20. Teletype From Rapid City FBI to Director, "Daily Summary Teletype" dated July 16, 1975, 2 pages.

THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 17 1975

TELETYPE

2100

NR007 RC CODE

845PM URGENT 7-17-75 RSB

TO DIRECTOR MILWAUKEE
ALBUQUERQUE MINNEAPOLIS
BUTTE OKLAHOMA CITY
DENVER OMAHA
DETROIT PHOENIX
LOS ANGELES SEATTLE

FROM RAPID CITY (70-10239) (P)

//////////////////////ALL OFFICES VIA WASHINGTON//////////////

RESMURS

DAILY SUMMARY TELETYPE

RE RAPID CITY DAILY SUMMARY TELETYPE TO BUREAU AND OTHER OFFICES DATED JULY 16, 1975.

ET-103

CRIMINAL INVESTIGATION

REC-52 89-32/29-568

WITNESSES

18 JUL 23 1975

OSCAR BEAR RUNNER

BEAR RUNNER APPEARED AT THE FEDERAL BUILDING IN RAPID CITY ON JULY 16, 1975, AND PUBLICLY TORE UP THE COPY OF THE SUBPOENA WHICH HAD BEEN ISSUED FOR HIM. HE STATED THE SUBPOENA WAS NOT VALID AS IT HAD BEEN SERVED ON HIS FATHER. HE WAS SERVED WITH ANOTHER SUBPOENA BUT MADE THE STATEMENT THAT HE WOULD NOT HONOR IT AS HE HAD NOT APPEARED AT THAT LOCATION VOLUNTARILY.

594

2109

THE INVESTIGATION OF THIS CASE IS BEING DIRECTED TOWARDS:

1) COMPLETELY IDENTIFYING ALL OF THE SUSPECTS, ADDING NEW ONES, OR ELIMINATING THEM AS APPROPRIATE;

2) ESTABLISHING THE WHEREABOUTS OF THE SUSPECTS DURING THE PERTINENT PERIOD;

3) IDENTIFY AND LOCATE ALL OF THE RESIDENTS OF "TENT CITY" WHO WERE THERE DURING ANY PERIOD OF ITS EXISTENCE AND/OR WHOSE FINGERPRINTS HAVE BEEN FOUND ON MATERIAL TAKEN FROM "TENT CITY;"

4) EXAMINING THE EVIDENCE AND CONNECTING IT TO THE SUSPECTS;

5) DEVELOP INFORMATION TO LOCK PELTIER AND BLACK HORSE INTO THIS CASE;

6) DEVELOP ADDITIONAL CONFIDENTIAL INFORMANTS AND SOURCES;

7) COORDINATE WITH AUXILIARY OFFICES IN ORDER TO FULLY DEVELOP BACKGROUND AND ACTIVITIES OF SUSPECTS WHO EITHER LIVE IN THEIR AREA OR HAVE ASSOCIATES THERE;

8) ATTEMPTING TO DEVELOP WITNESSES AND SOURCES WHO CAN AND WILL TESTIFY AS TO THE ACTUAL EVENTS OF THE AFTERNOON OF JUNE 26, 1975.

AS THE BUREAU IS AWARE, THE GRAND JURY IS BEING USED IN AN EFFORT TO FACILITATE THIS LATTER ASPECT WHERE WITNESSES ARE RELUCTANT TO FURNISH INFORMATION.

END

FBO ANY QUESTIONS OR CORRECTIONS CONTACT RAPID CITY.

CC Mitchell

594

21. Airtel from Rapid City to Director, Attn. FBI Laboratory, dated July 21, 1975, 3 pages; Teletype from Director to SAC Rapid City, "Reference your teletype 9/12/75" dated October 2, 1975; Teletype from rapid City to Director, "Re Minneapolis letter" dated October 2, 1975, 2 pages.

7/21/75

AIRTEL

5a-NM

TO: DIRECTOR, FBI (ATTN: FBI LABORATORY)

FROM: RAPID CITY (70-10239) (P)

SUBJECT: RESMURS

PC-H 0520

Being shipped to the FBI Laboratory under separate cover are the following cartridge cases most of which are expended:

Q1833 1. One each, case cartridge, .303 caliber from farm land next to crime scene.

34-Q1843 2. Ten each, cases, cartridge, .30-06 caliber, obtained near green house adjacent to crime scene.

(185) 3. Nineteen boxes and one envelope containing 422 each, cases, cartridge and four cases cartridge (live), various calibers. TENT CITY

4. One can containing 209 each, cases, cartridge, various calibers and one shell, shotgun; also four each, cases, cartridge (live), various calibers and one shell, shotgun (live). TENT CITY

5. One each, case, cartridge, .25 caliber, obtainted from 1967 Chevrolet near crime scene.

6. One each, case, 9mm, obtained 300 yards west of crime scene.

7. Six each, cartridge, .38 caliber; 7 each, cases, cartridge .223 caliber; five each, cases, cartridge, "SMI 939;" four each, cases, cartridge .303 caliber; eight each, cases, cartridge, "FA57 Match." for CANVAS TEEPEE South of Swaping Bull Hall Area of Tent City

(4) Bureau
1 - FBI Laboratory
(1) - Package
2 - Rapid City
PWB/lcp
(6)

E. Brugger

7-26E

8. Two each, case, cartridges, .44 caliber; three each, case, cartridges, .308 caliber; three each, case, cartridges, .303 caliber; one each, case cartridge, .22 caliber; above four items obtained near white house adjacent to crime scene.

9. Two each, case, cartridge, .223 caliber, obtained from 158 house near crime scene; one each, case, cartridge .2

10. One each, case, cartridge, .303 caliber, obtained from tent city adjacent to crime scene; one each, case, ca

11. One each, case, cartridge, .223 caliber; one each, case, cartridge, .35 caliber; above two items obtained from hood of 1967 Ford at tent city; 2 each, case, cartridge, .303 caliber; above two items obtained from top of 1967 Ford at tent city.

12. Fifteen each, case, cartridge, .30-06 caliber; seven each, case, cartridge, .357 magnum; one each, case, cartridge, .303 caliber; one box, 50 each, case, cartridge, .32 caliber, (live, 17 with firing pin marks); above four items obtained from residence believed to be that of JOANN LE DEAUX, adjacent to crime scene.

13. One each, case, cartridge, .38 caliber, obtained from tent city adjacent to crime scene.

14. One box six each, cases, cartridge, .303 caliber and one each, case, cartridge, .306 caliber, obtained from tent city.

15. One each, case, cartridge, .44 caliber, super magnum, obtained near crime scene.

16. One each, case, cartridge, .44 caliber super magnum, obtained near green house adjacent to crime scene.

17. One each, case, cartridge, .38 caliber, obtained from the front seat of SA JACK R. COLER's automobile; one each, case, cartridge, .223 caliber, obtained from the trunk of SA JACK R. COLER's automobile.

MP 70-10239

18. Thirty-one each, case, cartridge, .303 caliber, obtained from MICHAEL ROOKS, Oglala, South Dakota.

19. One each, case, cartridge, .303 caliber, obtained from International Scout near crime scene.

These items were obtained at the RESMURS crime scene or from the Pine Ridge Indian Reservation subsequent to the crime scene search by SA CORTLANDT CUNNINGHAM, Bureau.

It is requested the cartridge cases not be mixed and be kept in their shipping containers as received.

The cartridges should be compared with weapons received, re: RESMURS, and with other weapons related to RESMURS in an attempt to connect the cartridges with specific weapons.

It is also requested the items be held at the FBI Laboratory for future comparison to weapons which may be located in the future.

PLAINTEXT TELETYPE

1-Office, 3266
URGENT
1-Mr. Callahan
1-Mr. Gordon
1-Mr. E. Hodge
10/2/75
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

TO SAC, RAPID CITY (70-10239)

FROM DIRECTOR FBI (89-3229)

OCT 02 1975
1207pa m
TELETYPE

RESMURS

REFERENCE YOUR TELETYPE 9/12/75 AND LABORATORY REPORT PC-M0133 NM, 8/5/75.

THE .308 WINCHESTER CALIBER REMINGTON MODEL 760, CARBINE, SERIAL NUMBER OBLITERATED, OBTAINED FROM SPECIAL AGENT [redacted] 67C-5 BUREAU ALCOHOL, TOBACCO AND FIREARMS, (BATF) U.S. TREASURY DEPARTMENT, WAS IDENTIFIED AS HAVING FIRED .308 WINCHESTER CALIBER CARTRIDGE CASE, Q336 IN REFERENCED LABORATORY REPORT, RECOVERED AT RESMURS SCENE FROM DENVER BUCAR.

TRAINING DIVISION, QUANTICO, ADVISES THAT NO FIRED SPECIMENS FROM THE .308 WINCHESTER CALIBER REMINGTON, MODEL 760, CARBINE, SERIAL NUMBER 6967042 ON FILE.

EFFORTS CONTINUING AT REMINGTON ARMS COMPANY TO SUPPLY BUREAU WITH SERIAL NUMBERS OF ALL MODEL 760 CARBINES IN .308 WINCHESTER CALIBER PRODUCED AND SHIPPED TO CUSTOMERS FROM JULY TO DECEMBER, 1969, IN ATTEMPT TO PROVE IDENTITY OF RECOVERED CARBINE BY PROCESS OF ELIMINATION METHOD AS IT IS BELIEVED

89-3229-1675
REC-61

3 OCT 8 1975

1 - SAC, Kansas City
1 - SAC, Albany
1 - SAC Minneapolis
1 - SAC, Denver

EH:fdb(10)

Assoc. Dir. ___
Dep. AD Adm. ___
Dep. AD Inv. ___
Asst. Dirs.
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 ___

57 MAR 2 MAIL ROOM ☐ TELETYPE UNIT ☑

1786

(GIN) SH-5AC

EXHIBIT XX

MAJORITY OF THESE WEAPONS WERE PRODUCED FOR AND RECEIVED BY THE BUREAU.

RECOVERED .223 CALIBER COLT RIFLE RECEIVED FROM SA [redacted] BATF, CONTAINS DIFFERENT FIRING PIN THAN THAT IN RIFLE USED AT RESMURS SCENE. b7C

EXAMINATIONS CONTINUING.

REPORT FOLLOWS.

1786

COMMUNICATIONS SECTION

OCT 02 1975

TELETYPE

WR003 RC CODE

6:42 PM NITEL 10/2/75 DLS

TO DIRECTOR (89-3229)

FROM RAPID CITY (70-10239) (P)

ATTENTION: FBI LABORATORY - FIREARMS SECTION; IDENTIFICATION DIVISION - LFPS

RESMURS

RE MINNEAPOLIS LETTER TO BUREAU SEPTEMBER 15, 1975; RAPID CITY TELETYPE TO BUREAU (ATTENTION LABORATORY) SEPTEMBER 27, 1975; AND BUREAU TELETYPE TO RAPID CITY OCTOBER 2, 1975.

IF NOT ALREADY DONE, LABORATORY - FIREARMS SECTION REQUESTED TO COMPARE SHOTGUN SHELLS AND CASINGS FOUND AT SCENE OF RESMURS WITH BUREAU SHOTGUN, SERIAL NUMBER S043910V, RECOVERED FROM SUSPECT DALE SHEPARD AND HANDCARRIED TO LABORATORY ON JULY 23, 1975, TO DETERMINE IF ANY WERE FIRED FROM BUREAU SHOTGUN. X-115 REC-38 89-3229-1708X

REFERENCED BUREAU TELETYPE OCTOBER 2, 1975, INDICATED .223 CASINGS NOT IDENTIFIABLE WITH AR-15 RIFLE LOCATED IN VEHICLE WHICH EXPLODED ON KANSAS TURNPIKE SEPTEMBER 10, 1975. LABORATORY REQUESTED TO COMPARE ALL .223 CASINGS WITH AR-15 RIFLE (SERIAL NUMBER OBLITERATED) LOCATED AL RUNNING'S PROPERTY SEPTEMBER 11, 1975, AND SUBMITTED TO LABORATORY SEPTEMBER 15, 1975, UNDER MINNEAPOLIS FILE 70-10488.

89-3229

57 UL

EXHIBIT YY

IF NOT ALREADY DONE, LATENT FINGERPRINT SECTION REQUESTED TO COMPARE MAJOR CASE PRINTS OF DARRELL "DINO" BUTLER AND ROBERT EUGENE ROBIDEAU WITH ANY LATENTS OF VALUE DEVELOPED ON SHELL CASINGS RECOVERED AT RESMURS CRIME SCENE. PARTICULAR EMPHASIS SHOULD BE PLACED ON CASINGS FOUND IN VICINITY OF AGENTS' BODIES AND DENVER BUCAR.

ARMED AND DANGEROUS.

END

SJP FBIHQ CLR

1826

22. This evidence was heard at Peltier's second appeal, based on evidence obtained in a 1981 Freedom of Information suit which also produced material which supported his application for Leave to appeal to the Supreme Court of Canada in June 1989. It is set out as well in United States v Leonard Peltier 800 F. 2d 772 (8th Cir. 1986) at p 776 Note 5.

UNITED STATES of America, Appellee,

v.

Leonard PELTIER, Appellant.

National Association of Criminal Defense Lawyers, Inc. and California Attorneys for Criminal Justice, Amicus Supporting Appellant

Cathedral Church of St. John the Divine, et al., Amicus

Certain Members of U.S. Congress, Amicus Supporting Appellant.

No. 85-5192.

United States Court of Appeals, Eighth Circuit.

Submitted Oct. 15, 1985.

Decided Sept. 11, 1986.

Defendant, convicted of the murder of two special agents of the FBI, filed motion to vacate the judgment and for a new trial. The United States District Court for the District of North Dakota, 553 F.Supp. 890, denied the motion, and defendant appealed. The Court of Appeals, 731 F.2d 550, remanded. On remand, the District Court, Paul Benson, Chief Judge, 609 F.Supp. 1143, again denied the motion, and defendant appealed. The Court of Appeals, Heaney, Circuit Judge, held that fact that Government withheld favorable evidence which would have allowed defendant to cross-examine certain Government witnesses more effectively did not create reasonable probability that defendant would have been acquitted if evidence had been disclosed and, thus, did not entitle defendant to a new trial.

Affirmed.

1. Criminal Law ⇐919(1)

Fact that prosecution withheld evidence favorable to defendant which would have allowed defendant to cross-examine Government's ballistic expert more effectively concerning a .223 casing found in trunk of car of murdered FBI agent did not create reasonable probability that defendant would have been acquitted if the evidence had been disclosed and, thus, did not entitle defendant to a new trial. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.; 28 U.S.C.A. § 2255.

2. Criminal Law ⇐919(1)

Fact that prosecution withheld evidence favorable to defendant that would have allowed defendant to cross-examine certain Government witnesses more effectively concerning inconsistencies in ballistic evidence introduced at trial, such that jury might have given additional weight to fact that there was more than one weapon like murder weapon used on day in question, did not create reasonable probability that defendant would have been acquitted had the evidence been disclosed and, thus, did not warrant a new trial. Fed.Rules Cr. Proc.Rule 33, 18 U.S.C.A.; 28 U.S.C.A. § 2255.

William Kunstler, New York City for appellant.

Lynn E. Crooks, Asst. U.S. Atty., Fargo, N.D., for appellee.

Before HEANEY, ROSS, and JOHN R. GIBSON, Circuit Judges.

HEANEY, Circuit Judge.

On April 18, 1977, Leonard Peltier was found guilty of the June 26, 1975, premeditated murder of Jack Coler and Ronald Williams, special agents of the Federal Bureau of Investigation (FBI). The record as a whole leaves no doubt that the jury accepted the government's theory that Peltier had personally killed the two agents, after they were seriously wounded, by shooting them at pointblank range with an AR-15 rifle (identified at trial as the "Wichita AR-15").[1] The critical evidence in support of

1. The prosecution made the following statements in its closing argument:

> [W]e have submitted strong circumstantial evidence which indicates that Leonard Peltier

this theory was a casing from a .223 caliber Remington cartridge recovered from the trunk of agent Coler's car on June 29, 1975, and received by the FBI firearms identification expert on July 24, 1975. The district court, agreeing with the government's theory of the case, sentenced Peltier to two consecutive life sentences.

Peltier appealed to this Court from that conviction. He argued strenuously that he had not been given a fair trial because the trial court refused to permit him to fully explore his contention that the FBI had manufactured evidence against him and had intimidated and coerced several witnesses. He also argued that the district court erred in denying him the right to introduce evidence regarding the tensions between the FBI and the American Indian Movement (AIM) on the Pine Ridge Indian Reservation, and had erred in permitting introduction of prejudicial and inflamatory evidence. Peltier also objected to the manner in which the district court handled the ballistic evidence, particularly insofar as that evidence was intended to show his possession and use of the Wichita AR-15 on the day the two agents were killed. He finally complained that the government had deliberately withheld exculpatory information from the defense and that the trial court had erred in failing to do anything about this failure.

We affirmed the conviction on September 14, 1978. *United States v. Peltier*, 585 F.2d 314 (8th Cir.1978), *cert. denied*, 440 U.S. 945, 99 S.Ct. 1422, 59 L.Ed.2d 634 (1979). In affirming, we too accepted the government's theory that both agents had been killed with a high-velocity small-caliber weapon fired at pointblank range at a time when the men were seriously wounded and unable to defend themselves. We then held that the evidence was sufficient for the jury to find Peltier responsible for the murders.

On April 20, 1982, Peltier filed a motion to vacate the judgment and for a new trial pursuant to 28 U.S.C. § 2255 (1976). On December 15, 1983, he filed a second motion for a new trial under Fed.R.Crim.P. 33. The basis of this motion was a mass of data and reports obtained from the FBI under a Freedom of Information Act, 5 U.S.C. § 552 (1982) (FOIA) request. He simultaneously moved to disqualify the dis-

did in fact fire the fatal shots; but you need not believe that he did. I think that he did, and I think the evidence shows he did.

Tr. at 4974.

The evidence * * * indicates that Leonard Peltier was not only the leader of this group, he started the fight, he started the shootings and that he executed these two human beings at point blank range.

Tr. at 4975–76.

Out of all the individuals who were involved there was one individual who was most responsible, and I think the evidence without any question proves and establishes beyond any doubt that that was * * * Leonard Peltier.

Tr. at 4976.

Apparently Special Agent Williams was killed first. He was struck in the face and hand by the bullet, as I have demonstrated, probably begging for his life, and he was shot. The back of his head was blown off by a high-powered rifle.

Leonard Peltier then turned, as the evidence indicates, to Jack Coler lying on the ground helpless. He shoots him in the top of the head. Apparently feeling that he hadn't done a good enough job, he shoots him again through the jaw, and his face explodes.

Tr. at 4996.

The prosecution concluded its argument with the following statement:

I think my argument can be summed up in a very brief paragraph.

We have proved the cold-blooded, brutal murder of two human beings. We have proved that beyond any question. We have proved it was premeditated, planned in the sense that it was not a spur of the moment activity. We have proved beyond a reasonable doubt that Leonard Peltier was responsible for these senseless, brutal, cowardly murders. We have proved that beyond any doubt. We have proved that he organized and directed this camp, started the fight, fired at the agents again and again from the treeline.

Had we proved nothing further, that in itself would have been first degree murder; but in addition, we proved that he went down to the bodies and executed these two young men at pointblank range. Ladies and gentlemen, that's murder in the first degree. The United States respectfully requests that you return a verdict of guilty on both charges of this indictment.

Tr. at 5019.

trict court judge. The district court denied all motions without an evidentiary hearing. Peltier appealed, arguing that many of the documents received under the FOIA request were exculpatory and should have been made available to him under the dictates of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Specifically, Peltier argued that the government had improperly withheld information tending to show that the agents had not in fact been killed by the Wichita AR–15. We recognized that the evidence relating to Peltier's use of the Wichita AR–15 on June 26th was critical to his conviction and remanded the matter to the district court for an evidentiary hearing. We stated:

> At this hearing, the court shall limit its consideration to any testimony or documentary evidence relevant to the meaning of [an] October 2, 1975, teletype [which seemed to rule out the Wichita AR–15 as the murder weapon] and its relation to the ballistics evidence introduced at Peltier's trial. The court shall then rule on whether the evidence adduced below supports Peltier's contention that its nondisclosure violated the *Brady* doctrine, requiring a new trial.

United States v. Peltier, 731 F.2d 550, 555 (8th Cir.1984) (per curiam).

The district court conducted an evidentiary hearing on the matter and issued a detailed memorandum and order on May 22, 1985. 609 F.Supp. 1143. It held that the October 2, 1975, teletype, evaluated in the context of the entire record, would not have affected the outcome of the trial and that, therefore, Peltier was not entitled to relief.

Peltier appeals to this Court, asking us to make an independent judgment as to whether the previously undisclosed evidence would have produced a different result at trial.

The Legal Standard.

In *United States v. Bagley*, — U.S. —, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), Mr. Justice Blackmun, writing for the Court, reviewed the Supreme Court cases dealing with a prosecutor's failure to disclose evidence that could have been used effectively to impeach important government witnesses. He stated:

> In *Brady v. Maryland*, 373 U.S. 83, 87 [83 S.Ct. 1194, 1196, 10 L.Ed.2d 215] (1963), this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment."
>
> * * * * * *
>
> The holding in *Brady v. Maryland* requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or punishment."

Id., 105 S.Ct. at 3377, 3379, 87 L.Ed.2d at 486, 489 (citations omitted).

He went on to state:

> Impeachment evidence, however, as well as exculpatory evidence, falls within the *Brady* rule. See *Giglio v. United States*, 405 U.S. 150, 154 [92 S.Ct. 763, 766, 31 L.Ed.2d 104] (1972). Such evidence is "evidence favorable to an accused," *Brady*, * * * so that, if disclosed and used effectively, it may make the difference between conviction and acquittal. *Cf. Napue v. Illinois*, 360 U.S. 264, 269 [79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217] (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend").
>
> * * * * * *
>
> [C]onstitutional error occurs, and the conviction must be reversed, only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial.

Id., 105 S.Ct. at 3380–81, 87 L.Ed.2d at 490–91.

He then turned to the question of materiality, and stated that:

> The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the

result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.

* * * * * *

[T]he more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption. This possibility of impairment does not necessitate a different standard of materiality, however, for under the Strickland formulation the reviewing court may consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case. The reviewing court should assess the possibility that such effect might have occurred in light of the *totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response.*

Id., 105 S.Ct. at 3383, 87 L.Ed.2d at 494 (emphasis added).

After setting out the legal standard, the Court remanded the matter to the Court of Appeals for its determination whether there was a reasonable probability that had the evidence of the inducement offered by the government to two government witnesses been disclosed to the defense, the result of the trial would have been different.

Applying the rules set forth in *Bagley* to this case, we find that the prosecution withheld evidence from the defense favorable to Peltier, and that had this evidence been available to the defendant, it would have allowed him to cross-examine certain government witnesses more effectively. This case thus turns on the question whether the evidence withheld by the prosecution is material in the sense that its nondisclosure undermines confidence in the outcome of the trial.

We could have resolved this issue without great dificulty if the government had presented the case against Peltier on the theory that he was an aider and abettor. The evidence clearly shows that Peltier participated in the shoot-out that resulted in the wounding and ultimate deaths of the two FBI agents. But this is not the government's theory. Its theory, accepted by the jury and the judge, was that Peltier killed the two FBI agents at pointblank range with the Wichita AR–15. Under this theory, the ballistics evidence, particularly as that evidence relates to a .223 shell casing, allegedly extracted from the Wichita AR–15 and found in agent Coler's car, is critical. We thus must examine the evidence that surfaced after trial to determine whether, in the light of that new evidence and the totality of the circumstances, there is a reasonable probability that the jury would not have found Peltier guilty of the two murders if it had known all the facts. We do so with an awareness of the difficulty of reconstructing the course the defendant would have taken if the withheld evidence had been available to him at trial.

The .223 Casing.

[1] As the government states, the .223 casing found in the trunk of Coler's car was "perhaps the most important piece of evidence in this case." Tr. at 4996. While the autopsies indicated only that the agents had been killed pointblank by a high-velocity low-caliber weapon, the .223 casing pinpointed the Wichita AR–15 as the murder weapon, to the exclusion of all other weapons. Since other evidence connected Peltier to the Wichita AR–15, the .223 casing provided the final link necessary to establish Peltier as the pointblank murderer of both agents.[2]

2. Since the autopsies showed that three pointblank shots were fired, the single casing establishes only an inference that Peltier fired all three shots. The government argues that Peltier and his accomplices found and carried off the other two casings from the Wichita AR–15. We

Questions regarding the FBI's handling and examination of the casing first arose at trial due to inconsistencies in the laboratory reports. A February 10, 1976, laboratory report made by Evan Hodge, the government's ballistics expert, stated that the .223 casing found in Coler's trunk had been loaded and extracted from the Wichita AR–15. In contrast, Hodge's October 31, 1975, report stated that "[n]one of the other ammunition components recovered at the RESMURS scene could be associated with [the Wichita AR–15]." At the time of this earlier report, Hodge had both the .223 casing and the Wichita AR–15 in his possession.[3]

At the post-trial evidentiary hearing, Hodge explained that at the time he wrote the October 31 report, he had only examined a small portion of the submitted ballistics evidence, and that he had not gotten to the .223 casing until December, 1975, or January, 1976. He further testified that he had not been aware of any particular urgency connected with the casing, and had not received any priority requests regarding it. This testimony is facially inconsistent with the newly-discovered evidence, which included several teletypes from FBI officials and agents specifically requesting Hodge to compare submitted AR–15 rifles with .223 casings found at the scene,[4] and Hodge's responses to these teletypes, which, at least prior to February 10, 1975, consistently reported that the casings and rifles were nonidentical.[5] Additionally, from the FOIA request documents, the defense discovered that Hodge had ample reason to focus his attention on the .223 casing. He was aware as early as June 27, 1975, the day after the killings, that the two agents had been killed by a high-velocity low-caliber weapon at close range,[6] and by September 20, 1975, that the investigation had focused on Peltier and an AR–15.[7]

note that the evidence supports the view that there was at least one other AR–15 on the compound on the day of the murders. *See infra* at 779. If Peltier and his associates carried away the casings from the Wichita AR–15 to prevent their use as evidence it is just as logical to assume that they carried away casings from another AR–15.

3. Hodge received the casing on July 24, 1975, and the Wichita AR–15 on September 12, 1975.

4. In the July 21, 1975 "airtel" accompanying the shipment of evidence which included the .223 casing found in Coler's trunk, the Rapid City FBI agency stated that "[t]he cartridges should be compared with weapons received, re: RESMURS, and with other weapons related to RESMURS in an attempt to connect the cartridges with specific weapons." Evidentiary hearing exhibit D–20. In a September 15, 1975, memorandum accompanying evidence recovered on the Rosebud Reservation, the Minneapolis agency asked the laboratory "to test fire enclosed weapons [including an AR–15] and compare slug with slugs recovered from [unknown subject] crimes." Evidentiary hearing exhibit D–24. In a September 20, 1975, teletype to the lab, the Rapid City agency reported that it had information that Peltier had used the AR–15 found on the Rosebud Reservation to kill the agents, and stated that "[t]he Bureau laboratory is requested to conduct all logical examinations of the weapons submitted to them in referenced communications." Evidentiary hearing exhibit D–14. In a September 27, 1975, teletype, the Rapid City agency asked the laboratory to compare certain casings with the Wichita AR–15. Evidentiary hearing exhibit D–32. On this same date, the Rapid City agency sent another teletype requesting the laboratory to "make available to Rapid City a supplemental and confirming report to include all results of comparisons, examinations, tests, analyses, and restorations not previously reported." Evidentiary hearing exhibit D–15. On October 2, 1975, a teletype from Rapid City to the laboratory stated: "Laboratory requested to compare all .223 casings with AR–15 rifle * * * located at Al Running's property * * *." Evidentiary hearing exhibit 6.

5. In an October 2, 1975, teletype to Rapid City, the laboratory reported: "Recovered .223 caliber colt rifle received from SA Gammage, BATF, contains different firing pin than that in rifle used at RESMURS scene." Evidentiary hearing exhibit 4. A November 24, 1975, teletype from the laboratory to the Portland and Rapid City agencies reported that "[c]artridge cases fired in submitted weapons in laboratory were compared with like caliber cartridge cases recovered at RESMURS scene and it was concluded that these two rifles, in their present conditions, could not have fired any of the recovered specimens." Evidentiary hearing exhibit D–22.

6. Evidentiary hearing exhibit 13.

7. Evidentiary hearing exhibit D–14.

The question now before us is whether the newly-discovered evidence indicating Hodge may not have been telling the truth, considered in the light of the evidence the jury had before it, would have caused the jury to reach a different result. While that possibility exists, *Bagley* requires more. It requires us to find that it is reasonably probable the jury would have acquitted Peltier had it been aware of this evidence, and had the defense had an opportunity to question Hodge about the inconsistencies. Recognizing the difficulty of putting ourselves in the position of the jury, we hold that it probably would not have acquitted him. One of our sources of discomfort with our decision is that although the defense was aware at trial of the inconsistencies, it was not able to demonstrate their importance because of an evidentiary ruling by the district court.[8] If the newly discovered evidence had been available at trial, the district court's ruling might very well have been different. In any event, the defense would have had substantial additional documentary evidence upon which to cross-examine Hodge, and would have had greater reason to pursue the inconsistencies more vigorously than it did.

When all is said and done, however, a few simple but very important facts remain. The casing introduced into evidence had in fact been extracted from the Wichita AR–15. This point was not disputed; although the defense had its own ballistics expert, it offered no contrary evidence. Peltier raises general questions regarding the handling and examination of the .223 casing and the Wichita AR–15, but does not make specific allegations of tampering. There are only two alternatives, however, to the government's contention that

8. The district court's evidentiary ruling clearly hampered the defense in its efforts to point out the inconsistencies in the October 31, 1975, and February 10, 1976, lab reports. Although both reports were admitted into evidence, the Court refused to allow defense counsel to mention the dates of the reports or any inferences to be drawn from the dates in his argument to the jury. *See* Tr. at 4701. Since the primary impeachment value of the reports is that their timing creates an inference that the FBI lab may have changed its conclusion concerning the relation of the .223 casing found in Coler's trunk to the Wichita AR–15 only after it appreciated the alleged connection between the shell, the Wichita AR–15 and the murders, the argument foreclosed by the ruling could have been significant.

The district court based its ruling upon Fed.R. Evid. 613(b). That rule prohibits admission of extrinsic evidence of a prior inconsistent statement by a witness unless the witness has an opportunity to explain or deny the inconsistent statement, and the party opposing admission of the inconsistent statement is afforded an opportunity to interrogate the witness concerning the statement. *See Nebraska Public Power District v. Borg Warner Corp.*, 621 F.2d 282, 497 (8th Cir.1980). Rule 613(b), unlike prior practice, does not require the proponent of the inconsistent statement to direct the witness's attention to the inconsistency and afford an opportunity for explanation. All that is required is that the witness have an opportunity to explain. As Judge Weinstein states: "The rule does not indicate that the party introducing evidence of the inconsistent statement must afford the witness an opportunity to explain. It merely indicates that the witness must be afforded that opportunity." 3 Weinstein and Berger, Weinstein's Evidence 613–24 (Bender 1986).

The record indicates that the defense complied with the requirements of rule 613(b). While Hodge, the agent in charge of preparing the lab reports, was testifying, defense counsel announced his intention to introduce the October 31, 1975 lab report into evidence. At this point, the prosecution knew of the inconsistency in the reports. In fact, the inconsistency arose in the trial of Butler and Robideau the preceding summer. Tr. at 4705. Moreover, the prosecutor even gave Hodge an opportunity to explain the inconsistency during his redirect examination:

> Q. [D]o you remember when it was approximately that you began to examine that particular item along with other items in the shipment of items with which it came to Washington?
>
> A. Yes. It was about the end of 1975, beginning of 1976; January, December, in that area.

Tr. at 3388.

Thus, not only was the prosecution afforded ample opportunity to explain or deny the inconsistency, it did, in fact, elicit testimony from Hodge seeking to show that the inconsistency was a result of Hodge's failure to have examined all of the evience at the time he wrote the October 31, 1975 report.

Reviewing the record we can discern nothing in Fed.R.Evid. 613(b) that would serve as a basis for refusing to allow the defense to mention the dates of the inconsistent reports or to argue any inferences that could be drawn from these reports to the jury.

the .223 casing was ejected into the trunk of Coler's car when the Wichita AR–15 was fired at the agents. One alternative is that the .223 casing was planted in the trunk of Coler's car either before its discovery by investigating agents or by the agents who reported its discovery. The other alternative is that a non-matching casing was originally found in the trunk and sent to the FBI laboratory, only to be replaced by a matching casing when the importance of a match with the Wichita AR–15 became evident. We are not convinced that either alternative is likely. The discovery of a .223 casing in the trunk of Coler's car was documented in a contemporaneous report. That report listed dozens of other items that were found in Coler's car on the same date. The detailed nature of that report makes it highly unlikely that it was fabricated. Not only is there no direct evidence that the .223 casing found in the trunk was replaced by another casing, the internal operating procedures of the FBI with respect to the preservation of evidence makes it unlikely that such replacement could occur without massive collusion. We recognize that there is evidence in this record of improper conduct on the part of some FBI agents, but we are reluctant to impute even further improprieties to them.

The AR–15.

We turn now to the question of whether the jury might have reached another result had it been able to consider the government's testimony with respect to the number of AR–15's on the compound on June 26, 1975, in light of the newly-discovered evidence just discussed. It was essential to the government's case that it prove Peltier was in possession of the Wichita AR–15 on June 26th, and used that weapon to kill Coler and Williams. The government recognizes this fact in its brief.

> As a starting point in analyzing what the evidence produced at the hearing establishes one must first ascertain what is ultimately at issue concerning the match between Exhibits 34A [the Wichita AR–15] and 34B [the .223 casing found in the trunk of Coler's car]. What ultimately was proven by Special Agent Hodge's positive comparison of the extractor marks? * * * [H]is conclusion only establishes that Exhibit 34B at some point in time was loaded into and extracted from Exhibit 34A. His conclusion does not establish directly that that shell casing was fired by that weapon. It, likewise, does not establish by itself any connection between either Exhibits 34A or 34B and Leonard Peltier. * * * The match of the extractor marks between that shell casing and an AR–15 found in a burned vehicle on the Kansas Turnpike fairly conclusively established that point since there was no indication that either agent ever previously had access to that weapon. The inference which then arose, of course, was that since the agents received their final wounds as a result of close range fire in the area of Special Agent Coler's car, the shell casing had been ejected into the trunk as a result of one of the final shots.
>
> That inference standing alone, however, proved nothing concerning Leonard Peltier. He was not in the vehicle which exploded near Wichita and there was no direct evidence, such as fingerprints, which made a connection between he and the weapon. The only indirect connection between Peltier and the weapon was that it was in the custody of his friends and associates. The connection between Peltier and the Wichita AR–15, Exhibit 34A, rather, was established by the trial witnesses. The trial witnesses unanimously testified that there was only one AR–15 in the compound prior to the murders, that this weapon was used exclusively by Leonard Peltier and was carried out by him after the murders. The trial witnesses also testified unanimously that there was only one weapon which was seen firing at the agents that day which was capable of firing .223 ammunition and that this weapon was the AR–15 being utilized by Leonard Peltier. * * * The necessary further inference, therefore, was that Leonard Peltier's weapon was fired down in the area where the two dead agents were found. While

these inferences do not necessarily establish that Leonard Peltier personally fired any of the final killing shots, they do indicate very strongly that he was down by the bodies when the shot was fired. These inferences were, of course, strengthened by the trial testimony that Leonard Peltier was one of only three individuals seen down by the bodies that day.

Appellee's Brief pp. 30–32.

[2] We turn first to the question of whether there was only one AR–15 on the compound on June 26. The answer to that question must be no. Hodge testified that among the one hundred and thirty-seven .223 casings found on the compound within a few days of the agents' deaths were fourteen that could not be identified as having been fired from the Wichita AR–15. Seven of these cartridges, Q100–Q105, and Q130 were found by special agent Hughes in the green house area. These cartridges were the very ones that were examined by Hodge by August 5, 1975, and were the subject of the October 2, and October 31, 1975, reports. The remaining seven, Q2513–2519, were found in Tent City, and were the subject of Hodge's February 26th report. Tr. at 3323–34.

Notwithstanding the obvious error in the government's position, there are several reasons we have reservations as to whether the newly-discovered evidence probably would have caused the jury to reach a different result. First, the defendants knew at trial that fourteen .223 casings found on the compound did not match the Wichita AR–15. Hodge testified to that fact at trial. He even testified that he didn't know whether the fourteen had been extracted from the same weapon. The defendant, however, failed to emphasize this point in his closing argument.

Second, it is unlikely that the fourteen casings were extracted from an AR–15 during the fire fight with agents Coler and Williams. The green house and Tent City were physically located such that it would have been very difficult, if not impossible, for anyone to have fired at Coler and Williams from these points. Thus, it is more likely that these casings were ejected from an AR–15 in the fire fight that occurred after Coler and Williams were killed and other agents had joined in the shooting.

Third, Norman Brown testified that he saw Peltier firing a weapon from the treeline similar to the one introduced into evidence: "Well, * * * he was laying down and he'd get up and shoot, and then he'd lay back down and get up and shoot, and lay back down." Tr. at 1446. Michael Anderson testified that he saw Peltier at the agents' cars and that Peltier was carrying a weapon similar to the one introduced in evidence. Tr. at 788. Moreover, no witness testified that anyone other than Peltier was seen firing an AR–15 at the agents' cars, or that anyone other than Peltier was seen by the agents' cars with an AR–15.

In the light of the full record, the jury might have given additional weight to the fact that there was more than one AR–15 on the compound on June 26 had the inconsistencies in the ballistic evidence introduced at trial been supplemented with the reports and data discovered after trial. Moreover, under such circumstances it might have given more serious consideration to the possibility that an AR–15 other than the Wichita AR–15 was used in the murder of either Coler or Williams,[9] but we cannot say that it is reasonably probable that it would have been sufficiently impressed by these possibilities to have reached a different result at trial.

Conclusion.

There is a *possibility* that the jury would have acquitted Leonard Peltier had the records and data improperly withheld from the defense been available to him in order to better exploit and reinforce the inconsistencies casting strong doubts upon the

9. We note that the defense did not, for reasons which are not apparent, stress in its cross-examinations or closing argument that there was more than one AR–15 on the compound on June 26.

government's case. Yet, we are bound by the *Bagley* test requiring that we be convinced, from a review of the entire record, that had the data and records withheld been made available, the jury *probably* would have reached a different result. We have not been so convinced.

Affirmed.

UNITED STATES of America, Appellee,

v.

W.T.T. (a juvenile), Appellant.

No. 85-5314.

United States Court of Appeals, Eighth Circuit.

Submitted June 27, 1986.*

Decided Sept. 11, 1986.

Juvenile was declared a juvenile delinquent in the District Court for the District of South Dakota, Donald J. Porter, Chief Judge, for offenses of simple assault, assault by striking, beating and wounding, and robbery. Defendant appealed. The Court of Appeals, Arnold, Circuit Judge, held that evidence was sufficient to support findings that juvenile committed offenses upon which court based its adjudication of juvenile delinquency.

Affirmed.

John W. Oliver, Senior District Judge, sitting by designation, filed opinion concurring in part and dissenting in part.

Infants ⇐176

Sufficient evidence supported findings that juvenile committed offenses which would have constituted offenses of simple assault, assault by striking, beating and wounding, and robbery, if committed by adult, on which court based its adjudication of juvenile delinquency. 18 U.S.C.A. §§ 113(d, e), 2111.

Debra D. Watson, Rapid City, S.D., for appellant.

Reed Rasmussen, Asst. U.S. Atty., Rapid City, S.D., for appellee.

Before ARNOLD and FAGG, Circuit Judges, and OLIVER,** Senior District Judge.

ARNOLD, Circuit Judge.

Defendant W.T.T., a juvenile, appeals from a judgment of the District Court for the District of South Dakota[1] declaring him a juvenile delinquent. The District Court found that W.T.T. had committed three offenses: simple assault, a violation of 18 U.S.C. § 113(e) (Count I); assault by striking, beating, and wounding, a violation of 18 U.S.C. § 113(d) (Count II); and robbery, a violation of 18 U.S.C. § 2111 (Count III).[2] The defendant was committed to the

* This case was argued on February 12, 1986. It was submitted to the panel for decision on June 27, 1986, when the Court received the last item of information requested after argument.

** The Hon. John W. Oliver, Senior United States District Judge for the Western District of Missouri, sitting by designation.

1. The Hon. Donald J. Porter, Chief Judge, United States District Court for the District of South Dakota.

2. These statutes are made applicable to the defendant by 18 U.S.C. § 1153, which provides that any Indian who commits any of several specified offenses (including those charged here) within Indian country shall be subject to the same laws that govern all other persons committing such offenses within the exclusive jurisdiction of the United States. The parties have stipulated that the defendant is an Indian and that the events in question occurred in Indian country.

In the case of Counts I and II, the District Court's findings were of offenses lesser than but included within the charges contained in the amended information. Count I charged assault with a dangerous weapon with intent to do bodily harm, in violation of 18 U.S.C. § 113(c), and Count II charged assault resulting in seri-

23. Oregon State Trooper William P. Zeller testified that on November 15, 1975 he searched a Dodge Motor Home associated with the Petitioner and found a brown paper bag containing a handgun. He developed one latent print on the bag and identified it as having been made by the Petitioner. Special Agent Evan Hodge, of the FBI Firearms Identification Section, swore on April 6, 1976 that on December 29, 1975 he recovered the obliterated serial number from a .357 magnum Smith and Wesson revolver (the property of Agent Coler [Affidavit of Dean Ray, Extradition Exhibit 18 'K', 18 'J'].

United States
Department of Justice

(D.T)

7605631

Washington, D. C., April 7, 1976

All to whom these presents shall come, Greeting:

I certify That Charles R. Richey whose name is signed to the accompanying paper, is now, and was at the time of signing the same, United States District Court Judge for the District of Columbia

duly commissioned and qualified.

In witness, whereof, I, Edward H. Levi

Attorney General of the United States, have hereunto caused the Seal of the Department of Justice to be affixed and my name to be attested by the Deputy Assistant Attorney General for Administration, of the said Department on the day and year first above written.

Edward H. Levi

Attorney General

By Edward F. Scott

Deputy Assistant Attorney General for Administration

NITED STATES OF AMERICA)
)
CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA)

IN THE MATTER OF THE EXTRADITION ACT. R.S.C. 1970 Chap. E-21

AND IN THE MATTER OF LEONARD PELTIER also known as Leonard Little Shell, Leonard Williams, John Yellow Robe, Erwin Yellow Robe, Leonard John Peltier

(BJ)

AFFIDAVIT

Evan Hodge, being first duly sworn upon his oath, deposes and says:

1. That I am a Peace Officer and am employed by the Government of the United States of America as a Special Agent of the Federal Bureau of Investigation, and am assigned to the Federal Bureau of Investigation Laboratory, Firearms Identification Section, in the City of Washington, in the District of Columbia, United States of America.

2. That I have been employed in the Firearms Identification Section of the Federal Bureau of Investigation for approximately thirteen years. I have earned a Baccalaureate from the University of Maryland in the State of Maryland, United States of America. My undergraduate studies were in the fields of engineering and Business Administration. I have also earned a Masters of Science Degree from the George Washington University in Washington, D.C. As a part of my preparation to become a Firearms Identification Specialist, I studied for approximately one (1) year under the twelve (12) Firearms Identification Specialists in the Federal Bureau of Investigation Laboratory. During this year I examined thousands of bullets and cartridge cases, hundreds of weapons, read all the available literature in the field of firearms identification, toured several of the eastern United States gun factories and conducted other tests related to firearms identification.

I have testified in a court of law more than 100 times in the United States and once in Nassau, Bahamas.

3. That on December 29, 1975, I received a .357 magnum Smith & Wesson revolver with the serial number obliterated from the butt from the Portland, Oregon division of the Federal Bureau of Investigation. I examined the said .357 magnum Smith & Wesson revolver and was able to obtain the serial number "622056" from another part of the weapon. On this model of .357 Smith & Wesson revolver the serial number is always preceded by the letter "K" and in my opinion, the full and correct serial number of this revolver would be "K622056". That when I received the revolver I noticed the initial "Z" scratched on the butt of the said revolver and that there was also attached to the revolver an identifying tag. That attached hereto marked Exhibit "A" to this my affidavit is a photograph of the butt of the said revolver marked with the letter "Z" (See directional arrow). That also attached hereto and marked Exhibit "B" to this my affidavit is a photograph of the said revolver and tag attached.

4. That on July 5, 1975, I received one (1) .38 special caliber cartridge case in a container marked:

"Items obtained from front seat-
Jack R. Coler automobile".

That on July 24, 1975, I received another one (1) .38 special caliber cartridge case in a similar container marked:

"Items obtained from front seat-
Jack R. Coler automobile".

5. That by test firing and examinations conducted by me of the said .357 magnum Smith & Wesson revolver referred to in paragraph 3 hereof and the two (2) .38 special caliber cartridge cases referred to in paragraph 4 hereof, I am of the opinion that the said two (2) .38 special caliber cartridges cases were fired from the said .357 magnum Smith & Wesson revolver, serial number "K622056".

BT

6. That on the 24th day of July, 1975, I received one (1) .223 caliber cartridge case in an envelope marked:

"Items recovered from trunk -
Jack R. Coler automobile".

On July 5, 1975, I received thirty-four (34) .223 cartridge cases in an envelope marked:

"Items recovered from 1967
Ford Galaxie:

and also received one (1) .223 cartridge case in an envelope marked:

"Items recovered from
1966 Chevrolet Suburban"

After examining all thirty six .223 caliber cartridge cases, I am of the opinion that they all had been loaded into and extracted from the same semi-automatic rifle of a model and type known to me as a Colt AR-15 which is a weapon of high velocity.

7. That I further depose and state that the cartridge cases received by me on July 5, 1975 were from Special Agent Cunningham in a locked trunk. The cartridge cases received by me on July 24, 1975 were forwarded to me from Special Agent Ronald E. Brugger and received by me at the Firearms Section, Federal Bureau of Investigation, in the City of Washington aforesaid.

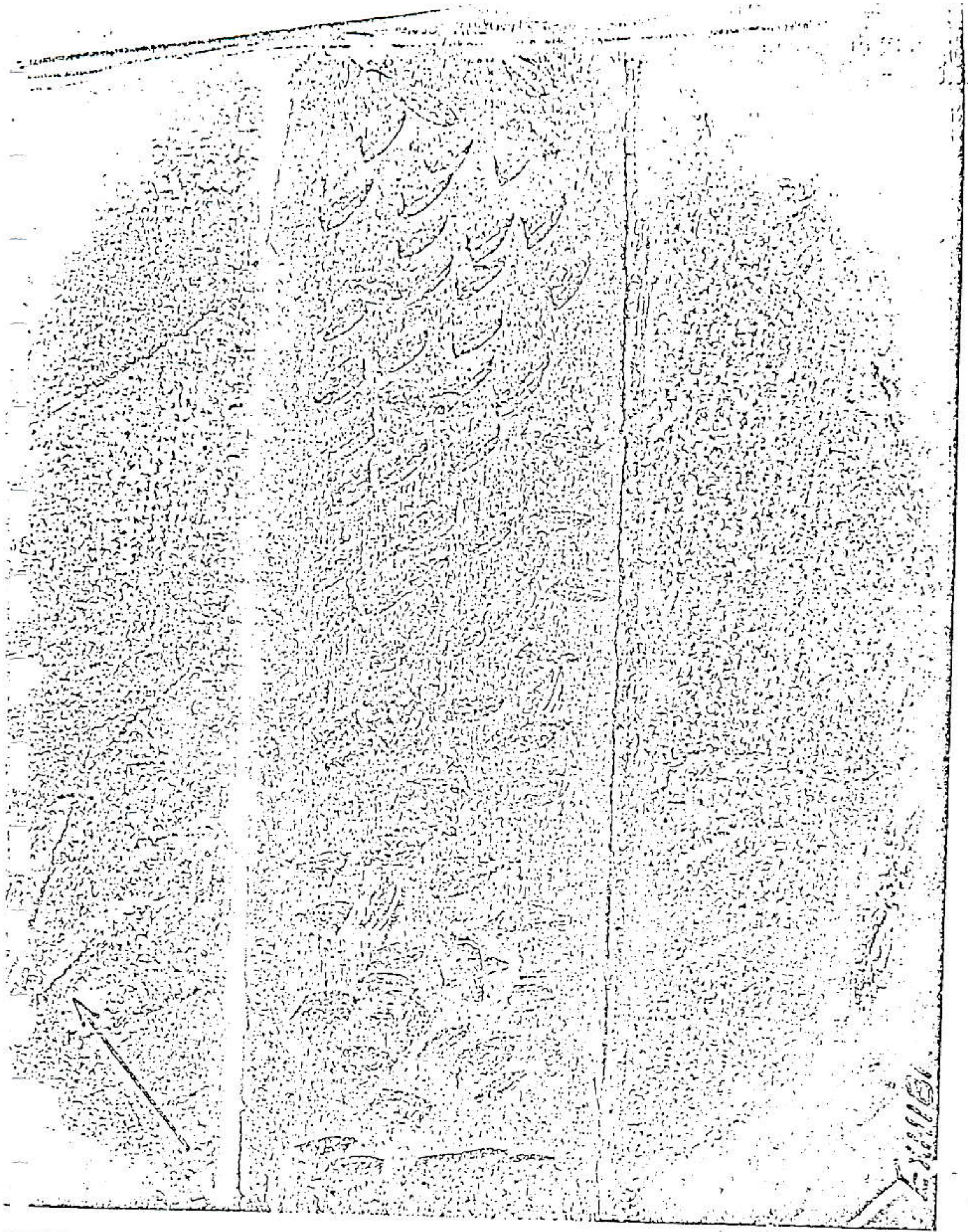
Subscribed and sworn to before me this 6th day of April, 1976.

Herbert N. Haller
Deputy Clerk
District of Columbia
United States District Court for the District of Columbia

Evan Hodge
Evan Hodge

I, CHARLES R. RICHEY United States District Court Judge for the District of Columbia, do hereby certify that attached hereto is the affidavit of Evan Hodge, sworn to before HERBERT N. HALLER, Chief Deputy Clerk of the United States District Court for the District of Columbia, whose signature appears on said affidavit, and that the said HERBERT N. HALLER was when the said affidavit was sworn, and now remains, a person duly authorized to administer oaths for general purposes, and that the said affidavit is in due form of law. In testimony whereof I have hereto signed my name and caused the seal of the said Court to be affixed at the City of Washington, District of Columbia, this 6th day of April, 1976.

United States District Court Judge



(137)

1116

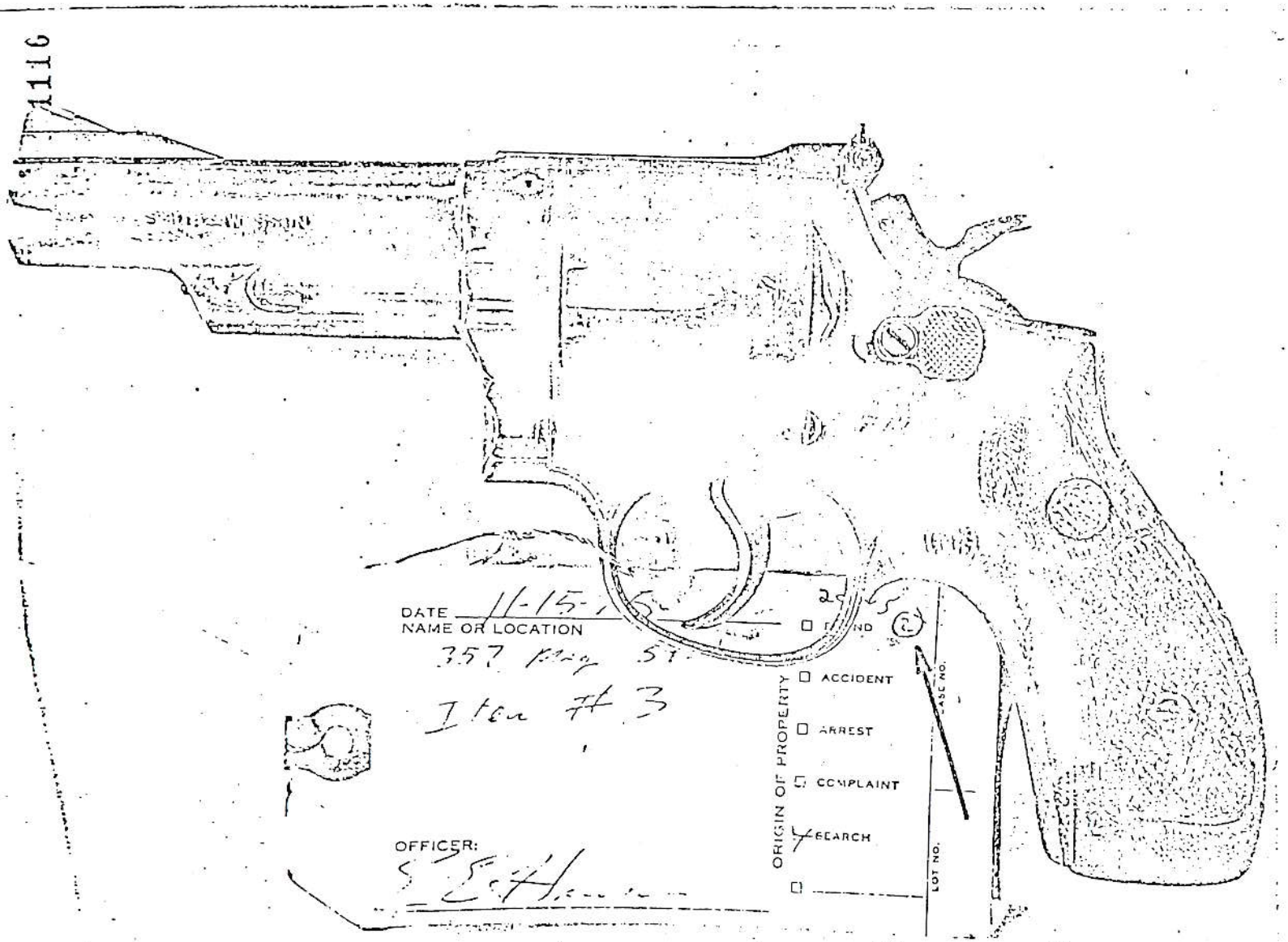


EXHIBIT B

187

Department of Justice

(BK) 1117

7605093

Washington, D. C., March 24, 1976

to whom these presents shall come, Greeting:

ertify That Alfred A. Arraj whose name is signed
e accompanying paper, is now, and was at the time of
ng the same, Chief United States District Judge for the District
lorado
duly commissioned and qualified.

ness, whereof, I, Edward H. Levi

Attorney General of the United States, have hereunto caused the Seal of the Department of Justice to be affixed and my name to be attested by the Deputy Assistant Attorney General for Administration, of the said Department on the day and year first above written.

Edward H. Levi

Attorney General

By Edward S. Smith

Deputy Assistant Attorney General for Administration

...F AMERICA)
OF COLORADO)
)
COUNTY OF DENVER)

IN THE MATTER OF THE EXTRADITION ACT. R.S.C. 1970 Chap. E-21

1118

AND IN THE MATTER OF LEONARD PELTIER also known as Leonard Little Shell, Leonard Williams, John Yellow Robe, Erwin Yellow Robe, Leonard John Peltier

A F F I D A V I T

(18K)

Dean L. Ray, being first duly sworn upon his oath, deposes and and says:

1. That I am the Custodian of Records of the Denver Division, Federal Bureau of Investigation, in the City of Denver, in the State of Colorado, United States of America, a branch of the said Federal Bureau of Investigation of the Government of the United States of America.

2. That in the usual and ordinary course of the conduct of the operation of the said Federal Bureau of Investigation there appears in the said records a Duplicate Property Record containing information pertaining to property of the Government of the United States of America issued to special agents of the said Federal Bureau of Investigation.

3. That attached hereto and marked Exhibit "A" to this, Affidavit, is a copy of the said record of information of the United States Government property issued to Jack R. Coler, a special agent of the Federal Bureau of Investigation. That I personally compared the copy of the said record marked Exhibit "A" with the original record and attest the same to be an authentic, full, true and correct copy of the said Duplicate Property Record, the source of which being records under my custody at the Denver Division, Federal Bureau of Investigation, Denver, Colorado.

4. That it is not possible to produce the original record as the same is required for court proceedings in the United States of America.

5. That the said record indicates that a .357 caliber magnum Smith & Wesson Model 19-2 revolver, serial number K622056 was issued and delivered to Special Agent Jack R. Coler.

Subscribed and sworn to before)
this 11th day of March 1976)
)
Deputy Clerk)
)
Dean L. Ray)

Commission Card & PA Case No. 5553

FBI Handbook No. 43[illegible]

Agent's Brief Case X

GTR's No. [illegible]

[illegible]

=0,235,011-020

Firearms

Colt Official Police Revolver No. [illegible]

S & W Military & Police Revolver No. D801272

S&W M19-2 .357 Mag. X K622056

Hip Holster and Adapter for above

Non-Agent Property

FBI Identification Card No.

Credential Card (Non-Agent) No.

U. S. Government Operator's Ident Card No.

Handbook for FBI Employees

1119

Authority Granted to Carry Personally Owned Firearms as Listed Below:

Date of Approval	Date Bureau Advised	Description (Indicate make, type, caliber and serial number)	Approving SA
9-3-71	9-3-71	Smith & Wesson .38 SN 401493 X (SA Bunch [illegible] 7/11/75)	WHALEY

Coler

18K

EXHIBIT "A"

18K

24. Memorandum from B.H. Cooke to Mr. Gallagher, Subject: "Resmurs - Contemplated dismissal of prosecution of James Theodore Eagle; Continuing prosecution of Leonard Peltier" dated August 10, 1976, 2 pages at p.1. Note that an order of extradition has already been obtained against Peltier because of the false Poor Bear affidavits.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Gallagher

FROM : B. H. Cooke

SUBJECT: RESMURS - CONTEMPLATED DISMISSAL OF PROSECUTION OF JAMES THEODORE EAGLE; CONTINUING PROSECUTION OF LEONARD PELTIER

1 - Mr. Held
1 - Mr. Adams
DATE: 8/10/76
1 - Mr. Gallagher
1 - Mr. O'Connell
1 - Mr. Cooke
1 - Mr. Gordon
1 - Mr. Hawkins
1 - Mr. Mintz
1 - Mr. Leavitt

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Ext. Affairs
Fin. & Pers.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Legal Coun.
Plan. & Eval.
Rec. Mgmt.
Spec. Inv.
Training
Telephone Rm.
Director Sec'y

PURPOSE: To record the decision to dismiss prosecution of James Theodore Eagle and to vigorously prosecute Leonard Peltier in the murders of SAs Jack R. Coler and Ronald A. Williams.

RECOMMENDATION: For information and record purposes.

APPROVED:
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Ext. Affairs
Fin. & Pers.
Gen. Inv.
Ident.
Inspection
Intell.
Laboratory
Legal Coun.
Plan. & Eval.
Rec. Mgmt.
Spec. Inv.
Training

DETAILS: On 8/9/76, Director Clarence M. Kelley conferred with U. S. Attorney (USA) Evan Hultman, Northern District of Iowa, prosecutor in the Resmurs trials, who was accompanied by William B. Gray, Director, Executive Office for USAs. Present at this conference were Associate Director Richard G. Held, Deputy Associate Director James B. Adams, Assistant Director Richard J. Gallagher, and Unit Chief John C. Gordon and SA Herbert H. Hawkins, Jr. of the General Crimes Unit.

EX 104 REC-5 89-3229-2818

USA Hultman stated that the Resmurs case on James Theodore Eagle was weak and he felt there was not sufficient evidence to get it to the jury. The prosecutive aspects of this case were fully discussed and all present concurred with the Director and USA Hultman that this case be dismissed, so that the full prosecutive weight of the Federal Government could be directed against Leonard Peltier.

22 SEP 10

On 8/9/76, Departmental Attorney Roger Cubbage was advised of this decision, inasmuch as Mr. Cubbage wanted to know the FBI's position prior to meeting with USA Hultman and Departmental Attorney Alfred Hantman, Chief of the General Crimes Section, on 8/10/76. Mr. Cubbage subsequently advised on 8/10/76 a decision has been made in the Department to allow the USA to dismiss the charges against James Theodore Eagle.

JCG:mer (10)

CONTINUED - OVER

Memorandum to Mr. Gallagher
RE: RESMURS - PROSECUTION OF
JAMES THEODORE EAGLE

On 9/4/75, Marvin A. Stoldt advised that on 6/26/75, he observed Eagle fleeing the crime scene carrying a rifle. On 9/11/75, Michael Erwin Anderson advised that on 6/26/75, Eagle was at the Harry Jumping Bull residence when the FBI Agents were shot. On 9/22/75, Norman Patrick Brown identified a photograph of Eagle and stated Leon Eagle, the brother of Jimmy Eagle, helped individuals escape 6/26/75, from the scene of the killing of the FBI Agents. On 10/3/75, Melvin White Wing advised he heard Eagle say "We took turns shooting the Agents." On 11/25/75, at Rapid City, South Dakota, a Federal Grand Jury indicted Eagle for the murders - first degree in the killings of SAs Coler and Williams.

Prior to being indicted, on 10/1/75, Eagle was found guilty to two counts of CIR - Assault with a Deadly Weapon in U. S. District Court, Rapid City, and sentenced to six years in the custody of the Attorney General.

3138

III. MYRTLE POOR BEAR'S EYEWITNESS ACCOUNT

1. The Background to the Poor Bear Extradition Affidavits

By **February 10, 1976** the F.B.I. were aware that Canadian prosecutor Paul William Halprin, their counsel on the extradition, was reluctant to proceed on the Reservation Murders. If they did not succeed in obtaining an order for Peltier's extradition on those charges, he could not be prosecuted for them even if they succeeded in getting an extradition order on the other charges.[25]

Again on **February 12, 1976**, they repeat:

> "Halprin stated had not sufficient information to file other charges"...
>
> "After extensive deliberations Halprin agreed to file additional charges based upon information furnished by F.B.I. February 11, 1976." [26]

As late as **April 20, 1976** that initial reluctance is still being discussed internally:

> "It was only after considerable pressure and direction from those attending the meeting that Halprin acquiesced to proceed on all charges."[27]

At the same time, the political nature of the case was also clear to the F.B.I.:

> [Concerns are expressed about the defence committees, the sympathy expressed in Canada to "the Indians plight", and that previous judicial hearings] "have been rife with statements by the subjects which are misleading to the courts and have led to reasonable doubts by the judiciary and resulting in the subject's gains to obtain freedom."...

> "A strong effective and knowledgeable representative for the U.S. government should be leading the prosecution of Peltier in order to insure a successful extradition."[28]

Paul William Halprin was very active in preparing for the extradition.

Between **February 17 and 19, 1976** Halprin was in Rapid City South Dakota interviewing witnesses and preparing the extradition case. In order to review the available evidence, he attended at F.B.I. offices in Rapid City South Dakota and Boise Idaho.[29] He was in Rapid City when he was advised that there was a potential eyewitness to the shootings.[30] There is no evidence to determine what response he gave to this information, or why, indeed, it was provided to him. It is reasonable, however, to infer that he remained concerned about the strength of the case that he had been so reluctant to proceed with.[31]

2. The Poor Bear Extradition Affidavits

On **February 19, 1976**, Myrtle Poor Bear swore an affidavit that she was not on the Pine Ridge Reservation the day the F.B.I. agents were killed, although she claimed that Peltier confessed to the murders to her. **THIS AFFIDAVIT WAS NOT PRESENTED TO THE CANADIAN EXTRADITION COURT AND ITS EXISTENCE WAS NOT DISCLOSED TO CANADIAN DEFENCE LAWYERS.**[32]

On **February 20. 1976**, according to his subsequent sworn deposition, Halprin was advised while in Rapid City South Dakota of a "potential eyewitness".[33]

On **February 23, 1976** Myrtle Poor Bear signed an affidavit claiming that she was at Pine Ridge and saw Peltier kill the agents.[34]

On **March 31, 1976** a third affidavit was signed by Myrtle Poor Bear after Halprin sought clarification of the February 23, 1976 affidavit.[35]

The circumstantial evidence detailed in Part II and the direct

evidence detailed in Part III represents the evidence presented on the extradition hearing.

25. F.B.I. teletype, To Director, Feb 11, 1976, 4 pages. Presumably they were aware, as well, how frail the evidence on all the charges actually was. (They were only ever able to gain convictions in the Reservation Murders, all other charges were withdrawn or dismissed.)

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

FEB 11 1976

TELETYPE

NR001 SE CODE

10:20AM IMMEDIATE FEBRUARY 11, 1976 PGP

TO DIRECTOR 89-3229

RAPID CITY 70-10239

MILWAUKEE 89-93

PORTLAND 89-74

FROM SEATTLE 89-119 (P)

Assoc. Dir. ___
Dep.-A.D.-Adm. ___
Dep.-A.D.-Inv. ___
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 ___

Fug. SUPVR

LEONARD PELTIER, AKA - FUGITIVE; FUGITIVE ALERT 100; WANTED FLYER 481; IO 4681; CIR - MURDER; NFA; UFAP - ATTEMPTED MURDER; TEN MOST WANTED FUGITIVE. OO: MP/RC.

RE SEATTLE TEL CALLS, FEBRUARY 11, 1976.

ON FEBRUARY 10, 1976, SEATTLE SA ON LIAISON ASSIGNMENT VANCOUVER, B.C. HAD CONFERENCE WITH PAUL W. HALPRIN, PROSECUTING ATTORNEY, MINISTRY OF JUSTICE, VANCOUVER, B.C. WHO IS REPRESENTING U.S. DEPARTMENT OF JUSTICE IN LEGAL PROCEEDINGS.

HALPRIN STATED APPLICATION FOR BAIL HEARING SET FOR THURSDAY, FEBRUARY 12, 1976. AT THAT HEARING DATE FOR ESTRADITION WILL BE SCHEDULED BASED UPON THE COURT CALENDAR AND AVAILABILITY OF LEGAL COUNSEL FOR DEFENSE AND PROSECUTION. HALPRIN STATED HE IS PROCEEDING SOLELY ON MILWAUKEE INCIDENT OF ATTEMPTED MURDER. AS OF 4 P.M., FEBRUARY 10, 1976, HALPRIN HAD NO DETAILS CONCERNING THE MURDERS AND INDICTMENTS OF SAS WILLIAMS AND COLER.

EX-116 REC-38 88-66300-99

3 FEB 18 1976

END PAGE ONE

9 MAR 31

271

HALPRIN STATED THAT ON SUNDAY, FEBRUARY 15, 1976, HE WILL PROCEED TO RAPID CITY, MILWAUKEE, ONTARIO, OREGON, AND FINALLY TO WASHINGTON D.C. PURPOSE IS TO INTERVIEW WITNESSES AND OBTAIN INFORMATION SIMILAR TO SUCH THAT WOULD BE PRESENTED AT A CRIMINAL TRIAL. HALPRIN STATED THIS IS NECESSARY PRIOR TO EXTRADITION HEARING.

HALPRIN WAS ADVISED OF PELTIER'S BACKGROUND WITH AIM, HIS PAST CRIMINAL RECORD AND OTHER PERTINENT INFORMATION. HALPRIN WAS UNAWARE OF MANY FACETS THIS MATTER. HALPRIN MADE FOLLOWING REQUESTS FOR INFORMATION WHICH HE NEEDS PRIOR TO THE BAIL APPLICATION HEARING, FEBRUARY 12, 1976.

1. ALL CHARGES FEDERAL AND LOCAL EXISTING FOR PELTIER OUT OF THE STATE OF OREGON IN CONNECTION WITH MOBILE HOME INCIDENT, NOVEMBER 14, 1975.

2. DETAILS CONCERNING LOCAL CHARGES MILWAUKEE SPECIFICALLY THE DATE PELTIER SUPPOSED TO APPEAR AT TRIAL, THE AMOUNT OF BAIL AT THE TIME.

3. SPECIFIC DETAILS OF THE MURDER OF TWO FBI AGENTS, DATE OF GRAND JURY INDICTMENT AND IF RECOMMENDED BAIL. HALPRIN ALSO REQUESTED A COPY OF THE INDICTMENT.

END PAGE TWO

271

4. DETAILS OF THE MERCER ISLAND, WASHINGTON INCIDENT SEPTEMBER, 1974, THE DATE PELTIER SUPPOSED TO APPEAR AT LOCAL COURT, AMOUNT OF BAIL, AND FINAL DISPOSITIONS.

ON FEBRUARY 11, 1976, SEATTLE SA FURNISHED HALPRIN WITH THE MAJORITY OF REQUESTED INFORMATION. THE FOLLOWING INFORMATION IS NEEDED IMMEDIATELY AND IS SET FORTH IN THE LEADS BELOW.

HALPRIN STATED THAT THE INFORMATION CONCERNING MURDER CHARGES ON PELTIER EXTREMELY IMPORTANT AS IF NOT BROUGHT BEFORE THE COURT AT BAIL APPLICATION HEARING FEBRUARY 12, 1976, POSSIBILITY EXISTS PELTIER BE EXTRADITED ONLY FOR ATTEMPTED MURDER MILWAUKEE POLICE OFFICER AND FEDERAL CHARGES REGARDING MURDER COULD NOT BE PROSECUTED IN U.S. COURT. THE PURPOSE OF THE APPROACH IS NECESSARY BECAUSE OF [redacted]

MILWAUKEE DIVISION. THE AMOUNT OF BAIL ON PELTIER BY LOCAL OFFICIALS ON CHARGE OF ATTEMPTED MURDER.

PORTLAND DIVISION.

1. WILL VERIFY RECOMMENDED BAIL OF $100,000 ON PELTIER REGARDING FEDERAL CHARGES.

END PAGE THREE

271

2. DETAILS OF LOCAL CHARGES INCLUDING PELTIER'S SHOOTING AT OREGON STATE PATROLMAN CONSISTING OF EXACT CHARGES, STATUTES, DATE OF WARRANT AND BAIL RECOMMENDED.

SEATTLE AT MERCER ISLAND, WASHINGTON.

1. THE AMOUNT OF BAIL ON PELTIER AFTER BEING ARRESTED IN SEPTEMBER, 1974, WHEN HE WAS SUPPOSEDLY TO APPEAR IN COURT ON NOVEMBER 22, 1974.

2. THE DATE AND EXACT FINAL DISPOSITIONS OF CASE CONCERNING PELTIER.

RAPID CITY AT RAPID CITY.

1. FURNISH SEATTLE WITH THE AMOUNT OF BAIL IF ANY ON THE MURDER INDICTMENT OF SAS.

2. FURNISH SEATTLE IMMEDIATELY BY AIR COURIER OR FACSIMILIE A COPY OF THE INDICTMENT.

ARMED AND DANGEROUS

END

SSSSSSSSS

CMB FBIHQ ACK CLR TU

CC- Gen Inv Div.

271

26. Teletype from Minneapolis to Director, dated February 12, 1976, 2 pages.

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

FEB 13 1976

TELETYPE

Dep.-A.D.-Adm.
Dep.-A.D.-Inv.
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

554

NR002 SE CODE

10:55PM URGENT FEBRUARY 12, 1976 PGP

TO DIRECTOR (88-66300)

MILWAUKEE

BUTTE

RAPID CITY (88-6763)

PORTLAND (88-8059)

FROM SEATTLE (88-9435) (P)

~~CONFIDENTIAL~~

LEONARD PELTIER , AKA - FUGITIVE; FUGITIVE ALERT 100; WANTED FLYER 481; IO 4681; CIR - MURDER; NFA; UFAP - ATTEMPTED MURDER; TEN MOST WANTED FUGITIVE. OO: MP/RC.

PE SEATTLE TEL, FEBRUARY 11, 1976.

ON FEBRUARY 11, 1976, CONFERENCE HELD VANCOUVER, B.C. WITH [redacted] VANCOUVER OFFICER IN CHARGE, GENERAL SECTION, RCMP; [redacted] NON-COMMISSIONED OFFICER IN CHARGE, SERIOUS CRIME UNIT, RCMP; [redacted] VANCOUVER INTEGRATED INTELLIGENCE UNIT (VIIU), RCMP; [redacted] VIIU; VANCOUVER POLICE DEPARTMENT; SA [redacted] SEATTLE LIAISON; AND B.C. DEPARTMENT OF JUSTICE ATTORNEY BILL HALPRIN. AT OUTSET OF CONFERENCE HALPRIN INSISTENT ON PERSUING SINGLE CHARGE ON PELTIER CONCERNING

b7C-Y

b7C-3

REC-60 88-66300-198

FEB 17 1976

61 MAR 4 1976

270

PAGE TWO SE SR-9435 [redacted]

ATTEMPTED MURDER BY PELTIER OF MILWAUKEE OFFICER. HALPRIN STATED HAD NOT SUFFICIENT INFORMATION TO FILE OTHER CHARGES. AFTER EXTENSIVE DELIBERATIONS, HALPRIN AGREED TO FILE ADDITIONAL CHARGES BASED UPON INFORMATION FURNISHED BY FBI ON FEBRUARY 11, 197[redacted]

b1
b7c

ON FEBRUARY 12, 1976, PELTIER APPEARED ASSIZE COURT, VANCOUVER, B.C., AND ORIGINAL INFORMATION IN WARRANT BASED ON ATTEMPTED MURDER MILWKEE OFFICER DISMISSED. NEW INFORMATION AND WARRANTS FILED FOR FIVE ALLEGATIONS INCLUDING ATTEMPTED MURDER MILWAUKEE POLICE OFFICER, MURDER OF SA RON WILLIAMS, MURDER OF SA JACK COLER, ATTEMPTED MURDER OREGON STATE PATROLMAN GRIFFITHS, AND BURGLARY OF THE HOUSE AT NYSSA, OREGON. BECAUSE OF NEW INFORMATION THIS MATTER CONTINUED UNTIL FEBRUARY 19, 1976, AT WHICH TIME EXTRADITION [redacted]ARING WILL BE SCHEDULED. PELTIER REMANDED TO CUSTODY AT THE LOWER MAINLAND CORRECTIONAL INSTUTUTE, BURNABY, B.C. FOR THE HEARING SCHEDULED AT 19 A.M., FEBRUARY 19, 1976.

[redacted]

b1
C b7c

END PAGE TWO

270

27. Airtel from Seattle to Director, subject Leonard Peltier, dated April 20, 1976, 3 pages at p.2.

5996

FD-36 (Rev. 2-14-74)

FBI

Date: 4/20/76

Transmit the following in _____ (Type in plaintext or code)

AIRTEL AIRMAIL

Via _____ (Precedence)

TO: DIRECTOR, FBI (88-66300)

SAC, SEATTLE (88-9435) (P)

SUBJECT: LEONARD PELTIER, aka - FUGITIVE;
FUGITIVE ALERT 100; WANTED FLYER 481; IO 4681;
CIR - MURDER; NFA; UFAP - ATTEMPTED MURDER
FORMER TEN MOST WANTED FUGITIVE
OO: MP/RC

Re Seattle tel, 2/11/76.

The following is submitted for informational purposes and whatever action is deemed appropriate.

On February 10, 1976, Seattle SA with RCMP [redacted] Vancouver, B.C., met with W. P. HALPRIN, Ministry of Justice, Vancouver, B.C. At this meeting, HALPRIN refused to request PELTIER's extradition on the murder charges at Rapid City or the Federal and State charges stemming out of the Oregon shoot out. HALPRIN said he did not have knowledge of those incidents. Seattle SA verbally advised HALPRIN and at time HALPRIN directed he be furnished in writing the exact details of all outstanding charges applicable to PELTIER within 24 hours.

On February 11, 1976, a meeting was conducted with HALPRIN attended by Seattle SA and senior members of the RCMP at which time the details concerning all federal and state charges with the exception of the Oregon state charges were furnished in writing to HALPRIN. Also included was the federal indictment charging PELTIER with the murder of the two SAs. HALPRIN was not furnished the details concerning the Oregon State charges as it had been learned earlier in the day that HALPRIN himself had been in telephonic contact with the Oregon State officials and had obtained all the necessary details.

2 - Bureau
2 - Rapid City (88-6763)
2 - Seattle
SER:cmf
(6)

2-PORTLAND

20 APR 23 1976

Approved: _____ Special Agent in Charge

Sent _____ M Per _____

During the conference, HALPRIN requested of the Seattle SA details regarding the Oregon State charges and such was not provided because of the prior conversation between HALPRIN and the Oregon State attorney. HALPRIN stated he did not have the details as he had not taken notes during the discussions. HALPRIN then immediately contacted the state attorney in Oregon in the middle of the night and directed the attorney to travel to where the state warrant was and immediately send it to him via Western Union.

HALPRIN, after being furnished all details as requested continued his adamance in proceeding solely on the Milwaukee charges. It was only after considerable pressure and direction by those attending the meeting that HALPRIN acquiesced to proceed on all charges.

[redacted] b7d-1 C

[redacted] C b7d-1

[redacted] b7d-1

[redacted] C

During March, 1976, a conference was established for investigative and legal personnel from the U.S. to meet with HALPRIN at Vancouver, B.C. Within 24 hours of HALPRIN's agreement to this conference, he with minimal notice to Canadian authorities, traveled to Rapid City to hold a private conference with the special prosecutor concerning this matter. As a result of this unexpected trip, this pre-trial conference was terminated by HALPRIN.

314

[redacted]

SE 88-9435 CONFIDENTIAL

[redacted] b7d-1

Seattle notes that since PELTIER has been arrested he has taken the position of being persecuted for political reasons due to his anti-U.S. Government activities and that he will be killed by the FBI when he is returned to the U.S. PELTIER's supporters are using the murder of ANNA MAE AQUASH as proof to further enhance their position that the same fate awaits PELTIER upon his return to the U.S. Since the arrest of PELTIER, several legal defense committees have been organized in the U.S. and Canada which have extolled to large degrees the political aspects of this case. Some of these programs have brought reference to allegations that the U.S. Government has plans to annihilate activist Indians. PELTIER's defense committees have organized numerous demonstrations and created effective literature to gain public support. The true effect of such organizing cannot be readily assessed.

Due to revalations from various U.S. congressional committees there is a sense among some Canadian judicial officials of creditability toward the Indian plight and a resulting sympathy, especially when brought into light with the picture painted by PELTIER's supporters (X)

Previous judicial hearings concerning both BLACK HORSE and PELTIER have been rife with statements by the subjects which are misleading to the courts and have lead to reasonable doubts by the judiciary and resulting in the subject's gains to obtain freedom. Since the Canadian prosecuting attorneys are not aware of the background of these subjects and all ramifications of the violations they are unable to refute statements made by the subjects and therefore these statements are allowed to stand unchallenged in court.

In order to overcome the possible release of PELTIER, a strong effective and knowledgeable representative for the U.S. Government should be leading the prosecution of PELTIER in order to insure a successful extradition.

[redacted] b7d-1

CONFIDENTIAL

314

28. Airtel from Seattle to Director, subject Leonard Peltier, dated April 20, 1976, 3 pages at p. 3.

5996

FD-36 (Rev. 2-16-74)

FBI

Date: 4/20/76

Transmit the following in [redacted] (Type in plaintext or code)

AIRTEL [redacted] AIRMAIL

Via ____ (Precedence)

TO: DIRECTOR, FBI (88-66300)

SAC, SEATTLE (88-9435) (P)

SUBJECT: LEONARD PELTIER, aka - FUGITIVE;
FUGITIVE ALERT 100; WANTED FLYER 481; IO 4681;
CIR - MURDER; NFA; UFAP - ATTEMPTED MURDER
FORMER TEN MOST WANTED FUGITIVE
OO: MP/RC

Re Seattle tel, 2/11/76.

The following is submitted for informational purposes and whatever action is deemed appropriate.

On February 10, 1976, Seattle SA with RCMP [redacted] Vancouver, B.C., met with W. P. HALPRIN, Ministry of Justice, Vancouver, B.C. At this meeting, HALPRIN refused to request PELTIER's extradition on the murder charges at Rapid City or the Federal and State charges stemming out of the Oregon shoot out. HALPRIN said he did not have knowledge of those incidents. Seattle SA verbally advised HALPRIN and at time HALPRIN directed he be furnished in writing the exact details of all outstanding charges applicable to PELTIER within 24 hours.

On February 11, 1976, a meeting was conducted with HALPRIN attended by Seattle SA and senior members of the RCMP at which time the details concerning all federal and state charges with the exception of the Oregon state charges were furnished in writing to HALPRIN. Also included was the federal indictment charging PELTIER with the murder of the two SAs. HALPRIN was not furnished the details concerning the Oregon State charges as it had been learned earlier in the day that HALPRIN himself had been in telephonic contact with the Oregon State officials and had obtained all the necessary details.

2 - Bureau
2 - Rapid City (88-6763)
2 - Seattle
SER:cmf
(6)

2 - PORTLAND

Approved: [redacted] Special Agent in Charge

Per [redacted]

SE 88-9435
CONFIDENTIAL

During the conference, HALPRIN requested of the Seattle SA details regarding the Oregon State charges and such was not provided because of the prior conversation between HALPRIN and the Oregon State attorney. HALPRIN stated he did not have the details as he had not taken notes during the discussions. HALPRIN then immediately contacted the state attorney in Oregon in the middle of the night and directed the attorney to travel to where the state warrant was and immediately send it to him via Western Union.

HALPRIN, after being furnished all details as requested continued his adamance in proceeding solely on the Milwaukee charges. It was only after considerable pressure and direction by those attending the meeting that HALPRIN acquiesced to proceed on all charges.

[redacted] b7d-1 C

[redacted] C b7d-1

[redacted] b7d-1

[redacted] C

During March, 1976, a conference was established for investigative and legal personnel from the U.S. to meet with HALPRIN at Vancouver, B.C. Within 24 hours of HALPRIN's agreement to this conference, he with minimal notice to Canadian authorities, traveled to Rapid City to hold a private conference with the special prosecutor concerning this matter. As a result of this unexpected trip, this pre-trial conference was terminated by HALPRIN.

[redacted] b7d-1

Seattle notes that since PELTIER has been arrested he has taken the position of being persecuted for political reasons due to his anti-U.S. Government activities and that he will be killed by the FBI when he is returned to the U.S. PELTIER's supporters are using the murder of ANNA MAE AQUASH as proof to further enhance their position that the same fate awaits PELTIER upon his return to the U.S. Since the arrest of PELTIER, several legal defense committees have been organized in the U.S. and Canada which have extolled to large degrees the political aspects of this case. Some of these programs have brought reference to allegations that the U.S. Government has plans to annihilate activist Indians. PELTIER's defense committees have organized numerous demonstrations and created effective literature to gain public support. The true effect of such organizing cannot be readily assessed.

Due to revalations from various U.S. congressional committees there is a sense among some Canadian judicial officials of creditability toward the Indian plight and a resulting sympathy, especially when brought into light with the picture painted by PELTIER's supporters (X)

Previous judicial hearings concerning both BLACK HORSE and PELTIER have been rife with statements by the subjects which are misleading to the courts and have lead to reasonable doubts by the judiciary and resulting in the subject's gains to obtain freedom. Since the Canadian prosecuting attorneys are not aware of the background of these subjects and all ramifications of the violations they are unable to refute statements made by the subjects and therefore these statements are allowed to stand unchallenged in court.

In order to overcome the possible release of PELTIER, a strong effective and knowledgeable representative for the U.S. Government should be leading the prosecution of PELTIER in order to insure a successful extradition.

[redacted] b7d-1

29. "Paul William Halprin ... arrived Rapid City, February 17, 1976, and reviewed affidavits prepared by witnesses concerning Peltier's involvement RESMURS. Halprin appeared satisfied re evidence furnished through affidavits.
"Departed Rapid City, February 19, 1976, taking annual leave ... en route and will arrive Boise Idaho... February 22, 1976." Teletype: Director FBI, February 20, 1976, 2 pages.

5630

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

FEB 20 1976

TELETYPE

AR223 RC CODE

522PM NITEL FEB 20, 1976 VLH

TO: DIRECTOR, FBI (88-66300)

BUTTE (88-6971)

MINNEAPOLIS (88-6763)

PORTLAND (88-8059)

SEATTLE (88-9435)

FROM: RAPID CITY (70-10239)

APPROPRIATE AGENCIES AND FIELD OFFICES ATTENTION LIAISON SECTION

DECLASS DATE 1-10-80 TLB

Assoc. Dir.
Dep. A.D.-Adm.
Dep. A.D.-Inv.
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

FAXED aff. Canada

RESMURS; LEONARD PELTIER, AKA - FUGITIVE; FUGITIVE ALERT 102; WANTED FLYER 451; IC 4681; CIR - MURDER; NFA; UFAP - ATTEMPTED MURDER, TEN MOST WANTED FUGITIVE; OO: MP/PC.

FOR INFORMATION BUREAU AND RECEIVING OFFICES, PAUL WILLIAM HALPRIN, CROWN COUNSEL, CANADIAN DEPARTMENT OF JUSTICE, VANCOUVER, BRITISH COLUMBIA, ARRIVED RAPID CITY, FEBRUARY 17, 1976, AND REVIEWED AFFIDAVITS PREPARED BY WITNESSES CONCERNING PELTIER'S INVOLVEMENT RESMURS. HALPRIN APPEARED SATISFIED RE EVIDENCE FURNISHED THROUGH AFFIDAVITS.

EX-116 REC 32 88-66300-102

DEPARTED RAPID CITY, FEBRUARY 19, 1976, TAKING ANNUAL LEAVE 1976 EN ROUTE AND WILL ARRIVE BOISE, IDAHO, VIA UAL, FLIGHT 522 [illegible] P.M., FEBRUARY 22, 1976. HALPRIN WILL BE MET BY SPECIAL AGENTS OF BOISE RA AND AFFORDED TRANSPORTATION TO ONTARIO, OREGON, WHERE

[redacted]

55 MAR 9 1976

DECLASSIFIED BY SP2 TAP/pal
ON 12-1379

274

[illegible] WILL MEET WITH LOCAL DA AND REVIEW ADDITIONAL AFFIDAVITS RE
[illegible]EXTRADITION PELTIER.

[illegible] AND EXTREMELY DANGEROUS.

END.

274

[illegible]