

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

CR NO. C77-3003

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**
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VOLUME XXIV

Pages 5169-5265

{5169}

SATURDAY MORNING SESSION

April 16, 1977

Whereupon, the following proceedings were had and entered of record on Saturday morning, April 16, 1977, at 10:30 o'clock, P.M. without the presence of the jury and the defendant being present in person:

MR. LOWE: I apologize, Your Honor. I lost five minutes on my watch last night.

Do you have some initial matters, Your Honor, or do you want me to start?

THE COURT: I have two initial matters. Is Mr. Ellison around?

MR. LOWE: I have not seen him this morning. He's not planning to be here at 10:30 I do not believe.

THE COURT: I appreciate that.

He does plan to be here today?

MR. LOWE: Yes, sir.

THE COURT: After the case has been submitted to the jury, I plan to hold a hearing in chambers on two matters this afternoon. The first matter I want the defendant present and I want Counsel for both sides present.

The second matter I want simply defense Counsel present including Mr. Ellison.

MR. LOWE: All right, sir.

Do you have a time you want to set or after we finish {5170} with the charge?

THE COURT: I would assume, I think we'll set a time for 1:30 this afternoon.

MR. LOWE: All right, sir. Fine.

THE COURT: An inquiry has been made of the clerk as to whether, this inquiry has come from the media as to whether they may interview the alternate juror after the alternate has been released, which will happen as soon as the jury has been instructed.

I would, before I make a decision on that, I would like to hear any expression that Counsel might have with reference to that.

MR. HULTMAN: Your Honor, I think that's a matter I probably first for the defense to respond to but I will be glad to respond.

THE COURT: It doesn't make any difference. I want the response from both sides. It makes no difference to me.

MR. HULTMAN: Very good, Your Honor.

For one, Your Honor, the government would object, not because of any amendment right of the press, but on the grounds that a jury is deliberating and the release of that kind of information still could run the risk that that kind of information could get to the jury again through a press statement and responses and could in effect, I think, be prejudicial as far as the ultimate determination of the case. {5171} It would be for the protection that the jury might be able to deliberate without running additional risks of any kind in all fairness, first, to this defendant, and, secondly, to the government, that the government would resist any such discussion until the case has ultimately been terminated by the return of a verdict by the jury.

MR. LOWE: Your Honor, I think there are two questions then and one of them we have standing and the other one we do not have standing, nor does the government.

The one we have standing, obviously, is whether it would in some way taint the jury. I am assuming, and I have all along assumed, that the sequestered jury is indeed sequestered and I don't see any prejudice to the defendant or the government in allowing that, and frankly I have serious doubt as to whether the Court even has power to do anything on that once you've released him.

The second question is rights of that individual juror and we don't have standing on that, but I would merely observe, as it is the case to come out of the grand jury, you can make the same argument with them as you do here. Jurors after any case is terminated, the jury has an absolute right to refuse to be interviewed or give an interview or make a statement or do whatever they want to do and I don't think we have standing on that.

I'm not here representing the newspapers or I would {5172} have some argument about that. I'm not here representing the jury, I might have arguments on that.

We would take the position that we simply do not take any position except that we don't object to it.

THE COURT: Very well.

I'm going to bring the jury in at exactly 11:00 o'clock but I will hear Counsel's now.

MR. LOWE: I think it can be very brief on this. I do have one matter that is of some concern to me and I think I should mention it. It's going to be very brief. Your Honor may not want to deal with it right now. I don't know if, at the beginning of the trial we discussed this model and it was my understanding that we agreed to have it for use in the courtroom during the trial. That was by stipulation. There were some differences of opinion by government and defense as to how it would be used, if at all, during deliberations by the jury and we simply agreed not to agree on anything one way or another. The only thing we have agreed on on this whole trial is not to agree on that.

In any event, I would like to raise the defense position. We feel the jury should not have access to the mockup unless Counsel and the Court are present. The reason we did stipulate, correct me if I misstate this, Mr. Hultman, the mockup should not be used by the jury for making line and sight type things, getting down and seeing over the hill {5173} whether you can see the car, see whether you can see somebody behind the house at a certain point, and that it was for general orientation and not for that purpose. We feel, therefore, that in order to avoid a misuse by the jury that Counsel ought to be present. I don't mean saying anything, just simply present. This is bolstered by the fact in Mr. Hultman's summation, I'm sure in the heat of argument he said this without thinking, "If you have any doubt whether you can see the cars from where Leonard Peltier was at, look at the mockup." That was the second thing we agreed we could use the for.

I would be concerned if they had access to it, unescorted access. It might be the jury would never ask to see it. If they do I think it would be appropriate for Counsel and Court to be present, whatever they do observe. I don't know if government wants to respond. I wanted to tell the Court before you charge the jury.

MR. HULTMAN: Your Honor, first of all, I think we agreed those things that were obvious and were supported by other evidence the Exhibit 20 certainly could be used for. What we were talking about specifically, and I think, John, the fact that what we were talking about in our discussions was that we would not get into a posture with rises and so forth that scientifically it was accurate in that degree. But it certainly was to be used for general observation and I think {5174} the one I used yesterday not only was a general observation but was clearly supported by the evidence and supported by the exact exhibit, the photograph I used to support it. I don't think I made any use of the model that we in any way disagreed on to that kind of use. It was a technical use. When it got down to fine lines and fine points, we said it would be observed and be whatever it was in a general sense of the word and not in a scientific sense of the word.

Now specifically, though, to Counsel's objection, the government believes that it is an exhibit that should go to the jury or be available to the jury in that sense of the word and we have no objection that the Court be present at any time but that they view it. But we would object it being no more right for Counsel to be present when they are viewing any other exhibit that is in this particular trial during the course of their deliberations.

THE COURT: The Court feels that it would be improper for the Court or Counsel to be present during any portion of the jury's deliberation, and the Court will instruct the marshals that if the jury, the mockup will remain in the courtroom. The marshals will be instructed and are hereby instructed that if the jury desires to view the mockup they may be brought into the courtroom with the marshals just for the purpose of viewing it generally without citing it or discussing it within the courtroom. The jury will be instructed {5175} they may deliberate and discuss the case only within the confines of the jury deliberation room.

MR. HULTMAN: That's quite satisfactory, Your Honor.

THE COURT: Very well.

MR. LOWE: May I make one other point. The clerk mentioned the two exhibits, I think they're 70 and 71. I know the big one is 71, at least. They might be taken into the jury room. I have some concern that once they are placed in there the items on the board be in the correct location.

Am I correct, Mr. Hultman, that each one of those has a pencil out line and designation behind it?

MR. HULTMAN: That's correct, John.

MR. LOWE: I think in order to avoid confusion I would ask the jury be instructed that that is the case and my concern is that if one juror moves a green flag for some purpose and doesn't say anything about it, another juror may look at that and think that's where the item belongs. I think as long as each of those has a pencil out line with a number, the jurors can make sure they are in the exact place.

I don't object to those, those green flags are not in evidence, I don't think it's objectionable and in fact it may help the jury to understand and recall the evidence. I would ask the Court to specifically point that out to the jury in case something gets disoriented on the board.

THE COURT: Now specifically what is it you wanted to {5176} point out?

MR. LOWE: There are pencil out lines for each of the little flags used by the FBI, I presume so when Counsel puts them on the board they know where to go so the arrow points to the correct spot.

MR. HULTMAN: For example, Your Honor, if you take this off there is a pencil out line with the number 37E so you know where 37E then goes. That's the question that Counsel just asked.

MR. LOWE: I think you just point that out to the jury, if they know that a thing seems to be out of place, they can check it by looking. That's all I have before I make my offer of proof, Your Honor.

If you want me to proceed I will.

THE COURT: Just a moment.

You may now proceed.

MR. LOWE: Your Honor, with this offer of proof it is the first two items that are in regard to specific instances, representative instances of violence on the reservation.

William Rossmore, attorney for Connecticut at a time prior to the events of Oglala, the shoot-out, he and several other people, including an attorney named Roger Finsal, an attorney named Marty Kobelman and three other people, Eva Gordon, a woman, Kathy James, a woman, and Bernardo Esquivita, {5177} native American person. Mr. Rossmore, Mr. Finsal, Miss Kobelman, Mrs. Gordon and Mrs. James, I understood, perhaps not Mrs. James, flew in a light plane to the reservation airport and were met from an automobile, a convertible type automobile with the top up by Bernardo Esquivita and Kathy James who at the time was an assistant at the Wounded Knee Legal Defense-Offense office at Rapid City about 100 miles away. They were picked up by the car and they went off and did some sort of investigation with regard to a legal case they were working on, a criminal case of some sort. When they returned to the airport they found that their plane was riddled with bullets from some unknown source but it was not deemed to be safe to fly. They turned around and decided they would drive back to Rapid City and make arrangements to fly back commercially. Before they could leave the airport area they were surrounded by a number of cars filled with goons. One of the people who was present in one of the cars was Dick Wilson, the tribal chairman that you have heard describe in this trial. The goons came over to his car. The people inside of the car locked the doors. They could not make exit because they were blocked in. The goons took out knives, cut through the convertible top, reached in, unlocked the doors and forced the people out, whereupon, Mr. Rossmore and Mr. Finsal were beaten very severely.

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And one of the goons approached Roger Finsal with a knife and had it not been for a deflecting blow aimed by Eder Gordon who apparently was quite upset because she knew Mr. Finsal and that knife cut Mr. Finsal from the forehead clear across to the top of his head, top back of his head very badly. This instance would be, and I might add that at the time they got them out of the cars Dick Wilson said "Stop them" and upon that order from Dick Wilson they did exactly that, they stopped them. That would be one instance.

Another instance involved a person named Jack Steele who was outside of the Law and Order Building in Pine Ridge which is the BIA police headquarters there and three men, I have no identity for the men, I don't know if it was ever determined, three men beat him up in the

presence of two men who he identified as special agents of the FBI. After he was beaten up very badly he went inside of the BIA building and wanted to have the three men arrested and asked the agents why they had not done anything while he was being beaten up; and he would testify that the two agents said that they were not a protective agency, they were merely an investigative agency.

As to Bambi Sanchez who did testify in this courtroom, Your Honor stopped an inquiry line which was going to an event which occurred when some special agents of the FBI came to her house where she and her husband LeRoy Casados, {5179} and I use the word husband, I should say I'm not entirely clear, it's my understanding that they are married and that she simply chooses to use her maiden name, in any event LeRoy with Bambi, a special agent came in, and when they burst in one of them held a gun to Mr. Casados's face and the second agent said words to the effect "It's Leonard, shoot him". We would offer that, we would offer that, or intended to offer it for the purpose of showing that LeRoy Casados was sufficiently a lookalike of Leonard Peltier that one of the agents made that particular comment. And there is evidence in the transcript, of course, that, about LeRoy Casados having a vehicle in which Special Agent Williams' gun was found and other information.

As to Myrtle Poor Bear, there are three things which we would have additionally put on the record but which became moot as a result of Your Honor's ruling. First of all we would have introduced members of her family to show two things: To show that her fear of the FBI had extended, and statements that she made to that effect had extended over a period of more than a year. And to show that statement about repeated meetings with Special Agent Price and Wood extended over a year. Your Honor may remember, I believe I'm correct that Special Agent Price indicated that he met with her only a few times. Myrtle Poor Bear said somewhere between ten and twenty times. So we would have shown utterances by the {5180} family, in the presence of the family to indicate that she had met with them many more times and to show that her state of mind, a fear of the FBI was not of recent vintage.

The second thing we would have shown what have been to show that there was a dramatic change overnight between the time Myrtle testified in detail in this courtroom and the next day when we brought her in with the weight of the world lifted from her shoulders as a result of having finally said her story in public. In order to convince Your Honor that she indeed is a believable person, not only what she said was believable the first time, but particularly the second time explained why she was nervous and having difficulty answering.

The other aspect of Myrtle Poor Bear we would have wanted to show that in the extradition proceedings in Canada the affidavits of Myrtle Poor Bear were used and were the basis of legal action instigated by the U. S. Government to extradite Leonard Peltier; that the use was as late as February of 1977, and certainly in December of '76 when he was actually brought back from Canada. To rebut the suggestion that the Government obviously knew that Myrtle Poor Bear was not a believable witness and that is why they did not use her because it is inconceivable that the Government would take the position they could use her affidavits in a legal proceedings. In fact, they did not believe she was a believable witness, {5181} and that the Government would knowingly use what they thought was unreliable for such a serious legal proceedings. So we would have produced a witness who would have testified that the three affidavits were the sinequanon of extradition, that if it had not been for the Poor Bear affidavits the extradition case would have failed and we would either have had testimony or there would have been a fair inference that the Government knew that when they tendered those affidavits.

That is the offer of proof in its entirety, Your Honor, with regard to testimony in somewhat more detail that we did not actually put on because of Your Honor's rulings and that is all I have.

MR. HULTMAN: Your Honor, could I just respond to one item? It will take just two seconds, I would like the record to reflect that it is my understanding on the items concerning Mr. Wilson

and those charges concerning him that it is correct that he was acquitted on those particular charges and I would wish the record to reflect that.

MR. LOWE: It is my understand that Mr. Wilson was charged out of that event and was acquitted. And in fact, Your Honor, I will add that to my offer of proof. I'm thankful for Mr. Hultman raising that. I think that goes further to show the fear of people on the reservation because even when there's a clearcut instance of unprovoked, unjustified violence they cannot get justice through the courts. And {5182} Mr. Wilson was in fact acquitted and I think that adds to the offer of proof.

Mr. Peltier advises me that not all of them were acquitted. Do you understand that, Mr. Hultman? I'm not familiar.

MR. HULTMAN: You mentioned Dick Wilson, that's all I have knowledge about.

MR. LOWE: You don't have any knowledge of those? Well, then I can't offer that then, Your Honor.

THE COURT: With reference to your named witnesses other than Sanchez and Myrtle Poor Bear I think the record will show that, I think the record is correct, is it not, Mr. Lowe, that you did not even mention those witnesses to the Court in this respect until the last day of the trial; and after you had announced that the defense was going to finish the presentation of their testimony on that day?

MR. LOWE: Excuse me, Your Honor. Your Honor, I can only speak of my own knowledge. But I would like to say that to my knowledge that is the first time those names specifically were mentioned in open court or to Your Honor.

I understand, though, that as I pointed out, I guess it was the 7th, the afternoon of the 7th or the day of the 8th, the Thursday and Friday before the Easter weekend when I was not here that Your Honor did have at a sidebar conference some discussion with counsel about a ruling on the relevancy {5183} and the admissibility of specific instances of violence. I do not know whether those names were specifically mentioned. I do not know whether those events were described with some detail without mentioning the names.

I'm simply, I don't know that. I have not looked at the transcript, but these were people for whom subpoenas had been out for a long time granted by the Court, of course, pursuant to our usual arrangement with the Court. And I did offer them prior to the close of the defense case. But the reason we did not mention them --

THE COURT: Where were these witnesses at at that time?

MR. LOWE: I do not know, but Jack Steele was here I was advised William Rossmoore was, was available, standing by to come if he could be used or maybe -- that's what I'm advised.

THE COURT: Available where?

MR. LOWE: I do not know. I simply, I don't know. He's an attorney from Connecticut, but in any event he could have been here for the next morning. I only mentioned this, Your Honor, that we

obviously knew Your Honor's ruling saying no specific instances would be allowed, and it seemed to me that that was a foreclosure of production of those witnesses.

MR. HULTMAN: Your Honor, might I on the record indicate that during the course of the trial the names of witnesses, agreements were given to counsel at a given time {5184} somewhere in the proceedings, at least when they were expected to be called, and to my knowledge none of the names that have been mentioned at any time were given either on or off the record to the Government.

MR. LOWE: The reason for that is that they were not early witnesses in our case. In the beginning of our case they were later witnesses and I, Mr. Taikeff made those lists up, but I can only assume that we had simply not gotten to that point. We had not given any of them. We were giving him a day or two --

MR. HULTMAN: It was the case, clear up to the end of the trial, that I was given names each day up into and including the last day of the trial. And I never received any of those names.

MR. LOWE: I acknowledge that that would be the case because after Your Honor ruled that you would hear specific instances of violence there was no purpose in putting their names on any witness list.

THE COURT: Court adheres to its ruling that the evidence on the specific instances of violence unrelated to the issues in this case would not be received in evidence.

MR. LOWE: I understand, Your Honor. Thank you.

THE COURT: And the offer of proof is therefore denied.

MR. LOWE: Thank you, Your Honor.

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When you say the offer of proof is denied of course you mean it's part of the record, but you are simply not changing your ruling on the basis of this, I trust.

THE COURT: The offer of proof is a part of the record but I'm denying your right to put the proof, specific proof on the, into the record before the jury or in this case because of any, because of undue delay that would be created even before the Court. Other than your statement, in other words, I'm denying you an opportunity to put the specific testimony of these two witnesses that were offered on the last day after you had indicated that you were ready to rest I am denying; and there was an indication that at least one of these witnesses was in Connecticut or someplace. I am denying you the right to have those witnesses testify out of the presence of the jury.

MR. LOWE: No, I understand that.

THE COURT: And we'll take, I want to be sure that the record is clear.

MR. LOWE: Yes, sir.

THE COURT: And would take as an offer of proof your statement as to what those witnesses would testify to if they had been called.

MR. LOWE: That's what I understood. Thank you, sir.

THE COURT: Very well. The jury may be brought in.

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AFTERNOON SESSION

(Whereupon, at the hour of 1:30 o'clock, p.m., the following proceedings were had in chambers with counsel being present and the Defendant being present in person:)

THE COURT: In this case there have been offers of proof of misconduct; and in order that the record should be complete -- at least with suggestions of misconduct which have come to my attention -- I decided to make a record here in chambers this afternoon after the case has been submitted to the jury.

So I am going to, first of all, ask Mr. Hanson to take the chair over there as a witness and state for the record, In narrative form for the record, an incident that you reported to me.

THE CLERK: Thank you, Judge. If you don't mind, I will read from the statement that I have written out.

THE COURT: You may.

THE CLERK: After work on April 12th, 1977, about 6:30 p.m., Robert Sikma provided me with a note of a phone conversation had between the U.S. Attorneys office and a witness by the name of Marvin Bragg. I will read that note to your Honor.

THE COURT: Very well.

THE CLERK: The note provided to me by Robert Sikma reads as follows:

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Marvin Bragg called at 2:30 -- emergency. I called him at 236-8181, Moorhead, Clay City Jail at 2:45; and the note represents that Mr. Bragg told the United States Attorney the following:

Yesterday after court the turnkey started to put Peltier in same cell with Bragg. Bragg ran out and told him that he was testifying against that man. They then put him in another cell.

Later he got a note from Peltier through a trustee who assured it was destroyed thereafter, telling him that if he didn't get back on for the defense and change his testimony, they would get his wife as well as him.

The other guy (Indian) on same matter was also given the word.

Bragg was told to contact the defense this way: Dial 233-4909, and ask for John.

I thought about the contents of the note on the way home. I contacted Judge Benson who felt I should attempt to confirm the allegation.

I obtained approval, as requested by the jailer, from Chief Deputy United States Marshal Warren to speak with Marvin Bragg.

Mr. Bragg restated what he had said in the note of the phone conversation and added that he had come very close to changing his testimony. He stated that five {5188} additional years for perjury were worth it to save his life. He told me that he had the phone number, 233-4909, in his pocket at this time, to call if he wanted to change his testimony.

I asked him to describe who the trustee was who passed the note from Peltier to Bragg. He did not know his name, but described him as being a tall dude with long blonde hair and with glasses.

I checked with the jailer, and the jailer advised me that there were about four persons in jail who fit this description.

I talked with one Dave Williams who denied passing any note. Another person, Ron Felix, was apparently asked by either the jailer or Dave Williams, and he also denied passing any notes. The jailer felt that it was very probable, however, that a note could have been passed by a trustee.

The note attempted to get Bragg to come back to court and change his testimony about promises made by the FBI.

Bragg stated that he was in the cell with "two Missouri boys", and they and the trustee made sure that the note from Peltier was destroyed.

The jailer confirmed that Bragg had spent the night with two Missouri boys.

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I also talked with Marion High Bull. He had spent the night in the same cell as Peltier.

He said, "I said a lot of things last night to save my life," or words to that effect. I told him the story that Bragg told me.

I might mention at this time he indicated he was afraid to talk at his end, so I related the story to him that Bragg told me. He agreed that he had been threatened in an attempt to get him to change his story.

The last thing, the name of the jailer that I talked with was a gentleman by the name, Ed Boldt -- (spelling) B-o-l-d-t.

I checked -- the only other thing I have done on this, Judge, is I have checked the phone number given to me by Bragg, and that phone number -- I asked Anne Kuschel of our office to check on it; and with her memory she advised me that that number was familiar to her, and that that is the phone number listed on the bond given by John Trudell, an address in Moorhead; and we checked with the phone company, and that phone is registered to Dino Butler.

That is all I have.

THE COURT: Counsel for the defense may ask Mr. Hanson any questions.

MR. TAIKEFF: No questions.

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THE COURT: Counsel for the Government may ask Mr. Hanson any questions that you have.

MR. HULTMAN: I don't have any questions, your Honor.

THE COURT: Very well.

Bring in either Mr. Bragg or Mr. High Bull.

I believe you stated that was April 12?

THE CLERK: Yes, that happened on April 12, your Honor.

THE COURT: Did you talk to Bragg and High Bull in person or by telephone?

THE CLERK: By telephone.

THE COURT: On April 12?

THE CLERK: On April 12, yes. Yes, sir.

THE COURT: Very well.

Mr. High Bull, will you come forward and sit in this chair, please?

(Whereupon, the following examination was had of Marion Allen High Bull:)

By THE COURT:

Q Mr. High Bull, this gentleman sitting in that chair directly across from you is Ralph Hanson. He is the Deputy Clerk of Court of this court, and Mr. Hanson has just made statement as to a conversation that he had with you on April 12th by telephone, concerning some conversation that you and he had relating to some threats that he states you told him {5191} about on the telephone, the threats having been alleged to have occurred when you spent the night with Leonard Peltier in a cell.

Would you tell us in your own words what that conversation was -- first of all, what the conversation was that you had with Mr. Hanson?

A Well, the evening that I was sent over to the county jail, I was put into a cell which I didn't know at that time Leonard stayed in; and I was trying to figure out some way, you know, after I found out it was his cell, trying to figure out some way to make up a story or something so that I won't be harassed or threatened in any way, you know. Well, anyway, after that Leonard came in; and the other guy, he just slipped by him and went out the door, and I was left in there; and Leonard come over and as he was walking over, he was giving me a mean look. I knew then what I was going to get, you know. You know, some beating or something like that. That's the only thing that came to my mind because I was in there. I was actually called as a --

Q (Interrupting) Defense witness?

A (Continuing) -- defense witness, but the statement that I put in, that's what the whole thing was about; and that I was -- he told me to tell the Court and in some way to relate that the FBI had something to do with me making that statement; and I gave him a statement which was true in some parts, which wasn't, {5192} as long as it kept me from getting hurt or anything, well, you know. Well, I told him, I said that I would get up on the stand the next day and change my statement, but I wanted out of that cell and I had to keep myself from --

Q (Interrupting) You told who that you would get up on the stand and change your statement?

A Leonard.

Q You told him, and why did you tell him that, did he say anything to you?

A No. Well, you know, he asked me so I had to. Well, I was in the same cell he was.

Q I know. What did he ask you, what did he say to you?

A He said, "The only way that you can knock that statement out," he says, "is get up there and say something that the FBI threatened," or something like that, you know, "on you." That's why I gave that statement -- and that would knock that statement out.

Q Were any threats made to you?

A That's the only thing I can say right there.

Q Pardon?

A That's the only thing I can say right there, other than that, well, everybody knew the word was out that we were snitches, and that was it. Being a snitch, your life is in jeopardy, you know, anybody -- you are anybody's game.

Q And you did tell Mr. Peltier that you would go up the {5193} next day and change your statement?

A Only to get out of the cell house.

Q Did you get out of the cell?

A Yes, the next morning. I wrote a note out, and I got out of there just that fast.

Q Wrote a note out to who?

A The jailer.

Q To the jailer?

A Yes.

Q What did you put in that note?

A I told him I wanted to get ahold of the U.S. Marshals. I had something to tell them, and that I wanted out of that cell as soon as possible. I didn't want to stay in it.

Q Why were you fearful of Leonard?

A Because of the statement that I made against Jimmy Eagle.

THE COURT: Mr. Taikeff, do you have any questions?

MR. TAIKEFF: I think I may have more than one question. It would depend upon the answer whether I have any additional questions.

By MR. TAIKEFF:

Q I have listened to what you said, and I want to make sure that I understand it.

When you got into that cell, you realized that Leonard was in that same cell although he wasn't present yet, that he was going to come into that cell, is that right?

{5194}

A No.

Q When you first went into the cell, who was in there?

A There was other inmates in there.

Q Was Leonard in there?

A No.

Q So then you realized before Leonard got there that he was going to be in there?

A Not after one of the guys in there said his cell was at the end.

Q But before he ever showed up, you knew he was coming, right?

A Right, trying to get out of there.

Q That's when you started worrying?

A No, just didn't want to be put in the same cell with Leonard.

Q Before Leonard got there, you started worrying about the fact that you might be in the same area with Leonard, isn't that right?

A Right.

Q And the reason you were worried was because you knew that you had given a statement against Jimmy Eagle, right?

A Right.

Q Not because of anything that Leonard said to you, isn't that correct?

A Well, he is the one that said it.

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Q Before he got there is what I am talking about, before he got there you were worried about something, weren't you?

A Right.

Q What were you worried about?

A Him.

Q And that was because you had given a statement against Eagle, isn't that correct?

A Yes, correct.

Q That was not because of something he said to you, right or wrong?

A It was on account of him too.

Q Wait a second. We are talking about before he even showed up, you were worried because of things in your own head, not because of things he said to you, isn't that right, before he showed up?

A No.

Q No? What did he say to you before he showed up?

A Who, Leonard?

Q Yes.

A Nothing.

Q So then you were worried about things because of your own private thoughts, isn't that right?

A No.

Q Well then, what were you worried about, what was the cause of your worry before you saw him there, you understand I {5196} am saying "before you saw him there"?

A When I was back in the cell over there, when you and I first talked.

Q In the Marshal's office?

A Right.

Q Yes.

A There I told you that I didn't want to testify for or against anyone because as soon as I got up on the witness stand to testify for or against anyone, that I would be a snitch.

Q Yes, You told me you were worried either that you would be in trouble with the prison authorities or with the prison population, so you would rather not testify for anybody, isn't that basically what you told me?

A Yes, because -- not because of testifying, but because of the statement that I made.

Q I understand you were afraid that it would come out in open court that you had once talked to the FBI and told them about Jimmy Eagle's statement?

A Right.

Q And you were afraid if that got back to Leavenworth where you are now doing a very long sentence that you would be in some kind of danger?

A Right.

Q So that was the beginning of one worry. We are talking about a different worry here, we are talking about a worry that {5197} you had after you got back from testifying, do you understand that?

A Um-hum.

Q Now, I think you said you started worrying the minute you found out that you were in the same area as Leonard, isn't that a fair statement of what you said?

A Yes.

Q Isn't that true?

A Would you repeat that again?

Q Yes. What you have told us so far is that you started worrying about this situation even before Leonard showed up?

A Start worrying about what -- oh, yeah, the statement, yeah, the statement that I had to give up there.

Q After you testified they brought you back to Moorhead, to the jail across the river?

A I don't follow you.

Q All right. We will take it in small doses.

You testified in this courtroom before Judge Benson and a jury?

A Yes.

Q After that where were you taken?

A Back to Moorhead.

Q All right. That's what I am talking about.

When they took you back to Moorhead, was Leonard there?

A No.

{5198}

Q They put you in a cell, right?

A Right.

Q You found out Leonard was in that same cell area, right?

A Right.

Q You started worrying, right?

A Yes.

Q Up to that point Leonard hadn't spoken to you, right?

A No.

Q Then Leonard showed up, right, correct?

A Right.

Q You had some conversation with Leonard?

A Small.

Q Tell us everything he said to you, not what you said to him, just the things he said to you.

A Well, he said something like -- he was referring to this statement that I made.

Q About Jimmy Eagle?

A Yes, and that one of these days I will be going off living with my own people, and that it was the Wausheshu --

Q Wasusheshu, Indian word for white people.

A Anyway, it was the white people that we had to worry about, and not testify against another brother.

Q Did he say anything to you?

A Not directly to me.

Q Did he say anything that you overheard that he said to {5199} anyone else, that you heard with your own ears, from his mouth?

A Well, he said that we took the stand, and he put the word out on us that we were snitches.

Q He told you that he would put the word out?

A He didn't tell us, I overheard.

Q You overheard him say to somebody else?

A Yes.

Q In fact, you are a snitch, right?

A You might say that.

Q And snitches are problems for people in jail, right, isn't that true?

A Right.

Q And so he just told other people in jail to watch out for you because you were a snitch, right?

A Right.

MR. TAIKEFF: I have no further questions.

By THE COURT:

Q Was any suggestion made to you that you should change your testimony that you had given in court?

A Yes.

Q And who made that suggestion?

A Leonard.

MR. TAIKEFF: What words --

THE COURT: (Interrupting) Just a moment, I am questioning.

{5200}

Q (By The Court) Who made that suggestion?

A Leonard.

Q How was it made to you?

A He said the only way that you can clear yourself is to get up on the witness stand, "Well, I will have my attorneys get you on the witness stand to change your statement."

Q And who did he say that to?

A Me.

Q He said that to you directly?

A Yes.

By MR. TAIKEFF:

Q Did he tell you he wanted you to tell the truth about what happened? "Yes" or "no".

A Told me to tell the truth about what?

Q About how you came to give that statement about Jimmy Eagle.

A No.

Q What did he say, he wanted you to lie?

A Yes.

Q Tell us what he said, tell us what his words were.

A Well, I can't say it was a lie or not, he just told me to get up on the witness stand and change it, say something to the effect that the FBI threatened, or something like that, so I can knock that statement out.

Q Didn't he say to you that that was based on his belief, {5201} that that is what really happened?

A No.

Q Are you prepared to take a lie detector test on this question today?

A On what question?

Q On what happened in the jail, are you willing to take a lie detector test so we can find out what really happened?

THE COURT: Just a minute.

MR. TAIKEFF: I asked him whether he was willing to, your Honor.

THE COURT: First of all, there are no lie detector tests going to be given. I am simply taking a record of what has been alleged.

MR. TAIKEFF: I would like the record to reflect my client is ready to take a lie detector test on the subject. I want to know if he is willing.

Q (By Mr. Taikeff) Are you willing to take a lie detector test?

A Yes.

Q You are?

A Yes.

By THE COURT:

Q Was any other statement made to you by the Defendant other than what you have told us now?

A No.

{5202}

By MR. TAIKEFF:

Q By the way, the time you are serving is for killing two of your family members, isn't that correct?

A Yes.

THE COURT: Does the Government have any questions?

MR. HULTMAN: Your Honor, I don't have any questions.

THE COURT: Very well.

The Marshals may take Mr. High Bull out. Mr. Bragg should be brought in.

MR. VOSEPKA: Your Honor, perhaps the record should reflect that the note that Mr. Hanson read which had been provided to him by Mr. Sikma was a note that I prepared after a telephone conversation with Mr. Bragg.

THE COURT: Very well.

(Whereupon, the following examination was had of Marvin Bragg:)

By THE COURT:

Q Mr. Bragg, the gentleman sitting across from you in that chair over there by the wall is Mr. Ralph Hanson. He's the Deputy Clerk of Court of this court, and he has reported to us a conversation that he had with you on April 12th concerning some threats that you reported to him as having been made to you while you were at the Clay County Law Enforcement Center over in Moorhead.

Will you tell us in your words what conversation you had {5203} with Mr. Hanson?

A I told him about a note I received from a trustee about I could have a second chance to clear my statements that I made against Mr. Peltier or else I was through, you know.

He told me the statements that I made -- I could get up on the stand; the attorneys would call me back to court, I could get up on the stand and change my whole testimony around, that the FBI had made me say whatever I had to say.

Q And from whom did you receive this note?

A I got it from a trustee.

Q Do you recall specifically what the note said?

A Just somewhat.

Q Well, to the best of your ability.

A What I was supposed to do, you know, that I would be called back to court by his attorneys, and that I would have a chance to straighten up some statements that I made.

Q And the trustee that gave you the note, do you know who he is?

A Not personally. No, I don't know his name.

The note I had I was supposed to read, and I was told to tear it up. The two dudes in the cell with me made sure I tore the note up.

Q You did tear the note up?

A Yes, sir.

Q And the note was to the effect that you should go back {5204} on the stand and change the testimony that you had previously given?

A Yes, sir.

Q And change it in what respect?

A In his behalf.

Q And what were you supposed to say?

A That I made up lies about everything I said.

Q Did you have any conversation with Mr. Peltier himself?

A No, sir.

THE COURT: Do you have any questions?

MR. TAIKEFF: Yes, I do.

By MR. TAIKEFF:

Q Do you know who wrote that note?

A No, sir, I don't.

Q Have you ever seen Mr. Peltiers handwriting?

A No, sir.

Q So therefore --

A (Interrupting) Not until I received the note.

Q I beg your pardon?

A Not until I received the note.

Q How do you know it was his handwriting?

A I don't really.

Q Did you ever have any conversation with him?

A No, sir.

Q Ever in your life?

{5205}

A No, sir.

Q Now, the guy who brought you the note, did he wait there while you read the note?

A Yes, sir, he did.

Q And was he there while it was torn up?

A Yes, sir.

Q Then what was the involvement of the other two people in the cell in making sure that the note should be torn up?

A Because they know Mr. Peltier. They were all a part -- and in the cell with Mr. Peltier -- supposed to be escapees from the Jackson Penitentiary in Missouri.

Q But my question is: If a guy brought you a note and he wanted you to read it, and then he wanted to make sure that that note was destroyed, why didn't he just show it to you and then tear it up himself; what was the involvement of the other two people to make sure that the note got torn up?

A Because they was supposed to pass the word I was a snitch, and he was supposed to make sure and went back and told Mr. Peltier that the note was tore up.

Q Who is "he"?

A The trustee.

Q But if he was there throughout, he could have torn the note up himself, right?

A He could have.

Q So what was the necessity of involving the other two {5206} people?

A Evidently he was told to make sure that they seen to it that I tore it up.

Q But he wasn't leaving the note with you, was he?

A No, he was leaving it with the two dudes in the cell with me.

Q I thought you said he stayed there throughout the time and then he could have torn up the note himself?

A He did stay there.

Q Well then, explain to us what was the involvement of the other two people if he was there and could take care of everything that was supposed to be taken care of.

A The involvement, I guess they were to make sure that I tore it up too.

Q You didn't tear it up, did you?

A Yeah, it was tore up.

Q It was torn up. You didn't tear it up, did you?

A No, sir, I didn't.

Q Who tore it up, the guy that brought it to you?

A No, the two in the cell.

Q The man who brought you the note showed you the note and then he handed the note to the other --

A (Interrupting) No. He handed it to the other two in the cell. They handed it to me, and I read the note.

Q He stood there all the time?

{5207}

A Yes.

Q He gave it to them first?

A Yes.

Q Are you willing to take a lie detector test in connection with this thing?

A Sure am.

MR. TAIKEFF: O.k. No further questions.

(Counsel confer.)

MR. HULTMAN: I may have one question, your Honor.

By MR. HULTMAN:

Q Were you put in any cell at any time in which Mr. Peltier was?

A Yes, sir, I was.

Q Now, when was that?

A As soon as I got to the jail over there I was put in the cell Mr. Peltier was in.

Q Is that when you first came to the jail, you were put in the same cell with him?

A He wasn't in there at the time.

Q He wasn't there at the time?

A No, sir.

Q All right. When then did he come to the same cell area?

A After he come from court.

Q That was on the same day that you arrived?

A Yes, it was.

{5208}

Q You didn't have any idea until he came into the cell that he was going to be there, did you?

A No, sir.

Q Did that surprise you?

A I seen Mr. Peltier, I ran out of the cell.

Q O.k. All right, what was the reason that you ran out?

A Because I knew I was in there and I had made statements towards him at the time, but I was informed from the officers that I was there to testify in the defendants behalf.

Q Would that sort have been a normal reaction for any of us if you were in the same cell with a person who might be affected by the testimony, you didn't want to stay there, is that the conclusion you came to?

A That's right.

Q Did anybody -- did anybody talk to you from the time you came here, except the telephone conversations you have had, have you talked to any lawyers at all about anything since you have been here?

A No, sir, I haven't.

MR. TAIKEFF: You talked to me in the Marshal's cell for about five minutes.

MR. HULTMAN: That's what I was just going to get to.

Q (By Mr. Hultman) Except for the conversation you related just a few moments ago in response to a question by Mr. Taikeff, the gentleman who just spoke?

{5209}

A No, I haven't.

Q All right. Did anybody from the Government at all talk to you since you have been here, at all?

A No, they haven't.

Q Did the note that you -- did you read the note?

A Yes, sir.

Q Did the note give you any instructions of any kind as to whether or not you could get in touch with anybody at all?

A Yes, sir. It was John. I got the number

Q You what?

A I have the number.

Q You have the number?

A Yes, sir.

Q Was the number on the note?

A Yes, sir.

Q Did you write it down or something then?

A Yes, sir, I got the note.

Q Do you have it now?

A (Handing).

Q Would you indicate what that number is?

A 233-4909.

Q And how was it that you got that particular number?

A I got it off the note.

Q Do you have any idea what that number represents or who; is or anything?

{5210}

A No, sir, I don't. I was told if I have any trouble from the FBI about changing my testimony, I could just call that number.

Q Now, as I understand it, you then called or asked to call someone, is that right?

A Yes, sir.

Q And did you get a chance to make a phone call then?

A Yes, I did.

Q And where was it that you called?

A I called my mother at first, and then I tried to call here, the courthouse.

Q All right. Did somebody then call you back from the courthouse here?

A Yes, sir.

Q And would that have been Mr. Vosepka, do you know what was that name or anything?

A I don't remember the name. He just told me he was the one that swore me in.

Q All right. O.k. Would that have been Mr. Hanson over here, if you recall?

A Yes, sir.

Q You didn't know who it was, he told you that, that he was the one that swore you in?

A Yes.

Q All right.

{5211}

Now, did you also have a conversation with somebody here in the courthouse who called you back about what you had seen and done?

A Yes, sir.

Q And do you remember what that man's name was at all?

A I don't remember his name.

Q Did he tell you who he was or from what office he was?

A Yes, sir.

Q What office did he tell you he was from?

A I can't remember He told me the Judge had told him to get in contact with me because I made a statement and stuff. He wanted to find out what it was, what was happening.

Q All right. Did you then tell him what it was you had seen or observed and so forth?

A Yes, sir.

Q He didn't tell you or give you any ideas of what you may or may not have seen, you told him what it was you had seen and done?

A Yes, sir. He asked me, would I go before the Judge about it.

MR. HULTMAN: All right. I don't know this fact at all. Mr. Vosepka, you said something a minute ago?

MR. VOSEPKA: I made the call. However, I didn't talk about any involvement with the Judge.

I think Mr. Hanson told him that, I identified myself {5212} as being with the U.S. Attorney's office and indicated our office had received a call, and that was from him; and I had written on the note it was an emergency, and I asked him what the nature of the emergency was.

Then he told me what the situation was. As I recall, I don't think I said anything about his going before the Judge. That must have been Mr. Hanson.

THE CLERK: That is correct.

Q (By Mr. Hultman) Were those the only two times that you talked to anybody about the things you are discussing here?

A Yes.

THE CLERK: To clarify that matter a little bit, I think I mentioned to him at the conclusion of our conversation that if it became necessary, would he be willing to appear before the Judge to relate these matters, and he indicated that he would.

Q (By Mr. Hultman) What was indicated, if anything, as to what might happen if you did not change your testimony?

A That I was dead, me and my family.

By THE COURT:

Q Who indicated that to you?

A That was on the note.

Q That was on the note?

A Yes, sir.

{5213}

Q That if you didn't change your testimony, you and your family were dead?

A Yes.

By MR. HULTMAN:

Q Did you write down the phone number that you have from the note, is that how you got the phone number?

A Yes, sir.

Q And did you write it on the place where you have just now revealed it from?

A Yes, matchbook.

MR. TAIKEFF: Could I ask some questions?

MR. HULTMAN: Go ahead.

By MR. TAIKEFF:

Q Up to this point has any effort been made to get you to identify the person who brought you the note?

A No, sir, there hasn't.

Q How many people are there in the jail right now?

A I haven't any idea.

Q Well, if I told you that the capacity of the jail was about 50 people, could you say whether it was full, half full, any idea from what you have seen over there?

A I have seen -- I would say it was half.

Q And how many -- did anybody show you any photographs or anything else to get you to identify the person who brought the note to you?

{5214}

A No, sir.

Q How about the two people in that cell with you who were supposed to take care of the destruction of the note, what are their names?

A I don't know their names.

Q Could you identify them?

A Yes, sir.

MR. TAIKEFF: O.k., thank you, Mr. Hultman.

MR. HULTMAN: I have no further questions at this time.

THE COURT: Thank you, Mr. Bragg.

The Marshal will return Mr. Bragg.

MR. TAIKEFF: Your Honor, I would like to make an inquiry. I think Mr. Warren might be in a position to answer the question.

THE COURT: I believe one of the marshals went to see if Mr. Warren was there. He is in the outer office.

Mr. Warren, Mr. Taikeff had something he wanted to ask you.

MR. TAIKEFF: I wanted to ask you some questions.

MR. WARREN: Do you want me to take the stand?

MR. TAIKEFF: Come forward. It is an informal inquiry.

MR. WARREN: Terrific.

(Whereupon, the following examination was had of {5215} Chief Deputy Marshal Harold C. Warren:)

By MR. TAIKEFF:

Q It is always a great pleasure to ask you questions, sir.

A The feeling is mutual, counsel.

Q I have known that from the very beginning of my appearance here.

A number of people have been brought here to testify of writs, and that your office has had some involvement in handling those people, isn't that correct?

A Yes, sir.

Q And that includes Bob Robideau, Jimmy Eagle and others?

A Right.

Q You took some special precautions about making sure that those people were held at other facilities, sometimes at a great distance, at various times while they were here, isn't that correct?

A That's correct.

Q Could you tell us why, briefly?

A Basically it was a security precaution. I felt that no other Federal prisoner should be lodged in the same cell as the Defendant Peltier, nor should we have more than one other Federal prisoner that is involved with this trial to be held at the Clay County jail at any one time unless it was by Court order or request of such, or an emergency type.

Q Then could you explain to us how it was that two people {5216} serving 30 year sentences, who in the past have functioned as Federal informants, were each put, not only in the same jail, but in Mr. Peltiers cell?

A They each, as I recall, were in the same jail because they would be required on their arrival here -- it was felt that they would be required to testify or to be available for counsel the following day.

In the same cell -- it was an initial request, a strong request to the Sheriff, to the jailers, that no other Federal prisoners that had any involvement in this trial would be in the same cell with the Defendant Peltier. How this came about, I do not know, because as far as I am concerned there's no excuse for it.

As far as their prior testimony, I have never been advised up until this incident of the previous testimony they gave against Mr. Peltier or against any other person that might be involved in this trial or other trials.

Q Well, you certainly didn't fear for anybody's life when you kept Mr. Robideau and Mr. Peltier apart, isn't that a fair statement, they were co-defendants charged under the same indictment?

A Well, I don't think I felt fear for anybody's life. It was a security -- possible escape theory that I was concerned about.

MR. TAIKEFF: I have no further questions, your Honor.

{5217}

MR. HULTMAN: I have just one, your Honor.

By MR. HULTMAN:

Q All of the people who were brought here who were in a status of being prisoners, all were brought here, were they not, at the request of or pursuant to subpoenas from the defense, isn't that correct?

A By the defense, on a motion for writ of Habeas Corpus ad testificandum to the marshal to produce them.

Q So it is very clear that none of the individuals that we have talked about or been here, in any way were here at the request of the Government?

MR. TAIKEFF: It is agreed.

A That's what it was.

THE COURT: Very well.

MR. TAIKEFF: Thank you, Mr. Warren.

THE COURT: It just occurred to me I did not swear either Bragg or High Bull.

MR. LOWE: May I request the records show that they gave unsworn testimony?

THE COURT: Are they still available?

CHIEF DEPUTY MARSHAL WARREN: Yes.

THE COURT: Have them brought in one at a time. Mr. High Bull, would you just stand there? Would you raise your right hand?

Do you swear that the testimony that you gave earlier {5218} here this afternoon is the truth?

THE WITNESS: Yes, sir.

THE COURT: If you were to be asked the same questions that were asked of you and were now under oath, would you answer them any differently than you did answer them?

THE WITNESS: No.

THE COURT: Very well, that is all.

Would you have Mr. Bragg brought in?

Would you raise your right hand, Mr. Bragg?

Do you swear that the testimony that you gave in this room a few moments ago, earlier this afternoon, is the truth?

THE WITNESS: Yes, sir.

THE COURT: And if you were to be asked the same questions now under oath, would you answer them any differently than you did answer them?

THE WITNESS: No, sir.

THE COURT: Very well, Thank you. Mr. Hanson, would you approach the desk? Do you swear the testimony that you gave in this room earlier this afternoon to be the truth?

THE WITNESS: Yes, sir, I do.

THE COURT: Very well.

Mr. Hanson has informed me that Mr. Norman Zigrossi {5219} has something that he wants to state for the record.

Could Mr. Zigrossi be brought in, please? Mr. Hanson, will you swear Mr. Zigrossi?

NORMAN ZIGROSSI,

being first duly sworn, testified as follows:

EXAMINATION

By THE COURT:

Q Mr. Zigrossi, Mr. Hanson informed me that you had a statement or something that you wished to make for the record.

A Is this in relation to the Wounded Knee Legal Defense-Offense Committee?

Q Yes.

A Yes, only to the effect that we on numerous occasions have been confronted by members of that committee while trying to conduct investigations on the Pine Ridge Indian Reservation.

Under various conditions, in certain instances, the individuals, citizens that we tried to contact would have forms in their possession saying that members of the Legal Defense-Offense Committee represented them.

In other instances, we would be in the process of an interview when one of them would either knock or enter the room and indicate to our agents that they represented these individuals. Many times the individuals that we are talking to did not even know the members of the Committee, and so stated. When this occurred, of course, we would always leave and would {5220} not try to pursue the interviews.

In some instances we were followed, agents were followed by members of the Committee; and when we go into the community, and once we appeared and attempted to talk to someone, they would then come up and say, "We represent these individuals, we are the Wounded Knee Legal Defense-Offense Committee, they don't want to talk to you."

Essentially that's been our relationship.

Q Did you furnish Mr. Hanson with some copies of the types of forms?

A Yes, he does have several.

THE COURT: Would you mark those?

Q (By The Court) I show you what has been marked Court's Exhibit 1 and Court's Exhibit 2. Are you able to identify those forms?

A Yes, these are similar, your Honor, to the forms. They all vary, but essentially the same information is contained in there.

MR. TAIKEFF: May counsel see them, your Honor?

THE COURT: Yes.

(Counsel examine documents.)

MR. HULTMAN: Could I see them too, please?

(Counsel examines documents.)

MR. TAIKEFF: May I ask a question or two, your Honor?

{5221}

THE COURT: You may in just a moment.

Q (By The Court) Did you have anything more that you wished to say with reference to this?

A No, I don't.

THE COURT: You may question.

By MR. TAIKEFF:

Q As to the things you testified about, is it not a fact that you have no personal knowledge of any of it, that is to say, it is based on what other people have told you?

A Yes, that's true.

Q O.k. Now, the Wounded Knee Legal Defense-Offense Committee is an organization made up of lawyers and para-professionals whose principal, if not exclusive, function is to serve the legal needs of native American people, isn't that correct?

A I don't know if it is or not. I have no idea what they represent.

Q Well, they have an office in Rapid City, don't they?

A To my knowledge they do, yes.

Q And you personally raided that office once, did you not, or at least supervised a raid of that office? "Yes" or "no".

A Yes.

Q And did you have a warrant to search that premises?

A We were not there to search. We were there --

Q (Interrupting) You are a very competent person who {5222} understands the English language very well. I just asked you whether you had to serve a search warrant for that premises?

A No.

Q O.k. Your reason for being there, I gather, was that you were looking for a person for whom a warrant was outstanding, is that correct?

A That's correct.

Q Is it your understanding of the law as it exists in this country, under the Constitution of the United States, that you can break into someone else's home to find a person against whom a warrant is outstanding without also having a search warrant to enter that premises?

A Is it my understanding you can break into someone else's home to effect an arrest, is that what you are asking me?

Q Yes, on perhaps some informant's information that a person wanted under a warrant might be there.

A It is my understanding of the law that if you have probable cause or information that an individual is at a certain premises or on the premises, you have a right to go and effect an arrest and apprehend an individual.

Q How many times have you or your agents in any way entered without prior invitation or an implied invitation, under circumstances such as the one I just questioned you about, the offices of the Wounded Knee Legal Defense-Offense Committee?

{5223}

A Never.

Q Never conducted a search for anybody?

A Never -- you asked if I entered, and the answer is "never".

Q How about your agents?

A Agents did not enter.

Q Wasn't there an occasion when the office of the Wounded Knee Legal Offense-Defense Committee in Sioux Falls was raided and workers in there were held at gunpoint?

A I have no information in that regard whatsoever.

Q The occasion I questioned you about, what do you understand occurred on that date?

A I know exactly what occurred, I was there.

Q What happened?

A We knocked at the door. We identified ourselves. We stated our purpose, conducted or had some discussion with Mr. Schwartz regarding our purpose.

When we were convinced that the individual we were looking for was not present, we left. We were there approximately 15 minutes.

Q Did the Federal Bureau of Investigation ever conduct surveillance on the Wounded Knee Legal Defense-Offense Committee house and office by stationing agents in an adjacent motel in Rapid City?

A Not to my knowledge.

{5224}

MR. ELLISON: Down the block.

Q (By Mr. Taikeff) As far as you can tell from these forms which have been marked Court's Exhibits 1 and 2, do they reflect any advice to anyone which is not in fact the law in the United States?

MR. VOSEPKA: If you know.

A I don't know.

MR. TAIKEFF: Isn't that wonderful? I love the way signals are given in this particular situation.

Q (By Mr. Taikeff) Isn't it a fact that a person doesn't have to talk to the FBI if they don't want to?

A It is. It certainly is a fact.

Q So you do know it is within the right of a person not to talk to the FBI?

A That's not the question you asked.

Q I asked whether it was consistent with the law. Does the law say you have to talk to the FBI?

A The law does not say so. I never indicated that to anyone.

Q In light of that, on any of those two forms was anyone given any advice which was not consistent with the law?

A I would like to review the forms.

Q Go ahead.

A (Examining) Yes, it first states they are entitled to an attorney which we all know is true. It also requests that {5225} we leave the premises, and generally when an individual does not -- not generally, on all occasions, did indicate he did not want to talk to the FBI, we leave.

Q You don't expect people will know that's your practice, isn't that correct?

A I don't expect them to know that.

Q If I don't want to talk to you and I don't know your practice, you don't think that it is improper for me to tell you (a) I don't want to talk to you, and (b) you are to get out?

A Not at all. You are entitled to.

Q There is nothing inconsistent with the law in telling the FBI not only that I don't want to talk to you, but get out of here, isn't that perfectly legal?

A It certainly is.

Q Isn't it perfectly legal for some person to say, you know, the following are your rights, you can tell the FBI you don't want to talk to them, you can get them to get out of the house?

A I don't know. It depends upon the circumstances, how they go about it.

If I am sitting in someone's living room carrying on a private conversation, and another individual, unknown to me as an agent, unknown to the individual that I am talking to, if they rush in and say, "I represent you, this man is with the FBI, you have to get out of here, I don't want you to talk to {5226} the person, you get out," I don't know if it is legal or not. I am not an attorney.

Q As far as you know, what does the owner of the premises say under such circumstances?

A There has been various reactions from various owners of the premises throughout my experience.

Q Well then, you know, don't you, that if any such owner of any premises feels that he has been wronged in any way or improperly intruded upon, he has a remedy at law, doesn't he?

A That's true. I know this, as soon as any individual, regardless of who they are, indicate to a FBI Agent that they don't want to talk to us, we don't talk to them.

Now, if you are questioning my legal background, I am not an attorney.

Q I am not questioning your legal background. I am questioning you whether you resent the Wounded Knee Legal Defense-Offense Committee exist because it represents an organization that makes sure that the FBI does not and cannot intimidate native American people?

A I totally disagree. I do not resent that the Wounded Knee Legal Defense-Offense Committee exists. I don't resent it whatsoever. It is some of their methods that I resent. Whether they are legal or not, I don't know.

MR. TAIKEFF: Let me have one moment to confer with Mr. Ellison, please.

{5227}

(Counsel confer.)

Q (By Mr. Taikeff) Did you recently have an interview with a reporter for the program called "60 Minutes," or something like that?

A Yes.

Q And did you tell that reporter in the course of your interview that the FBI kept the Wounded Knee Legal Defense-Offense Committee under surveillance?

A No.

Q In October of 1975 did approximately 15 agents go to the Jumping Bull residence and keep the people in that house, in that house at gunpoint so that Mr. Sikma and others could make an inspection of the Jumping Bull compound?

A That is not my understanding of what occurred.

Q What is your understanding of what occurred?

A Is that Mr. Sikma went to the Jumping Bull Hall residence. They had permission from one of the owners. I forget which Jumping Bull it was. Which was it?

MR. SIKMA: Harry Jumping Bull.

A (Continuing) -- and after they received permission to enter the premises, they did enter; and they were, I think, four or six agents and Mr. Sikma, that reviewed or looked over what existed there as far as the buildings were concerned and the land and things of that nature.

Q (Mr. Taikeff) What weapons were the agents carrying, {5228} other than handguns?

A I honestly don't know, but it could be any type of weapon that is Government issue. We have various.

MR. TAIKEFF: Mr. Sikma, what sort of weapons did you see that day?

MR. SIKMA: I am not being questioned. I will answer the Court's questions if the Court decides what it wants to know on this. I will be glad to explain what happened.

THE COURT: Were you through?

MR. TAIKEFF: I want to ask one last question of Mr. Zigrossi.

Q (By Mr. Taikeff) Is it not a fact that if you detected any violation of Federal law of any member of the Wounded Knee Legal Defense-Offense Committee, you would see to it that that person was arrested and charged?

A It is not my position to detect violations of law.

Q If you did, I say.

A If I did?

Q Yes.

A If there was a facility to do it, yes, within the system, I would.

Q Have you ever arrested a member of the Wounded Knee Legal Defense-Offense Committee or seen to it that the FBI arrested a member of the Wounded Knee Legal Defense-Offense {5229} Committee for any Federal crime? "Yes" or "no".

A No, I have not.

MR. TAIKEFF: I have no further questions. I would like to have this witness sworn.

THE COURT: He was sworn.

MR. HULTMAN: I have a few questions.

By MR. HULTMAN:

Q Would that indicate or conclude to me that there hasn't been any harassment of them in any way?

A As far as the FBI harassing the Wounded Knee Defense, there has not been, no.

Q Let me get into some specifics. Isn't it a fact that when you get into a case such as the one we are now dealing with, or any case in which there are witnesses involved, that you end up literally having all of those witnesses being represented by this Committee?

A That's correct.

Q And is it a fact that when you try and go -- or your agents try to go and seek information from witnesses whose interests as a witness is not one and the same as the individual who may

or may not be charged, that it is then you run into the situations that you have been illustrating?

A In each instance where they are involved, that's true.

Q And is that the reason why you are concerned about it?

A I'm very concerned, yes. That is the reason.

{5230}

Q You have a duty, do you not, to seek information and interview witnesses, do you not?

A I do.

Q Now, let me get to a specific illustration. For example, you had a duty and a responsibility, did you not, to seek information from a witness or a possible witness by the name of Angie Long Visitor?

A Yes, I did.

Q And do you find, when trying to seek that information, that the individual is represented by the same individual that is representing other individuals, that you seek similar type of information from, concerning a given event?

A Yes, this is true.

Q And in each of these instances, or in many of them, the interests of those witnesses individually or even collectively may be different or adverse from the person who might well be, or even is in fact, a Defendant in a matter to which those individuals have been witnesses?

A Yes.

Q Or possible witnesses?

A Right.

Q And is it when you couple those events with the receiving of papers of this kind and events that you are talking about, that you have talked about here and testified here, that gives you the concern concerning the carrying out of your responsibility {5231} and duties?

A Yes, and there has been instances where it has been almost impossible, where we are physically followed throughout the Reservation by individuals of this Committee. Regardless of where our agents go, they will follow us. As soon as we go out to interview a citizen, they are right there with us. They walk to the door with us, and when we state our purpose, they put the paper on us to the person, and that culminates or ends any possibility of an interview of these

people; and this is not unusual, it has happened time and time again in the last 18 months that I have worked in South Dakota.

Q Would you on the record name some specific individuals or specific instances?

A Of individuals that worked for the Committee? Mr. Ellison is one.

Q When you have had the events happen of the kind and nature that you have been discussing.

A Mr. Ellison has been involved on several different occasions in this type of situation. Candy Hamilton is very active as a worker.

There is a David Tilsen who is also a worker, and John Schwartz.

MR. TAIKEFF: Jack Schwartz?

THE WITNESS: Schwartz, a former associate of Mr. Ellison's.

{5232}

Q (By Mr. Hultman) Have you found any instances where any one or all of those people allegedly then represent a number of prospective witnesses that you are seeking to interview concerning a given alleged crime or an indictment of some kind?

A To be honest, it is very difficult to understand who they represent, or for what reason. They seem to represent everyone that the FBI wants to talk to. That's what it amounts to. Regardless of whether they knew these individuals or not, if the FBI has an interest in a citizen on the Pine Ridge Indian Reservation, they or Mr. Ellison will represent them. Many times they don't represent them until after they realize our interest. That's the way it has been for the last 18 months.

Q Now, when you have run into the fact that even though you have no knowledge that these individuals represent a number of different witnesses in the same transaction that you are investigating, have you still represented and honored that representation when it has been made known to you or presented to you?

A If I have known about it, we have honored it in every instance.

Q Even though there isn't any question that you have some feelings about whether or not that is a fair thing, without questioning whether or not it is legal or illegal?

{5233}

A That's correct. We have searched from time to time for, like I say, a facility to eliminate this problem that we have had and have been unsuccessful.

MR. TAIKEFF: Good.

MR. HULTMAN: I don't have any other.

By MR. TAIKEFF:

Q I would like to ask you, sir -- this is an informal matter so that I trust a question of this type would be appropriate -- are you aware of the fact that Norman Brown on March 23rd, 1977, was served with a subpoena in or near Mission, South Dakota, which was returnable on March 14th, and then taken into custody without a warrant and brought here to Fargo in an FBI airplane, are you aware of that incident?

A I am aware of the fact that he was served. I am not -- the dates are new to me. However, he was not brought here in an FBI airplane.

Q Wasn't he flown from Pierre?

A Not in an FBI airplane.

Q What kind of an airplane?

A I don't know.

Q You have enough experience, being one of the highest ranking FBI officials in the United States, to know that a subpoena is a command for a person to appear in court, you know that, don't you.

{5234}

A Sir, are you questioning my legal background?

Q I am questioning your knowledge, if you know that a subpoena is a notice to a person that's required in court.

A That's correct. Yes, I won't argue.

Q And the FBI normally doesn't serve subpoenas, and as soon as they have been served, take the person into custody, isn't that correct?

A That is not correct. We do serve subpoenas.

Q And take people into custody?

A If it is a forthwith subpoena, we do.

Q Norman Brown wasn't served with a forthwith subpoena?

A I have no knowledge of how he was served.

Q Let me ask you, if he were in fact served with a subpoena on the 23rd, that showed a return date of the 14th, and was taken into custody and brought here and locked in a hotel room which was not registered to his name, would you consider that to be the kind of intrusion on a person's rights that some organization might be interested in preventing in the future?

MR. CROOKS: Your Honor, before this question is answered by Mr. Zigrossi, I would like to make a statement.

MR. TAIKEFF: As to the facts?

MR. CROOKS: I have some personal knowledge of this

MR. TAIKEFF: Go ahead.

{5235}

MR. CROOKS: It involved my office, and I wish to make a statement.

MR. TAIKEFF: I hope your Honor will air every point of view and fact that might come forward in this conference.

MR. CROOKS: My first observation is the unfairness of this question to this witness because, No. 1, counsel knows that he is dealing with legal matters which are within the purview of this office.

I will advise the Court that the Federal Bureau of Investigation was advised that a past due subpoena is a forthwith subpoena; and that was the posture of the Federal Bureau of Investigation, as advised by our office. I don't --

MR. TAIKEFF: (Interrupting) Is it your position you could take a person into custody --

MR. CROOKS: (Interrupting) Do you want me to finish, or are you going to make another speech?

THE COURT: Just a moment. You may finish your statement, Mr. Crooks.

MR. CROOKS: The Federal Bureau of Investigation was advised by our office that in our legal opinion the past due date indicated it was a forthwith subpoena; and further, the Federal Bureau of Investigation did have authority directly from myself that if Mr. Brown did {5236} not accompany them, they had authority to arrest him and bring him, following the removal hearing, to Fargo, North Dakota; and that, your Honor, was the prosecutor's decision, made by myself, with the full approval of the United States Attorney of this District.

The Federal Bureau of Investigation was advised of that fact, and I don't think anything further need be said.

MR. TAIKEFF: What was he to be arrested for? That's the question I would like to know. What was he to be arrested for?

MR. CROOKS: Frankly, I am not sure it is any of your business. The arrest --

THE COURT: (Interrupting) This thing is getting afield.

MR. TAIKEFF: It is not getting afield. It is demonstrating to your Honor the kind of things done to native American people, for which the Wounded Knee Legal Defense-Offense Committee was originally formed and will continue to function that way because it is necessary to protect the rights of these people, to interfere with these kinds of illegal conduct. That's exactly the point.

MR. CROOKS: Counselor, I have stated the position of the United States Attorney's office in the District {5237} of North Dakota, and I don't feel that I have to answer to you or anyone else for our decisions.

The decision was made by the United States Attorney with my concurrence, and it was related to the Federal Bureau of Investigation that they had authority to bring Mr. Brown to Fargo on a charge which was authorized by this office. If he did not wish to accompany them personally and voluntarily, it was my advice, but they never needed to exercise that authority because he did accompany them voluntarily.

MR. TAIKEFF: My response was, sir, that the Wounded Knee Legal Defense-Offense Committee will continue to fight such Fascist tactics.

THE COURT: You have made your response now twice on the record.

By THE COURT:

Q Mr. Zigrossi, you were asked a question about some things in Rapid City by Mr. Taikoff and asked to give a "yes" or "no" answer.

Before I excuse you, I want to ask you, is there anything more you want to say about that incident?

A Is this the Wounded Knee Defense-Offense, the office? We never did enter the office at all.

We were just there for one reason, that was to serve an arrest warrant on an individual that we believed was there. {5238} We made absolutely no entry and no search, and to my knowledge the FBI never has.

By MR. TAIKEFF:

Q How about the office on the Reservation, was that office --

A (Interrupting) I didn't even know an office exists on the Reservation. I don't think they do have an office. I have heard secondhand about houses that have a little sign on it saying, "Legal Workers," that type of thing; but I would say this: That the FBI in my 18 months has cooperated in every instance of a native American that did not want to talk to the FBI. That's

true of the Defense-Offense Committee. When I know that they represent someone, I cooperate with them a hundred percent.

I personally feel more harassed by that Committee than they could ever feel harassed by the FBI.

MR. TAIKEFF: I could hear that.

MR. CROOKS: I am sure you did.

THE COURT: Thank you.

THE WITNESS: You are welcome.

THE CLERK: Did you indicate there were two other agents?

THE COURT: I was just going to raise the question to Mr. Hanson.

THE WITNESS: They have firsthand knowledge.

{5239}

THE COURT: You are excused, Mr. Zigrossi.

MR. LOWE: This is firsthand knowledge relating to things in this case, or just to the general --

THE WITNESS: (Interrupting) Both.

THE COURT: Mr. Hanson, were there some other agents?

THE CLERK: Whoever else he has to send up.

THE COURT: I might state for the record that the reason I decided to put this on the record is because in the trial I gave counsel for the defense an opportunity to present on an offer of proof alleged incidents of misconduct on the part of the FBI.

Now, these other matters have been brought to my attention by Mr. Hanson after they were brought to his attention by someone; and I decided to include that as a part of the total record in this case.

MR. TAIKEFF: We don't object to that, your Honor. We are happy to air these things.

MR. ENGELSTEIN: Before it starts, I have to leave to catch a plane. With your permission, may I walk out if something is proceeding?

THE COURT: I have no reason to ask you to stay, Mr. Engelstein.

Would you come forward, sir?

THOMAS H. GREENE,

being first duly sworn, testified as follows:

{5240}

EXAMINATION

By THE COURT:

Q Mr. Greene, it has been indicated to me that you had some statement that you wished to make.

A Yes. In connection with the investigation of the case which has just finished in the courtroom, on one particular occasion in my personal knowledge, when we were attempting to interview people who we thought might have information concerning the investigation, concerning the case, we were presented with forms and pieces of paper.

Q Excuse me, would you state specifically where and when?

A Yes. It was in Pine Ridge, South Dakota, at the residence of -- pardon me -- at the hospital where the man by the name of Mr. Baen -- (spelling) B-a-e-n -- was being employed.

Q Would you state the approximate date?

A It was in September. It was either the 22nd or 23rd, thereabouts, the latter part of September of 1975.

Q Then would you proceed and relate the incident?

A Presented a piece of paper wherein it was stated that he did not wish to talk to us because he had no information and that we should see his attorney, and handed me a piece of paper indicating that he did not want to talk to the FBI about any matters.

The paper was signed by an individual stating that this information was a fact, that she was Mr. Baen's attorney. It {5241} was signed by a woman having the name of Candy Hamilton.

I have also been a field supervisor for the FBI in Rapid City for the past year and a half. This has occurred on other occasions which I cannot relate specifically, but was brought to my attention by other agents working under my control.

Q Do you know whether or not Candy Hamilton is in fact an attorney?

A No, I do not.

Q Is there anything more that you wish to state?

A Other than the fact that I was told by a witness in this I matter which has just concluded, that she was advised by Mr. Bruce Ellison, under no circumstances should she talk to me or with any other agents under my supervision in connection with anything to do with this matter which we were investigating, the death of the two agents.

Q Who was the witness?

A The witness was Angie Long Visitor.

THE COURT: Do you have any questions?

MR. TAIKEFF: Yes, your Honor.

By MR. TAIKEFF:

Q Did you have anything to do with the arrest of Angie Long Visitor on the material witness warrant issued by this Judge?

A Yes, I did.

Q Were you the person who arrested her?

{5242}

A No, I was not.

Q Were you present when she was arrested?

A No, I was not.

Q Were you in the FBI office when she was brought into the Office?

A Yes, I was.

Q Do you know of any attempts on her part to make contact with an attorney?

A Yes.

Q What can you tell us about that?

A I received several telephone calls shortly after her arrest from an individual stating his name was Attorney Ken Tilsen; and also a telephone call from Mr. Bruce Ellison, asking if she had

requested an attorney, and I advised him that she had not but that I would contact her in the office to determine if she wanted one; and if she did, then we would let her make such a phone call which in fact did transpire.

Q How much time was there between the first call you got from Mr. Tilsen and the time when she finally spoke with him if, in fact, she finally spoke with him?

A I really can't say exactly.

A rough estimate, 20 minutes, 15 to 20 minutes possibly.

Q Where were you when you received this phone call from Mr. Tilsen?

A In my office at Rapid City, the FBI office.

{5243}

Q Where was Angie Long Visitor?

A She was also in our office in another room.

Q How far away from you?

A Only 50 feet.

Q What took 20 minutes for the return phone call to be made?

A Because she did not state that she wanted to make the phone call immediately. We advised her that there was a message for her that was from Mr. Tilsen or Mr. Ellison, and asked her if she wanted to make the phone call. She said she did not.

Another phone call was made to me by Mr. Ellison. I took the message to Angie Long Visitor the second time. She said, "Yes, at this time I would like to call him." At that time she was taken immediately to a telephone.

Q When he called did he say he was calling because he wanted to find out if she wanted him to be her lawyer, did he say he wanted to find out whether she wanted to speak to him, or did he call and say he was her lawyer and wanted to know if she was in custody?

A He called and wanted to know if in fact she was in custody.

Q Didn't he identify himself as her lawyer?

A That's correct.

Q Was there any reason why you did not then connect them instead of wasting 20 minutes or using 20 minutes to find out {5244} whether she wanted to talk to her own lawyer?

A Because he didn't say he wanted to talk to her, and she didn't say she wanted to talk to him.

Q Did you have her call him back after the 20 minutes?

A Yes.

Q That was after he hung up?

A Yes.

Q Why did you have her call him back?

A Because she said she wanted to talk to him.

Q How do you know he wanted to speak with her?

A He had indicated so

Q Why didn't you connect them, he said he was a lawyer, he was her lawyer; when you heard this, why didn't you put them in touch with each other?

A Because he didn't indicate he wanted to.

Q You said the reason you had her call was because he said he wanted to?

A He asked if she wanted an attorney or wanted to talk to him. We relayed this message to Angie Long Visitor.

Q He was her attorney, didn't he say that?

A Yes.

Q That's not the first time he represented her, isn't that a fact, in connection with this case?

A I don't know that.

Q Didn't he represent her before the Grand Jury?

{5245}

A I don't know that as a fact.

Q You have no knowledge whatsoever that Ken Tilsen for some time had been representing Angie Long Visitor in connection with this case as of the day you took her in custody, is that what you are saying?

A Not as my personal knowledge, no, I didn't.

Q Did you hear it from anyone prior to receiving that phone call from Mr. Tilsen, or were you totally oblivious to the possibility that in fact he was her lawyer and had been for some time?

A He did mention in the phone call he was her attorney. He stated he had been her attorney for some time.

Q Do you have any reason to believe that was not true?

A No.

Q Why didn't you just go to her and say, "Your lawyer is on the phone, and he wants to speak to you"?

A He wanted to know if she wanted to speak to him.

Q Now, when Mr. Ellison called, what did he say in connection with his inquiry?

A He wanted to know if she was under arrest, if she was in the FBI office, and if she wanted to speak to him.

Q And what did you say to Mr. Ellison?

A I told him that the message would be given to Mrs. Long Visitor. If she so desired to speak with him, we would put her in contact with him.

{5246}

(Counsel confer.)

THE COURT: I am not going to get into a full-fledged hearing.

MR. TAIKEFF: I am telling your Honor that she will adamantly deny --

THE COURT: (Interrupting) You may make your statement that she will deny what she has said. I am not going to get into an adversary inquiry.

MR. TAIKEFF: I have no further questions.

I think perhaps your Honor has the idea of why the Wounded Knee Legal Defense-Offense Committee exists.

MR. HULTMAN: I have no questions.

THE COURT: Thank you.

MR. HULTMAN: Go ahead.

I would want to put in the record, however, at this point, your Honor, that Mr. Tilsen on the record with me indicated that he represented during the course of these proceedings four separate witnesses; and I honored that request, but I wanted it to appear here in the record, three in addition to the one that counsel has just now indicated.

MR. TAIKEFF: Mr. Lowe thought the record was not clear, and for the purposes of clarifying it, I would like it to reflect the fact that Angie Long Visitor is not far away and is available to be called and would {5247} testify that she was held incommunicado from her attorney, and that her attorney as far as she knows sent Mr. Ellison, who was closest to the FBI office because Mr. Ellison maintains his office in Rapid City, and he was prevented from getting through to her.

THE COURT: The record, I think, should also further indicate that at that time Mr. Ellison was already an attorney for Mr. Peltier in this case.

MR. TAIKEFF: That may be a fact, your Honor, but that is totally independent of any request he received from Mr. Tilsen to see what he, Mr. Ellison, could do to help Mr. Tilsen find out what was happening because Mr. Tilsen wasn't getting any straight answers from the FBI.

THE COURT: Very well.

MR. VOSEPKA: If I might, you inquired earlier whether this Candy Hamilton was an attorney. I do not know any more than Mr. Greene does for sure, whether she is.

However, an individual whom I believe to be Mrs. Candy Hamilton appeared in the Clerk's office this very day and approached the alternate juror who had been excused and identified herself as being a representative of the New York News Service.

I know she apparently represents herself to be a newspaper woman or a news person.

{5248}

THE COURT: Was there another agent?

DEPUTY MARSHAL LEE: Your Honor, there is no other agents.

THE COURT: There are no other agents, very well.

There then is one other matter that I wish to take up with Mr. Lowe and Mr. Taikeff and Mr. Ellison, and it will not be necessary for the Defendant to be present for that.

MR. LOWE: May I make a statement relating to what has taken place?

THE COURT: You may.

MR. LOWE: First of all, offers of proof which have been made during the trial were based on either witnesses who were offered and refused by the Court or particular elements of testimony or exhibits which were offered by the defense and declined by the Court.

It is a totally unknown procedure to me to have such apparently unsolicited people come forward to make statements such as Mr. Zigrossi and Mr. Greene, agents of the FBI, after the fact, to be made on some sort of purported offer of proof.

In fact, I understand -- I don't understand there has been any offer of proof by counsel.

THE COURT: Just let me clarify that if you did not understand what I said at the beginning of the proceedings.

{5249}

Offers of proof were made on alleged incidents of misconduct or violence, as I think you expressed it, evidence of which events I excluded on the grounds that they were irrelevant. They did go into the record, however, the offers of proof.

This information which has been presented this afternoon has come to me through the Clerk of Court's office, and I felt in order to make the record clear where this is just as irrelevant to the issues in this lawsuit as I considered the matters to which your offers of proof related, that I should allow a record to be made of this in order that, if this matter goes up to the Court of Appeals, the Court of Appeals may have the benefit of a more complete picture.

In connection with that, those two papers that have been marked as Court's Exhibits 1 and 2 may be made a part of the record in this proceeding.

MR. LOWE: Well, that feeds in exactly with what I am getting to, your Honor:

No. 1, I speak for myself only, I am not a member of the Wounded Knee Legal Defense-Offense Committee, I am not representing them, I am not retained by them, I am not here because I am co-counsel with them or anything of that nature.

It is my understanding that the same is true of Mr. {5250} Taikeff. I can't speak for anybody else on the --

MR. TAIKEFF: (Interrupting) That's not true. I have been a member at times on a full-time basis of the Wounded Knee Legal Defense-Offense Committee. I am quite proud of it.

MR. LOWE: I take no commission -- I have gone down and worked at places upon request of the members. At this point this has not relevance.

What has been said by the agents is not in rebuttal of any of the specific things which were brought up on offers of proof or testimony, and are theoretically irrelevant to the allegations that have been made because they relate to events which are not directly involved in the allegations of misconduct.

We could parade in here, I dare say, 150 native Americans and white persons who would give testimony to misconduct by the FBI during this period of terror following June 26th, 1975, and I think that would be just as inappropriate to be heard here.

Accordingly we would move to strike this from the record, and include striking it as a proffer.

It is clearly intended, at least by these people -- and I would certainly like to think that the Court is not putting this in in order to try to put something in the appellate record, in the event an appellate record {5251} is necessary, that would somehow taint the record against the Defendant.

I am confident the people who spoke here would like to have that go in in order to prejudice the Appellate Court against the Defendant and make it look as though there are bad things and bad people associated with the Defendant.

We have no opportunity to respond. We don't have an opportunity to put on rebuttal witnesses. We don't have an opportunity -- really we didn't know what was going to be said and haven't had an opportunity to prepare for it, to put on rebuttals, offers of proof.

There are legions of witnesses and volumes of proof which we could put on if we chose to. I think it is an appropriate thing that the FBI has had a chance to vent their spleen, if that's what it was. I do not think it is appropriate for that to go up in an appellate record in this case.

THE COURT: I might also mention, however, the request or suggestion was made -- I do not know how it arose -- that the FBI had something that they wanted to present; but this matter this afternoon, the total hearing that has been had, arose primarily out of the report that came to me of the threats that allegedly had been made to these two witnesses after they had testified, apparently {5252} in an effort to get them to change their testimony.

MR. LOWE: I was not speaking to High Bull and Bragg and Hanson. I don't mean I say it was relevant.

I was speaking to Mr. Zigrossi and Greene.

MR. ENGELSTEIN: Could I talk --

THE COURT: (Interrupting) You did.

I was just indicating that this first matter brought up was the primary purpose of this session here in chambers this afternoon. I felt that it was something that should not be held in open

court; and I do, however, as I mentioned, have one more matter that I am going to take up with Mr. Lowe and Mr. Taikeff, and particularly Mr. Ellison.

MR. TAIKEFF: Your Honor, while counsel for the Government is leaving, could I step outside and say good-bye to Mr. Engelstein?

THE COURT: Are you leaving?

MR. ENGELSTEIN: I want to catch a plane.

We are all making statements, and I would state I would be privileged to work for the Wounded Knee Committee in the future if they would invite me.

THE COURT: They will probably invite you.

MR. LOWE: We would move to strike Mr. Zigrossi's and Mr. Greene's testimony, seal it and leave it in this court and not send it in any appellate record.

{5253}

THE COURT: That motion is denied. I am going to put the whole thing in. I think that the Court of Appeals is more competent than this Court to make a determination as to what weight it wants to put on this information.

Good-bye, Mr. Engelstein.

MR. ENGELSTEIN: It was a pleasure.

MR. LOWE: I did not intend -- I think Mr. Ellison and the others now here, I hope understand the disavowal of my connection with the Wounded Knee Committee was not meant to be disparaging in any way, but to merely indicate I was independent of that position at this point.

Off the record.

THE COURT: Off the record.

(Discussion was had off the record.)

(Whereupon, a video tape broadcast was shown with the only counsel being present, Messrs. Taikeff, Lowe and Ellison.)

THE COURT: Mr. Hanson, would you come over here, please?

THE CLERK: Sure. Yes, your Honor.

THE COURT: Just have a chair. Would you mark this as a Court exhibit?

THE CLERK: I have marked that as Court Exhibit 3, your Honor.

{5254}

THE COURT: Court Exhibit 3 is a copy of Rule XXIX of this Court, Fair Trial-Free Press Directive.

The second page of that exhibit which is shown at Page 56, the second paragraph from the bottom contains the following provision:

"During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview, relating to the trial or to the parties or issues in the trial, for dissemination by any means of public communication, except the lawyer may quote from or refer without comment to public records of the court in the case."

Would you mark this paper as a Court exhibit?

THE CLERK: Marked that as Court Exhibit No. 4, your Honor.

THE COURT: Court Exhibit No. 4 is a certified copy of a document entitled "Notice of Appearance".

"Please enter my appearance as an attorney of record for LEONARD PELTIER in the above-entitled case.

"Dated this 13th day of February, 1977.

"Respectfully submitted, Bruce Ellison."

Would you mark this document?

THE CLERK: Marked it as Court Exhibit No. 5, your Honor.

{5255}

THE COURT: The record may show that counsel with the Judge of the Court has just viewed tape of a television program in full, in which Mr. Ellison is making comments at several points in the course of that television program.

The Court Exhibit 5 is a transcript of the comments of Mr. Bruce Ellison taken from the viewing of that program, and attached to it is the reporter's certificate.

Mark this exhibit, and mark this exhibit at the same time.

THE CLERK: I have marked them Court Exhibits 6 and 7, your Honor.

THE COURT: Court Exhibit 7 is a copy of the Minneapolis Tribune under date of Wednesday, April 6th. On Page 7B is a schedule of the "TV and radio highlights today," "7:30 p.m. -- Profile of Street singer Jerry Rau; and an update on the trial of American Indian Movement Leader Leonard Peltier, charged with the murder of FBI agents on `Changing Channels.'" Channel 2.

Court Exhibit 6 is an affidavit of Henry E. Wilson, Special Agent, Minneapolis office, Federal Bureau of Investigation, who furnished the following statement:

"I am a Special Agent of the Federal Bureau of Investigation assigned to the Minneapolis Office. I reside at 7808 Manor Avenue North, Brooklyn Park, {5256} Minnesota.

"On Wednesday evening, April 6, 1977, I had occasion to view a program on Minnesota Public Service Television, also known as Channel 2, Minneapolis, Minnesota. This program was during the time period from approximately 7:30 p.m., to 7:45 - 7:50 p.m. This program concerned the trial of Leonard Peltier, that is currently being held before United States District Court Judge Paul Benson in Fargo, North Dakota. Appearing on this program were John Trudell, the head of the American Indian Movement, the Chief Defense Attorney Ellison, and an older Indian woman whose name I cannot recall, but who claimed to reside on the Pine Ridge Indian Reservation, Pine Ridge, South Dakota.

"I recall specifically that Attorney Ellison accused at least five to six Federal Bureau of Investigation Agents of having fabricated evidence and of having lied on the stand. Ellison also made a statement to the effect that Judge Benson was aware of these lies, but had made the statement that he did not believe Federal Bureau of Investigation Agents would do such a thing."

It is subscribed to.

MR. TAIKEFF: I trust, after just hearing the tape, your Honor recognizes that the statement in the affidavit which says that Mr. Ellison said that Your Honor was aware {5257} of those things is a factual inaccuracy?

THE COURT: I have already, through Exhibit 5, entered in the record the exact copy of Mr. Ellison's statements.

I am going to have you mark these as one exhibit, these excerpts from transcripts, clip them together somehow.

Exhibit 8 is a portion of the transcript from the daily copy in this trial which the Court has extracted and which the Court believes to be the dialogue arising out of which Attorney Ellison made the statements that he did on that public television program; and I am including Exhibit 8 as a part of the record here to show that not only does this appear to have been an outright and flagrant violation of local Rule XXIX in this case, but a very serious misrepresentation of the comments which the Court made with reference to this lying dialogue.

The Court views this total activity on the part of Mr. Ellison as being highly unprofessional, as designed to misrepresent to the public what was actually going on, and finds it to be extremely

detrimental to the judicial system as a whole because it is obviously designed to inflame passions and to interfere with the administration of justice.

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All of this will be made a part of the record in this case, and Mr. Ellison will be given an opportunity now or later to make whatever response he may feel appropriate to what the Court has just now put into the record.

MR. TAIKEFF: Can we borrow the exhibits for the purpose of reviewing their exact content before such a response is offered to your Honor, if such a response is chosen to be made?

THE COURT: You may.

I would ask Mr. Ellison if he desires to make any response at this time?

MR. ELLISON: Your Honor, I will wait until I have an opportunity to review the exhibits.

MR. TAIKEFF: In fact, if we could take them into the office and begin that process --

THE COURT: (Interrupting) I will not be available for any further proceedings on this matter this afternoon.

MR. TAIKEFF: I wasn't suggesting that your Honor need hold himself available.

We would like to start that process.

Whenever that occasion presents itself for your Honor to hear anything further that need be heard, we would be prepared to go forward immediately.

THE COURT: That closes the matter so far as Mr. {5259} Ellison is concerned.

There is a much less serious matter relating to Mr. Lowe which I am also going to put on the record.

I have here a copy of the Minneapolis Tribune, Saturday, April 16th, on Page 4A; and I would ask the Clerk to attach a mark, put an exhibit identification on that.

THE CLERK: Mark that as Court Exhibit No. 9, your Honor.

THE COURT: I have particular reference to a statement in this story relating to Mr. Peltier:

"Although defense lawyers indicated after the trial ended," now, the record may show that this paper came out this morning and the trial was not ended yet at that time, although the taking of evidence had been completed.

Again I will read: "Although defense lawyers indicated after the trial ended that they were hopeful that Peltier would be acquitted, the lawyers carefully prepared the court record in the event they have to appeal a conviction.

"I'll bet a year's pay that an appeals court will overturn any conviction," said Lowe after testimony was completed.

"The lawyers believe that U.S. District Judge Paul Benson erred in limited their attempts to point out discrepancies in FBI reports to the jury and to let the {5260} jury hear from several witnesses about their experience with FBI agents."

Mr. Lowe, in view of the provisions of that paragraph I read, Paragraph XXIX, do you have any statement to make concerning this report of your comments to the press?

MR. LOWE: Yes, I do.

I can state very simply, first of all, I was quite surprised. I happened to read the Tribune this morning. I don't normally. Normally I have been reading The Forum, and I think my wife got it at breakfast, I am not sure. I guess I saw it in the defense office, and I was quite surprised to see that in print because I did not know that at any time I had made such a statement to a member of the press, for public dissemination certainly.

I recalled, when I read the newspaper, having said that to somebody whom I thought to be just one of the people who had been attending the trial. I was not aware at the time that that person was a member of the press media.

After I had been discussing the thing with him, he and I just talked on a break, I had an occasion to discuss with him what he was doing at the trial. He, as I remember, was a man who was particularly well-dressed; and it had been my impression he was either a local {5261} attorney who had stopped in to observe or somebody who has some interest in the trial. In fact, I thought at first he had been an FBI Agent because I had seen him talking with Mr. Hultman at one point.

It was after I made that statement that I talked with him and found out that he had something to do with the news media in Minneapolis; and he said that he was preparing some general information which he was eventually going to assemble into some sort of a summary piece that he was going to do later in Minneapolis.

I frankly thought he had indicated it was some sort of television thing, news report; but I can assure your Honor neither had he made it known it was the news media. I certainly did not make it for public dissemination.

I have frequently in the past thought fiercely of the free press and fair trials standard, but I can assure your Honor it was my intent throughout this trial to observe the local Rule and what I understand to be the general proscription on improper remarks; and I can assure you I had no knowledge or intent that that would be coming out in any public media.

MR. TAIKEFF: I can add one fact, based on my own personal knowledge concerning what Mr. Lowe just said, if I may.

THE COURT: You may.

{5262}

MR. TAIKEFF: I think I know who that man is. He asked if he could read the testimony of certain witnesses from the transcript in the course of the past week. In fact, he asked on two separate occasions and he too said something to me, and I am fairly certain it is the same man. He said he was from Minneapolis, and he told me that he was writing a general piece on the entire case but did not say anything about functioning in the capacity as a currently working news reporter who was going to publish anything in the newspaper.

I, fortunately, said nothing to him, except "Yes, you can look at the transcript if you would like," and I suspect that's the same person; and I told your Honor that because of what Mr. Lowe said about the man saying that he was doing general research in the area.

MR. LOWE: In fact, Your Honor, I will add another thing. I believe now that Mr. Taikeff says that, it triggers something.

I believe the time that I spoke with him -- and I know the first time that I remember seeing him -- was not in the courtroom that day, but was actually at another location, at the house where Mr. Taikeff has been, where I met him; and I think that was where I said it to him because it was so out of context with the courtroom, that's why I had no concept of a member of the press.

{5263}

MR. TAIKEFF: That's where he came to read the transcripts.

MR. LOWE: He at that time just talked to me casually. I was over there for some reason, deliver something or whatever it was. I was not living in the same house with Mr. Taikeff.

I would also add, your Honor, during numerous occasions during the trial I have been approached by the press, news media.

One of them was called to your attention, some humorous side comments when there was a juror whose earlier statements had been brought to your Honor's attention, we had a hearing out of the presence of everybody; and that there was later reported to your Honor that -- I think Mr. Hanson reported that a reporter had told him when he said, "No comment," he couldn't get anything but no comments out of any of the lawyers either.

That has been my posture throughout this trial.

THE COURT: And I have no information to indicate otherwise. Thank you, that is all.

MR. TAIKEFF: Could we take those papers with us, your Honor?

THE COURT: I will give them to Mr. Hanson. He is responsible for them from this point on.

MR. TAIKEFF: Off the record for a moment, concerning {5264} CIA matters. It is really a procedural question.

THE COURT: Yes. I will send the court reporter out.

(Whereupon, at 3:42 o'clock, p.m., the hearing in chambers was adjourned.)

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REPORTER'S CERTIFICATE

I, ZONA A. McARTHUR, hereby certify that I am one of the duly appointed and acting Official Court Reporters for the United States District Court, District of North Dakota; that I was present in court during the daily copy proceedings along with Douglas Ketcham, Roger Mjones and Cyndee Karich, had in the above-captioned cause at Fargo, North Dakota, beginning March 16, 1977, through April 16, 1977, inclusive, Volumes I through XXII, SUPPLEMENT XXII, XXIII and XXIV; and that the portion of the foregoing pages numbered 1 through 5264 that I reported contain a full, true and correct transcription of the shorthand notes taken by me of the daily copy proceedings had and entered of record at such times and place, the certificates of the other reporters to be attached hereto.