

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

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**CR NO. C77-3003-01**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**LEONARD PELTIER,**

**Defendant.**

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

**VOLUME VIII**

**Pages 1447-1689**

INTERROGATION OF WITNESS

Pages 1447-1449

{1450}

FRIDAY MORNING SESSION

March 25, 1977

3:45 o'clock, A.M.

(Whereupon, the following proceedings were had in chambers, the Judge and juror Jeffrey McClean present:)

THE COURT: I just want to tell you first of all that we're very sorry to hear about your father and I wanted to find out from you whether you felt you could continue as a juror.

MR. McCLEAN: I suppose I could but I really feel that I would rather be home right now.

THE COURT: When is the funeral going to be?

MR. McCLEAN: I'm not sure. There is a little talk last night about that it might be Monday being so close to the weekend.

THE COURT: I'm going to take it up with the lawyers in the case but I wanted to talk to you first to see how you felt about it. If you did decide that you wanted to continue as a juror, I would arrange for a marshal to take you home tonight. Of course, you'd have to come back, and take you home again tomorrow and on Sunday. If the funeral was Monday that would create a little bit of a problem because that would mean we'd have to recess the court and keep 13 other jurors idle at that time. But, as I said before, I'll make a decision in your case. I wanted to find out how you how you felt and that I will talk to the lawyers.

{1451}

The impression I get is you would continue but you would prefer not to.

MR. McLEAN: Yeah. Right.

THE COURT: Is that a correct statement of how you feel?

MR. McCLEAN: Yeah. Right.

THE COURT: Now do you have any questions?

MR. McCLEAN: No. Not that I can think of.

THE COURT: Well, I will meet with the lawyers and then I will advise you.

MR. McCLEAN: Okay.

THE COURT: As long as I know you would continue then, but you prefer not to, I can go on from there. It you did continue it would not affect, do you feel it would affect your jury service?

MR. McCLEAN: No. Not that I can see at this time.

THE COURT: Well, what I'm asking, do you think it would affect your ability to act as a juror in the case under the test that I reiterated so many times while we were picking a jury?

MR. McCLEAN: No. Not really. Not that I can think of.

THE COURT: I would have assumed that would be true but I wanted you to tell me whether you thought it would. Well, we'll let you know very soon.

{1452}

MR. McCLEAN: Okay.

THE COURT: Thank you for coming.

{1453}

FRIDAY MORNING SESSION

March 25, 1977

(Whereupon, the following proceedings were had and entered of record on Friday morning, March 25, 1977, at 9:00 o'clock, A.M., without the jury being present and the defendant being present in person:

THE COURT: Counsel approach the bench, please.

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

THE COURT: Yesterday afternoon the father of juror number twelve, Jeffrey McClean, was killed in a train-automobile accident. I instructed the marshal last night to take Mr. McClean to Jamestown for a visit, and bring him back, and he did.

I saw Mr. McClean in chambers this morning, with a court reporter, and I asked him if he would continue as a juror. He said that he would prefer not to, but he said that he would.

I asked him when the funeral was going to be. He said it had not yet been determined, but probably Monday. I told him that I would take it up with the lawyers, that if he was asked to continue that I would arrange to have a marshal take him home for a visit tonight, tomorrow and Sunday in the company of the marshal.

I asked him if he were to continue as a juror if he felt that it would, this would affect his ability to meet the duty of a juror as I have reiterated to them times during the {1454} selection process, and he said that he did not think it would.

Now, I would like for counsel to express their point of view on this situation.

MR. HULTMAN: Well, I would defer first, Your Honor, to the defendant as to any feelings because maybe I would agree with whatever, you know, whatever determination that would be.

MR. TAIKEFF: Subject to what Mr. Peltier may say on the subject, and I think this is the kind of thing we should consult with him about. I would say that under other circumstances I would not

feel that the loss of a parent would make a juror ineligible to serve, or incapable of serving. But the one thing which Your Honor said that does concern me is that the juror said he would prefer not to. And I think that means his mind would be preoccupied to too great an extent with the situation; and if it was an accidental death rather than a natural passing, it's hard to imagine that he'd be able to keep his kind off that incident.

And I think he probably would, even though, make a conscious effort to do. Otherwise he would be distracted by the knowledge of what took place and his life, in his personal life.

I'm fairly certain that our position will be that he should be excused. But I think I owe it to Mr. Peltier to ask him about that.

{1455}

THE COURT: Yes. Please do.

MR. TAIKEFF: May I?

THE COURT: Yes.

(Defense counsel conferred with the defendant.)

{1456}

(Counsel confer.)

MR. TAIKEFF: May we approach the bench?

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, as your Honor has noted, we discussed the matter with the Defendant for more than five minutes, possibly close to 10 minutes; and he is agreeable that it would be appropriate under the the circumstances to allow the juror to be excused.

MR. HULTMAN: The Government would join that application, your Honor.

THE COURT: Very well, I will excuse him.

MR. TAIKEFF: Thank you.

(Whereupon, the following proceedings were had in the courtroom, the Defendant being present:)

THE COURT: Would you ask Mr. Muir to come in, please?

Mr. Muir, would you approach the bench and will counsel return please?

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

THE COURT: Mr. Muir, would you advise Mr. McClean that he is excused from further jury service and will arrangements then be made to return him home?

MR. MUIR: Yes.

{1457}

THE COURT: Very well.

MR. MUIR: We came back last night in with his wife. She stayed some place. They have their car here.

THE COURT: So they have their own means of return?

MR. MUIR: That is correct.

THE COURT: Thank you.

(Whereupon, the following proceedings were had in the courtroom, the Defendant being present in person:)

THE COURT: Are counsel ready for the jury to be brought in?

MR. TAIKEFF: There is only one matter I would like to bring to your Honor's attention before that.

Yesterday at approximately 5:30 Mr. Crooks notified us that Myrtle Poor Bear, who up to that point had been and perhaps still is, in the custody of the Marshal in protective custody, was available for us to make inquiry of concerning the possible consent interview.

Mr. Crooks indicated to us that in his opinion she probably would not agree to such an interview, and he suggested that we undertake to question her at that time. We arranged for a court reporter to come with us to the Marshal's office, and when we arrived there, she was in the Marshal's private office. Mr. Warren, the Chief Deputy, and another Deputy Marshal, probably two -- I don't recall exactly -- were also present; and we asked Mr. {1458} Warren if he would allow us a moment alone with Myrtle Poor Bear so that we could make inquiry, and he said, "No," he would not; and then he said -- and I will try to quote him -- "Ask her the one question and get her answer."

Apparently Mr. Warren was fully apprised of the fact that she was going to be asked only one question, namely, "Do you want to speak with us?" And that her answer would be "No".

I am not certain how he knew that, but in any event I wanted to make sure that that matter was brought to your Honor's attention.

Anticipating the possibility that she would refuse consent interview and because Mr. Crooks indicated that once we had spoken with her, she would be released from protective custody, we secured a subpoena from Mr. Hanson requiring her appearance this morning at 9:00 a.m.

At the end of the confrontation with her, we asked Mr. Warren to serve that subpoena, which he did.

Now, I do not see her, and I am not certain to what extent she has complied with the subpoena or whether she is still in the Marshals custody. If she is, it is not necessary for her to wait here in the witness room. We made the subpoena returnable this morning so that the Court could continue some form of jurisdiction over her.

I am wondering if the Government would advise us as {1459} to her status. If she is in the Marshal's custody, then of course, we presume there will be no release from that custody until such time as we call her to the witness stand.

MR. CROOKS: Your Honor, could we approach the bench on this matter?

THE COURT: You may.

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

MR. CROOKS: Your Honor, because I am the one he was referring to, I would like to respond to this.

I don't know what the insinuation was supposed to be, insofar as the Marshal and myself is concerned; but so there is no question, the Marshal was advised that this witness had indicated that she didn't particularly want to talk to anybody including myself about this matter again, and that I had told her that in the judgment of the United States Attorneys office she probably would not be called now as a witness; and I advised Mr. Warren that, of her feelings, and advised him that she was in his custody and that he should be present to make sure that her rights were honored and that she was fully protected; and it seems to me that that was completely proper on the part of Mr. Warren, and I rather resent the implication that Mr. Warren was doing something improper. She was in protective custody, and that was the reason she was made available {1460} to them in the manner she was.

Insofar as her present status, I assume that we have not now released her from protective custody because of the subpoena that was served; but insofar as the Government is concerned, we have no particular further interest in her other than that she does remain available, and it is my understanding from Mr. Warren that they will make her available when she is called as a witness.

MR. TAIKEFF: That satisfies our needs, your Honor.

MR. CROOKS: She is just like any other witness. I don't think that she has any obligation to sit in their office or any other particular place. When she is wanted as a witness, the Marshal will make her available.

MR. LOWE: Let me add something which I learned last summer. It was my first contact with the Marshal's Protective Service Division, as they call it. They take the position that any time a witness says to them, "I no longer want protective custody," the witness -- it is not for the United States Attorney or the Court or anybody -- and then they will immediately release the person and relieve her of her presence, and do whatever else they need to do.

Our concern is that if this witness is taken somewhere in the protective custody status, California, South Dakota or Minnesota or wherever it might be, and at some point {1461} the witness says, "I no longer want to be in protective custody," we ought to have some notice to the Court, or the Marshals ought to at least bring her back here so she is here where she is pursuant to a subpoena, where we have some access if she is going to be called as a witness.

All we are asking for is some notice. We don't want to find ourselves without a witness. That's the situation.

MR. HULTMAN: Your Honor, could I also respond?

Mr. Lowe has correctly stated the posture, your Honor; and I would want that made very clear, and I say this in all good faith. I mean, she is here; and I believe she is still here. I haven't seen her or anything, but that was the intention, that she remain here until you had the opportunity to do the things you wanted; but I want to make it very clear, your Honor, that the Government cannot be responsible under the circumstances. As Mr. Lowe says, once a witness in protective custody -- because it is their decision in the first place, and it is their decision to revoke it.

Any time that she should desire, as of the time we are standing here right in this courtroom, right now, she no longer wants protective custody, at that point the Government's obligation is in no way to keep her. You would be the first ones here at the bench were it somebody else raising some problems.

{1462}

MR. TAIKEFF: That's exactly why we called the matter to your Honor's attention, so your Honor could have her produced and instruct her that she is subject to the jurisdiction of the Court and perhaps advise the Marshal's Service that there is an obligation to return her here rather than turn her loose.

MR. HULTMAN: They can't do that if she makes such decision. They can't keep her in custody. She is like any other witness, like the ones that I have had some problems and some difficulties with from that standpoint.

MR. TAIKEFF: In that case we would ask that she be held as a material witness and released on her own recognizance in the Marshal's custody; and thereafter on her own recognizance she be given an instruction that if she fails to appear she would be guilty of a Federal felony with five years' imprisonment. She is an important witness we are asking for.

MR. LOWE: Our concern is that normally a witness subpoenaed would remain until you call him. The Protective Service may not want to keep her in town. They may feel it would be more secure to take her to Minneapolis or Kansas City, where I think they took some last year. That

would make the normal practice of a witness subpoenaed just being here so we can check on them every day. If they don't show up, at least we know they {1463} are not around. We have no way to keep track of her if she is in protective custody. We feel it is reasonable for the Marshal's Service to return her to the situs of her subpoena. We have no objection to the Marshal retaining her in protective custody; but if they decide they are not going to be responsible further, they should return her to the Court.

MR. HULTMAN: If the Court so ordered, it is a matter for the Court.

What I am saying clearly on the record, in no way can I be held responsible from the very beginning moment that a person in protective custody says, "As of now I am leaving." The Marshal at that time can do nothing unless there is some other type of order that gives the Marshal some authority to act, something other than that of being a witness in protective custody.

What I am saying, I want to make very clear, as of right now, and that's why the notice was given last night. I have tried to do that with every witness once a determination has clearly been made on the part of the Government, and I gave some more names this morning to counsel for the Defendant. Once we make a decision that the witness is not going to be called, there is no reason for me to call her, I have an obligation then to release that subpoena; and if it is somebody in protective custody, that doesn't {1464} change that status, but if that person makes a determination, there is no way in which the Marshal has authority from that point on to produce her anywhere or any time or under any circumstances.

That's what I want made clear, and that's why I think counsel has got to take whatever measures and means they wish to take in order to insure that the witness is available, your Honor. I am not going to be placed with that responsibility because it isn't mine at this particular time.

MR. LOWE: Let me advise you so you understand the context of this witness, that this witness has stated under oath in writing that she was an eyewitness.

MR. TAIKEFF: To the killing of the agents.

MR. LOWE: To the killing of the agents, not just in the area, she saw the agents shot and killed.

MR. TAIKEFF: Within 10 feet.

MR. LOWE: Within 10 or 20 feet. We believe by any definition she is a material witness. We would ask under these circumstances admittedly there is some lack of ability to control her.

MR. HULTMAN: As I was saying before --

MR. TAIKEFF: (Interrupting) She is an unstable person.

MR. LOWE: She is an unstable person also.

{1465}



We would ask your Honor to designate her as a material witness, to put her on her own recognizance, not asking she be locked up, she be advised of the consequences of failing to appear as a material witness upon call.

We have no objection to her being with the Marshals at an undesignated place as long as she could be produced if we need her, as long as she is in the Marshal's Service. If she is going to be in protective custody, we understand there are problems. We understand the material witness status would exist.

MR. HULTMAN: I am not encouraging any, I am sure you understand that.

MR. LOWE: Yes. I think this is a very important witness. She stated under oath she is an eyewitness. We would apply for that status, Judge. She is a very important witness.

MR. HULTMAN: I made the statement with reference to control, not in this case but in previous proceedings, it is argued and there is certain merit to it in that I would be the first one to agree that she is a very unstable person, and that's the part where I would vouch in normal circumstances with a normal witness that something might happen. There is nothing I would in any way try and guarantee with reference to this witness.

It is my understanding that, for example, somebody {1466} from the Wounded Knee Legal Offense-Defense has talked to her while she was in California just now immediately before she left. I have had fears that she would go off and not be available period; and I knew you were concerned about it in the last trial, of the availability; and very frankly, that's why we sought to get her in some type of measure where she would be available to whoever might want to talk to her. I will do everything I can to keep it in that status. I want the record clear as to what limitations are.

MR. LOWE: You would not oppose a material witness status?

MR. HULTMAN: No.

THE COURT: On the showing that has been made, it is ordered that Myrtle Poor Bear be retained as a material witness.

Counsel for the Defendant may submit a proposed order to the Court in accordance with the understanding that has been expressed here at the bench.

MR. LOWE: Thank you.

MR. TAIKEFF: Thank you, your Honor.

MR. LOWE: May we get that to you after lunch?

THE COURT: Yes.

{1467}

THE COURT: The jury may now be brought in.

MR. LOWE: May we approach the bench.

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

MR. LOWE: Your Honor, in an abundance of caution, Mr. Hultman and I both feel it would be advisable if we could have the marshal come to the side bar and have you instruct him until such time as we can prepare a written order to hold Miss Poor Bear in a material witness status and merely make sure she stays in the courthouse until Your Honor can deal with this matter officially. We both feel that would be wise.

THE COURT Who is the marshal that --

MR. CROOKS: Mr. Warren I talked to about her this morning and it's my understanding that he returned her to, I think, Valley City and she's still in their custody. My understanding is they were going to keep her in custody until further indication of whatever kind.

MR. LOWE: I have no objection to having her kept in Valley City. I think if the marshal is instructed to --

MR. HULTMAN: She may say, "I'm going to leave," and walk out right now.

MR. LOWE: Just so he relays to the deputies with her not to release her until further order of the Court until we can have a protective order.

{1468}

THE CLERK: I can phone Mr. Warren to come down, if you like.

THE COURT: This is in reference to Myrtle Poor Bear. The lawyers are agreed that if she should ask to be released from protective custody that she is to be, I have ordered and a written order will be prepared today, that she be held as a material witness without bond. So if she does ask to be released from protective custody, it is ordered that she be held at least until this order, the written order is in her hands, and you be guided by what is in the written order. They are concerned she might, if she asked to be released from protective custody she might take off. Defendants feel she is important to them.

MR. WARREN: Okay.

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

THE COURT The jurors perhaps are all aware of the fact that the father of juror number 12, Jeffrey McClean, his father was killed in an automobile-train, or motor vehicle train accident yesterday afternoon and he has been released from further duty on this jury. So we now have 12 jurors and one alternate remaining, and just to fill in the empty chair I will ask you, Mr.

McKay, if you will take that chair and then for the rest of the trial occupy the chair that Mr. McClean had.

{1469}

MR. MCKAY: Now?

THE COURT: Yes, please.

You may continue.

MR. HULTMAN: Plaintiff calls Norman Brown.

IF it please the Court.

THE COURT: You may proceed.

NORMAN BROWN,

being previously sworn testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. HULTMAN:

Q And you understand that today as a witness that you are still in your renarls sworn on the pipe to tell the truth, do you understand that?

A Yeah.

Q And that what you did yesterday continues today?

A Yeah.

Q I want to go back to where we left off yesterday, and at that time I believe you indicated that there were certain people in certain places when you got to the area, the general vicinity of the green house, the little shed between and the white house, is that right? Do you recall that?

A Yeah.

Q Now I want to direct your attention again to Government's Exhibit No. 71. As I recall, one of the persons you indicated that was there when you arrived there was Norman Charles, is that right?

{1470}

A What?

Q Was Norman Charles one of the persons who was in this area when you got into the area yourself?

A Yeah.

Q Where we left off yesterday.

A Yeah.

Q Where was Norman as best you recall when you first saw time?

A He was at the white house.

Q At the white house. And that's the house that's been referred to here as the Jumping Bull house is that correct?

A Yeah.

Q And do you remember, did he have any weapon of some kind t that time?

A Yeah.

Q And would you describe it to the jury for us, please.

A Well, it was long rifle. Just a long rifle.

Q It was a long rifle of some kind.

Now you also indicated that there was another person here when you got there. Do you remember who that was?

A Mike.

Q And who is Mike? Mike who?

A Anderson.

Q Mike Anderson.

Where was Mike Anderson when you saw him when you {1471} arrived?

A By the white house.

Q He was also by the white house. And that's the same house you just talked about that's the Jumping Bull house, is that right?

A Yeah.

Q And you indicated that there was another person that you saw not in the area of the houses but in another part of the area down in an area which you circled with this "P" in the general area of the "P," is that right?

A Right.

Q Who was that?

A Leonard.

Q Now did the other person that was here at the -- pardon? Leonard was here?

A Yeah.

Q I want to take you back. The person you just referred to prior to Leonard, did he have a weapon of some kind at the white house?

A Who?

Q This second person. You indicated you saw two persons here. You talked about one of them having a weapon of some kind did you not?

A Yeah.

Q Did the second person have a weapon of any kind?

{1472}

A Yeah.

Q And who was that person?

A Mike.

Q Mike.

Now what kind of a weapon? Would you describe what the weapon was as it looked like as you best recall.

A I think it was a .22.

Q And was it a .22 that you also had?

A I think so.

Q Now you described that. What kind of a weapon did Leonard have?

A Well, when I, it looked like M-16.

Q And that was the weapon that you described for the jury a little earlier, is that right?

A Right.

Q I'm going to show you now that has been marked as an exhibit in this case and ask you at the time that you are now talking about and the person you are referring to and the actions that you described at the end of yesterday, was it a weapon of this general type and description?

A Yeah. Looked like that.

Q All right.

Now you indicated that one of those two persons also had a weapon that looked like a .22, is that correct?

A Right.

{1473}

Q And that you had a weapon Norman Brown I t 73 that you had earlier described, is that correct?

A Right.

Q And I'm going to show you now the weapon that has been introduced or marked as evidence in this case as 41A and ask you whether or not it was a weapon of this kind that you had at the time you're now testifying.

A That kind?

Q Yes. A weapon. Yes.

A Yeah.

Q Was the weapon that you saw in the hands of Mr. Anderson at that time, was it one of a general description of this kind?

A What do you mean?

Q Well, you said, I believe, you thought it was a .22, is that right?

A Yeah.

Q Did the .22 in any way resemble one like this in any way?

A No.

Q No. All right.

Was there anything else in particular about the one you had from the one he had as you recall?

A Well, mine had the scope.

Q Yours had the scope. Did his have the scope?

A I don't remember.

Q Is there anything else about Mr. Anderson's weapon that {1474} you do recall?

A Just a rifle.

Q Just a rifle. And a .22 you thought?

A Yeah. .22.

Q Now you said that just as you came to the hill that you were with another person, is that right?

A That's right.

Q And who was that?

A Joe.

Q And did Joe have a weapon of any kind at that time?

A Right.

Q And what kind of a weapon? Describe it to me.

A Well it was lever action (indicating).

Q All right.

A lever. And you made --

MR. HULTMAN: Let the record show that the witness made a signal in this direction (indicating).

Q (By Mr. Hultman) What else do you remember about that particular weapon that Joe had?

A It was a rifle.

Q And it was a rifle. Is there anything else you remember about it? Had you ever seen it before?

A Yeah.

Q And where had you seen it before?

A In the log cabin there.

Q You had seen it before here in the log cabin. The same {1475} place that you had seen the weapon that you have previously referred to that Mr. Peltier had at this time is that right?

A Say that again.

Q You saw it in the same place, the log house, which in earlier testimony you said that is likewise a place where you saw a weapon of the same kind and nature that Mr. Peltier had at this time?

A Yeah.

Q Now I'm going to show you what again has been marked as an exhibit in this case and ask you whether or not the weapon that Mr. Stuntz had was one of a general description of the same type as I'm now going to show you?

MR. HULTMAN: Let the record show I have in my hands Government Exhibit No. 32A.

Q (By Mr. Hultman) I want you, Norman, to look at this weapon and ask you whether or not the one that you have describe that Joe had was one of this general description?

A Yeah.

Q And wren you referred to a lever or a lever handle, is his what you were referring to?

A Right.

Q You said you had seen the weapon that he had before, is that correct?



A Yeah.

Q And you had seen it in the log house?

{1476}

A Right.

Q Now we've talked about the two people that were here when you arrived in the general vicinity of the white house. You've talked about Mr. Stuntz, you talked about Mr. Peltier. Was there anyone else other than the two men that you said you had split with and those two persons were who, as you recall?

A Bob and Dino.

Q Bob and Dino. You had split with them.

Were there any other people that you saw in the area that I have inscribed here, in this area (indicating)? Do you remember seeing anybody else?

A No.

Q At that time.

A No.

Q That's everyone?

A Yeah.

Q Is there --

A That's all I saw.

Q Is there any question in your mind about that at all, whether or not there was any other persons?

A Yeah.

MR. TAIKEFF: I have to object to the form of that question, Your Honor, as assuming a fact not in evidence. I think the witness said he did not see anyone.

{1477}

MR. HULTMAN: I will restate it and it's correct, Counsel.

THE COURT: Very well.

Q (By Mr. Hultman) My question to you, Norman, are there any other persons that you saw, there may have been people you didn't see, of course --

A Yeah. I saw Angie and Ivis.

Q The Long Visitors that you talked about. They didn't have any weapons with them of any kind, did they?

A No. No.

Q Were there any other persons at all that you can recall?

A No.

Q Now at the time that you said you saw Mr. Peltier and you described his actions and the type of weapon that he had and the shooting, did you see any other persons in the entire area that's represented here? Did you see any other people of any kind?

A Yeah. We were running, when we got to the houses, two FBI Agents started shooting at me and Joe.

Q Two FBI agents started shooting at you and Joe. Where were the two FBI agents?

{1478}

A (Indicating.)

Q All right. And would you point out on Government's Exhibit 71 where they were.

A (Indicating.)

MR. HULTMAN: Let the record show that, the witness has pointed out the area of Coler's car as it's represented in writing on Government's Exhibit No. 71.

Q (By Mr. Hultman) Now, would you tell us when it was, where you were when you saw the two agents first here in the area you've pointed out, where were you when you first saw them?

A I was right by that green house (indicating).

Q By the green house, and that's this house here (indicating); is that right?

A No.

Q You point out and you tell us, I don't mean to --

A (Indicating.)

Q Would you maybe stand up if you have to in order to actually touch the board.

A (Indicating.)

Q All right. You are showing the green house. And where, where around the green house were you as you best recall with relationship to the green house? Where were you?

A About right here (indicating}).

Q All right. You were somewhere between the green house and {1479} shed the shed. Is that the general area that you are pointing out?

A Right. Around that area.

Q Now, what were you doing at the moment that you saw the two individuals down in this area (indicating)? What were you doing when you first saw them?

A Well, when I first, when they come running we saw them. And I stood by that house ready for the shots, and I was going across. And they started shooting and, you know, I could hear the rounds go by. And that's when I started shooting back again.

Q All right. Now, would you describe what it was you saw here. Would you describe the scene that you observed in front of you for the jury. In other words, you tell the jury what it was you saw.

A Well, I saw there was, I saw two cars.

Q All right, you saw two cars.

Would you tell us where the cars were in terms of each then and how would you describe the two cars?

A Well, one was pointing, you know, south, and the other was pointing west.

Q All right. Would you come here and point with the pointer or us the direction that each of the cars were pointed, and let's start with one car and just talk about one car for a moment. Would you do that?

A (No response.)

Q Okay. Tell the jury one car, start with one car.

{1480}

A Well, this one was south, pointing south and north.

Q All right. So was it in a position, if this were to represent a car itself, was it pointed in generally the direction that that drawing is right now?

A Yeah.

Q All right. And was it in the general area or position that represented in this Government's Exhibit No. 71? Is that about how you would best recall it was?

A Yeah.

Q All right. Can you tell the jury anything more about that car. Do you remember anything about the car?

A The hood, the trunk hood was open.

Q All right. So that, which the direction you say was, it faced this direction; is that right?

A Yeah. The front was facing that way (indicating).

Q But the trunk hood was up, is that what you are saying?

A Yeah.

Q All right. Now, is there anything else you remember about car?

A There was an agent.

Q And where was the agent with relation to the car itself?

A He was behind that trunk hood.

Q He was behind the trunk hood of the car we are talking about?

A Yeah.

Q Would you describe, did he have a weapon of any kind?

{1481}

A Yeah.

Q And do you remember what it looked like?

A I think he had a handgun, or he had one than pumped, a rifle.

Q He had one that pumped?

A A rifle.

MR. HULTMAN: And let the record show that the witness gave a motion with his left hand like a movement of some kind.

Q (By Mr. Hultman) All right. Have you seen a gun, a pump gun before this particular time? Had you ever seen a pump gun?

A No.

Q Hadn't seen one?

A No.

Q All right. Have you seen one since of any kind, any time, anywhere?

A No.

Q All right. Now, so as you best recall then the man standing behind this car (indicating) was behind an open trunk, and he had a weapon that looked like he was pumping; is that a fair conclusion of what you've just said?

A Right.

Q Was there anything else that you remember about that car, that person, anything in particular?

A (No response.)

{1482}

Q If you don't, we'll move to the second car.

A I don't remember.

Q All right. Now, would you point out to the jury where the second car was with relationship to the car you've just talked about.

A Right there (indicating).

Q All right.

MR. HULTMAN: And let the record reflect that he pointed to a position that was to the left.

Q (By Mr. Hultman) Do you remember seeing any junked cars or abandoned cars that were in the area at all? Do you recall any junked or abandoned cars at all?

A You mean these here (indicating)?

Q Well, any where.

A Yeah. These here junked cars (indicating).

Q There were some junked cars.

MR. HULTMAN: And let the record show that the witness refers to a row of six approximately objects in the area just to the West and a little south of the intersection which is marked with a "P".

Q (By Mr. Hultman) Do you remember any other junked cars of any kind?

A No.

Q All right. Now, tell us with relationship to the first car that was pointed generally in the direction that you were, {1483} is that a fair description by me of the hill?

A Yeah.

Q What direction was the vehicle, car pointed?

A West. He was pointing east, the front was pointing east.

Q All right. Would you, by taking the object that is here, and is just in the general shape longer than it is one direction to another, would you put it on the map and place it in the direction, or in the position that it was sitting as you best remember. This is the second car now we are talking about.

A (Indicating.)

Q Maybe we should put the first car first where you thought the first car was and that might help.

A Yeah (indicating).

Q All right. And then put the second car.

A Where's the front one?

Q Well, was the front of the car pointed toward the first car?

A Yeah.

Q All right. So that in other words you are saying as you put it here this is the front of the car; is that right?

A (No response.)

Q Nearest, or pointing in a general southerly direction?

A Yeah. It had to.

Q Now, what can you recall about that car, and anything about that car? Is there anything in particular that you remembered about the car?

{1484}

A It was shooting. There was an agent shooting.

Q There was an agent shooting.

Where was that agent?

A I think he was on this side (indicating).

Q All right.

MR. HULTMAN: Let the record show that the witness has pointed to the side which is away from the position where he was.

Q (By Mr. Hultman) The car was between you and the agent; is that right?

A Yeah.

Q All right. Now, did he have a weapon of some kind?

A Yeah. It was a handgun.

Q It was a handgun.

And could you see what position he had the handgun?

A Yeah. He'd get up and shoot some rounds and back down.

Q So you saw him shoot and then get back down; is that right

A Right.

Q Now, were there any other people now that you saw in the area other than the ones that you described up to this point? Do you remember any other persons, seeing any other persons in the area that is shown here as Government's Exhibit 71 up to this time?

A Did I see anybody in this area besides these two?

Q Yes.

{1485}

A No.

Q All right. Did you see anybody, any other people in the entire area that you were looking at, the scene you were looking at from up here in the place that you were located? Did you see any other persons?

A Well, after a while two cars came in.

Q All right. Now, would you show the jury where those cars came in on Government's Exhibit 71.

A Can I talk to my lawyer?

Q Oh, yes. Oh, yes.

MR. HULTMAN: Your Honor, the witness has requested an opportunity to visit with his lawyer.

THE COURT: Very well.

(Whereupon, the witness conferred with his counsel, Mr. Maring.)

Q (By Mr. Hultman) Now, Norman, I believe we were at the point where you indicated you now saw some other people somewhere; is that right?

A Right.

Q All right. Would you maybe, if you'd come over in this side so that the jury could see, and you point out on the map, Government's Exhibit 71, where it was now that you saw any other persons. And if you don't remember exactly, tell us as best you can where it was.



A I saw two cars coming in right here (indicating).

{1486}

MR. HULTMAN: And let the record show that the witness has indicated that two cars, he saw two cars coming in on an extension of the road that comes from Highway 18 past Jumping Bull Hall into the residences that we know as Wanda Siers; and the area he specifically is referring to is a, an area approximately the length of a pencil if you put one end of the pencil at the Siers' residence and left the rest of it in a generally northeasterly direction on the road that is there.

Q (By Mr. Hultman) Now, what is it then that, what is it that happened at that time?

A You mean right there (indicating)?

Q Yes. Tell us what it is you saw and observed.

A Well, I saw two cars were coming in. When they were coming in we started shooting at those two cars.

Q You say "we started shooting;" is that right?

A (No response.)

Q And who do you mean by "we"?

A Me and Norman Charles.

Q All right. Now, where were you and Norman at that time? Would you show the jury again on Government's Exhibit 71 where you were at that time.

A Yeah. I moved from here (indicating) to this white house the propane tanks.

Q All right.

{1487}

MR. HULTMAN: Let the record show that the witness now had moved from where he had indicated previously to a point near the Jumping Bull house near some propane tanks.

Q (By Mr. Hultman) Is that what I heard you say?

A Right.

Q All right. Where were those propane tanks with relationship to the Jumping Bull house?

A They were on the east side of the house.

Q All right. Would you point out approximately where they were.

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that he points to the east side of the Jumping Bull house.

Q (By Mr. Hultman) Were these tanks seemingly tanks that are up against a house and used somewhere in the house?

A Yeah.

Q All right. Now, where was the other person that you refer to at that time, the time you say, "We started shooting"?

A There was two cars. There were some people in there. I don't know how many people, though.

Q All right. And they were coming into the Jumping Bull area; is that right?

A Yeah.

Q All right. And how far, as you recall if you do, about {1488} where was it that the first car got, as far as it got?

A Right there (indicating).

Q All right. And let me make an "A" at that particular point where the witness has just marked a pencil "At" on Government's Exhibit No. 71.

The first car got to that point; is that right?

A Right.

Q All right. Now, where was the second car?

A Right there (indicating).

Q All right. And let me put a "B" at that point. In other words, one car was following the other, is that a fair conclusion on my part?

A Right.

Q All right. Now, at what point did you, when you referred to to "we," the two of you start firing at the two cars, "A" and "B"? Where were they when you started firing at them right where you pointed it out there?

A Well, right here (indicating).

Q little short of the point of where they stopped.

Now, describe what it was that then happened as far as the two cars.

A Well, started shooting at them. I think a couple of the tires. Then they moved back, they practically stopped and, and they moved back to about right here (indicating), somewhere around this area here (indicating), and they were parked there.

{1489} And they got out and they started shooting at us.

Q All right. Where they finally parked, where was it with relationship to the Highway 18? Was it a long way from the highway, or a short way, or somewhere --

A You mean right here (indicating)?

Q Yes. I just want to find out generally.

That's generally where you think it was; is that right?

A Yeah. Around this area here (indicating).

Q All right. Somewhere in this area (indicating.)

I'm going to draw a circle.

A Yeah.

Q Now, could you continue to see all of those two cars?

A You mean from there (indicating)?

Q Yes. From where you were?

A Yes. I could see them.

Q You could still see them, all right.

How far away from the Siers' residence, or the house that you are talking about that they got up to in front of almost "A" and "B", how far away from it as you remember back your mind in

the scene, how far away did the two cars back in distance from the house that was known as the Siers' residence? Could you give the jury an estimation of some kind?

A You mean how far they moved back here (indicating)?

Q Yes. How far did they move back?

{1490}

A About seventy-five yards.

Q All right. Approximately seventy-five yards?

A About, yeah.

Q All right. Now, what if anything then happened next? What do you remember next?

A As soon as we started shooting at them, shooting at us, we saw some more cars coming around, around this area where that highway is.

Q All right. You know the area generally, do you not?

A Yeah.

Q Is there another road or highway that comes around on the other side of the creek which would be below Government's Exhibit 71?

A Yeah.

Q And is it on the side of a hill somewhat the same height as this general area in here (indicating)?

A Yeah. I could, you could see the road from --

Q You could, all right.

A From around there, yeah.

Q You could look across the wooded land where the creek was over to where that road is and see it; is that right?

A Yeah.

Q All right. Now, what was it that you saw happening over here on the road, that's over on this side of the creek?

A Saw some agents. Well, we got out of the car and they {1491} started going across the field this way (indicating). They got out of the car. I think there was three or four of them got out of the car and started coming up this way (indicating).

Q So they got out of their car and they started coming towards your direction, is that a fair conclusion on my part?

A Yeah.

Q All right. Do you remember, do you know any of the houses or any of the people that lived across from the creek along that road that you are talking about?

A No.

Q You don't know any of them?

A No.

Q And did you know any buildings of any kind over there?

A Yeah. I think there's a couple houses back there somewhere.

Q All right. And were the men that you saw anywhere in the vicinity of any of those houses that you talked about? If you recall whether they were or they weren't.

A I don't know. I saw them get out of the car and they come this way (indicating).

Q All right. Now, you said that they were agents, and I want to ask you about that. Did you know at the time or is this something that you concluded at that time?

A You mean --

Q That they were agents?

A Yeah. At that time when I saw them, you know, people would {1492} tell me, you know, there's agents on Pine Ridge and there's goons. And when everything happened from then, you know, I thought it might be agents.

Q All right. So you thought they were agents, that's the point you are making?

A Yeah.

Q You didn't know of your own knowledge --

MR. TAIKEFF: Your Honor, I object to the repetition because the witness said he thought they might have been agents. And it was made, the repetition was made in a very positive sense.

{1493}

MR. HULTMAN: I withdraw, and that is correct.

THE COURT: Very well.

Q (By Mr. Hultman) Now, what was the next thing that you saw and observed; were you still at the same position here in the general area of the tents, of the white house?

A No, slipping around the house, and then we saw a couple of cars go by up here (indicating).

Q All right. Could you see Highway 18 then from where you were?

A Yes.

Q Could you see the -- any cars coming and going?

A Yes, saw them coming and go by, past.

Q What direction were those cars going, if you remember, would you show the jury what direction?

A (Indicating).

Q And they were going fast, you said?

A Yes.

Q Now, what was the next thing that you saw and observed?

A Joe came up to me, and he said, "There is women and children in the camp, you know. Our sisters are down there," he said. Then he said, "Why don't you go down there? The agents are coming in this way (indicating), so this is the time to be a man. This is the time to be a warrior," so he said, "Why don't you go over there and take somebody with you?" "They might be coming in from this side (indicating)."

{1494}

Q What general area were you discussing at that time, would you point out on the map generally?

A Right up there (indicating).

Q Generally where the tents were, is that right?

A Yes.

Q All right. Now, did you at any time while you were on the hill itself look down where the agents were again and see anything down where the agents were?

A Yeah. I saw one of them. I think it was this guy here (indicating).

Q That's the one that was behind the first car, behind the trunk, is that the one that you are pointing out now?

A Yeah, I think it was that guy (indicating).

Q All right.

A One of them I saw crawl through the car and crawl back to the original positions they were at. I think it was this one here (indicating). I don't remember, but I know I saw one of them.

Q What you remember then is that you saw one of them, you don't know which one, is that a fair conclusion?

A Yes.

Q And what was it you observed him doing if you did see him doing anything, you said he was crawling?

A Yeah. He crawled through the front of the car and he crawled out. He was there for awhile, and then he crawled back {1495} out and got in the same place where he was at.

Q All right. Did you see the second person at this time that you are talking about?

A Yeah. He was shooting away there.

Q Now, what kind of a weapon did he have, what kind of a gun?

A Handgun.

Q The handgun, all right.

Now, did you at any time see anybody else down in the area where the two men were?

A Besides those two?

Q Yes, at any time during the afternoon.

A No.

Q You didn't see anybody else in that area at all?

A No.

Q Now, did you see the men at the cars, the two men at any other time than the two times you have now talked about, prior to the time that you left?

A You mean, did I see them right after I saw them them times that I saw them?

Q You talked about two times. Did you see them any other time?

A No. That's when Joe told me to go around and take them, so we ran across over here (indicating). Then we were over here by this gate here (indicating), around here (indicating).

{1496}

Q All right. Would you tell me, and I will mark it, I will move my pencil and you tell me when -- have I gone too far, can you reach it? You show me where so I can make a mark, or you make a mark.

A (Indicating) It is right here (indicating).

Q All right. Let me make a mark where you are pointing right now.

A Right there (indicating).

Q Use the pointer, and I will make the mark where you place the pointer.

A (Examining) There is a gate right here somewhere (indicating).

Q Gate somewhere in here, in that general area (indicating)?

A Yes.

Q All right. Let me put a "G" there for "gate", somewhere in that general area?

A (Indicating). (Examining) Around here some place (indicating).

Q All right. I will draw a circle in there.

A Yes.



Q And I put a "NB" there for Norman Brown, that's the area generally where you are talking about, is that right?

A Yes.

Q Now, did you then go to that point is that what you are saying?

{1497}

A Yeah, me and Mike ran over there.

Q All right. You and Mike ran to a point that is the general area of the circle "NB", is that right?

A Yes.

Q All right. Now, what was the route, would you point out the route that you generally took, you and Mike?

A About like this (indicating).

Q All right. It was in a general direction from the areas of the houses to the area that is known as "NB", is that right, generally in that direct?

A Yes.

Q Not in a straight line, but just generally?

A Yes.

Q All right. Did you see anybody down there when you arrived there?

A Yeah, just me and Mike, us two were there, that's all I saw.

Q Did you see anybody at all?

A No.

Q All right. Now, how long approximately had you been up in this area (indicating), that you have been talking about, from the time you got there until the time you are now talking about that you left, can you give --

MR. TAIKEFF: (Interrupting) Your Honor, just to make clear, a clarification for the record, by the phrase {1498} "this area", I believe Mr. Hultman intended to be the area --

MR. HULTMAN: (Interrupting) "NB", the area to which he left. The area from which he left to the area which he went to.

MR. TAIKEFF: The "from" place is the residence, and the "to" place is near the gate.

MR. HULTMAN: Yes, near the gate.

MR. TAIKEFF: I wanted to make sure the record was complete.

MR. HULTMAN: Right.

Q (By Mr. Hultman) How long approximately, if you have any idea at all, as you best recall were you here on the hill area, in the area of the houses, from the time you got there until the time you are now talking about when you left?

A Well, when we ran, me and Joe up here (indicating) 20 minutes and these cars came. I don't know. It happened fast, you know. I didn't keep track of time.

Q All right, but am I clear in what your response to me was, that it was about 20 minutes from the time you got here (indicating) until the cars came in, is that what you just now said in your answer? I want to make sure of what you said.

A I don't know for sure.

Q Approximately?

A I don't know.

Q How long then was the total time that you were there before {1499} you left?

A It was about an hour, hour and a half.

Q Hour, hour and a half, that's the best you can do?

A Yes.

Q All right. Now, did you at any time, Norman, go from the hill area back to the tent area, other than the time you are now talking about; do you recall ever going back there during that period of time other than the one you are talking about now?

A I don't think so.

Q All right. Let me ask you this: Did you have the same weapon from the time you left and came to the hill until the time you are now talking about when you went to the area that we have marked on the map as "NB", did you have the same gun during that period of time?

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

MR. TAIKEFF: I didn't hear the answer, your Honor?

THE WITNESS: I don't remember.

Q (By Mr. Hultman) You don't remember.

Now, other than the two occasions that you said when you looked down at the bottom of the hill, do you recall at any time during the hour to an hour and a half, which was an approximation you made, do you remember any other occasion when you looked down at the bottom of the hill?

A I don't understand the question.

{1500}

Q You were here in this area (indicating) for an hour, an hour and a half approximately, is that what you told the jury?

A I said I didn't know, about.

Q I know, about, approximately?

A Yeah.

Q All right. Whatever the time was when you were up on the hill during that period of time that you were there, did you look down and view anything at the cars other than the two times that you have described to the jury?

A No.

Q You did not, so that all the rest of that time then you were doing things that didn't have anything to do with this area down here (indicating), is that right?

A I take these people over here (indicating), that were over here (indicating), and shooting back here (indicating), and then saw some cars coming around and went back here (indicating) we were waiting for them.

Q So is it fair for me to conclude that you didn't do any other shooting of any kind?

A Yeah, I shot at them, yes.

Q When did you first --

A (Interrupting) The first time I came down. They shot at me, and I shot at them.

Q Is that the only time you fired down there?

A The next time I saw them, they were shooting at us -- {1501} when I saw them, three times, the third time is when I shot back.

Q All right. Let me take them one at a time

There are three times that you looked at them now, is that correct, as best you remember?

A Yes.

Q Have you told us about the first time already?

A Yes. When I was coming across here (indicating) they shooting at me and I shot back.

Q All right. Now, when you say they were shooting at you could they likewise have been shooting at somebody else in same general direction?

A Yeah, they could.

Q As far as you felt at that time, they were shooting at is that right?

A You know, probably. Probably, yeah, shooting at all of us.

Q Now, the second time, did you shoot at that time?

A Back?

Q Yes.

A Yeah, I shot back.

Q The second time you say you saw the two men down here (indicating), if I recall you correctly -- you correct me if I say anything that is different than what you saw -- that there was one man who was standing still with the handgun, is that right, talking about the second time?

{1502}

A Standing still?

Q Standing, but he had a handgun, he was standing shooting, firing?

A He was shooting going down.

Q All right. Now, there was also a second man, and you say he was crawling, is that right?

A Yeah, he was crawling.

Q All right. Do you recall anything about the man that was standing in terms of what he looked like that might or might not have been different from the first time that you saw him?

A What do you mean?

Q Did he look any different in any way than the first time?

A No.

Q Now, did you fire back on that occasion when you looked the second time that are referring to?

A No, because he was shooting at me and I didn't shoot that time.

Q Now, what is the third time again that you are referring to now?

A When I was back here (indicating), you know, when I saw the car come around this way (indicating).

Q The car?

A It was this way (indicating), I saw the car.

Q When you are referring to you saw other cars, where is it that you are now talking about, where were those cars?

{1503}

A Back here (indicating), the highway, the dirt road.

Q You are talking about the road that loops around, this one you were talking about a little while ago, you saw some more cars on that road?

A From the time I saw those, he told me to go over there.

Q Is that the time then that you saw and looked down where the two cars and the two men were, the third time, is that the time?

A Right.

Q All right. Now, what is it that you saw at that time?

A In here (indicating)?

Q Yes.

A Shooting at me, so I shot back. I don't know if they were shooting at me, you know, the guns were pointing that way.

Q Would you describe what the two men were doing at that particular time as you best recall?

A One had a pump rifle (indicating), and the other one had handgun.

Q All right. One had a pump rifle, and you pumped again, is that right?

A Yes.

Q And the other one had the handgun?

A Yes.

Q There were the two men at that time?

A That one was right behind this car (indicating), and the {1504} other one right behind this one (indicating).

Q Were they in the same general positions they were the first time you saw them?

A Not the same position, but moved around the two cars, you know, and shooting back of it.

Q All right. Now, did you see any other people other than the ones you talked about while you were on the hill up to the time that you left and went to the area on the map that you have pointed out as "NB"; do you remember seeing any of the same people or any additional people, any other places on Government's Exhibit 71?

A Yeah, Dino.

Q Where was Dino?

A I think he was around -- let's see. I am not sure, probably around here (indicating), around the cars. I am not sure. Around the area (indicating) -- I saw him, yeah, the cars there.

Q All right. It is correct your response is by the cars, in that general area. Would you point out on the map the area that you are referring to so that the jury will be able to see?

A Right here (indicating).

Q All rights Can I draw a circle here approximately that you were, generally?

A (Indicating).

Q All right. Let's make your circle very dark here, and who {1505} was in that general area?

A Dino.

Q I am going to put the word "Dino" there. Now, what was Dino doing?

A He was shooting.

Q He was shooting.

Do you remember what, would you describe for the jury the kind of weapon that he had that he was shooting with at that time?

A It was a big rifle, big stock, just big.

Q Big, is that right?

A Yes.

Q All right, big stock, big rifle?

A Yes.

Q Had you ever seen it before?

A You mean before June 26th?

Q Yes, before June 26th.

A No.

Q Had you seen it before that very moment on June 26th, had you seen it earlier any time?

A Yeah. It was up here by these bushes here (indicating). We split up, and we were running over here (indicating).

Q Yes. He had it at that time, and you saw it at that time, this same one?

A Yes.

{1506}

Q So you saw it when you were fairly close together up there, when you split up, is that right?

A Right.

Q And that's how you can describe it?

A This big rifle, and clip, I think it was, clip put in from the top.

Q It was a big rifle and a clip that you put in from the top?

A Yes.

Q Now, was there anybody else -- did you see anybody in the same general area that you saw Dino?

A Leonard.

Q You saw Leonard?

A Yes.

Q Where was Leonard?

A Right here (indicating).

Q All right. Now, did you see anybody else?

A No.

Q All right. Now, would you describe the firing that you have just referred to, would you describe to the jury what the firing sounded like.

A Kind of fast.

Q Kind of fast, all right.

How many shots did you see or hear when you were looking over here (indicating) at the time we are now talking about?

{1507}



A It was just off and on, about, you know, five shots and then stop, and then shooting back to the Indians here (indicating), and get down; and that side stop, shot five more, some like pretty fast. I don't know how many rounds. We shot back again.

Q It sounded pretty fast.

Where was it that it sounded pretty fast?

A Around here (indicating).

Q All right. The area where Dino and Leonard were, is that the area you are pointing out?

A Yes.

Q You are very clear it didn't sound like it was fast down here (indicating), is that a fair conclusion for me to draw?

A This was fast, but not, you know, really fast, just kind of like, like, like -- (indicating). It was kind of fast, not as fast as down where it was fast.

{1508}

Q Compared to the two then, that's what you're saying. This one was faster than this one, is that a fair conclusion from what you just said?

A Yeah. I guess so.

Q I just want what your answer is, what you remember, not what I said.

MR. TAIKEFF: May I make the suggestion, since the chart is not playing the important role it was 10 or 15 minutes ago, could we have the benefit of the use of the microphone in the witness box because some of the answers are not audible here.

Q (By Mr. Hultman) Were there any other individuals that you saw while you were up on top of the hill doing anything other than what you have told the jury up to this point, Norman? Do you remember any other people doing --

A Besides those two I just said?

Q Yes.

A No.

Q Do you remember seeing anybody else firing?

A You mean besides those? Yeah. The agents. They were firing.

Q Besides the ones you've talked about, any others?

A No.

Q Now I'm going to show you what has been marked, first of all, as Government's Exhibit 29A ask you whether or not you have {1509} a weapon of this general description before?

A Yeah. It looked like that.

Q When you say it looked like this, what is it? You tell the jury.

A It was long. It was a big stock.

Q And what time are you referring to now that you're talking about?

A You mean when I first saw it?

Q Yes.

A It was right up there (indicating).

Q Who was it that had a weapon generally this description?

A That looked like that?

Q Yes.

A Dino.

Q And is it a weapon that generally looks like that that you saw him with at the time we just finished talking about? Did he have the same weapon of the same general description that you saw him with earlier?

A You mean from up there (indicating)?

Q Yes.

A I don't know. It was long. Couldn't hardly see. It might have been. I don't know.

Q You don't know for sure. All right.

Now I look at this and I ask you from your own knowledge, because you were the one that said that a clip went {} in and you used a motion, is that the kind of general type of situation as to how you would load this kind of a weapon from the clip from the top?

A Yeah. From the top.

Q So this kind of a weapon would meet the description with reference to the clip in the top that you described a while ago, too, is that right?

A Yeah.

Q Now I'm going to show you what has been marked as Government's Exhibit 37A and ask you whether or not just from a general description have you seen a weapon that resembles one of this general description?

A You mean did that look like --

Q I'm just asking you, Norman, whether or not you have ever seen a weapon on this day or before that we're talking about that generally looked like this kind of a weapon?

A Yeah.

Q And would you tell us where it was and with whom that you saw a weapon that was generally of this description?

A Bob.

Q And when you refer to Bob, who are we referring to?

A Robideau.

Q Where was it that you saw Bob with a weapon that fit this general description, if you remember?

A No, I don't remember. I just remember seeing that with him.

{1511}

Q Now what did you do when you got to the point, and you went with Bob, is that right? When you got to the point that I we've marked on the map as "NB," who was with you at that time?

A Mike Anderson.

Q What if anything did you and Mike do?

A We were just waiting because they were coming in that direction, people.

Q And did you see anybody while you were there in that area once you got down there where the area we've marked as "NB"?

A Besides meeting Mike there?

Q Yes.

A No.

Q Did you see anybody while you were down there?

A No.

Q How long approximately did you stay down there before you saw anyone? When was it that you first saw anyone after the two of you went down to that area? Were you there for some time?

A Yeah. Was there about, about an hour, two hours. It was long time but I don't know.

Q It was a long time?

A Yeah.

Q Maybe an hour to two hours?

A I don't know. Maybe. It was a long time.

{1512}

Q These are all approximations that you're giving, is that right?

A Yeah.

Q Just to the best that you can remember?

A Yeah.

Q Now did you see anybody other than your companion during that time that you were there, see anybody else?

A Yeah. Was Norman Charles.

Q All right. How long after the two of you were there approximately, that you best can remember was it before you saw Norman Charles?

A I think it was Wish. It was one of them. It was Wish. No. It was Norman. I don't know.

About an hour and a half, two hours. It was a long time.

Q Long time. All right.

And you tell me who it was and what you did.

A You mean that came?

Q Yes. Who came?

A It was --

Q Did you learn something at that time that might be of help to you as to who it was?

A Yeah. Mike came. Not Mike, Norman. He told me that Joe had been hit, you know, he's dead.

Q So you know it was Norman. There isn't any question in {1513} your mind about that, is that right?

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

Q You don't know for sure?

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

Q What if anything then did you do next?

A Well, we went to, he took us, said, "Let's go back to camp." So we went to camp and got a tent.

Q All right.

Would you point out then where it was you were. Let's start from where you were.

A (Indicating.)

Q All right. You're pointing out the area generally with a circle marked "NB". And where from there did you go?

A (Indicating.)

Q You went back to the general area where the tents were, is that right?

A Right.

Q Now what was it that you saw -- withdraw that.

Who was it that you saw when you got back to the tent area? Who were the people, if any, that you saw when you got back there?

A You mean, all the people that I saw?

Q Yes. Who are the first people that you saw or persons that saw?

A Was Bob, Dino, Leonard. That is all. Bob, Dino, Leonard and {1514} Wish. It was Wish or Norman. I can't remember.

Q But you're sure about Leonard, Bob and Dino, is that right?

A Right. They were at camp there

Q They were there when you got there, is that right?

A Yeah.

Q Now what if anything did you observe them doing at this particular time?

A They were loading a van. It was a van.

Q Had you seen the red and white -- van at some time on any other day that you're now referring to? Did you see that red and white van before?

A (No response.)

Q The van that you're referring to that they were loading.

A Yes.

Q When had you seen it before?

A I don't know. It was before June 24.

Q Who had you seen with the van on those occasions before June 26th? Do you know whose van it was?

A I think it was Leonard, but I'm not sure.

Q And you seen Leonard drive it while you were at Jumping Bull's?

A Yeah. I saw him drive it. Once.

Q Now I want to take you back just for a moment from the point we are now and ask you whether or not when you were here {1515} on the top of the hill did you see any other vehicles other than the ones that you have told the jury about? In the general area of the Jumping Bull property. Not out on the highway or back here (indicating) or cross the creek and down on the other road but in the general area of the Jumping Bull's do you remember seeing any other cars than the ones that we have talked about up to this point while you were on the hill from the time you got there until the time you left?

A It was around the houses I saw that red and white car.

Q That's the same one we're talking about now?

A I remember seeing it around there.

Q Would you point out in a circle generally where you best recall, if you do, if you don't I'm not I don't want you in any way to do anything other than what you best can remember.

A Yeah. Around there. Around the houses around there.

Q Around the houses area?

A Yeah. Around the area.

Q Is that as you best recall?

A Yeah.

Q When was it that you saw the red and white van?

A It was the first time when I was running up the hill. The first time when you were running up with Joe. Was there anybody around the red and white van?

A All right.

Q So that the red and white van was not down in the tent area {1516} in the morning while you were cutting, chopping wood and doing those things?

MR. TAIKEFF: Objection to that question, Your Honor. It's both leading and assumes facts not in evidence.

MR. HULTMAN: I withdraw the question. I withdraw the question.

Q (By Mr. Hultman) Did you see the red and white van down the tent area in the morning?

A No. I don't know. Got up, then we were going to eat and then we heard the shots.

Q Now what was it that they were loading? Do you remember what they were loading at the time we're now talking about, what the objects were?

A Clothes, CB and food I guess. I don't know. Just loading. What I mostly saw was the clothes.

Q Now do you remember any other car or cars that were in the general area of the tent area?

A There was a green car.

Q Now was that the same green car that you talked about earlier, or yesterday when you said that you went and got the weapon that you got?

A Yeah.

Q Is that the same green car?

A Yeah.

Q And I'm going to show you now what has been marked as {1517} Government's Exhibit No. 55 and it is marked as page 23 and also with an orange "1" on it and ask you whether or not you have seen that particular car before?

A Yeah.

Q And would you tell the jury what it is, what car that is.

A It's a green car.

Q Is that the same green car that you just now were talking about?

A Yeah.

Q Now is that green car in generally the same place that it was that you're now testifying to?

A Same.



Q Is that where you saw it? Look at the area around it and see if you recognize the area.

A Yeah. I think so; yeah. Yeah.

Q Now do you remember seeing any objects of any kind on or about or in the green car at the time we're now talking about?

A There. No.

Q Did you still have your weapon?

A Yeah.

Q What if anything did you do with your weapon?

A Well, I put it on that green car there.

Q All right. So that if I were to show you again the same picture, {1518} do you see any weapon on that green car?

A Yeah. There (indicating).

Q Is that the weapon to the best of your knowledge?

A Looks like it.

Q It looks like it anyway?

A Yeah.

Q All right.

Now do you remember any other objects that were there, if any, at the time you put the rifle that you had secured from the green car and had in your possession up to that time and left on the hood of the green car, do you remember seeing anything else there from your own recollection at that time?

A I don't remember.

THE COURT: The Court is in recess until 11:10.

(Recess taken.)

{1519}

THE COURT: Counsel ready to proceed?

MR. HULTMAN: Government is, Your Honor.

MR. TAIKEFF: Yes, Your Honor.

THE COURT: Bring the jury in.

(Whereupon, the jury was brought into the courtroom.)

THE COURT: You may proceed.

Q (By Mr. Hultman) Norman, I believe we were talking about some automobiles, and I had showed you a Government Exhibit a little earlier in a big book, and there is one that's a separate item. And I just want you to look at it for a second. It's Government's Exhibit 13-B. Is the automobile that portrayed in 13-B the same green automobile that you've been talking about?

A Yes.

Q And on Government's Exhibit B is a rifle, and there are some letters. Next to it is -12. Is that the weapon that you had been referring to?

A Yeah.

Q And in the earlier descriptions and discussions?

A Yeah.

Q All right. Now, we talked about another automobile, red and white van. Do you recall?

A (No response.)

Q I'm going to show you what's been marked as Government's Exhibit 12 and ask you whether or not you in that photograph see {1520} anything that you would recognize?

A Yeah. That van there.

Q All right. Is that the red and white van generally that you've been discussing?

A Yeah.

Q Does it generally give the appearance of being the one that you were talking about?

A Yeah.

Q All right. Now, I'm going to show you what's boar marked Defendant's Exhibit 93 and I want you to look at the scene that is portrayed there, and the automobiles that are portrayed there, and ask you whether or not you recognize the general scene that is portrayed in that exhibit?

A Are these the junk cars here (indicating)?

Q Well, I'm supposed to ask the questions and you tell us. Not you ask me.

A Yeah. I guess these are junked cars that I saw.

Q Go ahead and give you answer, whatever you answer is.

A (No response.)

Q Do you recognize, take a look at the photo and the scene that's there, the area, the ground, the hills, whatever is shown there. Do you recognize anything there?

A Yeah.

Q All right. Would you tell the jury what it is you recognize Defendants Exhibit 93?

{1521}

A The hill here (indicating).

Q Yes. What is the area at the top of the picture that you are pointing at?

A The houses.

Q All right. Is that the general area of the houses that you were referring to in your earlier testimony?

A Yeah.

Q And if you were, is that the general area where you were during this time that you were talking about that you were up by the houses?

A Up there (indicating)?

Q Yes.

A Yeah.

Q All right. Now, if you looked down from the top of this photo, which is the area where you said you were, do you recognize the area that's in the foreground of this picture where these automobiles are down?

A Yeah.

Q Could you turn, and on Government's Exhibit No. 71, and I seem to have lost the pointer.

MR. TAIKEFF: I put it on the ledge below the map, Your Honor.

MR. HULTMAN: Thank you, Counsel.

Q (By Mr. Hultman) Would you point out to the jury what it is that is portrayed in that exhibit.

{1522}

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that he's pointing out the row of abandoned cars on Exhibit 71.

Q (By Mr. Hultman) Now, let me put a 93 at that point and it will coincide with the exhibit that he has just referred to.

Now, do you remember seeing those cars on any occasion that you were in Jumping Bull's? Those junked cars?

A You mean real close or just seeing them?

Q Did you ever go by them, over walk by them?

A No.

Q Did you ever see them from any other place while you were there at Jumping Bull's?

A Yeah.

Q Where were you when you saw them?

A Right around up there? the area where the houses are.

Q All right. And is, do you see anything different in this picture than what you remember seeing all the times you were up at the housing area that generally what you remember you saw?

A What?

Q Is this generally what you saw, some abandoned or junked cars down there?

A Yeah.

Q Now, I'm going to ask you point blank, did you ever remember {1523} specifically seeing the car that is in the center of this picture?

A No.

Q Are you sure about that? Is there any question, have you ever seen that car that you can remember at all?

A No.

Q All right. Did you see it at any time on the 26th of June, 1975 that we're talking about?

A No.

Q All right. Now, there is one other weapon that I wish to show you, and this has been marked as Government's Exhibit 30-S for the record. You testified that you saw the man who did not have the hand gun down where the two cars were here, I believe as somebody who had a gun that he was pumping; is that right?

A Right.

Q Do you remember that?

A Right.

Q Now, I want to ask you whether or not, I'm not asking you that this is the weapon because you wouldn't know, there's no way for you to know whether this would be that gun, is there?

A No.

Q Because you only saw it from that distance. And all you indicated you saw was a man with a rifle pumping it; is that right?

{1524}

A Right.

Q Now, just in a general way, would this weapon here fit the general description of what you saw and remembered at that time, just generally?

A What does that mean?

Q Well, it means whatever it means to you. Does this particular gun have something that could be pumped?

A Yeah. It has something that can be pumped.

Q All right. And is it a rifle of some kind?

A Yes, it's a rifle.

Q All right. And is that what you remember the weapon being that the man, the second man had?

A Yeah.

Q And where was it that he was standing when you observed him?

A That car there (indicating).

Q All right. Will you come and tell us which car it was again so that the record might show. You can just point to it with your finger.

A (Indicating).

MR. HULTMAN: Let the record show that he's pointing to the object that indicates the car on the right-hand side as you view the map farthest to the south, and the one that is pointed in the general direction of the houses to the general direction of east by southeast.

{1525}

Your Honor, at this time the Government would offer into evidence Government Exhibits 30-AA, 29-A, 37-A, 32-A and 69-A.

MR. TAIKEFF: Assuming, Your Honor, that those numbers represent the objects which this witness has testified to, there's no objection.

MR. HULTMAN: They do, Your Honor.

MR. TAIKEFF: No objection.

THE COURT: Would you state the exhibits again.

MR. HULTMAN: And exhibits that other witnesses have previously identified and referred to.

Exhibits 29-A, 30-AA, 29-A, 37-A, 32-A and 69-A.

30-AA, 29-A, 37-A, 32-A and 69-A.

THE COURT: Exhibits 29-A, 30-AA, 32-A, 37-A and 69-A are received.

Q (By Mr. Hultman) Now, I want to go back to the point where you are at the red and white van. Do you remember, I believe we were talking when you were at the red and white van.

A Yeah.

Q And there was some other people there when you got there; is that right?

A Yeah.

Q Now, what, do you recall anything more specific than what you've indicated up to this point that anyone was doing in your presence at that time other than loading the van?

{1526}

A What do you mean?

Q Was there any discussion of any kind as to what you were going to do or where you were going to go?

A Yeah. Leonard said, you know, there's no way out because there's, you know, we are just surrounded. We didn't know what so do. And I don't know, we ware surrounded.

He said, "There's only one way out," you know. "Let' try it." "So let's get in the car, we'll make a run for it.

Q Now, who was it that said that?

A Leonard.

Q All right. And what if anything did happen after that?

A We told him that, you know, we're not going to make it. There's no way we're going to got out. So he changed his mind, we changed our minds, too. And we started going, started going oh, kind of southeast to the woods.

Q All right. Would you now with the pointer indicate the general direction then that you started to leave by.

A (Indicating).

Q All right. Now, I want to ask you now, and let's talk about each individual at a time, and I think it might be a little clearer, who it was that left with you. Let's start with Leonard. Did Leonard leave? Did you go, was he a part of the group that left?

A When all of us left?

Q Yes.

{1527}

A Yeah. There was Leonard.

Q All right. Let's just talk about Leonard for a second.

A Yeah. It was Leonard.

Q Did Leonard have anything with him when you left?

A Yeah.

Q What was it?

A It was a gun, rifle.

Q All right. And will you describe it for the jury.

A What I said it looked like, an M-16.

Q All right. The same general description of the one you had seen earlier in the day?

A Yeah. Right.

Q Who else left with you?

A Dino.

Q And when you talked about the same rifle that Leonard had with him during the day, I want to take you back to the time that you saw Leonard in the area that was marked with a "P", which was this area with this circle here (indicating). Did he have the same type of weapon with him when he was at this point?

A Yeah.

Q All right. And now he has a similar weapon with him when you leave; is that right?



A Yeah.

Q Now, Dino was the second person that you said left with you; {1528} is that right?

A Yeah.

Q You all left together, all right.

Did he have anything with him when you left?

A Yeah.

Q And would you tell the jury what it was that he had?

A It was a rifle.

Q And do you remember what description, would you tell the jury the description of the rifle he had.

A It was that big one like I said last time.

Q All right. And that's the same one you described before; is that right?

A Yeah.

Q Now, who else left with you together?

A Mike.

Q All right. And do you remember whether or not Mike had any weapon with him?

A Yeah, I think so. I'm not sure.

Q All right. Let's talk about somebody else and then go back and maybe it will help you remember.

Was there anybody else in the group? Talking about the men now?

A Yeah. Wish.

Q All right. And did Wish have any weapon of any kind?

A No.

{1529}

Q Did you ever see Wish at any time during the time that he was at Jumping Bull's with a weapon?

A No.

Q All right. I guess I didn't ask you, did you have a weapon?

A Yes.

Q And what weapon did you have?

A 35.

Q When you say "35", is this something different from the weapon that you have described and talked about earlier? Is it a different weapon than the 22 you were talking about?

A Yeah.

Q Well, now, where was it and when was it that you got a 35?

A It was when I came back to the camp. Norman came.

Q All right. You said that when I showed you what was Government's 13-B, I believe that that was the 22 that you have been carrying all the day, was it not?

A Yeah.

Q And you put it on the hood there; is that right?

A Right.

Q And did you leave it there?

A Yeah.

Q And have you ever had anything to do with the weapon itself along the trail, did you ever see it along the trail again as you left that day, or the next day, or the next day?

{1530}

A No, I don't think so.

Q All right.

A Might have been. I don't know.

Q All right. So the last you knew you left it here on this hood; is that right?

A Right.

Q All right. So now you are talking about a weapon that's different from this one; is that right?

A Right.

Q All right. Now, would you describe that as best you can for the jury.

A Well, it's a small rifle and bolt action (indicating).

Q All right. And where did you get that weapon?

A I think it was one of the tents, yeah, it was a tent I think.

Q All right. Now, was there anybody else, any of the men who left with you that we haven't discussed up to this point? Did Bob leave with you?

A Yeah.

Q All right. And did Bob have a weapon of any kind?

A Yeah. It was a shotgun.

Q And do you remember anything in particular about that shotgun?

No. Just a pump. It was a big shotgun.

{1531}

Q It was a big shotgun and it had a pump you indicated; is that right?

A Yeah.

Q Had you ever seen that shotgun before?

A No.

Q In all of the weapons that all the times you'd been at Jumping Bull's?

A No.

Q So this was the very first time you had seen it?

A Yeah.

Q No question in your mind about that, is there?

A Yeah.

Q All right. I'm going to show you now what has been marked as Government's Exhibit 36-A and I'll ask you to look at it. Is this a weapon that has one of those pumps that you indicated on earlier occasion?

{1532}

A What?

Q Is it one of those weapons that has a pump?

A Yeah.

Q I would like you to look at the end of it, and I would like you to look at it just in general; and I would ask you, you were saying that Bob had a shotgun with him that you had seen for the first time. Was it a shotgun that in some way or any way is similar to the one that I have now?

A It had the pump, the pump is.

Q All right. You wouldn't know whether or not this was the one or not, would you?

A No.

Q All right. Now, did Bob have anything else, did he carry anything else?

A Yeah, he had a rifle. That was a rifle.

Q All right. Would you describe to the jury what that rifle looked like, as you recall?

A I knew it was a rifle, but I don't know what kind it was, wouldn't remember.

Q All right. Do you remember anything about the rifle itself, anything that you might recall in your mind as you think about it, that might describe it in any way?

A No, I can't.

Q All right. Had you ever seen it before that time?

A I think -- I am not sure, but I think it was the one I {1533} told you he had before. I am not sure.

Q You are not sure, is that right?

A I can't remember.

Q That's a fair answer, that you are not sure?

A Yes.

Q That's your best answer, is that right?

A Yes.

Q Now, we have talked about Leonard, we have talked about Bob, we have talked about Dino, we have talked about yourself. Were there any other men or young men that went with you?

A Norman.

Q All right. Now, did Norman have any weapon of any kind?

A Yeah, he had a rifle.

Q Do you remember anything about that rifle, could you describe anything you remember to the jury?

A It was a long one, a long rifle. It had a bolt action too (indicating).

MR. HULTMAN: All right.

(Counsel confer.)

MR. HULTMAN: Your Honor, let the record reflect that 37-A was already in evidence when I made my last offer, and I didn't realize that, so that it was already in evidence, your Honor.

THE COURT: I am aware of that.

MR. HULTMAN: All right, sir.

{1534}

Q (By Mr. Hultman) I am going to show you what has been marked as Government's Exhibit 69-A, and ask you whether or not this weapon has a type of action of the kind that you are just describing?

A Yeah.

Q Do you remember seeing the weapon that you are just referring to with anybody earlier that day, had you seen that weapon before that you are talking about right now?

A That one there?

Q No, no. I am asking you, the weapon that you have been describing to the jury, do you remember which one of your group we were just talking about that had a rifle in leaving, that had a bolt type of action?

A Norman?

Q I am sorry?

A Talking about Norman?

Q I am asking you, are you talking about Norman now? I wanted to make sure that there is no confusion. Let's talk about Norman.

Did Norman have a gun when he left?

A Yeah, he had a rifle.

Q What do you remember about that rifle?

A It was long and had a bolt action.

Q Had you seen that one earlier in the day?

A Yeah, I think so. I am not sure.

{1535}

Q Norman was up on the hill with you at the time all the firing was going on, wasn't he?

A Yes.

Q Do you remember what kind of a weapon he had at that time?.

A Yes, I think it was the same one he had.

Q Would that be your best recollection?

A You mean the one he carried out?

Q Yes.

A Yeah, I think it is the same one he had, yes.

Q It is the one that had a bolt action?

A Yes.

Q Would it be fair for me to conclude that it would be a weapon generally, just in general of a kind like this with a bolt, at least a bolt?

A Yes.

Q Do you remember anything else about the particular weapon that he had during the day, description-wise, that you would recall or that you recall at that time?

A I don't understand.

Q Was there anything else you remember about the weapon that he had?

A No.

Q All right, very fine.

Now, we mentioned for just a moment Wish, did we not?

A Yes.

{1536}

Q He was in the group, was he not?

A Yes

Q And I believe you said he didn't have any weapon?

A No.

Q All right. Did he carry anything out?

A He was carrying out a bag.

Q Could you describe to the jury generally what it was he carried out?

A It was a bag, about this big (indicating), had a handle on top where you could carry it.

Q All right. Did any of the rest of you carry that bag at any time?

A No, just until we got out, you know, started going back to the hill.

Q Did you know any time during the time what was in that bag?

A No.

Q All right. Now, was there anybody else that we haven't discussed up to this point?

A I think we talked about everybody that was there.

Q All right. Here there any -- let's make sure now so there isn't any question. We have talked about Leonard, right?

A Yes.

Q We have talked about Bob?

A Yes.

{1537}

Q You have testified about Dino?

A Yes.

Q We have talked about Wish?

A Yes.

Q We talked about Norman?

A Yeah.

Q And have we talked about Anderson?

A Yeah.



Q All right. Now, was there any other men or boys that went out with you?

A Yeah, I went out with them.

Q And you yourself?

A Yeah.

Q Now --

A (Interrupting) You should have asked me that.

Q All right. Were there any women or girls that went out with you?

A Well, right after we were going out we were walking, like I pointed --

Q (Interrupting) Um-hum.

A (Continuing) -- we were walking in that direction, when we met them about a hundred yards from camp.

Q Was this the first time you had now seen them?

A Yeah.

Q From the time that you left when you heard the shots?

{1538}

A Yeah.

Q All right. Now, would you point out, if you can, just generally where it is you now saw the people that you are now referring to, if you can, on the map -- if you can't -- show us wherever it would be?

A Little bit here (indicating), little bit higher, where the corner is down there (indicating).

Q little bit higher, a little off Government's Exhibit 71?

A Yeah.

Q And where with relationship to the creek would that have been?

A It was right by the creek there. We asked them why they were coming back, and they told us that they had the roads blocked off and there was no way out. We were just there, and they

were coming. We didn't know what to do, you know. That would be the end of us, but we got together and told Jimmy to give himself up because they might hurt him or might shoot him.

Q Now, when you say "we", were you close to Little Jimmy yourself?

A Yes.

Q You were very close to him, were you not?

A Yeah, I guess so, yeah.

Q Kind of like an older brother, would that be a fair conclusion on my part?

A Yeah.

{1539}

Q And did you have conversation with Little Jimmy at that time?

A Yeah.

Q All right, and were you in fact the one who told him what you thought he ought to do?

A Yeah.

Q All right. So what, if anything, then did Little Jimmy do?

A Well, he went back to where -- towards the houses, and we heard some shots and we didn't know what to think. We thought he might have got shot, so we stood there, and we sat down and sat in a circle and started praying, you know, all of us, that, you know, they tell us -- ask our creator to help us get out. So we were all there sitting there praying and saw an eagle come down, big eagle, so he came down; and I saw -- then he flew kind of south, southeast, or flew -- I don't know, just followed it across some creeks and we were kind of like bending over real low and could tell the people were out there; and we were just quiet, so you know, we were all scared; and wasn't -- all I was thinking about was our sisters, you know, and we crossed through a road. There was a culvert. It was big enough so you could crawl through, so we crawled through; and we went to this tree -- right across, about 10 yards from the road, 20 yards, there was two trees, two big trees; and some of us went and climbed the tree and we were sitting there, and there was -- Mike and Wish were still in the culvert, told {1540} them to stay there; and there was a plane on top of us, kept flying over, around us; and a couple of cars, you know, two cars went by and saw somebody on 16 looking out the window. They passed, the windows were rolled down, and one passed by this way (indicating).

We were there for awhile, and we thought they saw us; and we thought, you know, didn't know what to think, you know, so we seen that plane was flying on top of us right above us. guess he knew we were there, so started praying again, just our minds that something happened to that plane, I don't know, that's what I was praying, so the rest of the group were praying, so the plane, you know, took off, flew on over towards Pine Ridge.

So as soon as that plane took off, we started running up the hill. Then we told the sisters, said, "Why don't you go ahead first?" So they took off, and we were down here (indicating), and this road here (indicating), about half a mile down, it was about down -- 14, 15 cars lined up.

So we were running up the hill. They were shooting at us like -- I don't know, just shooting at us. We were out there in the open. We were running up.

Q How far away were you approximately from the people that you are now talking about?

A From the road there?

Q Yes.

{1541}

A I don't know. About half a mile, I guess. I don't know. It was pretty close then, not too far and not too close.

Q All right. Let me ask you a question, Norman. You said that you were in the culvert during this discussion, these remarks you have now made, is that right?

A I wasn't.

Q You weren't?

A No.

Q But some were?

A Yes.

Q You were in the trees, is that what you said?

A Yes.

Q It was heavy foliage, I believe you said, or something to that effect?

A What does that mean?

Q Could somebody from the airplane see you in the trees where you were?

A Yeah, they could.

Q What about in the culvert?

A No.

Q O.k. Now, did anybody in your group do any shooting at the time that you are now talking about?

A Yes, all the men, you know, because you know, we weren't worried about ourselves. We were just worried about, you know, our sisters, so we told them to go ahead; and while we were {1542} running up the hill, these go by us like a bee, go by, you know, like bees, you know, going by.

We ran up a hill, a real little hill, with the rest of them there. We told the ladies or women to go ahead and keep running up that hill.

Q Let me ask you here: Do you recall whether or not Mr. Anderson did any firing during the time that you were going up the hill?

A No, I don't think so, no.

Q Do you remember anybody that did any firing, did somebody do some firing when you went up the hill, I mean, in your group?

A Yeah.

Q All right. Do you remember what kind of a weapon Mr. Anderson had?

A No, I don't know.

Q All right.

A And we were there --

Q (Interrupting) Let me ask you this question: Do you remember the weapon that Joe Stuntz had during the day?

A You mean the 30-30?

Q At least when you left the tent area, 30-30, as you described it?

A Yes.

Q Did you ever see that weapon or one that looked like it any other time later during the times that we are now talking {1543} about?

A No. No, I don't think so.

Q All right. O.k.

Now, what, if anything, did you do next?

A Well, we kind of like spread out, and they were shooting at us. We saw two cars that came off the road, and they -- I don't know, they were just -- they went around the hill we were going up, and were still shooting at the other people down there, so we got up and we ran up that hill.

Then we met the sisters up there and started praying again and that eagle we saw --

Q (Interrupting) When you say the "sisters", would you tell the jury who these people were so that the jury will know who the sisters were?

A It was Jean Bordeau, and I just know the other girl by the name of Lynn and Neelock.

Q So there is three?

A All right.

Q And those are the three that lived in the tent area with you, is that right?

A Yes.

Q Now, what is the next thing that happened -- did you see any other people other than in your group that anybody talked with; from the point we are now talking about, did you run into anybody?

{1544}

A Yeah. It was getting kind of dark, and two people on a horse -- I don't know who they were, and I don't know -- there was me, Norman, we were looking over where those two cars were at. We were up on the hill here (indicating), they were down here (indicating). I think they were crawling up there and saw two horses and two people, and they are the ones that, you know, helped us out.

Q All right, and what happened next?

A So they helped us out and went down the hill, then we just started going into the hills. That's how we got out of there.

Q All right, and where did you next go, did you go to any house of any kind or in the vicinity of a house?

A Yeah. Went to the -- up in the hills for about five hours, six hours, long time, I don't know how long, about six hours, and we were walking, and we met this guy. He wasn't wearing shirt. We met him.

Q Did he talk to anybody?

A Yeah. He was with Bob, and I think, yeah, Bob gave him shotgun; and then he left. Then we started walking, walked through this big culvert, just walked through it, walked through that, walked for an hour and a half, walked over a bunch of hills, came up to a house; and there was an old man who was living there, I think about 85. He was old, and we asked him if we could stay there; and he could barely understand English, you know, asked him if we could stay there and he said {1545} "Yeah," and he let us stay there.

Q Do you remember what his name was or --

A (Interrupting) Yeah, it was -- let me see. I know his name. but I can't -- let's see.

{1546}

Q Maybe it will come to you as we talk a little more.

Did you all stay there then at the cabin that night?

A The small cabin, real small.

Q About what was the size of it?

A About eight by ten. You know, pretty small. Real small.

Q Now what did you do with the weapons that night?

A Soon as we got there, Leonard asked me, "You want to go on security," you know, "You want to, want to go up there and watch out."

Q Who was it that asked you?

A Leonard. He didn't tell me, you know, he said, "Do you want to"; I said, "Yeah. I'll go up there." So me and Wish, we went up there for about three hours and we, you know, talking.

Q Where were your weapons put that night, if you recall?

A Well, right after security I come in and we switched with Norman. I don't know who the other one was. And I walked into there, saw some guns laying up against the wall.

Q All right.

Did you see any pistols of any kind?

A Yeah. Saw two of them.

Q And would you describe the two pistols that you saw at this time. Let's take them one at a time and describe one and describe the other.

A One had a short barrel and the other one had a long barrel, {1547} pretty long barrel (indicating).

Q Did they look somewhat the same except one had a longer barrel and one a shorter barrel?

A I don't know. It was pretty dark. There was a kerosene lamp, you know. Just saw it. I didn't really look at it or nothing, I just saw it.

Q Had you ever seen those before?

A No.

Q I'm going to show you now what has been marked as Government's Exhibit 31A and Government's Exhibit 35A and ask you whether or not one of these has a long barrel and one has a short barrel?

A Yeah. One has a short barrel.

Q And with what little you saw that night, as you've described, did the weapons you saw at that time in some way resemble the two weapons that I now hold in my hands?

A I don't know. I saw one with a short barrel and I saw one with a long barrel.

Q All right. And that's as much as you remember, is that right?

A And I saw a holster but there was no gun in it.

Q So you saw one handgun with a short barrel, one with a long barrel and a holster. Those are the three things you saw?

A Yeah. The holster was just rolled up and laying there.

Q And you had not seen the two guns, the handguns before?

{1548}

A No. I don't think so.

Q All right.

Did you see those two handguns at any time after on the table in the small cabin by the kerosene lamp that night? Did you see them the next day or the next day or the next day?

A No.

Q Now what if anything did you then do? Did you leave there the next day?

A Yeah. We left early in the morning, then we started walking. Then we, we hid in some bushes. Walked about three miles from there, four miles. We just laid down staying in some bushes. Stayed there all day. About 10:30 or something like that till it was dark. Then we started walking. Then we did the same thing again the next day, we laid under some bushes.

Q So is it fair that you did the walking in the nighttime and you stayed in the bushes and the other things in the daytime, is that right?

A Right. But, yeah. You might say that.

Q And where did you stay then the second night?

A We stayed out under some bushes. Then we started walking again. Next evening, came across day, see, we thought we were going to Manderson but we ended up in Pine Ridge.

Q How was it that you thought you were going to Manderson?

A Because we thought, old man. We asked him, "How do we get {1549} to Manderson?" And he showed us the way. We were supposed to take this trail but we took this one (indicating).

Q Did he help you in any way by giving any assistance other than just telling you on how you might find the way to Manderson?

A It was pretty hard to talk to him. Like, couldn't hardly understand English. And asked, you know, "Give us some food," and he said, "Yeah " He got us some food for one meal, you know. You know, enough for that day.

Q Did he write anything down for anybody, if you recall?

A No.

Q And so where did you stay then the next night?

A You mean after we left there?

Q Yes.

A Out in the bush, under the bushes.

Q Then where did you stay? Where did you go and stay then the next night or day?

A Well, right after that we were walking, came upon a place, you know, there was a hill. Then we looked over and it was Pine Ridge. So we didn't know what to do so we started walking this



way again (indicating). We saw a house, I don't know, somebody knew who lived there but I don't know who. We went up to the door and asked if we could stay there and they said, "Yeah." So we stayed there that night. The man was kind of fat and his wife, too.

{1550}

Q And were there any other people there?

A There was a, I think two daughters there.

Q And would you describe what the lady looked like in terms of her size?

A You mean the old lady?

Q Yes.

A Yeah. Pretty fat. Yeah.

Q She was fairly heavy, is that right?

A Yeah. Yeah.

Q About how old were the daughters would you guess? Would they have been teen-agers?

A About 16, 17, around there.

Q Now where did you go from there?

A Somebody came and gave us a ride and went to Crow Dog's paradise.

Q Would you indicate who went. When you got a ride, who went? Did you all go in one car at one time?

A No. Me and Norman and I think it was Wish, Wish or Mike. It was a lady and a man that drove us out. I don't know who the lady was or the man with the car.

Q Do you know who went in the other group?

A Yeah. I think it was, there's three groups there went. We were first, I think. The girls were first. Second. Then I think it was Bob, Dino and Leonard got in Crow Dog's. Bob, Dino and Leonard went in one group, is that right?

{1551}

A Yeah. I think so.

Q Now I want to take you back to ask you a question or two on leaving the camp and getting to where you are now. Do you remember taking any other objects with you of any kind?

A Oh, it was a canteen; Yeah.

Q What happened to the canteen?

A It got dropped.

Q would you describe what the canteen looked like to the jury.

A I don't know. Had stripes on it, on the side.

Q Was it covered with anything?

A Yeah. It was some kind of cloth. I don't know.

Q All right. I'm going to show you marked as Government's Exhibit No. 17. Did you have any water in it when you left?

A Yeah.

Q I want you to look at this canteen and see whether or not you recognize it in any way.

A Yeah.

Q You do recognize it?

A Yeah. I think that's the same one.

Q And at least you left with one like this? Yeah.

Q Is that right?

A Yeah.

{1552}

Q Is there anything you remember about the canteen other than the cloth, the one you had with you on that occasion, specifically?

A What?

Q Did it have a strap of the kind that's here?

A Yeah.

Q Like this?

A Yeah. It had a strap.

Q Was it this size?

A Yeah. I think that's it.

Q This general shape. You think this is it. All right.

Where was it that you remember you dropped it or whatever you said you did? Do you remember about where that was or when it was?

A Yeah. When we started running up, ran about 100 yards. We was running. Yeah. That's when I dropped it about.

Q Now is that after you went through the culvert and you were going up the hill?

A Yeah.

MR. HULTMAN: I don't know whether, has 17 been offered yet?

MR. TAIKEFF: It is in evidence.

Q (By Mr. Hultman) Now where did you go then in the car?

A I think it was Crow Dog's. Yeah. Crow Dog's.

Q And how long did you stay about at Crow Dog's?

{1553}

A Until the sun dance.

Q And when was the sun dance approximately, if you remember?

A August.

Q Early part of August?

A End of July.

Q End of July, early part of August?

A Yeah.

Q All right.

Did any of the people go to any other place than Crow Dog's that was in your group?

A Yeah. As soon as we got there, you know, we all split up. And got there, like nothing happened. You know, we were just, went our ways and I think some went to Al's I, I didn't tell Crow Dog and I don't think anybody else told Crow Dog about what happened. I don't think they knew. Just like nothing happened. We just split up.

Q In fact, did you all discuss whether or not you would tell anybody anywhere along the trail?

A No.

Q But did anybody tell the old man? Would that have been Noah Wounded?

A Yeah. Noah Wounded; yeah.

Q Did anybody tell Noah, the old man, about the things that had happened earlier on the 26th?

{1554}

A I don't know. They might have. I don't know.

Q But you didn't hear anybody tell him?

A No. I didn't hear anybody.

Q What about the place that you stayed the second night, the next place that you stayed, did anybody tell them about how you got there in a group under these kind of circumstances out of the woods and in the night? Did anybody tell those people that you know?

A I don't know.

Q You didn't hear anybody tell them anyway?

A No.

Q You definitely said that you didn't tell Crow Dog, is that right?

A No. I didn't tell Crow Dog.

Q Did anybody tell Crow Dog that you know?

A No. I don't think so. I didn't hear. No. I don't think so. I don't think they'd tell Crow Dog; no.

Q Any reason why you wouldn't tell Crow Dog? Because he's a spiritual man, you know. I don't know. Just good man. You know, probably didn't want to get him in trouble. I didn't.

Q Now you said, I believe you used the name Al, was that right?

A Yeah. Al.

Q Would that be Mr. Al Running?

{1555}

A Yeah.

Q Who was it that went to Mr. Al Running's place?

A I don't know. See, as soon as we got there, we got there in the night and I stayed at Leonard's at night and I don't know who went to Al's, but some of the people that we came with, you know, I don't know where they were at.

Q Did you go to Al's?

A Yeah. I went to Al's to visit.

Q We went to Al's? Who was at Al's that was in the group that went out on the 26th from the tent area?

A Neelock and Dino and Jeannie.

Q So Dino, was there any other men besides Dino? Did Bob go?

A Bob was there; yeah.

Q Bob and Dino were at Al's and you were at Al's, is that right?

MR. TAIKEFF: Objection, Your Honor.

A We're like --

THE COURT: Just a moment.

MR. TAIKEFF: I believe that is not what the testimony is.

MR. HULTMAN: If it wasn't, I certainly want it corrected.

MR. TAIKEFF: Could I confer with Mr. Hultman for a moment? {1556}

MR. HULTMAN: Yes. All right.

Q (By Mr. Hultman) When you referred to staying at night at Leonard's, this is up until this time we have been basically talking about when you used the word Leonard, Mr. Peltier, is it not? Leonard was Mr. Peltier. Leonard Peltier. The person that you have been talking about being with on the 26th and going --

A Yeah.

Q And so forth. Now you referred to Leonard, staying somewhere at Leonard's.

A Crow Dog.

Q This wasn't Mr. Peltier. This is now a new Leonard?

A Yeah.

Q This is Leonard Crow Dog's, the medicine man you're talking about?

A Yeah.

Q We want it made clear you didn't stay at Leonard Peltier's that night. It was Leonard Crow Dog's. All right.

A Yeah.

Q Now I want to ask you now, were there any other people -- did you leave Leonard's and then go to Al Running's, is that the way it happened?

A You mean Crow Dog's?

Q Yes.

A Yeah. I just went there to visit.

{1557}

Q Were there any others that stayed at Al Running's other than, I believe you said Bob and Dino. Was there anybody else that stayed at Crow Dog's that you know?

A Yeah. Neelock, then Jeannie. Like I stayed at Crow Dog' for awhile, then stayed at Al's. You know, just visiting, every once in awhile.

Q Is it fair for me to conclude from what you're saying that the people that went from the tent area with you stayed back and forth between Leonard's and Al Running's, is that a fair conclusion for me to draw?

A What do you mean, "stayed back"?

Q You said something about you were one place --

A Yeah. Just visiting.

Q Visiting back and forth?

A Yeah.

Q Do you know at any other place that any of you stayed during the days following or during the sun dance and the days following Leonard's and Al Running's, do you know any place that anybody in the group stayed specifically?

A No. I was just -- no. No.

Q I just have one last question. Has everything that you've told the jury yesterday and today been on the sacred pipe and been the truth?

A Yeah.

Q Thank you. I have no further questions.

{1558}

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

{1559}

CROSS-EXAMINATION

BY MR. TAIKEFF

Q Mr. Hultman referred to you by your first name. Do you want me to call you Mr. Brown or Norman?

A Don't matter.

Q All right. Defendant's Exhibit 93 in evidence is a photograph of a red white vehicle, and I think you looked at it before, and I think you said that you thought that vehicle at one time or another was in the vicinity of the so-called junked cars; is that right?

A Yeah.

Q Do you know whether that vehicle was ever operated, or was it possible to operate that vehicle?

A I don't know.

Q I show you what has previously been marked Defendant's Exhibit 94 for identification. It is not in evidence. Can you tell us if you know of your own knowledge the relationship between what's in that photograph and what is in Defendant's Exhibit 93 in evidence?

A What?

Q Do you know what this is in this picture No. 94?

A It's this one (indicating).

Q When you say "this one" you pointed to No. 93?

A Yeah. Looks like it, yeah.

Q All right. 94 is the back end of 93?

A Yeah.

{1560}

MR. TAIKEFF: Offer it in evidence, Your Honor.

MR. HULTMAN: If counsel so indicates it is, I no objection.

THE COURT: 94 is received.

Q (By Mr. Taikeff) Now, in October of 1975 you were interviewed by the FBI, in fact the date I believe was October 10 1975 at approximately 12:00 noon; is that correct?

A (No response).

Q October 10, 1975?



A 12:00 noon?

Q 12:00 in the afternoon.

A No.

Q No. In Arizona?

A It was -- what time did you say there?

Q I said I believe it was on October 10th at approximately five minutes after 12:00.

A No.

Q Do you recall whether you were interviewed --

A It was in the evening I got interviewed that first time.

Q In other words could it have been around midnight, five minutes after midnight?

A Yeah. I think so.

Q All right.

A I know the time.

Q And were there four law enforcement officers present?

{1561}

A (No response.)

Q If you're not sure, tell us how many you remember.

A I remember three.

Q Were there three FBI agents?

A Yeah. There was three.

Q Three FBI agents?

A I think there was five of them. But one kept moving in and out, bringing coffee. I don't know if there was another one.

Q Was there someone from the BIA?

A Yeah.

What's his name?

Q First name Frank?

A Frank Adake.

Q All right.

A No. That's -- he wasn't there that time. I think you got different one there.

Q Well, did you sign a statement that night?

A Yeah. Signed a statement.

Q And do you recall whether Frank Adake witnessed the statement?

A You mean that first time they came?

Q Well, I'm talking about October 10, '75. I wouldn't know whether that was the first time or the second time or the third time.

{1562}

Well, let's skip past that particular name. Do you remember the names of the agents who were there?

A The first time was a Victor Harvey, J. Gary Adams. I don't remember the other one.

Q Was there ever a time when you were interviewed by an agent named James Doyle?

A Yes.

Q And did you sign a statement on that occasion?

A Yeah, I think so.

Q And was Gary Adams there that time with Doyle?

A Yeah.

Q And was there another agent by the name of Michael Ness or Ress from Albuquerque?

A What time are you talking about?

Q I believe October 10th. I'm not trying to pin you down to the date.

A No. I know I'd remember if I knew what time, because it was twice.

Q I see.

A I might --

MR. TAIKEFF: Let me have this marked so I can show it to you.

(Mr. Taikeff had exhibit marked.)

Q (By Mr. Taikeff) I'm placing before you this folder which contains, what has now been marked Defendant's Exhibit 110 for {1563} identification. Do you recognize that sheet?

A Yeah.

Q And do you recognize that the following sheets are handwritten statement?

A Handwritten?

Q Yes. Written by someone's hand. It's not typewritten?

A Yes.

Q Did you ever see that handwritten statement before?

A What?

Q Before I just showed it to you, did you ever see that statement?

A Yeah. Yeah, I saw it.

MR. TAIKEFF: Your Honor, may I have a moment to confer with Mr. Hultman?

THE COURT: Very well.

(Whereupon, Mr. Taikeff conferred with Mr. Hultman.)

MR. TAIKEFF: Your Honor, with Mr. Hultman's consent and subject to Your Honor's ruling, I'm going to give to the witness a duplicate of what has been previously marked Defense Exhibit 110 for identification to facilitate the questioning.

THE COURT: Any objection?

MR. HULTMAN: I may object to the question, Your Honor. I have no objection to the procedure that we're using.

THE COURT: I have reference to the procedure.

{1564}

MR. HULTMAN: I understand, Your Honor.

THE COURT: That is approved.

MR. HULTMAN: Thank you, Your Honor. And the statement is now in the hands of the witness.

Q (By Mr. Taikeff) What I want to know is whether you put your initials at least once on every page of that document?

A Yeah.

Q Who wrote out that statement?

A Doyle, James.

Q And were you speaking with the agents while they were, or the agent while he was writing that statement?

A Yeah. But --

Q All right. Just answer my questions and I'll take it a step at a time with you.

A Yeah.

Q Look at the third page of the statement four lines from the bottom.

MR. HULTMAN: Are we referring to page 3, Counsel, so I can follow?

MR. TAIKEFF: I'm going to show it to counsel, Your Honor.

(Whereupon, Mr. Taikeff showed Mr. Hultman Defense Exhibit 110.)

Q (By Mr. Taikeff) Are you looking at the page, Norman, where the word "lunch" is crossed out and the word "breakfast" {1565} is written in?

A Yeah.

Q And your initials are next to the word "lunch" that's been crossed out; isn't that correct?

A Yeah.

Q Now, at the beginning of that particular sentence four lines from the bottom are the words "at approximately 11:30 A.M.". Would you read that sentence to yourself.

A You mean from --

Q From the words "at approximately 11:30 A.M." until the end of that sentence.

A Okay. At approximately --

MR. HULTMAN: Well, now just a second, Your Honor.

Q (By Mr. Taikeff) Not out loud. Read it to yourself.

A Yeah.

Q Now, before you put your initials on the page you read each page, didn't you?

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

Q Did you say "yes"?

A I think so. I'm not sure.

Q Okay. Now, did you tell the agents that day that while you were preparing to have a meal you were with Joe Stuntz, Zimmerman and Michael Anderson?

A Yeah.

I mean did I say that to them?

{1566}

Q Yes.

A I don't know. I can't remember too good.

Yeah, I think so, yeah.

Q Now, on your direct examination you said that when you were in tent city just before the firing begin you weren't sure where Anderson was.

A Yeah.

Q Now, isn't it a fact that Anderson was in tent city with you and the other people?

MR. HULTMAN: Well, I object, Your Honor, on the grounds that this question has been asked and answered and that it is an attempt on the part of counsel. No objection to him asking the question as to who was there, but on attempt on the part of counsel to confuse the witness.

MR. TAIKEFF: Your Honor, I think it's a perfectly properly phrased question.

THE COURT: The witness may answer.

MR. TAIKEFF: Beg your pardon?

THE COURT: The witness may answer.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Do you remember the question?

A Say it again.

Q Isn't it a fact that when you were preparing to have your meal --

A Yeah.

{1567}

Q -- just before the firing started Mike Anderson was in tent city with you and the other people?

A No, he wasn't.

Q He wasn't?

A No. This was a long time ago. This is the second time when they came to me.

Q June 26, 1975 was a long time ago, wasn't it?

A Yeah.

Q And this statement was taken from you on October 10, 1975?

A Yes.

Q And today's date is March 25, 1977, isn't it?

A Yes.

Q Which is closer to June 26th, the day the took the statement or today?

A The day they took the statement.

Q And as a general rule is your memory better closer to an event or far from an event?

A Yeah.

Q Yeah what?

A Yeah, my memory's good closer to the event.

Q Is it possible that you forgot that Mike Anderson was with you in tent city?

A Yeah, it's possible.

Q Now, I notice as I've said before that the word "lunch" is crossed out and the word "breakfast" is put in. Is it a fact {1568} that that was the first meal you were all going to have that day because you had just gotten up before that?

A Yeah, right.

MR. HULTMAN: Well, I object, Your Honor, now to the question because it included an alleged fact that was not a part of the record, that he had "just gotten up". I believe it shows, the record shows that that is not to be the record. If counsel will ask the witness that question, I'll have no objection.

MR. TAIKEFF: Your Honor, I believe that Mr. Hultman accurately states the fact, but I don't think that's the basis for finding my question objectionable. I'm seeking information from a witness on cross-examination.

It's my understanding that if I have a good faith basis for asking a question as a question rather than making a statement that it's proper for me to do so. And the good faith basis is what I saw in that statement.

MR. HULTMAN: Might we approach the bench just one time.

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

MR. HULTMAN: Your Honor, and Counsel, I'm not in any way trying to interfere, and I won't interfere with your questioning. I think, though, I'm under a duty with the witness of this kind with a far greater degree of necessity {1569} make absolutely certain that there is no misunderstanding in the mind of the witness that he understands what statement included. Because I think without any question a witness of this kind, and that's why I was so deliberate in the course of my questioning to make absolutely certain in all fairness that he understood the question, that he responded to the question accurately. And that's the only reason for my objection now, Counsel.

MR. TAIKEFF: I can assure Your Honor that there was no sense on my part that the witness had not misunderstood question. I would not proceed on that basis, and I to clarify one point here so that counsel doesn't have any unnecessary exchanges during the cross-examination. Your Honor earlier in the trial made a ruling that it was for counsel to state facts as if they were facts in trying to elicit an answer because it left the wrong impression with the jury in a way that it could be said that counsel is testifying when counsel does that. But --

THE COURT: Not state facts, state facts which are not supported by the evidence.

MR. TAIKEFF: Right. But I understand that it is proper to say to a witness "isn't it a fact that," if there's a good faith basis for doing it. And it is not an attempt to parade information in front of the jury for which there legitimate basis.

{1570}

MR. HULTMAN: I have no objection to that.

MR. TAIKEFF: As long as I understand that.

THE COURT: There's good faith basis for doing it, but my objection to it is stating, making an assertion which there is no apparent, no factual basis for it.

MR. TAIKEFF: I understand.

MR. HULTMAN: Your Honor, the reason I wanted to approach the bench is I want counsel to know that I feel with a witness of this kind, his demeanor, his background, his hostility, in terms of, not to counsel now, but I'm referring now as to relationships in what terms they might be, leads us to one position that I don't want counsel to reel that if I become vigorous in an objection that I'm not attempting in any way to take from counsel or to distract from counsel, but I feel with a witness of this kind there may be occasions when I would have to do that, otherwise I wouldn't.

MR. TAIKEFF: I think, though, up to this point it's fairly clear that the witness has been responsive to Government counsel, and apparently there was a clear-cut rapport of a positive nature between Government counsel and the witness. So I don't think there can be any indication at this time that there is any hostility, either legal or personal. And I just wanted to comment on that to make sure that the record was not confused. And I see that Your Honor has closed his {1571} book.



THE COURT: I have closed my book.

MR. LOWE: That is what is known as a signal.

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

THE COURT: Court is in recess until 1:30.

(Recess taken.)

AFTERNOON SESSION

(Whereupon, at 1:30 o'clock, p.m., the trial of the within cause was resumed pursuant to the noon recess heretofore taken; and the following further proceedings were had, the Defendant being present in person:)

(Mr. David Maring also appeared).

THE COURT: Are we ready for the jury?

MR. TAIKEFF: Yes, your Honor.

THE COURT: The jury may be brought in.

(Whereupon, at 1:32 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: You may proceed.

MR. TAIKEFF: Thank you, your Honor.

NORMAN BROWN,

having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION (Cont'd.)

BY MR. TAIKEFF:

Q Norman, I want you to try to remember the time when you heard the first shot on June 26th when you were in Tent City. How long after you woke up was that?

A I don't know. I just got up.

Q Could you tell from what you saw around you in the camp what time the other people in the camp had gotten up?

{1573}

A Well, they got up before me, so I had just gotten up, and was talking to Joe for awhile, and that's when I heard the shots. I don't know what time.

Q What kind of things were being done in the camp when you got up?

A Well, they were cooking, they were making pancakes, and don't know. I had just gotten up, and I was talking to them so I woke up and I went with Joe and I was talking to Joe for awhile, and I don't know where the rest of the people were. They might have been still sleeping, I don't know.

Q Now, you spent some time up on the ridge near the houses, is that right?

A Yes.

Q After the shooting started?

A Yeah.

Q And Mike Anderson was up there on the ridge with you, wasn't he?

A Yeah.

Q Now, after you were up on the ridge by the houses, you then went up to this area here (indicating) which has been marked in a circle "NB", is that right?

A Correct.

Q And what was the next place you went to after you were in that spot?

A To the camp.

{1574}

Q And then from the camp you left the area?

A Right.

Q Now, when you made your way from the area of the houses to that spot, where was Leonard Peltier?

A When I saw him, way over there (indicating), he was right There in the circle.

Q To the right on the chart of this "Y" intersection?

A Yes.

Q Now, where was the next time you saw him?

A Inside the camp.

Q Did you ever see him when you were in this area marked "NB"?

A No. I just saw Mike, me and Mike.

Q From this area marked "NB", are you able to see down into the area of this intersection, the "Y" intersection?

A No.

Q Now, when you said a few moments ago that you were talking with Joe in Tent City right after you got up, you were talking about Joe Stuntz, weren't you?

A Right.

Q And is it accurate to say that Joe Stuntz was in Tent City when the shooting began?

A Yeah.

Q And did he go over to --

MR. HULTMAN: (Interrupting) Well, may it please the {1575} Court, I didn't have time to enter an objection, your Honor.

I object on the grounds that that is not a statement of the record, that the statement was that he did not know, that he was in the area, was the exact words; and I went into that at least on two occasions, and so I now object on the grounds that the question is a misstatement of the record.

MR. TAIKEFF: Your Honor, I think we have to get one thing straightened out so that there is not unnecessary colloquy. I am not bound by answers of a prosecution witness. If I ask a question in good faith and I get an affirmative answer, I don't see what the prosecution can object to; and I think on top of that, that Mr. Hultman has made a mistake and he is thinking of the wrong person.

I would be glad to confer with him for a moment and perhaps call that to his attention.

MR. HULTMAN: Your Honor, I think the matter can be resolved if I just get the opportunity from counsel before the response, that's all I am asking. I think within the Rules I have a right to make my objection at the end of the question before the response in order that the response not come, if it is legitimately to be withheld and not to come before the jury. That's my only point.

MR. TAIKEFF: I have no quarrel with that, your Honor.

{1576}

I would like the jury to know that counsel are permitted on cross examination to put a factual proposition to a witness to see whether the witness will agree with it or disagree with it providing counsel has a good faith basis for asking such a question, and it is not improper conduct on the part of counsel.

MR. HULTMAN: I didn't in any way infer -- I want counsel to know flat out, I wasn't inferring it was an improper act.

MR. TAIKEFF: May I have a moment to confer?

THE COURT: You may.

(Counsel confer.)

MR. HULTMAN: I withdraw my objection, your Honor.

THE COURT: Just a word to the jury.

You may recall that in my preliminary instructions at the opening of the trial I advised you that it is your responsibility to listen to the evidence and to determine what weight should be given to it. The problem that has arisen here and which has arisen before, and which will arise again, is that a witness may make a statement on direct examination; and if the cross-examining lawyer may have information before him which indicates that the witness made a different statement -- and if he asks -- on a different occasion relating to the same thing; and if he asks that witness, "Isn't it true that you made such {1577} and such a statement," and the witness says "Yes," then you have a direct conflict such as has just arisen; and it is for the jury to determine what the truth is in the statements of the witness, and that same test should be applied in judging the weight and credibility of any witness.

(Counsel confer.)

MR. HULTMAN: Your Honor, may I state for the record at this time with counsel that there is no -- because there may be a misunderstanding as far as the record, there is no disagreement between counsel that Joe Stuntz was with the witness at the time; and that's a consistent statement and there is no disagreement about that.

MR. TAIKEFF: Yes. My position is that his direct and his cross are consistent in that regards, your Honor.

THE COURT: Very well.

Q (By Mr. Taikeff) You said something on your direct examination, you know what your direct examination means?

A No.

Q When Mr. Hultman was asking you questions, that's your direct examination, so when I refer to it, I mean when Mr. Hultman was questioning you.

A Yes.

Q You said something on your direct examination about some concern about a possibility of an attack, do you recall that?

{1578}

A Right.

Q Would you explain what was the basis of your concern, what specifically you were concerned about?

A Well, I read in papers about goons, BIA goons, FBI, people tell me what they done to their homes, goons do, and how many people have been killed; and that's why we were concerned, not only for us, for the women and children there. Is that what you are asking the question.

Q (Interrupting) That's what I am asking about, the people who said certain things to you.

Are you talking about the people who were living in Tent City or people who lived elsewhere on the Reservation?

A Yeah, elsewhere, and some people in Tent City. Like I say, you know, the goons, watch out for them, they are dangerous.

Q Now, when you went up to the area which is marked with the letters "NB", you had a certain concern about the women who were there, did you not?

A Right.

Q You had seen something just before you went up there, just before you left the area of the residences to go up there, do you remember?

A Right.

Q What did you see?

A Some cars and some people coming across from the road over here (indicating) towards the area where the tents were {1579} (indicating).

MR. TAIKEFF: I believe that the witness has motioned with his hand in such a way as to probably indicate from Highway 35 in the south pointing towards the north.

Q (By Mr. Taikeff) The people you saw coming from south to north, were they Indian people?

A Coming from this way (indicating)?

Q Yes, sir.

A No.

Q They were not Indian people?

A No.

Q The people you saw arriving in cars on that part of Highway 35 which is west of the houses, where the bottom of the chart is?

A Yes.

Q Were those Indian people?

A I didn't see any.

Q Did you see any cars pull up there?

A You mean -- what are you talking about, right there?

Q No. I am talking about a place that isn't on the chart but would be on the chart -- Highway 35 comes all the way around?

A Yes.

Q And down here in the west (indicating), did you say that you saw some cars pull up just before Joe Stuntz told you to {1580} go?

A Yes.

Q Up towards Tent City?

A Yes.

Q What kind of cars were they?

A They were just plain cars, you know, one color of car.

Q Did you know who was in those cars?

A No, but I saw them carrying some guns.

Q Did you think it was possible that people would come into your tent city area and harm or shoot these women?

A You mean me?

Q Yes, I am asking you whether you thought it was possible that such a thing could happen.

A Yes.

Q Now, you said that Joe Stuntz said something to you about, "This is the time to be a warrior." Did I say that correctly?

A Right.

Q What does that mean to you, what did it mean to you?

A Well, I think what he meant was, shouldn't be scared to die, that I should think of the people that were there and not of myself, I think that's what he meant.

Q Mr. Hultman asked you a number of questions concerning the Jumping Bull community with reference to the possibility of seeing goons in that area, and I don't remember all the places that he pointed out to you; but I think he asked you whether {1581} you ever saw any goons in the vicinity of the tan and red house and any goons in the the vicinity of the white house and a number of other places. Do you recall that, whether you ever saw any goons?

You remember Mr. Hultman asking you whether you saw any goons in those various places?

A Goons?

Q Yes.

A No, I didn't see no goons.

Q I know you didn't. I am asking you whether you recall being questioned about that when Mr. Hultman was questioning you.

A No, he didn't say that.

Q He didn't say that, o.k.

You have never seen any goons on the Jumping Bull compound, have you?

A No.

Q Do you know any reason why they never came around there?

MR. HULTMAN: Well, I object, your Honor, to this. This clearly calls for an opinion and conclusion of the witness for which there is no proper foundation.

MR. TAIKEFF: I believe, your Honor, the question was the foundation. I asked him if he knew the reason why they didn't come around there.

MR. HULTMAN: That's the very reason for my objection.

{1582}

It calls for an opinion and conclusion for which there is no foundation.

THE COURT: Overruled. He can state whether he --

THE WITNESS: (Interrupting) Could you say that again?

Q (By Mr. Taikeff) You are permitted to tell us, if you know, why the goons didn't come around to the Jumping Bull's community.

A Because there was already people there.

THE COURT: The answer was "Do you know."

Q (By Mr. Taikeff) Do you know why?

A No, I don't know why. I don't understand the question.

Q All right. Let me try again.

Goons didn't come around the Jumping Bull community, did they?

A No, I didn't see them.

Q O.k. Do you know why?

A No.



Q O.k. You said that you went to a religious gathering in Farmington, New Mexico?

A Right.

Q Would you explain what you meant by "religious gathering", what was happening there?

A Well, spiritual gathering there?

Q Yes. Maybe I wrote down the wrong word. Maybe you said "spiritual gathering".

{1583}

A Well, it is when a lot of people meet together, and they talk about their unborn and they talk to their elders, and to us that's sacred. That's why I said "spiritual gathering".

Q And who sponsored that activity in Farmington, New Mexico, in the early spring of 1976?

A The American Indian Movement.

Q Briefly tell us what you mean when you make reference to "elders"?

A Our medicine men, our old people, that they know more, you know, than we do so we are asking them what kind of direction to take; and they tell us things about the sacred pipe and sweat lodge, stuff like that.

Q I may have made a mistake before -- I want to correct myself -- when I spoke about that gathering in Farmington, New Mexico. That was the early spring of 1975, right?

A Right.

Q Not 1976?

A Right.

Q Do you know or have you ever heard the expression, "traditional Indian"?

A Right.

Q Are the elders you speak of people who are described as traditional Indians?

A Yes.

Q Can you briefly explain what that means in terms of how {1584} they live their lives?

A They depend on themselves and nature and the medicines; and their thoughts are always concerned about people. You mean how they live?

Q Yes. I am following your answer. You can continue your answer, just as you are giving it.

A "Traditional", what I think it is is people that live in harmony with nature and that -- well, that's about all I can say.

Q Is there any special connection between traditional people and the American Indian Movement?

A Yeah. They are the same because the thoughts are the same and both thoughts are for the unborn, I think that's what you wanted to know, I don't know.

Q You live on a Reservation?

A Yeah.

Q How many people live on that Reservation?

A About 145,000.

Q How many of those would you say live a traditional Indian life?

A Well, about 120,000, I guess, yeah, almost three-fourths of the people there.

{1585}

Q Do you know anything about the political activities of AIM concerning life and political matters on the reservation?

A What do you mean?

Q Well, besides the religious aspects of the activity, there are aspects concerning who governs the Indian people and how they are governed on behalf of AIM.

A Well, I guess they're trying to put across that native people want to live, you know, in the sovereign way and depend on themselves and their own traditional kind of government.

Q Were Leonard and Dino and Bob involved in any activities like that on the Pine Ridge Reservation in June of 1975?

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

Q Were they working with the people there?

A Right. They were. Were working with them and they were with us. Medicine man come into our camp. There was a spiritual camp and it was, we took sweat lodges together, other people. They come and talked to us and, you know, help us with the food and, you know, help us in that way. And, you know, that's what the people came to the camp for.

Q The people who live on Pine Ridge came to your camp?

A Yeah. Lot of people.

Q Lot of people?

A Yeah.

Q Were you trying to encourage them to do something? Were you trying to get them to do something, to live a certain kind of way?

{1586}

A Yeah.

Could you say that again?

Q Yes. These people who came to you, were you trying to persuade them to live their lives a certain kind of way and take up the old traditional Indian way?

A Yeah We told them that, you know, that we think that the traditional form of government would be better than the present government there because the traditional form of government is a, it's with nature, the law of nature, and we feel that no law is greater than our law, that's the law of nature: love, peace and respect. That's what, you know, we tell them that way is better.

Q While you were on the reservation, did you talk to other people about their treaty rights?

A No, I didn't. No.

Q Do you know if Leonard did?

A Yeah. Yeah. I don't know too much about it. Oglala, their nation, I don't know their treaty. Know very little about it.

Q I'm not asking you about the content of the subject matter. I'm just trying to find out about the activities of the people who lived in tent city, what their work was, what their activities were. Do you understand that?

A Yeah.

{1587}

Q When you speak of treaty, or when I ask you about the treaty, what kind of a treaty are you talking about? With whom was the treaty that you referred to?

A With the government. I think the one you're talking about is 1868 Fort Laramie Treaty.

Q Yes. Tell us briefly of what your understanding is about that as far as it concerned the activities of the people from tent city, what connection they had with the subject of the 1868 Fort Laramie Treaty.

A Well, the subject, the way I understand is when they first, when our nation first signed a the treaty with the government, I guess they did with all Indian people, is when they signed that paper, or they were forced to sign it, I don't know, I think the understanding is that we go on separate roads. This road would be traditional form of government, the native people on this side and our white brothers and sisters on this side (indicating). So we're trying to tell them, you know, "Not supposed to touch, stay on this side because there come a time when," like there is two boats, two canoes, the white people on this side and the Indian people on this side. You're either in one boat or the other and you can't sit in both boats at one time.

Like my elder told me this that when there is a wind, he said a wind is going to come and separate these and the people that live the white way and the Indian way, the boats are {1588} going to separate and those guys are going to fall to disaster. Just take this side, this is the only way. This is the creator meant for us to be.

Q Your message to the people on the Pine Ridge Reservation was don't live your life like a white person if you're not a white person, live your life like the native American has always lived his life, is that a fair summary?

A Well --

MR. HULTMAN: Your Honor. Excuse me, Norman. Your Honor, I haven't entered any objection at this time and I think I have been lenient but I would at this time now interpose an objection that the matter we're now getting into there is no showing of relevancy and it's clearly beyond the scope of direct examination.

MR. TAIKEFF: Your Honor, I recognize Mr. Hultman in fact has restrained himself. However, on direct examination he asked the witness whether he knew anything of the work that was being done by Leonard Peltier and the other adult males. The answer was no. I don't know that the witness understood the question at that time and I'm addressing myself to that direct testimony at this particular time.

MR. HULTMAN: Your Honor, my objection is that I would have no objection to any showing of relevancy in terms of any activity that did go on. The only thing we have heard is a general discussion of philosophy. That's the basis for {1589} my objection. If there is any showing of any kind that there was specific activity, then there might be some probative value, but my objection goes clearly to the point there has been no showing of any kind of any specific activity.

THE COURT: As I understand the relevancy which defense counsel is asserting is he is attempting through this witness to establish to the extent of this witness' knowledge of the purpose of this group's presence at this particular location at that time.

MR. TAIKEFF: That is correct. And it is specifically addressed to the fact that the direct examination, there was a question as to whether the witness knew what Leonard and Bob and Dino, the adults of the group, were doing there and the answer was, "No" and I'm probing that answer. I think the answer was given as it was because the witness may not have understood the import or the impact of the question.

THE COURT: Well, within those limits of relevancy I will permit you to proceed.

A Could I answer that question back there? The last one?

Q (By Mr. Taikeff) I have no objection.

A What you say that wind is going to separate them apart with the movement, the American Indian Movement is going to. I guess that answers your question. That wind has to do that.

Q What did you and the other people from tent city do about {1590} spreading that word, about bringing that information to other native American people?

A Would you say that again.

Q Yes. I'll try it a different way.

Am I correct that you wanted the native American people living on Pine Ridge to assert their rights under the 1868 Fort Laramie Treaty and live independently of the white culture?

A Yeah.

Q And that you wanted the native American people at that location and perhaps in all locations to live their life by the religious beliefs, the traditional native American religious belief?

A Right.

Q What did you do in order to bring this message to the people on the reservation?

A What did I do?

Q What did you and the people from tent city? You said people came to you from different places on the reservation.

A Yeah.

Q Was there any connection between those people coming to you and what you wanted them to learn from you?

A Trying to tell of a new direction. You know, to go the direction of, like you said, traditional government, or like I said.

{1591}

Q And did you hold religious ceremonies?

A Yeah.

Q How often?

A Lots. About, used to have in the morning and then at night and came to be we had it every day. Sweat lodge.

Q Were the native American people welcome to come and participate?

A Yeah. They did come and take in the sweat lodge with us.

Q And was that part of your program, part of your way of persuading them, of helping them see the new way which was really the old way?

A Yeah.

Q You mentioned a place called Crow Dog's paradise. Would you tell us what that place is.

A It's a place where each year that they have the sacred sun dance every year and the place where people meet, like to sun dance. That's what it is. When people from all over come together and think with the same mind and thoughts and pray for all walks of life. That land there is sacred.

Q When you speak of all walks of life, you don't mean all different kinds of people, you mean people and animals, don't you?

A Yeah. People. Black, yellow, white and red. That's what the sun dance is all about.

Q Leonard Crow Dog is a medicine man?

{1592}

A Right.

Q His father was a medicine man before him?

A Right.

Q And you consider him a holy man, do you not?

A Right.

Q You said when Mr. Hultman was questioning you that you went to the sun dance for the first time when you were 13 years old.

A Right.

Q Is there any connection between the first time you go to sun dance and becoming a man?

A No, it's not. It's not that. It's like, not like, you don't do that just because you become a man. You thank our creator, we thank him. Like if we offer him tobacco or a horse or something, it's already his. We offer ourselves. We belong to ourselves but we're his children and these are our own bodies so we offer him all we have got, offering ourselves to him so that, you know, we can live in harmony and have a good understanding of nature.

Q From your contact with Leonard Peltier, would you say that is a spiritual man?

A Right. Everybody in the camp was spiritual. Yeah.

Q Did you think that if you had to use a gun to protect the young women that you would be giving up your spiritual nature?

A No. Because to me, you know, as to everybody in the camp, {1593} as we learn, I guess, since we were small that, you know, all life is sacred, you know.

Q Did you see all life is sacred?

A And we had to protect, you know, lives is what we done.

Q Now you traveled when you were quite young many different places in the western part of the United States, isn't that correct?

A Right.

Q Is that part of your life as a native American person, traveling from place to place and living in different places or different periods of time?

A What?

Q Did you live in different places, is that a cultural thing to live in different places at different times?

A Yeah. I guess so.

Q How long did you live on the Pine Ridge?

A About two weeks.

Q How many different times did you live on the Rose Bud Reservation?

A Last year. This would be my fourth time this year.

Q This year will be your fourth time?

A Yeah. How many different reservations have you lived at from time to time so far in your life?

A About five.

{1594}

Q Were there things that the people in tent city had that everybody used?

A Yeah, there was. What do you mean?

Q Well, for instance, sometimes you had one gun, then another time you had a different gun. Is that unusual amongst Indian people to use things that way so that it doesn't seem to belong to just one person?

A Yeah.

Q Is that the Indian way?

A Yeah.

Q How do you describe that? Do you have a word that you can use in English to describe that?

A What do you mean like? Say the question again.

Q Yes. You shared many things.

A Yeah.

Q With your brothers and sisters, didn't you?

A Yeah.



Q You said that there were times when you saw Leonard with a certain gun.

A Right.

Q Did he sometimes have a different gun?

A He might have. I don't know.

{1595}

Q Did you always use the same gun?

A No.

Q You said that sometimes Leonard drove the red and white van?

A Yeah.

Q Did anybody else ever drive that van?

A Yeah.

Q Who else?

A Well, I drove it once and Joe and Dino drove it.

Q Did you share your food?

A Right.

Q Did you share whatever money you had?

A What money?

Q Did you share between yourselves whatever you had?

A Yeah.

Q Is that the Indian way?

A Right.

Q You refer to Joe Stuntz as your brother. I assume you meant that in the spiritual way?

A Right.

Q Jimmy Zimmermann separated from the group on June 26, 1975; isn't that correct?

A Right.

Q Was that just about the time the group was leaving and moving south?

{1596}

A Yeah. This is when we all got together and we were ready to leave. And before we left when we got together, he should give himself up because, you know, he might get hurt.

Q Why did you think he might get hurt?

A Because people were shooting at us.

Q Now, in giving your direct testimony and talking about the two men who were at the cars, the one with the long gun and the one with the handgun, you've referred to them as agents, right? You said they were agents?

A Right.

Q You now that they were agents of the FBI; isn't that correct?

A Right.

Q When the shooting was going on did you know that they were agents of the FBI?

A No.

Q You told us that you saw Leonard shooting from that place where the junked cars are and you also said you saw the agents shooting?

A Yeah.

Q Which one did you see shooting first?

A I don't know. It was just -- I don't know who shot first, but they were shooting at each other I could tell.

Q Well, when you looked, which did you look at first and see shooting?

{1597}

A Well, when I got up there I saw Leonard shooting. He's the first one I saw shooting. And he backed down and his shots were not very fast. Shots, just shots.

Q And how long after the shooting first started did you see Leonard shooting?

A I don't know. Just happened so fast. I don't know.

Q How long did it take to go from tent city over to the houses?

A About a minute and a half. Me and Joe went up to that little hill.

Q And then you went back to tent city?

A Yeah. And then we ran back all the way from there and then back to tent city. Minute and a half, two minutes.

Q Did you ever see a person by the name of Jean Day at the Jumping Bull community?

A No.

Q Do you know whether there was a woman with Leonard Peltier, either living with him or his girl friend?

A No.

Q Did you ever see a person by the name of Myrtle Poor Bear at the Jumping Bull area?

A No.

Q Do you know who she is?

A Now I do.

Q When was the first time you met her?

{1598}

A I mean not now. I met her, but I know who she is when I read in the paper. I don't know her.

I never talked to her, just I heard of her.

Q You never saw her on the Pine Ridge Reservation?

A No.

Q Did you ever see a person by the name of Anna Mae Aquash at the Jumping Bull community?

A Yeah.

Q Did you ever see a person by the name of James Eagle at the Jumping Bull community?

A No.

Q Did you ever hear, either on June 26, 1975 or before June 26, 1975 any talk from the people who were with you on the Jumping Bull compound or community, did you ever hear any talk about killing FBI agents or killing BIA police officers?

A No.

Q I asked you a few moments ago about a James Eagle.

A Yeah.

Q Do you understand that that person may also be known as Jimmy Eagle?

A What?

Q Do you know anyone named Jimmy Eagle?

A Yeah. That's the same person.

Q Okay. You never saw that person at the Jumping Bull compound?

{1599}

A No.

Q Was there over any talk amongst the people or the Jumping Bull community about an ambush?

A No.

Q Are you sure of that?

A Yeah, I'm sure.

Q Are you a good shot with a rifle?

A I don't know.

Q Did you shoot-out any of the tires on the two cars that came in after the shooting started?

A Yeah. It looked like it, yeah.

Q Were you aiming for the tires?

A Yeah.

Q Do you think if you wanted to you could have hit the center of the windshield?

A If I wanted to.

Q What was the distance that you were shooting?

A I don't know. It was pretty close.

Q You were at the white house?

A Yeah, white house.

Q And you were shooting a single shot 22 caliber rifle?

A Yeah.

Q And the cars that you are talking about stopped about here (indicating)?

A Right here where the "B" and "AB" is.

{1600}

Q Right here (indicating)?

A Somewhere around there.

MR. HULTMAN: I believe counsel used a specific yardage when I asked him this morning. And I would have no objection if you use a distance that he used. If you want to use a spot on the map, I would just request you use both characterizations that he gave.

MR. TAIKEFF: Is it your position that it's about two hundred yards?

MR. HULTMAN: It's farther than indicated on the map anyway.

Q (By Mr. Taikeff) Is it your position that it's about two hundred yards?

MR. HULTMAN: It's farther than indicated on the map anyway.

Q (By Mr. Taikeff) Okay. Would you say you were shooting a distance of at least two hundred yards? Six hundred, seven hundred foot?

A Yeah, I guess so. I don't know.

Q Have any idea how many tires you shot out with that single shot 22 from two hundred or more yards?

A I don't know. I think two.

Q Now, when you were back up near tent city in the area marked "NB" you were supposed to keep your eye out for anyone approaching tent city because you thought that the women were {1601} up there, right?

A Right.

Q Were you watching the road, the one that runs north-south across the chart, that short little road?

A That was another one. It comes down this way. It's a dirt road down this way (indicating).

Q All right. Let me ask you an easier question, perhaps. Were you watching all the roads that lead into tent city?

A Yes.

Q Could you see the roads from where you were positioned yourself from where you -

A Just part of the road. But right where I was at there, I could see that main road going. I was watching for it.

Q How about the road that came up from the area of the houses, could you see that road?

A Just to where -- right there (indicating).

Q That's the part that runs from left to right?

A Right across from "Plateau"?

Q Yes.

A Yes.

Q Okay. That's what I was asking you about before. You could see that, right?

A Just the part that, just right there towards camp. Those two places.

Q Okay. Were you paying attention and keeping your eye open a {1602} for anybody coming?

A Yeah.

Q Were you listening to hear if anyone was coming either on the road or through the woods?

A Right.

Q Did you see any cars or trucks coming that way while you were there?

A You mean by those two roads?

Q Yes.

A No, I didn't see no cars.

Q Now, when you left that area where "N.B" is, you went directly to tent city; is that right?

A Yeah, that's right.

Q And did you find Leonard Peltier there?

A Right.

Q And he was loading something, wasn't he?

A Right.

Q And what was he loading?

A A van.

Q A red and white van?

A Yeah.

Q The one that the Government showed you pictures of; is that right?

A Yes.

Q When you and your brothers and sisters left tent city you {1603} said there was some shooting at you before you got out of the area; is that right?

A At me?

Q At your group, shots were fired at the group?

A No. I mean when Jimmy went back, heard same shots.

Q How about after you left?

A You mean when we got through the culvert?

Q Well, from the time you left tent city you went south first; isn't that correct, towards Highway 35?

A Right.

Q How far is it to Highway 35 approximately?

A About half a mile, three-fourths of a mile.

Q In that distance, in that half mile or three-quarters of a mile, anybody take any shots at you?

A No.

Q Or at anybody else in the group?

A No. Just quiet.

Q But sometime after you left, there was some shooting at you, wasn't there?

A Right.

Q Where were you then, where was the group at that time?

A Running up the hill.

Q Where was that hill? Beyond 35, Highway 35?

A Yeah, yeah.

Q Okay. When you were running up the hill and shots were {1604} fired at you was anyone -- who shot first in the group, or was someone shooting at the group?



A At the group.

Q Now, the Government showed you two pistols which you said resembled the pistols you saw in the cabin one night where the ten of you stayed.

A Right.

Q How big would you say that cabin was?

A Small cabin. It's about --

Q As big as the jury box?

A Smaller. About halfway.

Q Half the size of the jury box?

A Yeah.

A little bit wider. It was just small, just small.

Q How many of you slept in that cabin?

A Eight. But Norman and somebody went on security when we came back.

Q So eight were sleeping in the cabin and two were on guard duty?

A Yeah.

Q Now, was anybody carrying those pistols that you saw? Did you see anyone carrying the pistols? I'm talking about when they were sitting on the table.

A Yeah. Dino I saw carrying one.

Q Did you ever see Leonard carrying one of those pistols?

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

{1605}

Q Do you know who brought those pistols to that cabin?

A No.

Q Do you have any knowledge of where they came from?

A No.

Q Were you at Crow Dog's Paradise in September of that year?

A Yeah. September, right.

Q How long did you stay at Crow Dog's Paradise in September of 1975?

A You mean how long did I stay there?

Q Yes. On that visit.

A About a week there.

Q I'm sorry, I didn't hear the last part of your answer.

A When I got there, about a week before September 5th.

Q You see any FBI agents while you were there?

A Yeah. They passed by.

Q Any of them come into the camp?

A You mean before June -- I mean September 5th?

Q Or on September 5th?

A Yeah, I saw them come in.

Q How many?

A There was a lot of them. About eighty, a hundred of them. There was a lot of them there.

Q This is on the reservation, right, the Rosebud Reservation?

A Right. Crow Dog's Paradise.

Q Now, Crow Dog's Paradise is a holy place, is it not?

{1606}

A Right.

Q And that's where Leonard Crow Dog and Henry Crow Dog live?

A Right.

Q Henry Crow Dog is Leonard's father; is that right?

A Right.

MR. HULTMAN: Your Honor, I haven't objected to this point, but I'll enter an objection at this time about anything from this point on. It is irrelevant.

THE COURT: Sustained.

MR. TAIKEFF: I'd like to come to the sidebar and explain to Your Honor the relevancy.

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, I am now entering upon a portion of the cross-examination which will elicit information concerning the conduct of this witness under the influence or fear. And what I am about to elicit from him, the fact that I'm about to elicit represent part or the information concerning the fear which was motivating him when he took certain conduct on a subsequent date. That conduct concerns testimony which he has given in this case.

MR. HULTMAN: Well, I fail to see any relevancy at all, Your Honor, in what has been indicated without some showing of some kind of that by counsel.

{1607}

MR. TAIKEFF: Well, certain threats were made to him by the FBI to put it more bluntly and succinctly, and the effectiveness of those threats is connected to what happened on that particular day in his presence, and did influence him in responding to those threats.

MR. HULTMAN: Well, now first of all I object, Your Honor, that it has nothing to do as far as the subsequent events as to what we're talking about here.

MR. TAIKEFF: Oh, it will. I will tie it together.

MR. HULTMAN: Wait a minute, Counsel, until I finish. Secondly, now if you are going to, if you are going to discuss specific 302's and so forth, then, you know, I will have an opportunity and you already have. But just to have a general discussion, you haven't shown, except on one single instance with this witness, where anything he has ever said any time, any place differs from anything he said on direct examination.

MR. TAIKEFF: That's exactly what I'm getting to.

MR. HULTMAN: That's one small --

MR. TAIKEFF: Mr. Hultman, my position on that is that it was a mistake. It was not any kind of intentional statement of fact. I am now getting to the very subject which you just described in general terms. That's the beginning of it is --

{1608}

MR. HULTMAN: You mean that his testimony on the stand here, which you are now setting up, that he has given testimony at the present time which is false?

MR. TAIKEFF: No.

MR. HULTMAN: On direct examination?

MR. TAIKEFF: No.

MR. HULTMAN: That's what I fail to see, and I would continue in my objection until there's a foundation showing of some kind of relevancy.

THE COURT: Well, if you are not going to show his testimony is false, then it's irrelevant as to why he told the truth, whatever he told the truth, because somebody told him to.

MR. TAIKEFF: Your Honor, he previously testified in connection with this case before the grand jury and he lied before the grand jury and he lied before the grand jury under the influence of the FBI, and he will so testify.

And he lied as to a specific fact which was testified to by another witness, something which the FBI wanted very much for him to do, and he did it before the grand jury, but was not sworn with the pipe. And he has not testified that way here only because he was sworn by the pipe and could not tell anything but the truth.

THE COURT: Right. But if he --

MR. HULTMAN: He's asking -- excuse me, Your Honor.

{1609}

THE COURT: Just a minute. Just a minute.

MR. HULTMAN: Your Honor, at this point I think we should have his own counsel here because we're now talking about perjury at this particular point.

THE COURT: We've got enough lawyers up here right now.

MR. HULTMAN: I'm sorry, Your Honor.

MR. TAIKEFF: I thought from that Your Honor said I thought you were suggesting perhaps too many.

THE COURT: If this witness has told the truth under the oath that he took on the witness stand and that the reason he did it is because he took the oath on the pipe rather than the customary oath that is administered in federal courts, then what probative value is there in showing that he lied at a prior time because he didn't take the oath on the pipe?

MR. TAIKEFF: No. He lied on the prior occasion because he was coerced into doing it by the FBI.

THE COURT: But unless that's, unless you somehow show that his testimony here in this courtroom is coerced I fail to see the probative value.

MR. LOWE: Let me say this, Judge. We will show, and I will make an offer of proof that the witness will say the he perjured himself in front of the grand jury because of the threats of the FBI and the subject matter of the perjured {1610} testimony was that he saw Bob and Dino and Leonard down at the cars where the two agents were right at the cars.

Now, this is the very testimony that Mike Anderson gave and the purpose of adducing this is to show that Mike Anderson, to support our case, that Mike Anderson has lied when he said that because he was subjected to the same threats by his own testimony of physical violence in that case. And the relevance of showing here that this witness did succumb to those threats on one occasion before the grand jury, even though he is now candid, is for the purpose of governmental misconduct of witnesses, subordination of perjury which was not to the credibility of other witnesses. We believe the witness is telling the truth now, but we believe they're entitled to show active subordination of perjury through threats by FBI agents on this young man in the past with regard to this investigation, because it casts the credibility of Mr. Anderson, Mr. Draper and others in doubt; and would support in a general line of testimony that we would present to the Court in that regard.

MR. HULTMAN: That is so irrelevant, Your Honor, that I won't comment any further.

MR. TAIKEFF: I don't see how it could be irrelevant.

MR. HULTMAN: They had an opportunity to attack the witness and they're now trying to attack through this witness, Your Honor, by what happened to this witness.

{1611}

If they had any basis to attack the testimony of the witness that was on the stand, they had full and ample cross-examination. And this is an attempt by irrelevancy through this witness with no inconsistency to try and show, to put the FBI or the Government on trial here.

There is no showing of any kind that this man hasn't told the truth.

MR. TAIKEFF: Your Honor, the Government does not succeed or should not succeed in concealing that earlier episode by not attempting to impeach the witness with his sworn grand jury testimony. The Government has a transcript of grand jury testimony in which he testified

that he saw the three adults down by the car which is essentially the same testimony that Mike Anderson gave in this case.

When asked that question here on direct examination the witness said, "No, I did not see them down there."

THE COURT: He wasn't asked the question. He was asked if he saw anybody else down there. He wasn't asked if he specifically saw those three gentlemen down there.

MR. TAIKEFF: Well, but by being asked, and he said, "no." He is in essence disavowing that earlier testimony.

Now, it would seem to me that a proponent of a certain proposition who had a witness on the stand who had previously sworn to the fact that the Government would want to adduce before a grand jury and get a different answer on {1611} trial would surely, particularly in light of the speech with a hostile witness, would surely attempt to introduce that into evidence, or at least impeach the witness with it. But they do not do so because their theory is that therefore we cannot inquire about it. They don't cut us off from an inquiry about very serious FBI conduct by failing to bring that out on the direct examination.

It has to do with the integrity of the entire body of evidence.

THE COURT: The only matter that is relevant in this cross-examination of this witness are matters relating to his testimony on direct examination. Now, if you, if what you allege is relevant that is a part of the defense case if you intend to present the defendant's case.

MR. TAIKEFF: Then I would like to adopt a witness at this time.

THE COURT: No. I am going to limit. I decided yesterday I am limiting the cross-examination to the relevant inquiry into the direct examination and unless you are prepared to tell me that this testimony which you seek to elicit is somehow directed towards showing that he has testified falsely on the stand yesterday afternoon or today it's --

MR. TAIKEFF: I will not make that representation to Your Honor because it isn't true.

{1613}

THE COURT: Well, then under Rule 611 the rule states specifically, I will read it, "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters if on direct examination."

MR. TAIKEFF: That's what I am asking, Your Honor.

THE COURT: I know, and you asked me to do it yesterday

MR. HULTMAN: That's what I --

THE COURT: You asked me to do it yesterday and I declined.

MR. TAIKEFF: I understand.

THE COURT: And I take the same position today.

MR. TAIKEFF: I understand. It will require that the witness be held to be a defense witness, continue to be available to the defense.

THE COURT: I don't know. You have the responsibility for presenting your defense case whichever way you feel best.

MR. TAIKEFF: I understand. I am prepared to do it that way, and I understand that Your Honor wants the Government's case to come in unaffected by evidence adduced by the defense as part of its case in chief.

I just want to make it clear that it is our intention to call this person as a defense witness. I presume he's here {1614} pursuant to a subpoena and I ask the Court not to excuse him and advise him that he is subject to that subpoena, and he will be recalled on as many hours or days notice as he requires.

In fact, I would specifically request that he be here Tuesday of next week to testify as a defense witness.

THE COURT: Well, I will certainly grant that request.

MR. TAIKEFF: All right. Then I'll see if I have anything on cross-examination itself and announce what my position is with respect to whether there are any further questions.

THE COURT: Very well.

{1615}

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

(Counsel confer.)

(Counsel confers with Defendant.)

MR. TAIKEFF: Your Honor, the defense has no further cross examination.

THE COURT: Very well.

MR. HULTMAN: Your Honor, I believe counsel has indicated that maybe Norman wishes to speak with counsel before I would begin any redirect.

MR. MARING: Your Honor, I thought that Norman had indicated that he might want to speak with me.

THE COURT: Do you want to speak with him?

THE WITNESS: Yes.

THE COURT: You may step down and confer with Mr. Maring.

(Witness and his counsel confer.)

(Witness resumes witness stand.)

REDIRECT EXAMINATION

By MR. HULTMAN:

Q Norman, I have just a few questions that I would like to ask you.

Counsel asked you some questions about your tribe, and I believe you indicated that there are about 120,000, is that the figure?

{1616}

A 145.

Q How many, 145?

A 145.

Q About 120,000 were the traditionals, is that what the response was?

A Yes, about.

Q Now, counsel asked you questions back and forth about traditional and AIM; and I want to make sure about members of the American Indian Movement.

You didn't in any way by your answers want the jury or anybody to conclude that those 120,000 traditional Indians in your tribe are members of the American Indian Movement, did you?

A What?

Q Counsel asked you a number of questions at the beginning about the American Indian Movement, and about your nation, do you remember those questions?



A Yes.

Q Now, what I want to make certain, that there is no question in either my mind or the mind of the jury, you weren't saying that the fraction of 120,000 or three-quarters of your nation, because that number approximately are traditionalists, traditional Indians, that those people are members of the American Indian Movement, are they?

A No.

Q About how many of them would you approximate are members {1617} of the American Indian Movement?

A Lots, I guess -- I don't know.

Q You were also asked some questions about the event at Farmington, is that right?

A Right.

Q And you indicated this was an event that -- where is that from, where is Farmington or the place where this event took place from your Reservation?

A About two hours' drive, two and a half.

Q Two hours' drive?

A Two and a half.

Q Are there many Reservations in this general area where Farmington is located?

A Around here?

Q No. I am talking about Farmington now with you, Farmington, New Mexico?

A Right.

Q All right. Are there many Indian people that live within 200 miles of Farmington?

A Yes.

Q Would you have any idea of approximately how many?

A No.

Q All right. Now, how many approximately people were at the meeting in Farmington to which you were asked questions on cross examination, as best you can estimate and recall?

{1618}

A I don't know, about -- I don't know.

Q Pardon?

A I don't know.

Q Would you give us just the best estimate that you could?

A About 800, I guess, 900.

Q And were they from all over the United States?

A Yes.

Q Including some people like yourself from your area?

A Yeah.

Q All right. Now, did you see any guns at that meeting?

A No, not at -- no.

Q Did you see any of the people that you were with with any guns at that particular time?

A No.

Q Now, as I understand it, that you went from there then to the area that we both have been discussing on direct and cross examination, is that right?

A Yes.

Q Now, you were then asked questions by counsel that had to do with a condition that you had concerning the goons. Do you remember the questions asked about that?

A Yeah.

Q Do you remember I asked you some questions about that on direct examination -- now, was there ever anything that you saw in all the time that you were at Jumping Bull's and the {1619} places that you went, why you were there, that indicated to you something that would give you fear of something in your mind called "goons"?

A Did I see them do anything bad or what?

Q Yes.

A No.

Q So that the only thing that you knew was what -- something that somebody else told you, is that right?

A Yeah.

Q Well, do you normally have any fear from something that somebody else has told you that you haven't witnessed yourself?

A Say that again.

Q Who was it that told you that there was something -- there were some people named "goons" that were bad people, who was it that told you that?

A Well, I read it in the papers, Anna Mae told me about goons, some other people from Pine Ridge, I don't know their names. They were kind of old, and Bob was telling me about goons.

Q Did anybody ever tell you at any time, any place, that any FBI Agent was a goon?

A No.

Could you say that again, I mean --

Q (Interrupting) I think you understood my question, and you responded to it, did you not, or is there something about it you didn't understand?

{1620}

A Explain it. Could you say the question over?

MR. HULTMAN: Would the reporter read the question back?

(Question here read by the reporter was as follows: "Did anybody ever tell you at any time, any place, that any FBI Agent was a goon?")

A No.

Q (By Mr. Hultman) There is no question about that, is there?

A No.

Q Now, counsel asked you about some vehicles, whether you saw any vehicles when you were down in the area that was marked "NB", where you were down in the general area, where the

tents were located; and I want to ask just a question or two about that. If you remember, Mr. Taikeff asked you some questions about when you were here in this area here (indicating). "Did you see any automobiles?" Do you remember his questions of you and what your responses were at that time; you gave some answers about automobiles, that you had seen some, I believe, if I remember, coming in?

A Back there (indicating).

Q You remember that?

A Yes.

Q Now, you also talked about that you were looking for automobiles also on any roads that might be coming in, is that {1621} right, to the tent area?

A Yeah.

Q All right. Now, I want to ask you, did you see any other automobiles, either when you were here or when you went over here (indicating), other than the ones that you have talked about both on direct examination and in response to cross-examination?

A Yeah, that one up there (indicating).

Q All right. So there was another car there, but this is something you just didn't remember when I asked you the questions?

A You asked me a question like that?

Q I don't --

A (Interrupting) You didn't ask me any questions like that.

Q Now, by your response to me now, is that you are only responding specifically to what I ask you, is that right?

A Right, yeah. If you asked me that --

THE COURT: (Interrupting) Are you able to hear him?

A Would you say that again?

Q (By Mr. Hultman) Well, is what you are saying to me now that unless I or Mr. Taikeff asks you specifically about a specific item, such as when he was talking and asking you about cars -- I don't remember what the exact questions were -- but he asked you something, "Tell him about cars"?

A Yes.

Q Then unless he asked you specifically something such as, {1622} "Did you see any other car in this area right here (indicating)?" -- that you didn't feel that you needed to answer that question, is that what you are saying to me?

MR. TAIKEFF: Your Honor, I must interrupt because there is included something which was not my area of inquiry. I asked him if he saw any vehicles go by on those inner roads, not whether he saw any vehicles inside Tent City when he got back; and because of his possible limitation in understanding, it is particularly confusing that way.

THE COURT: Would you restate your question?

MR. HULTMAN: All right, yes, your Honor.

Q (By Mr. Hultman) Then is it your response that there were some other cars in the area, is that a fair response, conclusion on my part?

A I don't understand.

Q All right. When you were here (indicating) or in the tent area, or going out of the tent area, while you were in this area -- and I am making a wide circle now -- did you see any automobiles other than the two that you have specifically referred to?

A Yeah, I saw --

Q (Interrupting) As being here and some automobiles that you talked about being over here (indicating), in this general area, on a highway, did you see any other automobile?

{1623}

A Other than those two there?

Q Yes, other than those two.

A Up in there (indicating).

Q Was this a car that is represented somewhere here on Exhibit 71 now?

A Yeah.

Q All right. Would you tell the jury what that car was?

A What do you mean?

Q Well, would you describe it for us?

A Well, it had a radio and it was going.

Q Had you seen that car any time earlier in the day?

A Yeah, down there (indicating).

Q One of these cars down here -- remember which one?

A That one right there (indicating).

Q Would it be this one or this one (indicating).

A That one (indicating).

Q This one here (indicating), is that right?

A Yes.

Q All right. Now --

A (Interrupting) It was one of them cars.

Q One of the cars. You said something about the radio in response to my question. Would you explain what you meant by that?

A I could hear people talking on that radio.

Q Where were you when you could hear it?

{1624}

A Inside the camp.

Q And would you tell the jury approximately how many yards away from that vehicle were you when you heard that radio?

A About 20 yards.

Q All right. So you did see another car in the general area, is that right?

A Yeah, right.

Q All right. Do you know how that car got there?

A No.

Q Did anybody indicate to you or tell you how it got there?

A No.

Q Now, counsel asked you specifically with reference to the two men that were down at the cars; and I believe your response, as he quoted it correctly on direct examination, you used the word "agent". Is that what you said when I was asking you questions?

A Agents, yes.

Q Was there any reason why you used that term?

A Because now I know who it was.

Q All right. It wasn't because I told you or told you to use those words?

MR. TAIKEFF: Your Honor, there was no such suggestion meant. Mr. Hultman knows that with the professional respect I have for him, if anyone got that idea, I disavow it. It was not my intention in asking that question.

{1625}

THE COURT: Thank you.

MR. HULTMAN: All right.

Q (By Mr. Hultman) What was it that you remembered -- did you remember whether they were native Americans at the time or that they weren't native Americans when you saw them that day?

A Well, you could tell by the color.

Q All right. Could you tell anything by their cars?

A What do you mean?

Q Was there anything about the cars that you remember that would relate anything to you in your mind (indicating), that would draw -- then allow you to draw a conclusion of some kind that they were agents?

A No, just cars.

Q All right. Now, you didn't have anything in your mind at that particular point -- strike that.

How was it that at that time -- or let me withdraw it.

Did you have any idea at that time, Norman, that the three persons and Little Jimmy down in the tent area were in any danger?

A Yeah.

Q Well, explain to the jury, how did you come to the conclusion that two people, one with a gun of some kind at the back of a car, and the other with a pistol down here (indicating) in the area where they were, and with Leonard with the weapon that he had when you got here (indicating), and Dino with the weapon {1626} that he had and the others with the weapons that they had here, here (indicating), that you have already talked about, how did you conclude at that time that the two women and Jimmy Zimmerman were in any danger from the two men, one with the rifle and one with the pistol?

{1627}

A Well, I saw those cars. Me and Jim saw them coming around this way (indicating).

Q Well, now that's at a later time. You're down here --

A Yeah.

Q -- to this point here (indicating). I'm not talking about that, understand?

A Yeah.

Q I'm talking about when you first get here. You'd heard firing in this area, right?

A Right.

Q And that's the only firing that you heard to that time, right?

A Right.

Q Now how is it -- I want to ask you again, you hadn't seen any cars any other places coming and going at this time, right?

A Right.

Q What is it with you knowing right then and there when you see two men down here, Leonard here with the kind of weapon that he had doing the shooting that you saw him doing, Dino with the kind of weapon that he had, and was there anybody else here in this period that you saw here other than those two?



A No.

Q You knew Bob was somewhere in here?

{1628}

A Yeah.

Q And you don't know where he was and he had a weapon. There was Joe Stuntz with you up here and you and two more here, all with weapons (indicating). How is it that you conclude in your mind at that time that the women and children not only in the tent area but didn't you indicate something for them to get out of there or something before you left?

A Well, they already knew where to go.

Q They already knew where to go. To leave, is that right?

A Yeah. To leave, because what else would you do when you heard shots?

Q Now I'm asking you how is it that you then concluded with that circumstance, knowing what you say and what you observed and that the three women or girls and little Jimmy are leaving, down in the bottom of the hollow here, two men, one with a pistol and one with his long gun that they are going to endanger the girls and little Jimmy?

MR. TAIKEFF: Objection to the form of the question because the testimony was never that those two men were going to endanger the women and child and that's how the question was phrased. I think it's unfairly phrased.

THE COURT: Objection sustained.

Q (By Mr. Hultman) Just tell me what it was in your mind at that time knowing what it was that you were seeing that resulted in your statement to Counsel and restatement now by {1629} counsel that you had fear for the women and children?

A Well, they were shooting at me, they were shooting at all of us.

Q Norman, I just have one more question. Have all of your responses that you have given been on the sacred pipe?

A Right.

Q And in every instance as far as the testimony you have given here today?

A Right.

MR. HULTMAN: I have no further questions.

A Seems like I'm on trial.

THE COURT: The Court is in recess until 3:30.

(Recess taken.)

MR. TAIKEFF: May we have a word with the Court before the jury comes in, Your Honor.

THE COURT: Yes, you may.

MR. MARING: May I approach the bench?

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

MR. MARING: Your Honor, I think Mr. Brown will be through testifying for the day fairly shortly and, as I understand it, he's going to be called next week as a witness for the defense. I would ask that he be released from the subpoena to the extent that he can travel outside the district of North Dakota for the period until he's recalled.

{1630}

THE CLERK: Mr. Taikeff.

THE COURT: It will be necessary for you to hear this request.

MR. TAIKEFF: I thought that Mr. Maring and I both wanted to speak to Your Honor about the same thing.

MR. MARING: That was the matter I was referring to. As I was saying, I think Mr. Brown will be finished with his testimony fairly soon this afternoon and it's my understanding now that he will be called back as a witness next week at some point in time and called as a defense witness.

MR. TAIKEFF: Correct.

MR. WARING: I'm requesting of the Court that he be released from the Subpoena to the extent that he can travel outside of the district of North Dakota until he is recalled to testify.

MR. TAIKEFF: I would not characterize that as being released from the subpoena.

THE COURT: I wouldn't either.

MR. TAIKEFF: But there is certainly no necessity of him staying within the jurisdiction of the district.

THE COURT: He'll remain under Subpoena but he will be permitted to travel outside of the district so long as he keeps somebody informed as to where he can be reached.

MR. TAIKEFF: I would assume the best person for that would be his counsel. We would like not to have any direct {1631} contact with them except in the presence of his counsel.

THE COURT: He will then be permitted to travel wherever he wants to so long as he keeps you informed and so that he can be reached.

MR. TAIKEFF: Instead of asking him to return on a specific day --

THE COURT: Excuse me. Keeps you informed as to where he's at and where he can be, as to where he's going and where he can be reached.

MR. TAIKEFF: I think it would be fairest if we do not specifically request that he return on next Tuesday but make the request through his counsel at least one day in advance, then he won't have to come here and wait out our need to put him on the stand, because he apparently is not especially happy about being away from home and we certainly want to accommodate him in that regard.

THE COURT: His home is in Arizona.

MR. TAIKEFF: I assume he's going back home, which raises the question of his transportation.

MR. MARING: It's my understanding from the discussions with the government that they will provide transportation for him either to South Dakota where his wife is presently staying and if he would like to go also to Arizona for the weekend.

Now in regard to him contacting me or me being in {1632} contact with him, my only problem might be that I don't know if the place where he is going, if they have telephone facilities. I would have to check that out with him. Otherwise I perhaps would have no way of being in touch with him. But it was my understanding that Mr. Mike Ness, I believe his name is, is he an FBI agent?

MR. HULTMAN: He's a Navajo agent.

MR. MARING: That he would be accompanying him to wherever Mr. Brown does go and he would be, that we'd be able to contact through the government Mr. Brown when he is supposed to be returned and Mr. Ness to make arrangements for him to return at that time.

MR. HULTMAN: If that matter --

MR. TAIKEFF: I wonder why the FBI accompanies where he goes. They brought him here under a subpoena without an arrest warrant from a great distance and I don't quite understand the escort that he has.

MR. HULTMAN: Counsel, all I'm saying is this is the responsibility of his lawyer and he to determine, not any of the rest of us. I certainly have made no suggestions of any kind, of this kind. I think there is a concern by you that you want him back here.

MR. TAIKEFF: That's my only concern.

MR. HULTMAN: Let me say to you, I think you may well have reasons to have very grave concerns concerning whether {1633} he would be back unless there is some means of communication of some kind.

MR. TAIKEFF: I won't press the issue.

MR. HULTMAN: His counsel and the witness I think are the proper people to decide whatever that is.

MR. TAIKEFF: I understand he's indigent and I assume appropriate arrangements would be made for him to be transported or given funds for transportation and if an agent is the one who is going to be the intermediary, then we'll surely give adequate notice of our desire to put him on the stand. There's no question we will put him on the stand.

MR. LOWE: I would like to have the record reflect the fact, are you saying that an FBI agent is going to be escorting him from the time he leaves here until the time he comes back?

MR. HULTMAN: I'm saying that's the matter for he and his counsel to decide, whatever they decide to do.

What I am saying is I would make whatever it is Counsel wishes in terms of availability, what he might or might not want through his Counsel, that's all I'm saying, John, because otherwise I'm saying to you here right now, I think Elliot has indicated very clearly he wants him here. What I'm saying is that I think if they aren't allowed to at least, his Counsel and he, I think they have a right to do it {1634} any way. I think if not, you're under some very grave risks that somebody is not going to be here.

MR. LOWE: I want to make a matter of record, number one, I have no doubt this witness will come back. I'm convinced from what he said and the way he said it he's coming back here. Number two, he's going to be our witness and I think if we were to suggest that a person who is associated with the defense should be able to accompany him and escort the government witness during the time before he testifies, I think the government would go through the roof. I think to the extent that an FBI agent represents intimidation for some native Americans, and I don't mean this young man, but I want to object to the procedure that FBI agents have no business accompanying defense witnesses and that's what this young man will be when he's released from the testimony today. I want to assert, we do have a standing objection to intimidation type circumstances. I'm not saying it's going to intimidate this witness or not. I don't even know whether Mr. Maring wants this to take place. I don't know whether he'd have any options in it. I'd like to ask on the record if Mr. Maring feels he has no option in this regard or whether he has been told that an agent --

MR. HULTMAN: John, let me make it clear on the record that it is for this man, the lawyer, and his client to decide, and I'm stating it on the record and I'm not going anywhere {1635} beyond it.

MR. LOWE: Is that your understanding, Mr. Maring?

MR. MARING: No one has told me that that is the situation that must take place. All I want to make sure, this young man has the finances and will be able to make arrangements so he can travel to the point where he wants to go so he can see the family until he's called as a witness again. If those arrangements can be made where he can get the money and go on his own --

MR. LOWE: He doesn't need to have the FBI agent accompany him.

MR. MARING: We don't need to have the FBI agent.

MR. LOWE: That's a somewhat misleading atmosphere.

THE COURT: It's resolved.

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

THE COURT: Counsel ready to have the jury brought in?

MR. TAIKEFF Yes, Your Honor.

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

MR. TAIKEFF: Am I to presume Mr. Hultman is completed?

MR. HULTMAN: Yes.

MR. TAIKEFF May I proceed, Your Honor?

THE COURT: You may.

{1636}

RE-CROSS-EXAMINATION

BY MR. TAIKEFF:

Q Norman, I think there are only two things I want to ask you questions about that were just brought up before the recess by Mr. Hultman.

None of the people at the Farmington meeting carried guns at the meeting, is that right?

A I didn't see any; no.

Q Isn't it a fact that everyone who came there had to check guns if they had them at the front gate?

A Yeah. Front security.

Q And people were assigned to security to make sure all guns, alcohol and drugs, if carried, were turned in at the front door, isn't that correct?

A Right.

Q Now the other point I want to touch base with you on is Mr. Hultman's questions about your worry about goons.

A Yeah.

Q Now he asked you whether you were worried because of what people told you.

A Yeah.

Q And I think you also indicated that you were worried because of things which you read.

A Right.

Q Now the people who told you these things about goons lived where?

{1637}

A Pine Ridge Reservation.

Q And how many different people told you things about goons?

A Four or five people.

Q And did they tell you about their own personal experiences?

A Yeah. One did.

Q What did that person tell you?

MR. HULTMAN: I object now, Your Honor. This is calling clearly for hearsay.

MR. TAIKEFF: Your Honor, I'm not offering it for the truth of the content but to show what he heard as a basis for his own concern.

THE COURT: He may answer.

A Well, told me that the reason why he got shot at was because he was an AIM supporter.

Q (By Mr. Taikeff) Now I think also in response to Mr. Hultman's question or questions you said that you were concerned about the possibility of goons interfering with you because of things which Anna Mae told you?

A Yeah.

MR. HULTMAN: I object to this, Your Honor. It's clearly going beyond the scope of recross-examination. That response was made on cross-examination by Counsel and there was no testimony elicited by me in any way in that {1638} particular, and that's clearly beyond and also, Your Honor, that it's irrelevant.

MR. TAIKEFF: Your Honor, I believe that Mr. Hultman is factually mistaken. In cross-examination I asked whether Anna Mae was ever at the Jumping Bull community and asked him nothing else on the subject. It was on redirect examination when Mr. Hultman was exploring the basis or lack of it of the witness' concern for goons that he elicited from the witness that Anna Mae told him certain things about goons which concerned him.

MR. HULTMAN: If that's correct, Counsel, I would withdraw my objection. I don't know it was not my understanding but I will assume that is correct. I take Counsel's word, Your Honor.

THE COURT: Objection being withdrawn, you may proceed.

MR. HULTMAN: For that limited purpose.

MR. TAIKEFF: Yes.

Q (By Mr. Taikeff) Would you tell us what she told you about goons.

A You mean after June 26?

Q No. Before June 26.

A Well, told me, you know, "Watch out for goons," you know, "they're dangerous." That's all. Told me to watch out for --

MR. TAIKEFF: I have no further questions.

Have you finished your answer?

{1639}

THE WITNESS: Yeah.

MR. HULTMAN: I have no questions.

{1640}

MR. TAIKEFF: I have no further questions.

Q (By Mr. Taikeff) Have you finished your answer?

A Yeah.

MR. HULTMAN: I have no questions, Norman. Thank you.

THE COURT: Mr. Brown, you may step down and you are just a minute. You are released from any further testimony today, or maybe in the next few days, but counsel have informed me that you will be called back so you do remain under subpoena. And you should confer with your lawyer who has been appointed to represent you, Mr. Maring, with reference to when you will have to come back and any limitations on your travel. You are not, you are not being limited, I mean under subpoena. You're not being limited under subpoena. You must understand that you will have to come back when you are notified. You understand that?

THE WITNESS: Yeah.

THE COURT: And Mr. Maring will explain it to you.

Very well. You may step down.

MR. HULTMAN: The plaintiff calls Dru McCullum, Your Honor.

DRU McCULLUM,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIKMA

Q Would you please state your name for the jury.

{1641}

A Dru McCullum.

Q Where do you live?

A In Ada, Oklahoma.



Q And was that your home during September of 1975?

A Yes, sir.

Q Do you remember a particular date, the 10th of September, 1975?

A Yes, sir.

Q And where were you on that afternoon?

A I was returning from Wichita.

Q And on what route were you traveling?

A We took the Kansas Turnpike and then on 35.

Q I would draw your attention to about 3:30 on that afternoon on the turnpike north of the Wellington exit and ask you whether or not you observed anything unusual at that particular time?

A Yes, sir, I did.

Q Would you tell --

THE COURT: Excuse me. Would you speak a little closer to the microphone.

THE WITNESS: Yes, sir.

Q (By Mr. Sikma) Would you advise the jury what it was that you, that you observed?

A Yes, sir. I was traveling south. I was a passenger in a southbound car and about a mile and a half to two miles north of the Wellington exit the car immediately in front of me {1642} exploded.

Q And about how far in front of you was that vehicle at that time?

A When it first exploded it was about a quarter of a mile in front of us.

Q And did you drive on up to that vehicle?

A Well, we put on the brakes immediately and waited for some of the smoke to clear, and then we drove around the car very slowly.

Q Okay. Did you have an opportunity to observe that vehicle as to what kind of car it was?

A Yes, sir. It was an older model, light beige, tan station wagon.

Q I will show you what is marked as Government's Exhibit 62 for identification and ask you just to look at these photographs if you would on page 1, or excuse me, on page 2, 3 and 5 and ask you whether or not you recognize what you see in those photographs?

A Yes, sir. It's the same car.

Q Okay. Would you tell the jury what you did at that time.

A Pulled over to the side of the road as soon as we heard the explosion and we stopped and we waited there for about, oh, maybe forty-five seconds and drove on around the car very slowly.

We pulled over into the center median because there debris in both lanes of traffic, and we pulled around very slowly {1643} and looked. We thought someone might still be in the car and need help.

Q Did you see anyone around the vehicle?

A Not around the vehicle, sir.

We saw some people, oh, maybe forty-five yards away from the car running in the field. It was right next to the highway.

Q And in what direction were they running?

A They were running to the southwest.

Q Did you observe what they were wearing?

A Not really, sir. It was a bright casual clothing.

Q Could you tell whether or not the people who were, you saw running along the side of the road saw you?

A I believe they did, sir. As we pulled around the car they appeared to be looking back and ducking.

Q Can you describe how many people there were?

A Yes, sir. There were five people in two groups. There were two people and then three people and in the road there were two people dragging the third person.

Q You say the three people were dragging another individual?

A Two people were dragging the third person.

Q Okay. Do you recall what these people were wearing. What type of clothes they were wearing?

A No, sir. It was just loose, casual-type clothing.

Q Do you recall the color of any of their particular clothing?

{1644}

A It was, I believe on had on a red shirt.

Q Were you able to help these people at all?

A No, sir. They were, they were continuing running in the field, you know, away from us.

Q They were running in a direction away from you; is that correct?

A Yes, sir.

Q What did you do then?

A Well, we drove around the car very slowly and we didn't see anyone in the car. We drove on still pretty slowly and went to the Howard Johnson's which is the next place you could pull off, and reported what we had seen.

Q Did you hear anything after you had pulled away from the car?

A Yes, sir. When we pulled into the Howard Johnson's we looked back and there was like a series of popping noises, like firecrackers. And there was a lot of black smoke.

Q And where did you say that was, that this took place?

A The explosion was about a mile and a half, two miles north of the Wellington exit on the Kansas Turnpike.

MR. SIKMA: That's all I have at this time.

CROSS-EXAMINATION

MR. TAIKEFF

Q Is it Ms. McCullum?

A Yes, sir.

Q Did you enjoy your trip to Fargo?

{1645}

A Yes, I have.

MR. TAIKEFF: No further questions.

THE COURT: You may step down.

MR. SIKMA: Plaintiff calls Ann Johnson.

MR. HULTMAN: Your Honor, I have just learned of a matter that I think we should approach the bench, Your Honor.

THE COURT: Very well.

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

MR. HULTMAN: Your Honor, I have just learned, and I don't know what the source is, but I'm sure the defense can verify that Mr. Levy has been subpoenaed for Monday, and that's all I know. Now, first of all I can't imagine what on Monday Mr. Levy would be doing. Secondly --

THE COURT: Excuse me. Who is Mr. Levy?

MR. HULTMAN: I assume it's the former Attorney General of the United States. That's all I know.

MR. TAIKEFF: I'm afraid Mr. Lowe and I are going to be embarrassed because we don't know of either requesting or serving such a subpoena.

MR. LOWE: Who told you?

MR. CROOKS: That's the word that came through the Department of Justice.

MR. HULTMAN: He's been subpoenaed to appear next Monday.

{1646}

MR. TAIKEFF: Someone's checking on that, Your Honor.

THE CLERK: That name is on the list.

MR. HULTMAN: My point simply is, Your Honor, that one, I would hope the Government would be given enough time to respond to anything of this kind because I'm sure, and depending upon

the Court's subpoena that's been served upon him, one, know that; two, and then given enough time to respond, and because in our judgment we do wish to respond.

THE COURT: I have authorized some subpoenas on a routine basis which people that I assumed were -- would everybody be quiet and let me finish making the statement. I have authorized some subpoenas on a routine basis of people requested by the defense team in this case.

I had no knowledge that there's been any attempt at this point to subpoena the former Attorney General of the United States, and I'll stop there.

MR. TAIKEFF: It took me personally by surprise as well, Your Honor.

MR. LOWE: Let me just state that I have been told, and what I misunderstood what I was first advised, I did this test with Mr. Ellison and certain others, I thought they were talking about the present Attorney General when they said Attorney General. I was aware it is of relevant testimony to give on behalf of the defense. I don't mean that we need him on Monday. I think we were picking that as a {1647} target date with the usual manner of advising witnesses when they move the timetable as to when they could appear.

THE COURT: All right. I will say this that any high officials sought to be subpoenaed are going to be, the names of those people are going to be released to counsel for the Government in order that a record can be made, if they deem it to be made if necessary, as to whether or not that witness should be brought in.

MR. LOWE: Perfectly agreeable, Judge.

THE COURT: As I say this was a complete surprise to me.

MR. HULTMAN: It's Monday. It's getting close to Monday, and I'd hate to think -- the reason I wanted to go on the record, Your Honor, and let me put it in the record, I requested the Court, the last time there was a subpoena similar to this, it was the head of the FBI, and very frankly it ended up in such an extremely embarrassing situation to the Government and embarrassing as far as the whole case, and I just don't want to be put in any more positions of that kind. And what happened is simply this, that the Director of the FBI was in a hospital and I checked it out once I learned of a subpoena, and I informed the Court and counsel for the defendant that he would appear.

We didn't even fight the subpoena.

THE COURT: Now, I will just, we don't have to go into {1648} this.

MR. HULTMAN: All right.

THE COURT: The order of the Court is that if there has in fact been a subpoena issued for former Attorney General Levy it will be quashed, and if counsel desire that this witness be subpoenaed and a specific application will have to be made setting out in detail what testimony it is that you seek to elicit from him.

MR. TAIKEFF: There's no objection to that, Your Honor. I just wanted Your Honor to know that the significance of that name as being the name of a public official of such rank completely

escaped me, and my surprise when I heard Mr. Hultman five minutes ago was legitimate. I hadn't the slightest idea that that had occurred.

MR. LOWE: As I say I knew that an Attorney General was coming, but I thought it was the present one that was going to be subpoenaed. I didn't know the status. It will be a proper showing and we'll do it pursuant to that. We'll do it pursuant to what you've just ordered.

THE CLERK: Judge?

MR. TAIKEFF: The Clerk wanted me to call Your Honor's attention to this name and this name. Now, I know this person to be a federal official, but not a high ranking federal official. And he did in fact testify for the defense at the last trial.

{1649}

He is a person who is the author of a certain report which deals with certain subject matter which is relevant to the case.

MR. LOWE: He also is the author of the report which is relevant to the subject matter of the case.

THE COURT: And these people have been subpoenaed to appear when?

MR. TAIKEFF: Well, we sent out the form with the subpoenas indicating that they need only be subject to telephone call. We had to pick a date because we had to get our subpoenas out. I understand the subpoenas went out with forms indicating that we would allow them to remain subject to telephone calls so we didn't have a backlog of people here unnecessarily crowding the streets of Fargo.

But we had to put some target date on, and we put the 29th on. But I think all of the people will be notified, and it will be verified with them that they do not have to be here on the 29th, but that they are technically subject to this subpoena.

The Government issued all of its subpoenas for March 14th and used basically the same technique, Your Honor.

THE COURT: I have no objection to that procedure. But as I explained, any persons who hold high positions in the Government, I do think some consideration should be given.

MR. TAIKEFF: There's no question. Your Honor, I {1650} have to concede that I didn't know the significance.

MR. LOWE: He's not in the government any more.

THE COURT: He is included in the category.

MR. LOWE: We have no objection to following that procedure, Judge.

{1651}

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

THE COURT: Are you ready for the witness?

A Yes, I am.

THE COURT: The witness may be brought in.

ANN M. JOHNSON,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIKMA:

Q Tell the jury your name.

A Ann M. Johnson.

Q Where do you live?

A Rapid City, South Dakota.

Q And what is your occupation?

A Stenographer.

Q And for whom do you work?

A The FBI.

Q And was that your occupation on June 26th, 1975?

A Yes.

Q Do you remember where you were at about noon on June 26th, 1975?

A I was in the office preparing to go to go to lunch.

Q O.k. What was your job in the FBI office in Rapid City at that time?

A I was a stenographer in which I take shorthand and {1652} transcribe it and answer the phones and the radio.

Q In the room where you worked, how many other people worked that particular room?

A There were six other agents that usually sat in there, and I and one other steno; and the senior resident agent sat in a room off of the one big room.

MR. TAIKEFF: Your Honor, I am sorry but the voice is not audible here.

THE COURT: I am having the same difficulty. You are requested to please speak up and into the microphone. Perhaps if you turn it a little bit and speak a little bit across it -- turn it a little more.

MR. TAIKEFF: Would it be possible, your Honor, for that question to be re-asked and start at the beginning of that answer?

MR. SIKMA: I will go --

THE COURT: (Interrupting) Do you want the reporter to read the question?

MR. SIKMA: Yes.

THE COURT: The reporter will read the question back.

(Question and answer were read by the reporter.)

Q (By Mr. Sikma) Who was the other steno that was in the room with you?

A Linda Price.

Q And who was the senior resident agent that worked in the {1653} room off of your room?

A George O'Clock.

Q Now, would you tell us what happened, if anything unusual happened, at about noon on the 26th of June, 1975?

A We heard radio transmissions that some agents were under fire.

Q And do you know who was transmitting those radio transmissions?

A Ron Williams.

Q Did you recognize his voice?



A Yes.

Q Had you had occasion to listen to Ron Williams talk over the radio on other occasions?

A Yes.

Q What, if you recall, was the nature of those transcriptions

A The first thing I heard was "There is something wrong here, we are being fired on."

Q And about what time was that?

A About 11:55.

Q And what did you hear next?

A Transmissions back and forth between Ron Williams and Gary Adams, trying to get a location on where Ron Williams was.

Q About how much time was there between the first transmission concerning the fact that Ron Williams indicated he was being fired on, and the transmission that Gary Adams was responding {1654} to that call?

A I really don't know.

Q Would you say though it was -- could you give me an estimate of about how much time it was?

A I would say only a matter of some seconds, maybe a minute or two.

Q O.k. What did you hear next?

A Just mainly transmissions back and forth, and the last thing I heard from Ron was -- I didn't really hear the words, but I heard like he kind of broke off and it sounded like a moan.

THE COURT: Speak up, please.

Q (By Mr. Sikma) What, if anything, were you instructed to do at that time?

A I was told to start taking notes.

Q And were you able to hear the transcriptions or understand what the transcriptions were at that particular time?

MR. TAIKEFF: Your Honor, I trust Mr. Sikma meant transmissions?

MR. SIKMA: I am sorry, I did.

A Not fully. I could hear him, yet I really didn't know what I was supposed to be taking down, whether I was supposed to be taking a summary or trying to get it sort of verbatim, so I really didn't know what I was doing.

Q (By Mr. Sikma) Did anyone come to your assistance at that {1655} time?

A Yes.

Q Who was that?

A George O'Clock.

Q And what, if anything, did he do?

A He would tell me more or less what was said, and I would write it down.

Q You would take notes?

A Yes.

Q And how long did this go on, about?

A Until -- well, only about 12:30, and then I was on my own.

Q O.k. What did you do after that time?

A I took notes the rest of the day.

Q Do you recall the radio calls throughout that day, do you recall what was being said throughout the day?

A Not real well, because it was so much, and I was on it all day. Not specifically.

Q As a matter of procedure -- and you said the first half hour or so George O'Clock was telling you generally what was being said and you were taking notes. What did you do after that?

A I tried to get down as close as I could just what was being said on the radio back and forth.

Q Did you keep track of the time?

A Yes, as close as I could. When the transmission would {1656} come in, I would try to look at the clock and get the time as close as possible.

Q What did you do with the notes that you transcribed?

A Well, I transcribed the notes onto a 302.

Q And whose 302 was that?

A Well, it is a 302 of George O'Clock in part. The actual first part of it is what he, you know, was telling me, which took notes on; and then after that it is really all my notes on that day.

Q How long did you go on that particular day taking notes?

A Until about 9:40 that night.

Q What was Linda Price doing at this time?

A She was answering the radio, or I mean, the telephone, I am sorry.

Q And did she at any time assist you in taking down the radio messages?

A Yes, whenever I needed to take a break.

Q And about how many times did that take place during the course of the day?

A Only about three, I think.

MR. SIKMA: May I have a moment, your Honor?

THE COURT: You may.

(Counsel confer.)

Q (By Mr. Sikma) Defendants have marked Defendant's Exhibit 75. I will show you this and ask you whether or not you {1657} recognize what Defendant's Exhibit 75 is?

A Yes.

Q And what is that?

A That's the transcription of what my notes were from that day.

Q Now, would you look at that and tell me, if you can, what time it was, as noted on that transmission, that you started taking notes on your own without the assistance of Special Agent O'Clock?

A About 12:36.

Q That was the first time that you did not have his assistance, is that correct?

A Yes.

Q And to go throughout this document, how long into the evening did you take notes on these radio messages?

A Well, the last entry is 8:50.

Q I will direct your attention to Page 1 of that document, and tell me if, after reading it, you can tell me what the transmissions were between 11:55 and 12:10 p.m. -- 11:55 a.m. and 12:10 p.m. I will ask you if you will read them first, and then tell me if you recall, after reading them, what you heard.

A (Examining) I don't recall hearing these direct, I mean myself.

Q Now, up until 12:26, I believe, or 12:36, rather, you were receiving dictations from George O'Clock, is that correct?

{1658}

A Yes.

Q Do you recall any of those radio transmissions from your independent recollection without reading them?

A Not very well, no.

(Counsel confer.)

Q (By Mr. Sikma) What was the general nature of the radio transmissions, what was being said between 11:55 and 12:10 p.m.?

A There was a general background of what had been happening, of the agents being fired at, and what was being done.

Q O.k. What happened at 12:06?

A Adams was receiving fire.

Q And what happened at 12:10, approximately 12:10 p.m.?

A An ambulance was called to go down there.

Q O.k. and what happened --

THE COURT: (Interrupting) Excuse me. Would you repeat that? You didn't speak loud enough.

THE WITNESS: O.k. Ambulance was called to go down there.

Q (By Mr. Sikma) O.k. and what happened at about 12:18 p.m.?

A Adams was on the scene and he had been receiving fire.

Q And what else happened?

A He said that he saw a red pickup leaving the Jumping Bull Hall area, and the Pine Ridge Police were instructed to stop this pickup.

Q And what happened at 12:21 p.m.?

{1659}

A Adams and the BIA unit with Adams reported they both had flat tires, and they didn't know where it came from.

Q What happened at 12:23 p.m.?

A Adams stated there was firing from both directions at both Adams and the BIA reinforcement with him.

Q Do you know from the transmissions what time Special Agent Hughes arrived on the scene?

A At 12:24 p.m.

Q And what happened at 12:27 p.m.?

A Adams reported there was still firing, and they were receiving fire from Jumping Bull Hall.

Q Now, approximately how long throughout the course of the afternoon, if you recall, did they receive fire or receive -- were they receiving fire in that area?

A I don't recall.

MR. SIKMA: I have no further questions.

MR. TAIKEFF: May I inquire, your Honor?

THE COURT: You may.

CROSS EXAMINATION

By MR. TAIKEFF:

Q Miss Johnson, you have Defendant's Exhibit 75 for identification in front of you?

A Yes.

Q I am going to place before you, in addition, Defendant's Exhibits 81 and 82, after I show them to Mr. Sikma, so he will {1660} know what I am talking about.

(Counsel shows document to Mr. Sikma)

{1661}

This particular time I'm going to put them facedown. Okay.

How long have you been employed by the Federal Bureau of Investigation?

A Since '72.

Q Do you like working there?

A Oh, yes.

Q You do stenographic work amongst your other duties?

A Yes.

Q And does that involve the preparation of forms known as 302s?

A Yes.

Q Do you have any objection to my referring to them sometime as reports just for a short hand?

A That's fine.

Q Now as a general rule, the 302s or the reports are dictated to you by the agent whose 302 it is?

A Right.

Q And then I assume that you're one of the people in the office who types the reports and then gives the reports back to the agent who dictated it?

A Yes.

Q Now there were certain events which occurred in your office on June 26th that you've told us about in part, is that right?

{1662}

A Yes.

Q Now 302 as a rule contain a lot of precise detail, don't they?

A Yes.

Q And as a general rule they're meant to contain as much detail of events as are deemed important by the person writing the report, isn't that correct?

MR. SIKMA: Your Honor, I'd object to this as calling for a conclusion on the part of the witness.

THE COURT: The objection is sustained on the grounds of lack of foundation.

Q (By Mr. Taikeff) Do you know from from your own experience that when an incident, perhaps one that only lasted a few moments or perhaps a fact which is not very complex is recorded in a 302, it is done with a great deal of detail and a great deal of language to make sure that every conceivable aspect is put down on paper, isn't that a fair description of how thoroughly and accurately 302 are prepared?

MR. SIKMA: Your Honor, I'd object. This calls for conclusion on the part of the witness. Not within her knowledge.

THE COURT: There is no showing that this witness has any expertise other than a stenographer who's typed 302s dictated by other people. That's the reason I sustained the first objection.  
{1663}

Q (By Mr. Taikeff) There's a 302 in existence that was typed on June 28, 1975. It appears to be an interview of you by an agent named Leon Canton. Are you familiar with the existence of that 302?

A Yes.

Q Were you interviewed by Agent Canton?

A Yes.

Q Did he dictate the 302 or the content of the 302 after he interviewed you?

A Yes.

Q To whom did he dictate it?

A Myself.

Q And who typed it?

A Myself.

Q Now Agent Canton works out of what office?

A He's in the Minneapolis division.

Q And have you ever read that 302?

A Yes.

Q See if one of the two documents I gave you, specifically No. 81, is the document I have been questioning you about.

A Yes, it is.

Q Now look at that first paragraph. It tells your occupation, doesn't it?

A Yes.

Q And where you're assigned?

{1664}

A Yes.

Q And what room you work in?

A Yes.

Q And the city and state and building in which you work?

A Uh-huh.



Q Based on your experience in working with and preparing, or rather typing 302s, is that kind of detail unusual?

A No.

Q In fact, a rather prominent characteristic of 302s is that they contain a great deal of precise information and detail about every event that they talk about.

MR. SIKMA: Objection, Your Honor, the foundation has still not been established and this witness does not know what --

MR. TAIKEFF: Your Honor, please. I do not think Counsel should signal the witness what Counsel thinks the witness should say.

MR. SIKMA: Your Honor, I think that it's a legal matter of whether or not this witness is competent to answer that question. As a matter of law, in fact, she is not.

THE COURT: Sustained.

Q (By Mr. Taikeff) How many 302s have you typed since you started working for the FBI?

A There is no way to state.

Q Yes, there is. How many do you type a day?

{1665}

A It varies.

Q Average day.

A I suppose it could be at least ten, twelve.

Q Do you read them after you type them?

A No.

Q Do you understand what's being said to you when the dictation is being given?

A Usually.

Q When an agent sits down with you, assuming you sit, and dictates a 302, do you have any sense of what he told you when you get finished taking that dictation?

A Most of the time.

Q As a general rule, when an agent dictates a 302, after the dictation has been completed but before you type, do you know in general terms what it was he just said to you in the course of the dictation?

A I don't think so.

Q You mean you have no memory of what he said to you?

A Not well enough that I could state in general terms what the whole thing was about.

Q You mean you couldn't give a general idea of what it was just reported to you via his dictation?

A I could probably pick out a few of the more prominent things that might have hit me, that I might have especially noticed while I was taking his dictation, but as far as the {1666} whole thing was about --

Q I didn't ask you what the whole thing was about.

If, for instance, an agent described to you the fact and detail of having followed somebody during the afternoon you have had that experience, haven't you?

A Yes.

Q You would as a general rule know when you got finished taking that dictation that the agent had followed somebody, isn't that correct?

A Yes.

Q And you might remember some of the principle details, isn't that correct?

MR. SIKMA: Your Honor, I would object to this line of questioning as irrelevant and, further, I request I be able to ask one or two questions in voir dire for the purpose of making an objection to this line of questioning.

MR. TAIKEFF: I'm trying to lay the foundation which Your Honor requires.

THE COURT: Would Counsel approach the bench.

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

THE COURT: I'm not sure that anyone can lay a foundation with this witness unless you can show that she has had some training relating to what is to go into 302s, what specific items should be recorded, what should not. In other words, {1667} exercising judgment. I don't think a stenographer simply reciting what somebody has dictated to her is qualified.

MR. TAIKEEFF: I can approach it in an entirely different way, Your Honor.

In response to this specific thing, Your Honor, just said, I am not trying to establish through this witness whether the 302s are done in conformity with the requirements of the FBI. I'm only seeking to establish a fact through her which is based on her own experience that anyone familiar with the English language would have an impression about after working on 302s for years. However, I can approach it in an entirely different way that probably will not be objectionable.

THE COURT: But what I am, the reason I'm sustained the objection is because of the fact that one agent may have recorded a fact she may not know. She may know that he did record a fact but she may not know why he selected that particular fact.

MR. TAIKEEFF: I understand that. My point, Your Honor, is that I think that any intelligent person knows the difference between a narrative text that by its nature has a mired of detail, peripheral details, and one that narrates very specific major points. That's a facility every person who is literate and has a functioning mind is capable of. It is only Mr. Sikma's bold assertion that she is not capable {1668} or competent to answer the question. Any literate adult could answer that question. Giving a sample of writing, "Is that in your opinion something which is chalked full of detail?" And the Federal Rules of Evidence permit a lay witness to express such an opinion. That's the only thing I'm trying to get out of this witness and Mr. Sikma doesn't want me to get it in.

THE COURT: The impression I get is you're attempting to establish through this witness the significance or lack of significance of something that is recorded and I don't think that this witness has any --

MR. TAIKEEFF: No.

THE COURT: -- expertise in this area.

MR. TAIKEEFF: No. It is the absence of something I'm leading up to. But first --

THE COURT: That's exactly the reason that I am sustaining it, because that is a judgment factor to be exercised by the trained investigator who makes the determination. I don't think this witness, whether something was left out or not or the significance of something being left out or not is anything is witness could testify to.

MR. TAIKEEFF: All right. I would like to ask some other questions along different lines.

THE COURT: You may do that.

(Whereupon, the following proceedings were had in the {1669} courtroom in the hearing and presence of the jury:)

Q (By Mr. Taikeeff) How did Agent Canton conduct the interview of you on June 28th? What happened?

A Just asking questions on what I heard and what I was doing.

Q Did he ask you whether you worked in room 260?

A No.

Q It's in that 302, isn't it?

A He asked me if that's where I was at the time because there is, was another room that I could have been in.

Q Did you tell him that your place of employment is room 260?

A No.

Q You knew this form was an interview form?

A Yes.

Q And you're the one who took dictation and typed it, right?

A Yes.

Q And it's your understanding, is it not, that a form is supposed to contain what the person being interviewed has said, right?

MR. SIKMA: Your Honor, I would object to this. Outside of the knowledge of this witness. I would make a competency objection.

Q (By Mr. Taikeff) Didn't you just say yes to my question?

THE COURT: I am going to overrule that objection.

{1670}

Q (By Mr. Taikeff) I'll withdraw the last question and ask you whether it's your understanding that an interview report is supposed to report what the person being interviewed has said?

A Yes.

Q No more, right? A person taking the interview is not supposed to make up things, isn't correct.

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

THE COURT: I think that we're getting to the area we discussed at the bench. That objection is sustained.

{1671}

Q Did you tell Agent Canton all of the things which you considered important concerning your activities on June 26, 1975 when he interviewed you on June 28th? Yes or no.

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

THE COURT: Overruled.

Q (By Mr. Taikeff) Do you want the question again?

A No. I just wasn't sure I was supposed to answer.

Q Yes. If the Judge says overruled to an objection you may answer.

A Okay.

Q Are you nervous?

Q Yes.

THE COURT: The reporter will read the question to the witness.

(Whereupon, question read back: "Question: Did you tell Agent Canton all of the things which you considered important concerning your activities on June 26, 1975 when he interviewed you on June 28th? Yes or no.")

A Yes.

Q (By Mr. Taikeff) Now, did you tell Agent Canton that at or about 11:50 or 11:55 A.M. you had been taking dictation in a different room other than Room 260, and that when you complete doing that work you returned to Room 260 at approximately 11:50 A.M.?

A Yes.

{1672}

Q To what question did you give him that information?

A He asked me what I had been doing, and that's when I said had been taking dictation and was preparing to go to lunch.

And we prepared to go to that room to go to lunch because that's where our purses and everything were.

Q Now, there's some sort of a speaker on the wall, or on a table in Room 260?

A The radio, it's on the table next to my desk.

Q And is it fair to say that as a general rule what comes over that radio could be heard by anyone with normal hearing the room?

A Yes.

Q And was the radio functioning as well as usual on that particular day?

A Yes.

Q Now, take a look at Defendant's Exhibit 75 for identification. That's also a 302, isn't it?

A Yes.

Q It's a long one, it's thirty-six pages long; is that correct?

A Yes.

Q How do you know that something happened around 12:36 P.M. June 26, 1975 that changed what you were doing, or what was happening in connection with your work?

A I'm not sure I know what you mean.

{1673}

Q Well, maybe I've stated the wrong time and I will be happy to be corrected by Mr. Sikma if I did.

But I thought you said on your direct examination that something changed for you that day at or about 12:36?

A Well, I was taking the notes on my own from then on.

Q How do you remember that?

A Just by more or less looking at the notes I can recall from hearing those things personally.

Q When you were looking at what notes?

A These here (indicating).

Q Let's be careful about the use of the word "notes". You have Defendant's Exhibit 75 for identification in front of you?

A Right.

Q That's a typewritten 302?

A Right.

Q When you took notes in the office you took them with a pen or pencil and wrote them on a different piece of paper; is that correct?

A Yes.

Q So when we talk about notes, let's be referring to the notes you took with your hand.

A All right.

Q Okay. Now, I ask you how is it that you are now able to remember almost two years later that it was at 12:36 P.M. that the circumstances under which you were working changed on {1674} June 26, 1975?

A It's by looking at this. That's the first thing I recall personally hearing.

Q Ms. Johnson, in your direct examination didn't Mr. Sikma ask you a question about the first transmission that came in from Ron Williams?

A Yes. But that was on, that was not taken down in notes at because at that time I was not taking notes.

Q Ms. Johnson, please try to answer my question as I ask it.

I asked you whether on direct examination you were asked to tell us about the first transmission that came in that caught your attention; is that correct?

A Yes.

Q And you told us the content of that transmission, did you not?

A Yes.

Q From your memory here in this courtroom?

A Yes.

Q So a few moments ago you said that the first transmission you took down on your own was at 12:36. You don't mean to say that that was the first transmission that you heard or have any memory of, did you mean to say?

A That's the first transmission on this 302 here.

Q Forget Defense Exhibit 75 for the moment. I'm talking to {1675} you about facts, historical facts which have nothing to do at the moment with what's on that piece of paper.

Did you hear the initial transmission?

A Yes.

Q Or what you believed to be the initial transmission from Williams?

A Yes.

Q And did you hear additional transmissions?

A Yes.

Q And do you have some recollection of those transmissions?

A Some.

Q I'm not asking you whether you know them exactly verbatim, you understand that?

A Yes.

Q Nor am I asking you them today as well as you did on June 28th, but you did hear transmissions prior to 12:36, did you not?

A Yes.

Q And they were in the English language?

A Yes.

Q And you have some recollection of at least some of them, don't you?

A Yes.



Q When you were interviewed -- do you have Defendant's Exhibit 81 in front of you?

{1676}

A Yes.

Q Is it face up?

A Yes.

Q Please turn it over.

When you were interviewed on June 28th by Agent Canton did he ask you questions about any portion of the transmissions which you then on June 28th remembered?

A Yes.

Q And did you tell him what you then remembered?

A Yes.

Q And did you either quote or paraphrase, depending on how accurate your memory was, some of those transmissions?

A Yes.

Q Now, did he make specific reference to certain transmission and ask you whether you have heard those, or did he say to you, "Tell us, tell me what you heard," and you just told him what you heard? Which way did it go, if it went either of those two ways?

A He asked me what I had heard.

Q And then on June 28th you told him, based on what was then your best recollection, what you remembered, right?

A Yes.

Q And you told him of a number of transmissions which you heard before 12:26 -- 12:36 in that interview; isn't that correct?

{1677}

A Yes.

Q Did you use any notes in the course of your interview?

A No.

Q What did you do with your notes made during the transmissions as they were actually occurring?

A They were destroyed.

Q I beg your pardon?

A They were destroyed.

Q Who destroyed them?

A I did a few months later.

Q Did Agent Canton ask you the names of the people who were resent in Room 260?

A Yes.

Q And did he ask you what were you doing while the transmissions were coming in?

A I don't recall.

Q Well, I assume that he asked you whether you were present, right?

A Yes.

Q And I assume that he asked you whether you heard the transmissions?

A Yes.

Q And I assume he asked you for the content of some of the transmissions, right?

A Yes.

{1678}

Q Didn't he ask you what your official duties were in connection with the transmissions?

A I don't recall if he asked that at all.

Q Take a look at the opening paragraph, first paragraph on the first page of Defendant's Exhibit 75 for identification. Read it to yourself, it's not in evidence.

That's part of the 302, is it not?

A Yes.

Q Are the statements in that paragraph true or false?

A True.

Q Then is it not a fact that the radio transmissions were monitored by stenographer, Ann M. Johnson, on June 26, 1975, to the best of her ability and are not intended as verbatim; isn't that factually true?

A Yes.

Q You never told Agent Canton that you got any help from anyone from 11:55 to 12:36, did you?

A No.

Q Why not?

A He didn't ask.

Q Did you think it was important?

A I didn't really think so. To me it was part of the dictation.

Q What do you mean "it was part of the dictation"?

A Well, part of my taking down the notes.

{1679}

Q Let's go back to 12:36 P.M., not the entry there, your memory. Couldn't it have been at 12:10 P.M. that Agent O'Clock stopped helping you instead of 12:36?

A I don't believe so.

Q Why not?

A It's just to the best of my recollection. I don't, you know.

Q Are you saying that you have a specific recollection that goes back to the afternoon of June 26th that at 12:36 he stopped helping you?

A No. I'm saying that by having looking at these, this 302.

Q Yes. That's No. 75 for identification?

A Right.

Q I have to keep saying those numbers so the record is complete.

Go ahead.

A Okay. That by looking at this I usually can recognize something that you occurred yourself, especially when you read it. And by looking at this, the first thing I can recall hearing myself is the 12:36 entry.

Q When you use the expression "hearing myself," are you telling us that until 12:26 you yourself heard nothing coming Dyer the speaker, but you only got it from Agent O'Clock? Or are you saying that you heard it, he heard it and he was helping you in your note taking?

{1680}

A That we both heard it and he was helping me in my note taking.

Q As far as you know did he ask you while he was helping you to write anything down which was inconsistent with what your ear had heard?

A No. Sometimes I didn't catch the whole thing, though, and he would fill it in for me.

Q Can you tell with respect to the 12:18 P.M. entry whether you heard that one yourself?

A I don't recall it at all.

Q Does that mean you don't recall whether you heard it, or you don't recall anything about it at all?

A I just don't recall it.

Q Now, when Agent O'Clock was working with you was he working in his official capacity?

A Yes.

MR. TAIKEFF: Excuse me one moment, Your Honor.

{1681}

(Counsel confer.)

MR. TAIKEFF: All right, your Honor, battle by stipulation.

Instead of offering the entire document, we offer the first two pages of Defendant's Exhibit 75 for identification.

MR. SIKMA: We have no objection to that, your Honor.

MR. TAIKEFF: I have no further questions of this witness.

THE COURT: Just a moment. I want to be sure I understand the stipulation. You are offering it in evidence, the first two pages of 75?

MR. TAIKEFF: That's correct.

THE COURT: There is no objection?

MR. SIKMA: No objection.

THE COURT: Very well. The first two pages of 75 are received in evidence.

(The first two pages of Exhibit 75 are received in evidence.)

MR. LOWE: Counsel, wait just a moment.

MR. SIKMA: I have no further questions of the witness, your Honor.

MR. LOWE: Just a moment.

MR. TAIKEFF: May we approach, your Honor?

THE COURT: You may.

{1682}

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

MR. TAIKEFF: Your Honor, that leaves the rest of the document without a proper foundation. I would assume that's the Government's position?

MR. SIKMA: Yes, your Honor.

MR. TAIKEFF: Now, there remains one witness who could complete the foundation, and that is Agent O'Clock. We have two agents coming on on Monday, Agent Waring and Agent Hughes; and I suspect that this document may be necessary in the course of cross-examining them, and I really don't know why the Government is resisting the offer of the document, but it was my understanding that some reasonable opportunity would be afforded the defense to lay the

foundation so that your Honor could make a final ruling on this entire document; and it was suggested by Mr. Hultman when that was being discussed at the side bar that we do it in front of the jury, and they produced this witness.

However, I think the record will show -- and I am basing this upon, not a memory, but a past recollection recorded, that Mr. Sikma said in open court during the argument on this subject -- we had a rather lengthy argument -- that Agent O'Clock was not present during the first half hour and the reason I believe that that was {1683} his statement -- I will have to search the record to find it -- is because on the second page of the 302 it specifically said that he was present, and I made a little footnote for a potential cross examination question to see whether there would be a contradiction between the testimony to be given and what it said there, and Mr. Sikma's remark.

Now, maybe he misspoke when he said that, but now we are dealing with the exact opposite. We not only have him present, but he is present and performing an extra function. It seems to me it would be appropriate to request at this time that Agent O'Clock be made available Monday morning so that we can finally explore the foundation of this document because we always seem to be frustrated by some missing link; and then if appropriate, get the entire document into evidence and so we can use it in cross-examining here and use it --

MR. LOWE: (Interrupting) May I make an inquiry?

MR. SIKMA: Just a moment. Your Honor --

MR. CROOKS: (Interrupting) Would you mind letting us finish?

MR. SIKMA: (Continuing) -- I am going to object to this for the reason that they went into it on the grounds back there that they were concerned about the first two pages of this; and I had a misunderstanding with regard to the initial part of that, that the initial part of this -- {1684} I thought that this was a summary, was a summary in fact of Special Agent O'Clock, the first part; and I thought that this would solve this problem by going along with this and saving some time; but if counsel is going to attempt to put this entire document in, I think it clutters up the record. I am going to resist it, and I am going to resist it very strenuously I am going to resist putting Agent O'Clock on out of order because it is totally irrelevant. It has no bearing on the facts of the case. As far as this case is concerned, it is totally immaterial, and for this reason we are going to resist it.

MR. LOWE: May I just make an inquiry of Mr. Sikma? It may save us a lot of time, Judge.

On a lot of Government exhibits you asked us to stipulate foundation without waiving arguments about relevancy. It seems to me that what you are talking about here is relevancy. I doubt that you would challenge the foundation of the accuracy of an agent's 302.

Are you willing to stipulate foundation in order to present the question of law to the Judge as to whether it is relevant or not and avoid a lot of time delay in having to call Agent O'Clock in? It seems to me that really would save us a lot of time and trouble here.

MR. SIKMA: I would have to consider that later. I don't think that foundation could be established through {1685} Agent O'Clock or any other witness, the type of foundation that would make this document admissible.

If the Defendant insists on calling Special Agent O'Clock who has retired subsequently in their own case, there is nothing we can do about it, but we are not going to go any further on this issue with regard to this unless we are ordered to do so by an order of the Court.

MR. TAIKEFF: I think, your Honor, unless your Honor is going to rule that this witness is not competent to give the testimony she gave, that the foundation is really already in. She says he was listening, she was listening, he was telling her what to write down, June the 1st, 41 minutes approximately. She was an FBI employee. He was a Special Agent. Whether he made a mistake goes to the weight, not to the admissibility. It was put down on a 302 which is an official FBI report, and it stands for what it says it is. The jury should know.

MR. SIKMA: Your Honor, this first 40 minutes, or whatever, is already in evidence, and we can argue about that.

MR. TAIKEFF: That's the point. The foundation is already here on the record.

MR. SIKMA: We have waived it to this limit, and I think the rest of it the Court has ruled on; and I think that, unless the Court changes its ruling, that we are {1686} going to retain our earlier position.

MR. TAIKEFF: It is the only document that purports to relate what was transmitted that day. There are no original notes left. It has perhaps not the fullest exploration of what weight to give to the document because Agent O'Clock is not here to testify; but if the Government feels that the document should be given less weight than it would merit on its face, the burden would be upon them to introduce evidence to show why the jury should not accept this document for what it says.

It puzzles me that the Government tries to keep out a document which is apparently prepared by the FBI in a meticulous and detailed fashion, which says it doesn't purport to quote but rather to give a summary of what was going on. That's the only piece of evidence of what was happening over that radio in existence in the world.

THE COURT: Well, I am still going to reserve ruling. I am going to review this colloquy and think about it over the weekend.

MR. TAIKEFF: Thank you, your Honor.

MR. LOWE: May I raise one question? I presume Miss Johnson wants to go home?

MR. SIKMA Yes, and so does Mrs. Price because she has a small child at home.

MR. TAIKEFF: We can agree --

{1687}

MR. LOWE: (Interrupting) I have a couple of questions. I don't care if you want to excuse the jury and do it out of the presence of the jury and have something like that rather than to have to call her back.

MR. SIKMA: What do you want to know?

MR. LOWE: I want to have it on the record that these times were times -- let's put it this way -- that she gave to Agent O'Clock times which she herself observed were coincident with the items she wrote down here; and then either by stipulation with you or by calling Agent O'Clock, we would want to have Agent O'Clock say that she accurately recorded the times she gave to him, similarly to lay the foundation that these times and these transmissions are accurate.

MR. TAIKEFF: Times are accurate.

MR. LOWE: Put it in the record, that's all.

MR. SIKMA: I think that the defense misunderstands what the witness has testified to. The witness testified that during the first --

MR TAIKEFF: 41 minutes.

MR. SIKMA: (Continuing) -- 41 minutes, Special Agent O'Clock was there. She is making the estimate of the time in this period of time.

MR. LOWE: I understand that, during the first 41 minutes.

{1688}

MR. SIKMA: He is making a statement of what was said.

MR. LOWE: I assume that we would have her put this on the record that after 12:36 -- I am assuming he interviewed her with the assistance of reading her notes -- but they went down the notes and he used that to prepare the 302; but that the notes had the time, 12:41, 2:55 reading on the notes.

MR. SIKMA: We will stipulate to that, that's generally what she did, She made the estimate.

MR. LOWE: Agent O'Clock would say that he accurately broke down whatever times it was she gave him. That's all I am talking about, getting it in the record.

MR. SIKMA: I think she actually typed down the times when she typed the notes. She typed it.

MR. TAIKEFF: She read a time off the clock in the office. You would be prepared to stipulate that's a fact?

MR. SIKMA: We would.

MR. LOWE: Probably stipulate also to the best -- I think it says here to the best of her ability what she wrote down, you know, at a given time here, with the names and everything, was as accurate as she could write it down as she was listening to it. Agent O'Clock would say that this is an accurate depiction of what she told him, basically the same.



{1689}

MR. SIKMA: I think we would say that.

MR. LOWE: That would be good.

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

THE COURT: It is five minutes almost past the time that I usually promised you that you can leave the courtroom.

The Court is in recess until 9:00 o'clock, Monday morning; and would ask the jury to remember that you must continue to keep an open mind and not discuss the case.

MR. SIKMA: Your Honor, I beg the Court's pardon. This witness is excused, I take it?

MR. TAIKEFF: Yes, your Honor.

THE COURT: We almost left you in the witness chair. You are excused.

(Witness excused)

(Whereupon, at 5:05 o'clock, p.m., the trial of the within cause was adjourned until 9:00 o'clock, a.m., on Monday, March 28, 1977.)