fast. Yeah, it was fast.

Q All right. That's while you are funning up here; is that right?

{1442}

A Yeah. About right here (indicating).

Q All right. Now, where specifically did you go with reference to the area, the Jumping Bull area? Would you point out on the map the spot, or the general area to which you went.

A I think it was that -- I think it was that white house and --

Q When you say "the white house" you mean the Jumping Bull house?

A Yeah.

Q Okay. You think you went to the white house!?

A (No response.)

Q Or if you didn't, I mean you think about it for a minute.

A No. It was, I think it was that shed there.

Q All right. Would you point out the shed. Is that the one between the green house and the white house?

A Yeah.

Q There is a shed there, all right.

Now, was there anybody else there at that time when you got there?

A Well, when I was, when I was running across, Angie and Ivis were carrying two little kids. I think it was two or three little kids. They were running over towards that crest there (indicating).

Q All right. As you came up to this area then, there was, would you describe again who it was and where they were going?

{1443}

A It was Angie and Ivis Long Visitor.

Q All right. And are they the people that live in the green house?

A Yeah. And well, well, when we split up we started running about right here (indicating), then we saw them. We passed them.

Q You passed them; is that right?

A Yeah. Not real close, but we just passed them.

Q And do you know where they were going or what general direction?

A Yeah. They were, I guess they were running up opposite from where they were coming from.

Q With relationship to the highway, or tent city, do you where the general direction they were going?

A About towards where this line is, like that direction (indicating).

Q All right. Would that be along sort of the crest of the plateau, the high ground; is that right?

A Right.

MR. TAIKEFF: May I ask, Your Honor, for Mr. Hultman to state approximately the point where they seem to have passed each other. That was not put into the record.

MR. HULTMAN: I don't know, but I'll ask the question, Counsel, for clarification.

Q (By Mr. Hultman) Would you point out approximately where {1444} it was as you best can recall that you saw the Long Visitors. You said in response that they weren't, you didn't pass them very close, but you were going the opposite direction. Would you point out approximately where it was that you saw them. Where were they when you saw them?

A About right here somewhere (indicating).

Q All right.

MR. HULTMAN: Let the record show that it's in the general area on the plateau.

Q (By Mr. Hultman) Now, who was at, if anybody, who did you see when you got to the shed between the white house and the green house?

A It was Mike and Norman.

Q Mike and Norman; is that right?

A Right.

Q Would you tell the full names to the jury again.

A Mike Anderson.

Q Mike Anderson.

A And Norman Charles.

Q And Norman Charles.

Now, where was Mike Anderson when you first saw him?

A He was by, I think he was by that white house there, the Jumping Bull house.

Q All right. By Jumping Bull's house, all right.

And where was the other young man that you referred to?

{1445}

A They were both around that white house there.

Q Both around the white house, all right.

Now, did you see anything in the general area other than those two people? Did you see anybody else?

A Yeah. Me and Joe ran up here (indicating). We were by that green house, that shed there. There was Mike and Norman. Then I looked down around here and I saw Leonard there.

Q All right. Now, you saw Leonard. Would you come to the map, and so that the jury can see where it is now at this time that you saw Leonard. Would you point that out specifically where you saw Leonard.

A (Indicating.)

Q All right. Let me draw a circle as you did and you tell me if it's any different. It's in that general area that you saw Leonard, is that a fair representation?

A Yeah. It's about right I guess.

Q Well, if it isn't -- is this the general area where you saw him?

A The general area.

Q All right. If it's any different I want you to make sure what it is.

A No, it's right, it's right.

Q You go ahead and put it on the map the way it was, not the way I maybe drew a circle because you were there and I wasn't.

A What do you mean?

{1446}

Q Well, where was the general area that you pointed out where you remember seeing Leonard at this point?

A Right here (indicating.)

Q All right. You drew the circle a little larger. Would you draw it so it's clear on the map.

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that the line, that circle area that has a number of black marks, and I'm going to designate that circle area with the letter "L".

Q (By Mr. Hultman) Now, what was he doing at that time?

A Well, he was, he was laying down and he'd get up and shoot, and then he'd lay back down and get up and shoot, and lay back down.

Q Now, what kind of weapon did he have at that time that you observed him?

A It was like the one -- looked like an M16.

Q It's like the one I showed you; is that right?

A Right.

Q All right.

THE COURT: Mr. Hultman, we have reached the time when the Court is set for recess. Court will recess until 9:00 o'clock tomorrow morning.

(Whereupon, the court adjourned at 4:30 o'clock P.M. on March 24, 1977 until 9:00 o'clock A.M. on March 25, 1977.)