

themselves for defence.¹⁰

Hundreds of rounds were fired that day on both sides; three people were left dead; two F.B.I. agents and a resident of Pine Ridge. The two F.B.I. agents, Coler and Williams, had been shot several times and were found lying face down next to Coler's bullet ridden vehicle. The third person killed on June 26, 1975, Joe Stuntz, a young member of AIM was said to have been killed by a police bullet. However his shooting remains another unsolved death at Pine Ridge.

On **June 27, 1975**, SWAT teams, spotter planes, a helicopter and a chemical warfare team were centered on Pine Ridge. The negative publicity that this display of force caused was of concern to the F.B.I., but they justified the force by claiming that AIM had built "bunkers" that could only be overcome by "military assault forces".¹¹

The deaths of the two agents was not permitted to go unsolved. The massive investigation commenced with the F.B.I. pursuing a list of 20 to 30 suspects, essentially all the AIM members who may have participated in the firefight. That list was narrowed down to four people; Dino Butler, Robert Robideau, Jimmy Eagle and Leonard Peltier. All were committed AIM members.

1. Peter Matthiessen in The Spirit of Crazy Horse, Viking Press, New York 1984, 2d edition 1991, and Ward Churchill and Jim Vander Wall in Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement, South End Press, Boston, at pp 103-177 and others, have developed this analysis of the background to the shootings. A number of the original documents upon which this analysis is based are included as well. Recently, in light of an active campaign for Presidential clemency for Peltier, this characterization has been attacked. Citing F.B.I. sources, investigative reporter Scott Anderson has published an article in a glossy magazine devoted to outdoor pursuits challenging what he calls the myth of Leonard Peltier and arguing that Peltier's continued imprisonment is the fault of his politically motivated supporters. Scott Anderson "The Martyrdom of Leonard Peltier" Outside July 1995 at 44. This paper relies on Leonard Peltier's own understanding of the situation he and other supporters of traditional Indian values were facing in 1975.

2. Ward Churchill and Jim Vander Wall in Agents of Repression: the FBI's Secret Wars Against the Black Panther Party and the American Indian Movement, South End Press, Boston, at pp 141 - 177; Peter Mathiessen in The Spirit of Crazy Horse, Viking Press, New York 1984, 2d edition 1991, at p. 195.

3. Peter Matthiessen in The Spirit of Crazy Horse, Viking Press, New York, 1984, 2d edition 1991 at p. 5. The popular film "Thunderheart" (directed by Michael Apted) is a fictionalized account of that same struggle and the role of the GOONS and the F.B.I.

4. Report of William F. Muldrow, Equal Opportunity Specialist, to Dr. Shirley Hill Witt, Regional Director, United States Commission on Civil Rights "Monitoring of Events Related to the Shooting of two F.B.I. agents on the Pine Ridge Reservation", July 9, 1975; Dr. Shirley Hill Witt and William F. Muldrow to John A. Buggs, Director, United States Commission on Civil rights, "Events Surrounding Recent Murders on the Pine ridge Reservation in South Dakota" March 31, 1976.

UNITED STATES COMMISSION ON CIVIL RIGHTS

MOUNTAIN STATES REGIONAL OFFICE
EXECUTIVE TOWER INN - SUITE 1700
1405 CURTIS STREET
DENVER, COLORADO 80202
TELEPHONE: (303) 837-2211

DATE: March 31, 1976

LY TO
ATTN OF: MSRO - S.H. Witt and W.F. Muldrow

SUBJECT: Events Surrounding Recent Murders on the
Pine Ridge Reservation in South Dakota

TO: John A. Buggs

THRU: I. T. Creswell, Jr.
Assistant Staff Director, OFO

DEFENDANT'S
EXHIBIT

W W

Events surrounding the murder of two Native Americans in separate incidents during the past six weeks on the Pine Ridge Reservation in South Dakota have again called into question the roles of FBI and BIA police in law enforcement on the reservation. Numerous complaints were received by MSRO alleging that these two agencies failed to act impartially or to respond properly in the aftermath of the two murders which are the subject of this memorandum. More seriously, the media published allegations that the FBI was perpetrating a coverup to protect guilty persons.

In view of the seriousness of these charges, Dr. Shirley Hill Witt, Regional Director, and William F. Muldrow, Equal Opportunity Specialist, from the Mountain States Regional Office were asked to gather first-hand information on events which transpired. FBI and BIA police officers, attorneys, tribal officials, and other persons involved in events surrounding these two murders were interviewed on March 18 and 19 in Rapid City, South Dakota, and on the Pine Ridge Reservation. Additional information was gathered through the mail and in telephone interviews.

Following is a brief summary of events which transpired according to the persons contacted.

Wanblee, a small town on the northeastern portion of the reservation, is largely populated by so-called "full blood" or traditionally oriented Native Americans. This community helped to oust incumbent Tribal President Richard Wilson by a three to one vote against him in the recent general election on the reservation. The chairman of Pine Ridge District, an area strongly supportive of Wilson on the reservation, was quoted on January 23 as saying that Wanblee needed "straightening out" and that people would come to do it.

On Friday evening and Saturday morning, January 30 and 31, according to Wanblee residents, several car loads of heavily armed persons reported by eye-witnesses to be Wilson supporters arrived in the town.

Sometime Saturday morning shots were fired, allegedly by this group, into the house of Guy Dull Knife. BIA police in town at the time called for reinforcements which arrived promptly but made no arrests of the persons identified by eye witnesses as the ones who did the shooting.

Shortly following this incident that same day, Byron DeSersa, a resident of Wamblee, was shot and killed during a high-speed automobile chase, reportedly by persons recognized by passengers in DeSersa's car as being the same individuals responsible for terrorizing the town earlier. Attackers jumped out of their cars to chase those who were with DeSersa and he bled to death for lack of immediate medical attention.

Following DeSersa's death, the FBI, which has jurisdiction over felonies, was called and two agents arrived that afternoon. Sporadic shooting continued in the town through Saturday night and two houses were firebombed. Residents reported that despite their pleas, neither the FBI, the BIA police, nor the Jackson County Sheriff's Office, who had cross-deputization powers and was present at the time, did anything to stop the shooting. Despite the fact that one person had already been killed by gunfire, an FBI spokesman told District Chairman James Red Willow that the FBI was strictly an enforcement agency and had no authority to act in a protective capacity. Saturday evening one person, Charles David Winters, was arrested for the murder of DeSersa. No attempt was made to apprehend or arrest the other passengers in Winters' car, even though persons who were with DeSersa when he was shot claimed that they were chased by Winters' companions after the shooting and could readily identify their attackers. Nor have any further arrests been made in connection with the terrorization of the town over a period of two days. The case is at present being investigated by a grand jury in Pierre.

The second series of events about which Witt and Muldrow conducted an inquiry began on February 25 when a rancher discovered the partially decomposed body of a Native American woman beside Highway No. 73 a few miles east of Wamblee. Two BIA policemen and an FBI agent responded to the rancher's report and brought the body to the Pine Ridge Hospital where an autopsy was performed on February 25 by W.O. Brown, M.D., a pathologist from Scottsbluff, Nebraska. He issued a verbal report that day to the effect that she had died of exposure. He found no marks of violence on her body except evidence of a small contusion. The dead woman's hands were severed and sent to a laboratory in Washington, D.C., for fingerprint identification, both the FBI and the BIA claiming that they had no facilities to do so themselves due to the state of decomposition of the body.

On the morning of March 3, the body, still unidentified, was buried in the Holy Rosary Cemetery at Pine Ridge. The FBI reported that in the afternoon of the same day they received a report from the Washington laboratory that fingerprint tests revealed the dead woman was Anna Mae Pictou Aquash, a Canadian citizen wanted in connection with a bench warrant issued November 25 in Pierre for default of bond on a fire arms charge. She also was under indictment by a federal grand jury in connection with a shoot out with Oregon police last November 14.

Relatives of Aquash in Canada were notified of her death on March 5, and news of her identification was released to the media the following day. Immediately, relatives of the dead woman and others who had known her expressed their disbelief that she had died of natural causes. On March 9, citizens of the town of Oglala, where she had lived for a time, publicly demanded a full investigation of the circumstances surrounding her death. Relatives, represented by attorney Bruce Ellison of the Wounded Knee Legal Committee, requested that the body be exhumed for further examination.

On March 9, six days after the body was identified, the FBI filed an affidavit with the U. S. District Court and received a court order permitting exhumation for "purposes of obtaining complete X-rays and further medical examination." X-rays had not been considered necessary during the first examination.

On March 11 the body was exhumed in the presence of FBI agents and Dr. Garry Peterson, a pathologist from Minneapolis, Minnesota, who had been brought in by Aquash's family to examine her body. X-rays revealed a bullet of approximately .32 caliber in her head. Peterson's examination revealed a bullet wound in the back of the head surrounded by a 5x5 cm. area of subgaleal reddish discoloration. Incredibly, this wound was not reported in the first autopsy and gave rise to allegations that the FBI and/or the BIA police had covered up the cause of her death. The fact that officers of both agencies examined the body en situs, wrapped in a blanket beside the road and far from any populated area, yet still did not suspect foul play, lends credence to these allegations in the minds of many people. Hospital personnel who received the body at the hospital reportedly suspected death by violence because of blood on her head.

Other persons are of the opinion that Anna Mae Aquash had been singled out for special attention by the FBI because of her association with AIM leader Dennis Banks and knowledge she might have had about the shooting of two FBI agents on the Pine Ridge Reservation last summer.

These two incidents have resulted in further bitterness, resentment, and suspicion toward the FBI. They follow months of turmoil on the reservation in the aftermath of the FBI shooting incident when allegations were rife that the FBI engaged in numerous improper activities including illegal search procedures and creation of a climate of intimidation and terror.

A contrast is seen between the Wanblee incident, where a person was killed and shooting was allowed to continue over a period of two days, and the incident in July when two FBI agents were shot and nearly 300 combat-clad agents, along with the trappings and armament of a modern army, were brought in "to control the situation and find the killers." Reservation residents see this as disparate treatment. This, along with what at the very least was extremely indifferent and careless investigation of the Aquash murder, many residents feel reveals an attitude of racism and antagonism on the part of the FBI toward Indian people.

Because of the circumstances surrounding the events mentioned here, along with the record of an extraordinary number of unresolved homicides on the reservation, and incidents of terror and violence which have become almost commonplace, the sentiment prevails that life is cheap on the Pine Ridge Reservation. The more militant and traditional Native Americans have concluded that they cannot count on equal protection under the law at the hands of the FBI or the BIA police. Many feel that they are the objects of a vendetta and have a genuine fear that the FBI is "out to get them" because of their involvement at Wounded Knee and in other crisis situations.

Feelings are running high and allegations of a serious nature are being made. MSRO staff feel that there is sufficient credibility in reports reaching this office to cast doubt on the propriety of actions by the FBI, and to raise questions about their impartiality and the focus of their concern.

In July 1975 Chairman Arthur Flemming formally requested Attorney General Edward Levi to conduct an investigation into allegedly improper FBI activities following the shooting of two agents last June. This request, as far as is known, was never acted upon. We feel that the situation is serious enough to warrant a second communication from the Commission to Mr. Levi requesting an investigation of the propriety, quality, and objectivity of FBI involvement on the reservation. A proposed draft letter is enclosed.

Shirley Kiss Witt
DR. SHIRLEY KISS WITT
Regional Director

William F. Muldrow
WILLIAM F. MULDROW
Equal Opportunity Specialist

enclosure

FEDERAL BUREAU OF INVESTIGATION
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Telephone: (303) 837-2211

DATE: July 9, 1975

TO: DIRECTOR
FROM: MSRO - WDM:ldrow

SUBJECT: Monitoring of Events Related to the Shooting of Two FBI Agents
on the Pine Ridge Reservation.

To: Dr. Shirley Hill Witt
Regional Director

At about 1:00 p.m. on Thursday, June 26, two FBI agents were shot to death on the Pine Ridge Reservation near the town of Oglala, South Dakota. The FBI immediately launched a large-scale search for the suspected slayers which has involved 100 to 200 combat-clad FBI agents, BIA policemen, SWAT teams, armored cars, helicopters, fixed-wing aircraft, and tracking dogs. An increasing volume of requests for information regarding the incident and numerous reports and complaints of threats, harassment, and search procedures conducted without due process of law by the FBI, prompted my visit to the reservation to gather firsthand information. MSRO was involved at Pine Ridge during the investigation of the tribal election held there in 1973. This office was also called upon to do a preliminary investigation of an incident involving the shooting of AIM leader Russell Means on the Standing Rock Sioux Reservation in North Dakota last month.

I was on the reservation from July 1-3, and during that time had the opportunity to talk with the Acting BIA Superintendent (Kendall Coming), the President of the Tribal Council (Dick Wilson), FBI agents, BIA police officials, numerous residents of the reservation including several who lived in the vicinity of the scene of the shooting, and media correspondents from NBC, CBS, and National Public Radio. FBI officials were too busy to see me when I visited their headquarters to arrange for an appointment. Part of the time I travelled in the company of Mario Gonzales, an attorney and enrolled member of the tribe who has been designated chairman for the South Dakota Advisory Committee.

This particular incident of violence must be seen in the context of racism, frustration, and crime which has increasingly pervaded life on the reservation during the last three years. Unemployment approaches 70 percent and the crime rate is four times that of Chicago. There have been eight killings on the reservation so far this year and uncounted beatings, fights, and shootings. Many of these incidents have never been explained or, in the minds of many residents, even satisfactorily investigated. The tribal government has been charged by reservation residents with corruption, nepotism, and with maintaining control through a reign of terror.

Tribal officials, including the President of the Council, have been indicted in connection with such an incident (on a misdemeanor charge, although guns and knives were involved). It is widely felt that those in power

people from the largesse of Federal programs at the expense of the more traditional, organized residents of the reservation.

Tensions are exacerbated by irresponsible statements by State officials.

The Civil Liberties Organization for South Dakota Citizens, a right-wing group composed in large part of white ranchers who own or lease most of the prime land on the reservation, produces active support for Wilson's government and presses for State jurisdiction over the reservation.

During World War II, due to a shortage of law enforcement manpower, the FBI was given jurisdiction to investigate felonies on the reservation and this has never been relinquished. The number of FBI agents assigned to the reservation was recently increased in an attempt to cope with the mounting crime rate. One of the agents who was killed last week was on special assignment from Colorado.

Many of the facts surrounding the shooting are either unknown by officials or have not been made public. Media representatives felt that the FBI was unnecessarily restrictive in the kind and amount of information it provided. It is patently clear that many of the statements that have been released regarding the incident are either false, unsubstantiated, or directly misleading. Some of these statements were highly inflammatory, alleging that the agents were "led into a trap" and "executed." As a result, feelings have run high.

The FBI had arrest warrants for four Native Americans who had allegedly assaulted, kidnapped, and robbed a white man and a boy. Residents of the reservation and an attorney from the Wounded Knee Legal Offense/Defense Committee with whom I talked felt that the warrants were issued merely on the word of the white people without adequate investigation. Such a thing, they point out, would never have happened had the Indians been the accusers and typifies unequal treatment often given to Indian people.

The two agents killed in the shooting had been to several houses on the reservation looking for the wanted men. The occupants of some of these houses claimed that the agents had been abusive and threatening. Some of the Native Americans that I talked with, who had been involved in the Wounded Knee incident, have a genuine fear that the FBI is "out to get" them. When the two agents were killed they had no warrants in their possession.

The bodies of the agents were found down in the valley several hundred yards from the houses where the shooting supposedly occurred. "Bunkers" described in newspaper accounts turned out to be aged root cellars. "Trench fortifications" were non-existent. Persons in the houses were in the process of preparing a meal when the shooting occurred. One of the houses, owned by Mr. and Mrs. Harry Jumping Bull, contained children and several women, one of whom was pregnant. The Jumping Bulls had just

...wedding anniversary. As a result of the incident, 1374
the Jumping Bulls had a nervous breakdown and is in a Chadron, Nebraska hospital.

The body of Joseph Stuntz, the young Native American killed in one of the houses during the shooting, was seen shortly after the shooting lying in a mud hole as though it had been dumped there on purpose. He was later given a traditional hero's burial attended by hundreds of people from the reservation.

Sixteen men were reportedly involved in the shooting though no one knows how this figure was determined. The FBI has never given any clear indication that it knows the identity of these men. Incredibly, all of them, though surrounded by State and BIA police and FBI agents, managed to escape in broad daylight during the middle of the afternoon.

In the days immediately following the incident there were numerous accounts of persons being arrested without cause for questioning, and of houses being searched without warrants. One of these was the house of Wallace Little, Jr., next-door neighbor to the Jumping Bulls. His house and farm were surrounded by 80-90 armed men. He protested and asked them to stay off his property. Eliot Daum, an attorney with the WKKOFDC who had been staying in the house with Little's family, informed the agents that they had no right to search without a warrant. They restrained him and prevent him from talking further with Little while two agents searched the house.

Daum was also present when David Sky, his client, was arrested in Pine Ridge as a material witness to the shooting. Sky was refused permission to talk with Daum before he was taken to a Rapid City jail, a two-hour drive. Individual FBI agents with whom I talked were deeply upset over the "execution" of their comrades.

Most of the Native Americans received me cordially and I was invited to attend the burial of Joseph Stuntz. Some expressed appreciation for my presence there as an observer and suggested that the Commission might be the only body capable of making an impartial investigation of the Pine Ridge situation. My interview with Dick Wilson was less satisfactory. He stated that he could give me no information and that he did not "feel like talking about civil rights at a time like this."

Several questions and concerns arise from result of these observations. The FBI's conducting a full-scale military operation on the reservation. Their presence there has created deep resentment on the part of many of the reservation residents who do not feel that such a procedure would be tolerated in any non-Indian community in the United States. They point out that little has been done to solve the numerous murders on the reservation, but when two white men are killed, "troops" are brought in from all over the country at a cost of hundreds of thousands of dollars.

No FBI agents actually live on the reservation and none of them are Native American. They are a completely outside group with remarkably little understanding of Indian society. Questions are raised as to the basis

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so; FBI jurisdiction on the reservation, the seeming conflict and overlap with the jurisdiction of the MIA police, and the propriety of the FBI, which furnished adversary witnesses for the Wounded Knee trials, acting as an investigatory body on the Pine Ridge Reservation. Many Native Americans feel that the present large-scale search operation is an over-reaction which takes on aspects of a vendetta.

Does the Commission have legal access to FBI and MIA investigatory reports which would enable an assessment of the scope and impartiality of their activities? Requests from this office to both of these agencies, and to the Justice Department's Office of Indian Rights, for reports of the investigation of Russell Means' shooting in June were denied.

The jurisdictional problem, like the present shooting incident, cannot be divorced from the other pressing concerns of Pine Ridge Reservation residents which relate to their basic rights as human beings and citizens of the United States. The climate of frustration, anger, and fear on the reservation, which results from poverty, ill health, injustice, and tyranny, would indicate that the latest incident of violence will not be the last.



WILLIAM F. MULDROW
Equal Opportunity Specialist

WFM:ej

5. Amnesty International, Proposal for a Commission of Inquiry into the Effect of Domestic Intelligence Activities on Criminal Trials in the United States of America (1981) at p.14.

Proposal
for a
commission of inquiry
into the effect of
domestic intelligence activities
on criminal trials
in the
United States of America



CHAPTER I

A PROPOSAL FOR A COMMISSION OF INQUIRY

A. General

Amnesty International's work in the field of human rights is mainly on behalf of individuals imprisoned for overtly political offences. It is relatively easy in such cases to assess a claim that an individual is a prisoner of conscience (1) as the law under which he or she is charged often explicitly proscribes the expression of political views or the membership of a political organization. This is not so in the United States of America (USA) where cases brought to Amnesty International's attention involve convictions of ordinary criminal offences.

The cases dealt with in this report involve misconduct by the Federal Bureau of Investigation (FBI). The defendants were all politically active when legal proceedings were started, and have alleged that their prosecutions were due to state or federal policy to imprison them because of this. (2) There is evidence to suggest that the FBI has harassed and/or kept under surveillance the political groups to which the defendants belonged. (3)

Amnesty International has learned from experience that close examination of the details of an individual case may fail to reveal any demonstrable connection between a defendant's political ideology and the fact that she or he is being prosecuted. Defendants in criminal cases have the benefit of the constitutional safeguards of due process and equal protection of the laws, and there is a wide variety of legal procedures and arguments that can be adopted by the defence before, during and after conviction. Moreover, it is a jury and not Amnesty International which notes the demeanour of witnesses and is in the best position to pronounce upon questions of fact. Even though Amnesty International may undertake an exhaustive review of the evidence in each case, it can bring to this task neither the skill nor the experience of a court of law.

There is, however, another matter to consider. The cases described in this report are mainly ones where the FBI failed to act with due regard for individual human rights. But this is only half the story: the misconduct occurred at the same time as FBI domestic intelligence investigations or disruption programs aimed at individuals who have been arraigned on criminal charges. (4)

A former leader of the Black Panther Party (BPP) in California, Elmer "Geronimo" Pratt, and certain members of the American Indian Movement (AIM), claim that they have been "framed" and are therefore political prisoners. Chapters II and III of this report examine this

claim but do not comment on whether the jury acted reasonably in convicting on the evidence given at the trial. (5) The purpose of the research has been different; it has been to ascertain whether FBI misconduct may have undermined the fact-finding process. To quote from the dissenting judgment in the Elmer Pratt case:

"Whether or not the evidence which was presented at the trial points unerringly to the defendant's guilt is not the fundamental issue, because in any trial if an effective defense is throttled there can be no conclusion other than one of guilt." (6)

Amnesty International's Statute does not permit the adoption as prisoners of conscience of those imprisoned because they have used or advocated violence. The matters of concern described in this report do not necessarily suggest that a particular individual should be considered a prisoner of conscience; only that there is reason to subject the circumstances of each case to further impartial scrutiny; nor does the report review all the evidence in the cases mentioned in it. (7)

B. Domestic Intelligence Operations by the FBI

Three aspects of FBI intelligence activities affecting American citizens are relevant to this report: the collection of intelligence about political groups and their penetration by informants; (8) the passing on of information thus collected to state law enforcement agencies, as well as supplying witnesses for the prosecution; (9) covert action "designed to disrupt and discredit the activities of groups and individuals deemed a threat to the social order." (10)

One function of the FBI is the prevention of unlawful violence, (11) but methods adopted to achieve this must be in accordance with both domestic law and the principles of international human rights law. This is especially important in domestic intelligence investigations whose criteria differ from those of ordinary criminal investigations and consequently may jeopardize political freedom: (12)

"An integral part of domestic security investigations is the collection of information about the political beliefs, associations and activities of Americans with grievances against the government . . . A wide range of information about political beliefs and activities may appear relevant from the point of view of experienced investigators, who assume that somehow, some day, all the pieces will fall together to reveal a pattern of conspiratorial activity." (13)

The BPP was the subject of an FBI covert intelligence program known as COINTELPRO ("Counter Intelligence Program"):

"In COINTELPRO the Bureau secretly took the law into its own hands, going beyond the collection of intelligence and beyond its law enforcement function to act outside the legal process altogether and to covertly disrupt, discredit and harass groups and individuals . . . In COINTELPRO the Bureau imposed summary punishment, not only on the allegedly violent, but also on the non-violent advocates of change. (14)

". . . Under COINTELPRO, certain techniques the Bureau had used against hostile foreign agents were adopted for use against perceived domestic threats to the established political and social order. Some of the targets of COINTELPRO were law-abiding citizens merely advocating change in our society. Other targets were members of groups that had been involved in violence, such as the Ku Klux Klan or the Black Panther Party. Some victims did nothing more than associate with targets . . ." (15)

Detailed reports of FBI misconduct towards the BPP are contained in the report of the Senate Committee set up to study "governmental operations with respect to intelligence activities and the extent, if any, [of] . . . illegal, improper or unethical activities by . . . the federal government" (Church Committee). (15A) Senator Church has said, however, that "we did not pursue the Indian matter It may not have been raised because it seemed to fall within the ordinary law enforcement side of the FBI duties whereas we were concerned with the counter-intelligence side." (16) In Amnesty International's opinion this distinction is in practice sometimes difficult to draw. (17)

On 17 March 1976 the Director of the FBI wrote that "a search of our central records reveals no information concerning the establishment of counter-intelligence disruption programs" (18) directed at AIM; but on 21 March 1979 the FBI Special Agent-in-Charge in Minneapolis, Minnesota, wrote that "the FBI does investigate AIM". (19) Judicial opinion suggests that "AIM now operates within the system". (20)

Amnesty International does not take any position on the necessity or otherwise of any domestic intelligence investigation; (21) but it notes with concern that while engaged on its intelligence work in relation to AIM the FBI has appeared willing to fabricate evidence against one of AIM's members. (22) It earlier withheld information from defendants which should have been disclosed (23) and infiltrated the defence team of individuals indicted on a serious charge. (24)

Domestic intelligence investigations are intended to ensure domestic security; (25) but when the agency carrying out the program also jeopardizes the practical application of the right to a fair trial the issues raised are fundamental. It is against this background that allegations of an FBI pattern of intimidation of AIM must be considered. (26)

answer is not dependent upon whether a defendant is found guilty in court; the prime issue is FBI conduct, its motives and possible effect upon the criminal justice system.

When defence counsel for an AIM member seeks to demonstrate that the FBI has been guilty of misconduct in other AIM prosecutions, is this relevant to the facts of the case being tried? First it must be assumed that a court will admit only "relevant" evidence. The word "relevant" means that any two facts to which it is applied are so related to each other that one fact (whether on its own or with others) proves or renders probable the existence of other facts. (49)

The defence is likely to say that evidence of misconduct should be presented to the jury to show that the government is prepared to use improper methods to secure a conviction. (50) The government is likely to reply that there is no direct proof that the evidence is relevant to the particular prosecution, and to argue that it is "collateral" to the actual facts at issue (for instance, how a homicide was committed and by whom). (51) They may assert that the defence is arguing in bad faith and seeking to sidetrack the court from the pertinent issues. A court might accept the contentions of either party.

The feelings of members of groups that are kept under surveillance should not be underestimated when evidence of FBI conduct is excluded as "irrelevant" or "collateral". The resentment aroused in such cases can perhaps best be seen as that of a minority which suffers discrimination and which believes, rightly or wrongly, that such a decision means they will get no real opportunity to submit to the jury matters they consider germane to the trial. The defence has been known to describe such decisions as "oppression in the courtroom"; (52) the prosecution may refer to "irrelevant political statements". (53) Accusations of bad faith between counsel are not uncommon. (53A)

Example No.1. US -v- Leonard Peltier

(i) Myrtle Poor Bear's evidence

Leonard Peltier was convicted of the murder of two FBI Special Agents on the Pine Ridge Indian reservation in South Dakota. In February and March 1976 Myrtle Poor Bear signed two affidavits purporting to be an eye-witness account of murders which had taken place on 26 June 1975. Leonard Peltier was arrested in Canada and two of these affidavits were presented to a court, together with other evidence, in extradition proceedings. (54) The Myrtle Poor Bear affidavits formed a vital part of the case against Leonard Peltier as she claimed to have been an eye-witness. Extradition was ordered and upheld by the Canadian Minister of Justice. (55)

Shortly afterwards, Leonard Peltier's counsel in the USA acquired a third affidavit sworn by Myrtle Poor Bear before the other two were. It indicated that she had not been present on Pine Ridge the day the FBI

agents were killed. The US Court of Appeals later said:

" . . . Anybody who read those affidavits would know that they contradict each other. Why the FBI and prosecutor's office continued to extract more to put into the affidavits in hope to get Mr Peltier back to the United States is beyond my understanding . . . Because you should have known and the FBI should have known, that you were pressurising the woman to add to her statement." (56)

Myrtle Poor Bear was called as a defence witness after it became apparent that the government was not going to use her testimony at the trial. (57) This was to "demonstrate that the government had resorted to fabrication of evidence, obstruction of justice, subornation of perjury and intimidation, all classic indicia of consciousness of a weak cause, and to lay bare the bias and hostility of two FBI agents [working on the case]." (58)

The trial court's guidelines were unequivocal:

"The court's position with reference to evidence to be offered by the defence is simply that evidence relative to the issues and the evidence presented by the government will be admitted. I will state, however, that witnesses who have testified will not be impeached by a showing of misconduct of the FBI unless that misconduct relates to the testimony of individual witnesses who have testified or . . . exhibits that have been received in evidence." (59)

During a court hearing to determine whether or not the jury should hear her evidence, Myrtle Poor Bear "disclaimed virtually every allegation she made in the affidavits [which had gone to Canada]. She testified that she had been forced to sign the affidavits, which were prepared by the FBI, under threats of physical harm." (60) Her evidence to this effect was not presented to the jury on the grounds that it was "collateral". (61)

The Court of Appeals later described the FBI's conduct thus:

"What happened happened in such a way that it gives some credence to the claim of the . . . Indian people that the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada . . . And if they are willing to do that, they must be willing to fabricate other evidence. And it's no wonder that [Indian people] are unhappy and disbelieve the things that happened in our courts when things like this happen." (62)

The prosecution argument on appeal was simple. Although the defective affidavits should not have been submitted to the Canadian authorities, they argued, the other evidence presented in Canada of Leonard Peltier's involvement in the murders should not be forgotten.

They pointed out that the Canadian Minister of Justice had evidence of the falsity of the affidavits before him when he upheld the extradition order. They contended also that Leonard Peltier had not presented valid reasons why the jury should consider the truthfulness or falsity of evidence given at the trial in the light of other evidence given at the extradition hearing. (63) They seem to have meant that nothing concerning the affidavits was relevant to whether or not Leonard Peltier had committed the murders, and that the prosecution had not tried to rely on Myrtle Poor Bear's evidence at the trial.

The government answer on appeal on the matter of bias and hostility on the part of the FBI was in the same vein. They argued that the agents concerned were not witnesses before the jury and that therefore their conduct was not pertinent. (64)

Another example from the same case is Jimmy Eagle.

(ii) Jimmy Eagle

Jimmy Eagle, a young Indian, was charged with the same murders as Leonard Peltier, but the government dropped the proceedings. He testified, not in the presence of the jury, that he had been questioned by FBI agents who had threatened to have him indicted for the murders if he did not cooperate with the investigation. (65) He had not cooperated and had later been indicted. After reporting the FBI threats to his lawyer, he had been warned to keep quiet at all times as the government would probably put informers in his cell. (66)

While he was in prison, the government had obtained statements from four of his cell-mates which purported to be a description by Jimmy Eagle of the murders. (67) Jimmy Eagle testified, again at a hearing to decide whether his evidence should be presented to the jury, that he had never made any of the statements attributed to him. (68) The defence later contended that because the statements of the four were so thorough, and so completely matched the FBI's theory about the murders, this strongly indicated that the FBI had concocted them and sought the cooperation of four felons in exchange for better treatment. (69)

The government argued in the Court of Appeals that:

"It was never established . . . whether Eagle or the cell-mates were lying concerning the jailhouse confessions. But regardless of who was lying, the issue had no bearing whatsoever upon the facts at bar. Even if it were assumed that the cell-mates were lying the defendant has offered no evidence which established a connection between the cell-mates' supposed misconduct and the FBI. Something more than accusation by defendant's counsel is needed to make such a connection." (70)

Another example from Leonard Peltier's case relates to Anderson, Draper and Brown.

(iii) Coercion of three government witnesses: Anderson, Draper and Brown (71)

These three important government witnesses testified on cross-examination that FBI agents had threatened, intimidated or physically abused them when they were questioned about the murders in the initial stages of the investigation. (72) The Court of Appeals said the following:

"Brown, in his testimony as a witness for the defence . . . stated that he testified falsely before the grand jury as a result of fear of the FBI. All three witnesses testified that when they were interviewed at early stages of investigation, their answers to the FBI's questions were inconsistent with the truth for one reason or another. However, upon further questioning at the trial by the government attorney, they stated that the evidence they gave at the trial was the truth as they best remembered it. [And that therefore there was no evidence that] the government induced them to testify falsely in this trial or in a related trial." (73)

The relevance of this is discussed below.

(iv) The Appeal Court's response to (i), (ii) and (iii) above

The Court said that the evidence was only "minimally relevant":

"Neither Jimmy Eagle nor Myrtle Poor Bear testified as a government witness against Peltier. Furthermore, Peltier made no showing that the integrity of the government's evidence against him was in any way tainted by the Myrtle Poor Bear and Jimmy Eagle episodes. (74)

"Peltier argues that the evidence was relevant to show bias on the part of the government witnesses, Anderson, Draper and Brown. He argues that Poor Bear's and Eagle's testimony, believed by the jury, might have caused the jury to speculate further as to whether the knowledge Anderson, Draper and Brown testified to was implanted in their minds by coercive FBI interrogation. (75)

"It is true that evidence tending to show a substantial reason for bias or interest in an important witness is never collateral or irrelevant. It may be . . . the very key to an intelligent appraisal of the witnesses. However, Eagle's and Poor Bear's allegations of FBI harassment, even if true, shed very little, if any light on the credibility of other witnesses, since the trial court allowed full inquiry into the dealings of Anderson, Draper and Brown with the FBI. . . . (76)

"Peltier also argued that the Poor Bear and Eagle testimony was admissible to show the intention of the FBI to bring about his conviction no matter what the cost. This issue is a more difficult one. As we stated earlier, Peltier's theory of the case was that the FBI framed him by manufacturing evidence and inducing witnesses to testify in accordance with its theory of murders. The Poor Bear and Eagle testimony was certainly consistent with that theory. However, we do not find an abuse of discretion on the part of the District Court in excluding the evidence. The District Court weighed the following facts:

- "(a) the defendant's failure to point to specific evidence used against him, the reliability of which was directly affected by the Poor Bear or Eagle episodes;
- "(b) the lack of probative value of the proffered evidence." (77)

The court said that Myrtle Poor Bear had not been a reliable witness and that her evidence had been very vague as she had often responded that she could not remember things. The court also pointed out that defence counsel had earlier referred to her as a "witness whose mental imbalance is so gross as to render her testimony unbelievable." (78)

As regards Jimmy Eagle, the court pointed out that the defence, in addition to presenting his evidence, had called two of the four cell-mates who had allegedly given false statements to the government. (79) The witnesses affirmed that their earlier statements to the FBI had been true and denied that the FBI had induced them to make false statements. The court said that the two witnesses had later stated they had been threatened by Leonard Peltier that their lives would be in danger if they did not return to court and testify that their earlier testimony had been the result of FBI threats: (79A)

"There was thus no real proof that the FBI solicited statements from the four cell-mates. There was only proof that Eagle denied making the statements." (80)

The court said that it realized the government would probably have presented evidence to the contrary, thus an already lengthy trial would have been extended. It referred to the danger of unfairness to the government as the evidence presented would clearly have tended to divert the jury's attention from the specific question of Leonard Peltier's guilt or innocence. (81)

The Appeal Court's conclusion was interestingly worded:

"While the more prudent course might have been to allow the defence to present the evidence, we find no abuse of discretion in the trial court's exclusion of the testimony of Jimmy Eagle and Myrtle Poor Bear in the light of its low probative value, the potential for further delay in the trial and the danger of unfair prejudice to the government." (82)

The defence tried to get the case heard by the US Supreme Court. The government's reason for opposing this is interesting. Taking up the defence argument that the Myrtle Poor Bear evidence should be seen as "government consciousness of a weak cause" (83) they said:

"An attempt by a government agent to suppress or alter evidence should it occur, can show no more than prosecutorial doubts concerning the probative value of the rest of the government's evidence. These doubts are not knowledge; they are opinion or evaluation. The prosecutor's or investigator's evaluation of the strength of this case is not relevant proof of the defendant's guilt or innocence." (84)

Amnesty International believes that, seen in its full context, the suppression or alteration of evidence can reveal a great deal more than the government suggests. This is discussed further in the Conclusion.

Example No.2. State of South Dakota -v- Richard Marshall (85)

This case too involves Myrtle Poor Bear and retracted testimony. In the South Dakota state prosecution of Richard Marshall for murder, Myrtle Poor Bear gave evidence for the prosecution, saying that the defendant had twice confessed to her that he was the murderer. (86) She later stated that this evidence was false and "contrived by FBI agents". (87) She said that FBI agents forced her to testify against Richard Marshall by threatening to take her and her daughter's lives. (88)

Myrtle Poor Bear was a surprise witness in this case. The prosecutor, directed by the court, apparently disclosed the names of his witnesses at a pre-trial meeting on 16 March 1976 at which Myrtle Poor Bear was not mentioned. (89)

On 22 March she made a statement to a Rapid City Deputy Sheriff about Richard Marshall's alleged confessions; and on 23 March the state's attorney asked to have her name on the record as a witness. (90) This request was granted on 25 March and the defendant asked the court to defer the trial so that the additional witness could be investigated. As far as Amnesty International knows, this latter request was refused. (91)

The trial began on 29 March, and on 2 April Myrtle Poor Bear gave evidence. Apparently she was supplied by the FBI to the state on 23 March 1976 (this was when she made her statement) and accommodation had been arranged for her by FBI agents for three days beforehand. (92) One of the Leonard Peltier affidavits was made on 31 March 1976, a few days later, so evidently she was still in touch with the FBI agents after she had been supplied to the state. (93)

(Footnotes to Peltier section)

54. The extradition proceedings took place in April and May 1976 in Vancouver, BC, before Schultz, J. An appeal was taken by Leonard Peltier to the Canadian Federal Court of Appeal in October 1976. It was unsuccessful.
55. The submission to the Minister of Justice was on the following grounds:
- "(a) The alleged offence was of a 'political character';
 - (b) The conduct of the US Government in suppressing vital evidence amounted to an abuse of process."

(See Halprin -v- Sun Publishing Co. Supreme Court of British Columbia. No. C 771952, 3 May 1978, Vancouver Registry.)

56. Judge Ross of the US Court of Appeals for the Eighth Circuit said this during oral argument on 12 April 1978. Excerpts from this argument, transcribed from magnetic tape, appear as Appendix C to the Petition for the Writ of Certiorari (No. 78-893) filed in the US Supreme Court on behalf of Leonard Peltier on 4 December 1978. See pages 49a-50a.
57. The government characterized her as "not a competent witness" (Peltier Transcript, afternoon session, 13 April 1977, Vol. XXI, pages 4605-6). Case was heard in the US District Court for the District of North Dakota, South Eastern Division, in Fargo, North Dakota, before Hon. Paul Benson, and a jury. This statement was made in the absence of the jury.
58. op. cit. note 56 supra, page 6.
59. See Peltier Transcript, morning session, 7 April 1977, Vol. XVII, pages 3458-3459.
60. This is the wording of the US Court of Appeals. See US -v- Peltier 585 F.2d. 314, 331 (1978).

Myrtle Poor Bear's evidence appears in Peltier Transcript, Vol. XXI. Direct evidence starts on page 4584; cross-examination on page 4629 and redirect on page 4648.

The defence sought to introduce the Myrtle Poor Bear (and other) evidence, and have it heard by the jury "so we rebut by circumstantial evidence certain specific key pieces of evidence which have been introduced against Leonard Peltier and we also offer it to show a pattern of conduct on the part of certain agents of the FBI . . ." (Vol. XXI, page 4653).

The government accused the defence of "attempting to set up a strawman and knock the strawman down and suppose to (sic), and to argue then that that proves something . . . This is nothing more than an attempt to put the FBI in general on trial for some supposed misdeeds that the paranoid defence team has brought up." (Vol. XXI, pages 4653-4654).

61. The court held that that was "irrelevant . . . , that the witness was not a believable witness." Her testimony was related to a "collateral matter". Peltier Transcript, Vol. XXI, page 4665.

The court also said the following (Peltier Transcript, Vol. XXI, pages 4658-9):

"The Court noticed that this witness was under obvious great mental stress. She, her testimony was interrupted at least three times by an emotional reaction of some kind.

"The Court is also aware of the extreme difficulty that was encountered in attempting to bring her back into this Court at the request of the defendant.

"The Court observed that she had a complete lapse of memory on cross-examination relating to recent events.

"The Court also is taking into consideration the fact that this witness was not used in the presentation of the Government's case which defense seeks to impeach by her testimony the three FBI agents who interviewed her were not used in the presentation of the Government's case . . .

"And the Court concludes the credibility of this witness for any purpose is so suspect that to permit her testimony to go to the jury would be confusing the issues, may mislead the jury and could be highly prejudicial."

The court later explained its ruling:

"The offer of proof related to a collateral matter and under the Rules of Evidence is therefore inadmissible. If [Myrtle Poor Bear] as she testified yesterday were to be a believable witness the Court would have seriously considered allowing her testimony to go to the jury on the grounds that if believed by the jury the facts she testified to were such that they would shock the conscience of the Court and in the interests of justice should be considered by the jury."

(Peltier Transcript, morning session, 14 April 1977, Vol. XXI, pages 4707-4708.)

62. Emphasis added. op. cit. note 56 supra. page 51a.
63. These arguments have been shortened and simplified so as to highlight the main points relevant to this discussion. In any event, the government arguments made considerable reference to the decision of the Court of Appeals, which is considered in some detail elsewhere in this chapter. The full arguments are set out in the Brief for the United States in Opposition to Leonard Peltier's petition to the US Supreme Court. The brief is dated February 1979. See pages 4-13 (especially note 8 on page 13).

64. ibid. page 10. The FBI agents did appear in the absence of the jury.
65. See US -v- Peltier 585 F.2d. 314, 331 (1978). Peltier Transcript, Vol. XIX, page 3961. See also Vol. XIX, pages 3979-3980.
66. 585 F.2d. 314, 331 (1978); and see also Peltier Transcript Vol. XIX page 4027.
67. 585 F.2d. 314, 331 (1978); and see Peltier appellee's brief in US Court of Appeals, page 28.
68. See Peltier Transcript, Vol. XIX, pages 3982-3987.
69. 585 F.2d. 314, 331 (1978). See defence submission in Peltier Transcript Vol. XIX, page 3974: "FBI agents . . . were seeking wilfully or recklessly statements of people who purported to be eyewitnesses without verifying them."

On page 3976: "What we are exploring here are the tactics by the FBI which were employed in creating witnesses who had no knowledge of the subject matter." (Defence submission). But compare this with appellee's brief (by government) page 33 re Myrtle Poor Bear.

70. Peltier, appellee's brief (by government) page 28.
71. All three witnesses were young American Indians.
72. This statement is taken from the decision of the US Court of Appeals. 585 F.2d. 314, 328-329 (1978). Amnesty International makes reference to Peltier Transcript Vol. V, page 841, re Anderson's evidence of threats; and Peltier Transcript Vol. XXII, page 4801, re Brown's evidence of refusal to allow contact with a lawyer.

The prosecution described this evidence as follows:

"In substance, however, their testimony indicated only that they were treated roughly and threatened with prosecution or, in the case of Michael Anderson, physical abuse, if they did not make a statement at all."

Peltier, appellee's brief (by government) page 32. (See also Appeal Court's ruling in this case re truth of evidence.)

73. 585 F.2d. 314, 329 (1978). See note 12 where the court said:

"Brown also stated that he lied to the grand jury. However, he affirmed, after his testimony regarding lying to the grand jury, that his testimony at trial was the truth."

See also Peltier Transcript, Vol. XXII, pages 4812 and 4819.

74. Emphasis added. 585 F.2d. 314, 332 [22] (1978).
75. ibid.
76. Emphasis added. 585 F.2d. 314, 332 [23,24] (1978). See, for example, Peltier Transcript, Vol. VI, page 1116.
77. Emphasis added. 585 F.2d. 314, 332 [25] (1978).
78. 585 F.2d. 314, 332-333 [25] (1978). This was at a time when the defence believed that Myrtle Poor Bear might be a government witness.
79. 585 F.2d. 314, 333 [25] (1978).
- 79A. ibid. note 15.
80. 585 F.2d. 314, 333 [25] (1978). See evidence in Peltier Transcript, Vol. XIX, pages 4124-4170; Vol. XIX, pages 4060-4112 and Vol. XX, pages 4409-4436.
81. 585 F.2d. 314, 333 [25] (1978). See paragraphs ii.c. and ii.d.
82. 585 F.2d. 314, 333 [25] (1978).
83. Petition for Writ of Certiorari (No. 78-893), dated 4 December 1978, pages 6 and 15-16. (On behalf of Leonard Peltier in the US Supreme Court).
84. Brief for the US in opposition to petition for certiorari, dated February 1979, page 12.

The brief continued:

"In short, what petitioner characterizes as the 'government's knowledge of the merits of the entire case' is simply not a relevant issue concerning which the jury should have been permitted to hear evidence."

85. This trial took place in March and April 1976 in the Circuit Court of Pennington County, South Dakota Seventh Judicial District before the Hon. Marshall Young, Judge, and a jury. In March 1979 a petition for post-conviction relief was heard by The Hon. Merton B. Tice, Jr., Judge. At the time of writing (January 1981) the Supreme Court of South Dakota has yet to pronounce on the petition for post-conviction relief. It had affirmed the original conviction on 12 April 1978. See 264 NW 2d. 911 (file 11906).
86. Myrtle Poor Bear's trial evidence was presented on 2 April 1976. It is reported in Marshall trial transcript, pages 99-125.
87. Decision of Judge Tice (75-72), dated 17 July 1979 (denying post-conviction relief to Richard Marshall), page 2.

88. ibid.
89. See petition for post-conviction relief (75-72) dated 12 June 1978, filed on 15 June 1978 in Circuit Court; Section VA, page 5.
90. ibid. Technically called a "Motion to Endorse the Name of Myrtle Poor Bear on the Information".
91. ibid.
92. op. cit. note 87 supra, page 3. Judge Tice's opinion states that Myrtle Poor Bear was "put up" by FBI agents for "the three days immediately prior to their disclosing to the Pennington County Sheriff's office that Myrtle had information bearing upon the Marshall trial." He also says in relation to her second Leonard Peltier affidavit that "on February 23 1976 Myrtle prepared a second affidavit identical to the first, save for a statement that she was in fact present during the shooting of the agents. On February 24, 1976, after Myrtle had been kept in a motel room for three days . . . [she was taken to another FBI agent] for an interview."
93. See appellant's brief (on Richard Marshall's behalf) in the Supreme Court of South Dakota, April 1980, pages 66-67.
94. op. cit. note 87 supra.
95. ibid. page 6, paragraph 2 and page 8, paragraph 2, taken together.
96. ibid. page 2, paragraph 3 and page 3, paragraph 1, taken together.
97. Emphasis added. ibid. page 3, paragraph 1.
98. ibid. page 4. The statement in question was an expression of agreement on the part of the US attorney who prosecuted Leonard Peltier, when, on 12 April 1978 a judge of the US Court of Appeals said that the FBI conduct over the affidavits indicated that "they must be willing to fabricate other evidence". (See text to note 62 supra.)

The judge also mentioned an obligation not to "give the appearance of manufacturing evidence by interrogating incompetent witnesses". op. cit. note 83 supra, page 51a.

The US attorney had said earlier that Myrtle Poor Bear was "incompetent in the utter, utter, utter ultimate sense of incompetency as recognised by defense counsel on more than one occasion." op. cit. note 83, supra, page 50a.
99. See text to note 82 supra and Chapter I.
100. See text to note 97 supra and Chapter I.

6. Airtel from Acting Director, FBI, to SAC, Albany for "all offices except Honolulu" captioned "AMERICAN INDIAN MOVEMENT (AIM) EXTREMIST MATTERS" mailed May 7, 1973.

THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER

airtel

To: SAC, Albany

5/4/73

From: Acting Director, FBI

1 - R. E. Gebhardt

1 - G. C. Moore

AMERICAN INDIAN MOVEMENT (AIM)
EXTREMIST MATTERS

ReBuairtels 12/6/72 and 1/16/73 captioned "American Indian Activities, Extremist Matters."

Offices conducting preliminary inquiries relative to individual AIM chapters, if not already done, immediately submit results of investigation conducted to date in form suitable for dissemination under caption of individual chapter with recommendation relative to additional investigation. Where evidence of extremist activity or involvement by a chapter is determined or suspected, institute full and continuing investigation thereof to determine aims, activities, leaders, membership, and finances. Develop informants or sources in or close to each chapter. Also, institute individual investigations of members of such chapters to develop background and determine their activities and propensity for militancy or violence. Submit results thereof in form suitable for dissemination under individual's caption with your recommendation relative to further investigation.

Institute similar individual investigations of all AIM members and unaffiliated Indians arrested or involved in takeover of Wounded Knee, South Dakota, or similar confrontations or disorders elsewhere. Submit results under individual's caption in a form suitable for dissemination. If warranted, consider subject for inclusion in Administrative Index and Key Extremist and for designation as a Key Extremist.

2 - All Offices (Except Honolulu and San Juan)

MAILED 21

MAY - 7 1973

FBI

CALL:aso (117)

SEE NOTE PAGE TWO

Mr. Felt _____
Mr. Mohr _____
Mr. Callahan _____
Mr. Cleveland _____
Mr. Conrad _____
Mr. Gebhardt _____
Mr. Jenkins _____
Mr. Marshall _____
Mr. Miller, E.S. _____
Mr. Soyars _____
Mr. Thompson _____
Mr. Walters _____
Tele. Room _____
Mr. Nease _____
Mr. Armstrong _____
Mr. Bowers _____
Mr. Hennigan _____
Mr. Hornig _____
Mr. Nicks _____
Mr. Rosen _____

MAIL ROOM

TELETYPE UNIT

7. Statement of Vern Long and Eddie White Wolf, October 18, 1973.

October 18, 1973
9:50 P.M. MST

Statement by Vern Long and Eddie White Wolf, the President and Secretary of the Oglala Sioux Civil Rights Organization.

A grave crisis now exists on the Pine Ridge Reservation because of the brutal slaying of [REDACTED] Vice-President of the Civil Rights Organization, by F.B.I. Agents, BIA Police and Wilson's Goons.

All day yesterday, October 17th, there was an extensive man-hunt for Pedro. The search involved about 20 police cars and several airplanes. They hunted Pedro down like an animal and murdered him in cold blood. We have not yet determined who did the actual shooting but we are quite certain that the murder was engineered by BIA Special Officer, Del Eastman. Eastman is a Sioux-hating Crow Indian from Montana.

The Bissonette murder is only one of a series of recent shootings and slayings of traditional Oglala Sioux by the F.B.I., the BIA police and goons since the Wounded Knee takeover.

Last summer a little Indian girl, [REDACTED] was shot in the head and lost an eye from goon bullets. Later, Vern and Clarence Cross were shot by BIA police and goons. Clarence died an agonizing death as a result of the shooting. And only last week the BIA police were involved in the shooting death of Aloysius Long Soldier at Kyle, South Dakota. The BIA and Dick Wilson have done a very effective job of suppressing the news coverage of any of these incidents. Now, Pedro Bissonette has been murdered by these same outlaws and hoodlums.

Because of this new wave of terror by Dick Wilson, the BIA and the F.B.I. against the traditional Oglala Sioux people, we are asking [REDACTED] to help us investigate the murder of Pedro Bissonette and to take whatever action is necessary to see that his murderers are brought to justice.

We are also calling an emergency meeting of the Oglala Sioux Civil Rights Organization and are asking all Civil Rights members and supporters to be present. The meeting will be held at Calico Hall on Monday, October 22, at 1:00 P.M..

8. Memorandum from J. E. O'Connell to Mr. Gebhardt, Subject: "The Use of Special Agents of the FBI in a Paramilitary Law Enforcement Operation in the Indian Country", dated April 24, 1975, 6 pages.

THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER

14-00000

FBI INVESTIGATION OF THE FBI WAS INSTRUCTED

Asst. Dir.
Admin.
Comp. Syst.
Ext. Affairs
Files & Com.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Plan. & Eval.
Spec. Inv.
Training
Legal Coun.
Telephone Rm.
Director Sec'y

TO : Mr. Gebhardt

DATE: 4/24/75

FROM : J. E. O'Connell

- 1 - Mr. Gebhardt
- 1 - Mr. Bates
- 1 - Mr. O'Connell
- 1 - Mr. Gordon
- 1 - Mr. Wannall
- 1 - Mr. Mosher
- 1 - Mr. Gallagher
- 1 - Mr. Mintz
- 1 - Mr. Mooney
- 1 - Mr. McDermott

SUBJECT: THE USE OF SPECIAL AGENTS
OF THE FBI IN A PARAMILITARY
LAW ENFORCEMENT OPERATION IN
THE INDIAN COUNTRY

PURPOSE: This position paper was prepared for use of the Director of the FBI to brief the Attorney General and the Deputy Attorney General (DAG) on the role of the FBI in the event of a major confrontation in Indian country (Federal jurisdiction) where (1) the President decides against the use of troops; and (2) the FBI is ordered by the President and/or the Attorney General to deploy FBI Special Agents in a paramilitary law enforcement situation, in lieu of the use of troops.

There is attached for ready reference a document captioned "Background Paper on the American Indian and the Takeover of Wounded Knee by the American Indian Movement (AIM)." This study outlines early history of the American Indian, jurisdiction of the FBI to investigate within the Indian country, background on AIM and their record for violence, history and background concerning the Pine Ridge Indian Reservation of the Oglala Sioux Tribe in South Dakota, a prelude to the occupation of Wounded Knee, the occupation of Wounded Knee by AIM and the use of FBI, U. S. Marshals and Bureau of Indian Affairs (BIA) Police at Wounded Knee, South Dakota, during the period February 27 - May 8, 1973, in a paramilitary law enforcement situation.

Enclosure : 100-462483 CONTINUED - OVER

NOT RECORDED

JCG:mel/rlf (11) 46 AUG 11 1975 SEE ADDENDUM, PAGE 6/1975

What is the status of this situation at this point. In a conference with AS Saffre we had a tentative agreement as to our position. Was it recorded?
AUG 14 1975

FBI INVOLVEMENT: The FBI was instructed by the Department of Justice (DOJ) in the latter part of 1972 to conduct extremist and criminal investigations pertaining to AIM. During the afternoon of February 27, 1973, approximately 200 members and supporters of AIM, carrying weapons, left Calico Hall, Pine Ridge, South Dakota, in a car caravan and were under surveillance by a few FBI Special Agents. Under the leadership of Dennis James Banks and Russell Charles Means, the caravan moved into Wounded Knee, South Dakota, on the Pine Ridge Indian Reservation where they took eleven hostages and burglarized the Wounded Knee trading post in violation of Federal statutes involving crime on an Indian reservation. A decision was made by SAC Joseph H. Trimbach, Minneapolis Division, to set up roadblocks to contain the militants, which roadblocks were manned by FBI Agents, U. S. Marshals, and BIA Police. This is how the FBI first became involved in the Wounded Knee armed standoff against the U. S. Government.

ROLE OF THE WHITE HOUSE, JUSTICE DEPARTMENT AND OTHER AGENCIES: Decisions were made by the AG after regular and continuous consultation with responsible officials representing the White House, namely Mr. John D. Ehrlichman, Assistant to the President for Domestic Affairs, Mr. Leonard Garment, Special Consultant to the President, and his assistant, Bradley Patterson and officials in the U. S. Department of the Interior. On February 28, 1973, the situation at Wounded Knee was evaluated in a series of meetings between former AG Richard G. Kleindienst, former DAG Joseph T. Sneed, former Associate DAG Charles D. Ablard, and others. These three officials were responsible for the decision making of the DOJ. Department of the Interior officials and the BIA were involved as these agencies administer Indian reservations under Federal jurisdiction.

PROBLEMS CONFRONTING THE FBI: The various other Federal agencies involved in the Wounded Knee takeover were the U. S. Marshals Service (USMS), BIA Police, DOJ Attorneys, public information officers and Community Relations Service, the U. S. Attorneys (USAs), Department of Defense, and the U. S. Army. The DOJ sent Ralph Erickson, Special Assistant to the AG, to Wounded Knee as the senior U. S. Government representative on the scene. He was subsequently followed by 4 other DOJ and/or Department of the Interior officials who assumed this role during the 71-day siege from February 28 - May 8, 1973.

Memorandum to Mr. Leonard
RE: THE USE OF SPECIAL AGENTS

Throughout the operation there was a definite lack of continuity as each senior representative replaced another. Colonel Volney Warner (now General), Chief of Staff, 82nd Airborne Division, was dispatched to Wounded Knee at the outset to assess the situation and to recommend whether or not troops should be utilized. The AG issued instructions there was to be no confrontation and negotiations with the militants by representatives of the DOJ were to be entered into to resolve the matter and have the hostages released.

There was a divided authority among the many agencies present at Wounded Knee, including church and social groups. The senior Government representative, Departmental Attorneys, and members of the USA's Staff issued conflicting instructions. Each representative present on the scene took instructions for the most part from superiors of his own agency. For example, on March 4, 1973, after consulting with Colonel Warner, Ralph Erickson issued orders that the use of deadly force by the law enforcement officers on the scene could only be used in self-defense to avoid death or serious bodily harm. In the application of force the officers, including FBI Agents, were to aim to wound rather than kill. This was in direct conflict with the policy of the Bureau that an Agent is not to shoot any person except when necessary in self-defense, that is, when he reasonably believes that he or another is in danger of death or grievous bodily harm. Special Agents are not trained to shoot to wound. Special Agents are trained to shoot in self-defense to neutralize the deadly force. The SACs on the scene and officials at FBIHQ strenuously objected to orders such as this which had previously been approved by the AG without consultation with any FBI official.

On a number of occasions the Acting Director and officials of the FBI requested the Administration and the Department to consider the use of troops at Wounded Knee. In Washington, D. C., DOJ officials in conjunction with other Governmental agencies explored the possibility of using troops. Colonel Warner on the scene recommended to the Chief of Staff of the Army against the use of troops. The Government concluded that such use would be undesirable because (1) it would substantially increase the risk of loss of life, (2) the full prestige of the U. S. Government would be committed to

Memorandum to Mr. Gebhardt
RE: THE USE OF SPECIAL AGENTS

what was primarily a dispute between rival tribal factions and (3) the use of Army troops against these Indians might be misinterpreted by the press and some citizens.

The FBI encountered extreme problems, both in the field and at FBIHQ, in adapting to a paramilitary role. The FBI was not equipped logistically to operate in a paramilitary situation in open terrain which ultimately ended in a 71-day siege. The FBI and USMS had to be equipped with military equipment, including Armored Personnel Carriers (APCs), M-16s, automatic infantry weapons, chemical weapons, steel helmets, gas masks, body armor, illuminating flares, military clothing and rations. Authority had to be obtained from both the AG (and/or his representative) and from the General Counsel, Department of Defense, prior to requesting the military logistics adviser, Colonel Jack Potter, to obtain the weapons and material through the Directorate of Military Support (DOMS). This clearance was often not forthcoming when clearance had to be obtained during the night hours. This phase of the operation required the FBI to maintain a constant 24 hour vigilance so as to equip our Special Agents and the other law enforcement officers with the weapons and material needed for a defensive operation.

OPINIONS OF THE SACS WHO WERE ON THE SCENE: SACs Richard G. Held, Chicago; Herbert E. Hoxie, Milwaukee; Wilburn K. DeBruler, Atlanta; and Joseph H. Trimbach, Minneapolis, furnished their observations regarding the Wounded Knee Special. In essence, they advised complete confusion existed as there were a number of DOJ representatives on the scene, each issuing conflicting orders. There was no coordination between the agencies other than that provided by the FBI, nor was there any advance planning done. For example, DOJ officials and Director Wayne Colburn, USMS, would fly back to Washington, D. C., presumably for conferences and would return with new policy of which FBIHQ was not aware. The military did not realize in many cases that they were there to assist and not direct the FBI. SAC Held at the time advised FBIHQ to have any success at Wounded Knee it would be necessary to withdraw the "political types" and make it an FBI operation under FBI direction and leadership. SAC Hoxie stated at Wounded Knee there was a constant vacillation of instructions and policy which was

Memorandum to Mr. Gebhardt
RE: THE USE OF SPECIAL AGENTS

devastating. SAC DeBruler believed the ill-advised instructions given prolonged the incident at Wounded Knee and in some measure resulted in unnecessary risk to law enforcement personnel and others at the scene. All SACs recommended should we in the future become involved in another situation similar to Wounded Knee where Special Agent personnel are deployed that the entire operation be under the direction of FBI officials and when law enforcement personnel from other agencies are involved it should be clearly understood the FBI is in the decision making role.

OPINIONS OF FBIHQ PERSONNEL: FBIHQ supervisory personnel were confronted with the major task of coordinating all phases of the Wounded Knee paramilitary law enforcement operation with the Department and other interested agencies, including USMS, the Department of the Interior, and the BIA. Many of the officials from the other agencies, including the staff in the DAG's Office, were not trained law enforcement personnel. It was necessary to constantly explain matters and give advice from a law enforcement standpoint. As the FBI was utilizing approximately 3 SACs and 150 Agents per day at Wounded Knee in a defensive perimeter along with other Federal officers which were receiving hostile fire, it was necessary to insure that nothing was done in a decision making role at the White House or DOJ which might result in Federal law enforcement officers taking heavy casualties. It was reported in the initial phase of Wounded Knee that the militants were in possession of an M-60 machine gun and AK-47s (Communist automatic assault rifles), which could result in heavy casualties. It was necessary to convince the decision makers that APCs were necessary for the protection of the Special Agents and U. S. Marshals. When the APCs came under hostile fire they could not be moved to a more secure position without authority from the AG. It is the consensus of opinion among the headquarters supervisors that no Government official who is not a trained law enforcement officer be permitted to direct a law enforcement operation the magnitude of Wounded Knee.

RECOMMENDATION: The Director meet with the AG and DAG to brief them on the Wounded Knee incident so that they fully understand if such an incident occurs in the future or an incident similar to Wounded Knee and the FBI is involved, the FBI will insist upon taking charge from the outset and

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will not countenance any interference on an operational basis with respect to our actions. They should understand the FBI due to its long years of experience and training is able to make law enforcement decisions without over-reacting to protect the general public, its Special Agent personnel, and the violators of the law. The AG and DAG should be advised it is our broad policy in such instances as this to "get in and get out as quickly as possible" with complete regard for the safety of all concerned. The FBI furthermore would seize control quickly and take a definite, aggressive stand where necessary. It should be clearly stated that the FBI does not desire to become involved in any political situations and definitely not participate in any discussion where it is obviously political in nature.

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ADDENDUM: J. B. ADAMS:ams 5/19/75

We should hold up any action in contacting the Deputy Attorney General and Attorney General as we are presently engaged in attempting to clarify the respective roles of the Marshals, FBI, BIA and tribal police in confrontations such as the recent Yankton incident. Appropriate recommendations in this latter area are forthcoming.

Jma

WJ

9. The incident involved a drunken escapade between Eagle and two white ranch hands when Eagle stole one of the men's cowboy boots. See Ward Churchill and Jim Vander Wall in Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement, South End Press, Boston, at pp 236-240 and accompanying Notes.