

50. Peltier trial transcript at 3234 cited in 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 311.

51. Exhibits "H", "J", and "K" of Extradition Case, and "Submissions on Circumstantial Evidence" submitted by the Prosecution to the Federal Court of Appeal of Canada, Leonard Peltier v United States, Federal Court of Appeal, Court File No: A-441-76, Judgement October 27, 1976.

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

SUBMISSIONS ON CIRCUMSTANTIAL EVIDENCE -  
SOUTH DAKOTA - CRIME OF MURDER - JUNE 26,  
1975

.223 calibre cartridge cases

Thirty-six (36) .223 calibre cartridge cases were examined by ballistics specialist Evan Hodge (Exhibit 18J). His conclusion was that they had all been loaded into and extracted from the same semi - automatic rifle of a model and type known to him as a Colt AR-15 which is a weapon of high velocity.

The sources of these thirty-six cases were as follows:

1. One (1) .223 cartridge case recovered from 1966 Chevrolet Suburban by Cortlandt Cunningham (Exhibit 18H). Peltier's fingerprints found in this vehicle by Winthrop Lodge (Exhibit 18M).
2. Thirty-four (34) .223 cartridge cases found in 1967 Ford Galaxie by Cortlandt Cunningham. This car sold to Peltier under the name of John Yellow Robe by Leonard W. Schumacher (Exhibit 18L).
3. One (1) .223 cartridge case recovered from the trunk of deceased agent's automobile by Cortlandt Cunningham.

Exhibit A to the Affidavit of Donald G. Wiley is a photograph of an FBI automobile with the trunk open and beside the vehicle are two dead bodies lying face down. The theory of the United States Government is that one

000227

of the .223 shell cases was ejected from the weapon of high velocity into the open trunk. The deposition of Dr. Robert D. Bloemendaal (Exhibit 18P) is that Ronald A. Williams exhibited a gun shot wound from a high velocity missile.

Deceased agent's Smith & Wesson .357 revolver

1. This weapon is issued and delivered to Special Agent Jack R. Coler - see Affidavit of Dean A. Ray (Exhibit 18K).
2. This weapon is found in a paper "sack" (paper bag) in Dodge Motor Home by Sgt. William P. Zeller. Sgt. Zeller developed the fingerprint of Leonard Peltier on the brown paper sack. His evidence was given viva voce. The basis of the fingerprints were from fingerprints taken by Staff Sgt. Gerald Young on February 19, 1976.
3. The fingerprints of Leonard Peltier are found on a microphone in the same Motor Home by Sgt. William P. Zeller.
4. Not mentioned in argument but apparent from the evidence of Cortlandt Cunningham (Exhibit 18H) were two (2) .38 special calibre cartridge cases found in the front seat of the Jack R. Coler automobile. Both cartridge cases were examined by ballistics expert Evan Hodge (Exhibit 18J) who subsequently received the said revolver and his opinion was that the two special cartridge cases had been fired from that revolver.

The revolver was identified by William P. Zeller by the photograph attached as Exhibit B to the Affidavit of Evan Hodge.

IN THE MATTER OF THE EXTRADITION  
ACT, R.S.C. 1970, Chap. 15-21

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

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SUBMISSIONS ON CIRCUMSTANTIAL  
EVIDENCE - SOUTH DAKOTA - CRIME  
OF MURDER - JUNE 26, 1975

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000229

UNITED STATES  
OF WASHINGTON  
DISTRICT OF COLUMBIA

ACT, U. S. C. 1975 Chap. F-21

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

1102

ARTHUR DAVIS

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Portland Cunningham, being first duly sworn upon his oath,  
deposes and says:

1. That I am a Special Agent of the Federal Bureau of Investigation and was employed as such on the 27th day of June, 1975, attached to the Federal Bureau of Investigation Laboratory, Firearms Section, Washington, District of Columbia, in the United States of America.
2. That on the said June 27, 1975, I attended the area of Jumping Bull Hall on the Pine Ridge Indian Reservation in the State of South Dakota, in the United States of America.
3. That at that place I examined a 1967 Ford Galaxie automobile bearing South Dakota license number 65-2355 and found therein thirty-four (34) .223 cartridge cases which I took into my possession and placed in an envelope marked: "Items recovered from 1967 Ford Galaxie"
4. That at the same time and place I located a 1966 Chevrolet Suburban Van bearing South Dakota license plate number 657572 and found therein one (1) .223 cartridge case. I took the said cartridge case into my possession and placed it in an envelope marked: "Items recovered from 1966 Chevrolet Suburban Van"
5. That on June 29, 1975, I attended at the Fall River County Jail, Hot Springs, South Dakota, United States of America, where I met Deputy Sheriff Michael Lynn Jennings, who directed me to a garage where I located a 1972 Chevrolet Biscayne automobile bearing Colorado License KE1194 which I recognized to be a vehicle belonging to the Federal Bureau of Investigation. On the front seat of this vehicle I found two (2) .38 special caliber cartridge cases. I took one of said cartridge cases into my custody and placed it in an envelope marked: "Items obtained from front seat - Jack E. Coler automobile" the other .38 special cartridge case discovered on the front seat was taken into my possession and subsequently delivered to Special Agent

... in the said 1972 Chevrolet Blisavne automobile  
I found one (1) .223 cartridge case in the trunk which I took in my  
possession and placed in an envelope marked:

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

and subsequently delivered said .223 cartridge case to Special  
Agent Ronald E. Bruggen.

7. That I delivered the following items, namely,

- (a) thirty-four (34) .223 cartridge cases;
- (b) one (1) .223 cartridge case;
- (c) one (1) .38 special caliber cartridge case;

said items being locked in a sealed trunk and forwarded to the  
Federal Bureau of Investigation Laboratory, Firearms Section, in  
the City of Washington, District of Columbia, United States of  
America, where the trunk and its contents were received by  
Evan Hodge, who I knew to be assigned to the said Federal Bureau  
of Investigation Laboratory.

Subscribed and sworn to before  
me this 11<sup>th</sup> day of MAR, 1976

James F. Downes  
Deputy Clerk  
District of Columbia  
United States District Court

)  
)  
)  
)  
)  
Cortlandt Cunningham  
Cortlandt Cunningham

\_\_\_\_\_, United States District Judge  
for the District of \_\_\_\_\_

do hereby certify that attached hereto is the Affidavit of \_\_\_\_\_

\_\_\_\_\_, sworn before

\_\_\_\_\_, Deputy Clerk of the United States

District Court for the District of \_\_\_\_\_, whose

signature appears on said Affidavit, and that the said \_\_\_\_\_

\_\_\_\_\_ 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 hereunto signed my name and caused

the seal of the said Court to be affixed at the City of \_\_\_\_\_

in the State of \_\_\_\_\_, this \_\_\_\_\_ day of

\_\_\_\_\_, 1976.



Judge  
United States District Court  
for the District of \_\_\_\_\_

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

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

1112

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

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.

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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".

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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.

*Charles R. Richey*  
United States District Court Judge  
United States District Court for the District of Columbia

STATE OF AMERICA )  
OF COLORADO )  
COUNTY OF DENVER )

IN THE MATTER OF THE EXTRADITION )  
ACT. R.S.C. 1970 Chap. E-2 ) 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  
if 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 )  
me this 4th day of MARCH 1976 )  
[Signature] )  
Deputy Clerk )

[Signature] )  
Dean L. Ray )  
Dean )



52. Memorandum from R.E. Gebhardt to Mr. O'Connell, dated June 27, 1975, 5 pages.

SEE NOTE 53

THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER

53. Memorandum from R.E. Gebhardt to Mr. O'Connell, dated June 27, 1975, 5 pages.

**THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER**

54. Notes of Interiew with Dr. Brown, dated June 27, 1975; And see Memorandum from R.E. Gebhardt to Mr. O'Connell, dated June 27, 1975, 5 pages.

**THIS MATERIAL NOT DISCLOSED TO LEONARD PELTIER**

Date of transcription 6/22/75

*b7c-3*

At 7:00 AM, June 21, 1975, SA [redacted] and SA [redacted] relieved SA [redacted] and SA [redacted] of the duty of protecting the corpse of an Indian male later identified through fingerprints as JOSEPH STUMTZ, which was being maintained in the morgue at the Pine Ridge Hospital, Pine Ridge, South Dakota. The door to the morgue was locked and no one entered until 9:55 AM, June 21, 1975.

At 9:55 AM, June 21, 1975, Dr. M. O. BROWN and an assistant appeared at the morgue, identified themselves and were allowed to enter by the Agents on duty, utilizing a key to the morgue, which Dr. BROWN had in his possession.

Dr. BROWN then performed an autopsy of the body and orally advised that his preliminary opinion was that death was caused by a projectile which struck the individual approximately at the hairline in the middle of the forehead, passed through the skull and exited through the back of the head. Dr. BROWN noted that the corpse appeared to be afflicted with tick fever; however, he noted no other abnormalities in the vital organs.

*b7c-3*

SA [redacted] and SA [redacted] also observed while SAs [redacted] and [redacted] took a set of fingerprints from the corpse, through which the body was later identified. It is noted also that Dr. BROWN was present during the taking of the fingerprints.

The following items were on the body when it was first observed by the Agents and apparently were worn by STUMTZ at the time of his demise:

1. One fatigue jacket bearing the marking "F.B.I."
2. One blue shirt with floral print.
3. One pair of blue jeans.
4. One leather belt.
5. One leather holster
6. One pair of white sneakers.
7. One pair of blue socks.

Interviewed on 6/27/75 at Pine Ridge, South Dakota File # 70-10239

*b7c-3*

by SA [redacted] Date dictated 6/23/75

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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# Memorandum

- Assoc. Dir. \_\_\_\_\_
- Dep. AD Adm. \_\_\_\_\_
- Dep. AD 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 \_\_\_\_\_

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DATE: June 27, 1975

Mr. O'Connell *JEO*

R. E. Gebhardt *REC JEO*

RESMURS

*Callahan*

Set forth below is a chronological recitation of information received and instructions given by Associate Director Callahan and Assistant Director Gebhardt regarding this matter.

At approximately 10:50 p. m., 6/26/75, we talked to Director Kelley. We brought him up to date as best we could at that time, namely, that two Agents were apparently attempting to execute an arrest warrant for an Indian charged with Assault with a Deadly Weapon and robbery when the shooting took place. There were four warrants in all on four individuals. Preliminary reports indicate one of the Agents said on the radio that they had been hit. Agents on the reservation responded. They came under fire but they were able to verify the two Agents had been killed. At that time the Agents who were brought into the area under the command of SAC Trimbach were moving into the area of the shooting on a gradual basis. They were approximately 1/2 mile on a perimeter. The area was described as a "group of houses" surrounded by "trees and foliage." At that time there were approximately 42 Agents present with 60 to 75 law enforcement officers and the firing being received was rifle-type fire. A quick check determined that the firing had ceased and that the area was secured but apparently there was some question as to whether some Indians were still in the houses. After a discussion with the Director it was decided SAC Held should be ordered in to head up the investigation with Joe Trimbach as his No. 1 Man. The press release as read by Mr. Callahan was approved.

At 12:30 a. m. SAC Held was contacted in Minneapolis and approval was given to him to charter a plane to get him there.

REC-26 89-3229-219  
JUL 10 1975

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CONTINUED - OVER

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UNCLASSIFIED-CONFIDENTIAL

Gelhardt to O'Connell Memorandum  
Re: RESNAURS

At 12:40 a. m. we were advised by External Affairs that the parents of SA Williams were advised of their son's death and the previously approved press release was released.

At 12:40 a. m., 6/27/75, SAC Trimbach called and a three-way line was set up with the Director. Trimbach said that it appeared the subjects apparently were able to move out of the area under cover of darkness since they could find no Indians in the houses from whence the firing occurred. He said there was not a great deal Agents could do tonight because of the dark situation but they intended to secure the area and start an intensive investigation at first light.

There were four houses involved in this compound and the surrounding area is completely open. It is believed the people involved are Indians or ADM people. He noted that while there were four warrants outstanding for four subjects, one subject had been taken in custody prior to the shooting. There are still three outstanding warrants.

The bodies of the two Agents were en route to Rapid City at that time. All of the weapons including the shoulder weapons kept in the Bureau cars assigned to the Agents were missing. All of their personal identification is missing except for the credentials of SA Williams which were found on the hood of one of the automobiles. The Agents' bodies were found approximately 200 yards from the house and it appeared the bodies had been dragged for a considerable distance, were shot repeatedly and at least one shot was delivered to the head. Twenty horses are being brought in for the morning search.

One Indian is dead but they have no identity of him at the present time; however, he did have the jacket of one of the dead Agents on his person.

In reconstructing what occurred, Trimbach said the two Agents in two cars were checking for one of the fugitives. They apparently got together in one car. One of the Agents called in and announced the general area they were going to. Shortly thereafter, it was announced on the radio there was shooting and the final transmission came from one of the Agents who announced they had been hit.

CONTINUED - OVER

Gebhardt to O'Connell Memorandum  
 Re: RESMURS

It took approximately 20 to 30 minutes before additional Agents arrived on the scene from the reservation. The best estimate the immediate witnesses were able to make was that there were 30 subjects who utilized rifle fire or shoulder weapons of some sort. Trimbach said they had approximately 100 Agents present or en route. Two U. S. Marshals were present. While the subjects were still in the house, approximately 50 shots were fired by FBI Agents utilizing shoulder weapons.

Mr. Kelley instructed that since the governor of South Dakota had volunteered the services of the National Guard, we should ask him to comply with his offer and make the Guard available to control a perimeter to prevent a build up of AIM members or Indians or just plain sightseers. It was pointed out despite the opinion of the U. S. Attorney, the use of the National Guard would not be in violation of the Posse Comitatus Act.

At 2:30 a. m., Mr. Callahan spoke to Associate Deputy Attorney General Robert F. McNamara and advised him of the fact that we were accepting the offer of the Governor of South Dakota for the use of the State National Guard. He requested that he, McNamara, advise the Deputy Attorney General and the Attorney General of this development.

At 11:05 a. m., 6/27/75, Mr. Callahan had a conversation with Togo West of the Deputy Attorney General's Office. West advised that he had discussed this matter with the Deputy and the Attorney General and they desired the Governor of South Dakota be informed that the Department of Justice was not requesting the use of the National Guard. It was explained that the FBI had accepted the offer of the Governor for the use of the National Guard and we did not institute an original request in this regard. West advised it was the desire of the Attorney General that we withdraw our request of the Governor. It was explained the Attorney General would support any request for troops made by the FBI if we could show that there was an absolute essential need, he would then make the decision as to whether a request of the Governor for the State National Guard or the President of Federal troops. This decision, however, would be made by the Attorney General.

CONTINUED-OVER

Gebhardt to O'Connell Memorandum  
Re: RESMURS

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At 11:30 am, SAC Trimbach was advised to withdraw the request for the National Guard. He stated it was now a mute question since the Governor had already turned down our request but <sup>whether</sup> our original request was being rescinded. Trimbach stated that there was no immediate need for any troops since there was no indication of any buildups of any groups of Indians or militants.

He said at dawn today several Agents were able to recover the second Bureau automobile. It was riddled with approximately 50 to 55 bullets and located in a creek bottom approximately 500 yards from where the Agents' bodies were located. Twenty yards from where the car was located was an abandoned AIM compound. It appeared the compound was abandoned hurriedly since food was apparently in preparation, clothes were left behind, etc. In connection with the second Bucar, Trimbach stated it was apparently driven to the AIM compound. He described the area of the action as being 4 houses close together with wide open spaces surrounding the houses. In connection with the first Bucar recovered last night, Trimbach said that "There were a lot of bullet holes." Again Trimbach stated they will probably not need any troops at the present time. He said the new phone numbers were 605-867-5871 and 5872. (These numbers were given to the switchboard.) He said there were 114 FBI Agents and 35 BIA Agents on the scene.

Trimbach was specifically asked as to the course of action being taken. He said that he had divided the Agents into two groups, one group was going to concentrate on searching for the three remaining fugitives and the approximately 30 Unsubs who were firing from the house. A search was going to involve some mountainous area and planes, jeeps, cars and horses were going to be used. The second group of Agents were going to be utilized to process the Bucars, the buildings, and any other areas needing processing and furthermore, would conduct whatever ~~would conduct~~ interviews were necessary. He was advised that ~~Rankin~~ <sup>b7c-</sup> a former Agent whose services as a tracker were utilized in the past in an outstanding manner, had telephonically contacted Quantico and volunteered his services and Trimbach was informed if Rankin's services were needed we would fly him out on a consultant basis. Trimbach said he would discuss the matter with Held and advise if services were needed. He was reminded that dogs were available and further instructed to call Headquarters every two hours with an up-date as to the situation at that particular time.

At approximately 12 Noon, the Director was contacted and advised of the above as related by Trimbach. The Director inquired as to the population on the reservation and he was informed there were 11,353 Sioux Indians with approximately 1,000 close to the community of Pine Ridge.

He inquired as to the size of the reservation and was informed it was approximately 3,000 square miles, 1,120 miles on East to West basis and 60 miles North to South.

The Director expressed his views with respect to the unavailability of the National Guard or troops. He said by not asking for these people, AIM was obviously being stablized and that the FBI and/or BIA would be subject to a possible ambush. He said a show of force was necessary to indicate the intentions of the Federal authorities' resistance to violence. We should let them know right away that we will not stand for murders such as in this case. He feels strongly that a show of force could definitely be a deterrent. A protracted investigation would lend much to the possession and advantage of AIM. The Director emphasized that these were his philosophical thoughts and recognized that as a practical matter the Attorney General would not request troops either State or Federal, unless there was a factual, absolute, essential need for them and not from a philosophical basis.

At 2:10 pm a meeting was held with Togo West, Kevin Maroney, Stanley Pottinger, and Francis Niland, all of the Department, together with Callahan, Wannall and the writer. The Departmental people were briefed as to the current situation and our assessment of the situation. During the course of the meeting, West was called to the telephone and it appeared that he briefed the White House who apparently was satisfied with the briefing. Pottinger made the observation that a surveillance of Crowdog, Holder, Banks, Means, and Camp and informant coverage of their activities may develop positive information as to the Unsubs. Division 5 is taking the necessary action in this regard.

K

*Handwritten signatures and initials:*  
JBA  
JBA  
JBA  
JBA

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55. Affidavit of Myrtle Poor Bear sworn before clerk B. Berry,  
February 23, 1976. Affidavit of Myrtle Poor Bear sworn before  
clerk B. Berry, March 31, 1976.

UNITED STATES OF AMERICA )  
 STATE OF SOUTH DAKOTA )  
 COUNTY OF PENNINGTON )

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

A F F I D A V I T

18N

Myrtle Poor Bear, being first duly sworn, deposes and states:

1. I am an American Indian born February 20, 1952, and reside at Allen, South Dakota, one of the United States of America.

2. I first met Leonard Peltier in Bismarck, North Dakota, during 1971. During March, 1975, I again met Leonard Peltier at St. Francis, South Dakota, United States of America. During April, 1975, I went to North Dakota to see him as a girl friend of his. About the last week of May during 1975 I and Leonard Peltier went to the Jumping Bull Hall area near Oglala, South Dakota, United States of America. There were several houses and about four or five tents. When Leonard Peltier arrived, he gave orders on what was to be done. I was his girl friend at this time. About a week after we arrived, about the second week of June, 1975, Leonard Peltier and several others began planning how to kill either Bureau of Indian Affairs Department, United States Government police, or Federal Bureau of Investigation, United States Government, agents who might come into the area. Leonard Peltier was mostly in charge of the planning. All persons involved in the planning had special assignments. There was also a detailed escape route planned over the hills near the Jumping Bull Hall area. I was present during this planning. Leonard Peltier always had a rifle and usually had a pistol near him. The pistol was usually under a car seat. About one day before the Special Agents of the Federal Bureau of Investigation were killed, Leonard Peltier said he knew the

were coming to serve an arrest warrant on Jimmy Eagle. Leonard Peltier told people to get ready to kill them and he told me to get my car filled with gas to be ready for an escape, which I did. I was present the day the Special Agents of the Federal Bureau of Investigation were killed. I saw Leonard Peltier shoot the FBI agents. During August, 1975, I met Leonard Peltier again at Crow Dog's Paradise on the Rosebud Indian Reservation, South Dakota, United States of America. We talked about the killing of the two Federal Bureau of Investigation agents near Jumping Bull Hall. Leonard said it makes him sick when he thinks about it. He said that one of the agents surrendered, but he kept shooting. He said it was like a movie he was watching but it was real, he was acting right in it. He said he lost his mind and just started shooting. He said he shot them and just kept pulling the trigger and couldn't stop.

Subscribed and sworn to before  
me this 23<sup>rd</sup> day of February, 1976 )  
Betty B. Berry )  
Deputy Clerk )  
United States District Court )  
District of South Dakota )

Myrtle Poor Bear  
Myrtle Poor Bear

I, Andrew W. Bogue, United States District Judge for the District of South Dakota, do hereby certify that attached hereto is the Affidavit of Myrtle Poor Bear, sworn to before Betty B. Berry, Deputy Clerk of the United States District Court for the District of South Dakota, whose signature appears on said Affidavit, and that the said Betty B. Berry, was authorized to administer oaths for general purposes and that the said Affidavit is in due form of law.

In testimony whereof I have hereunto signed my name and caused the seal of the said Court to be affixed at the City of Rapid City in the state of South Dakota, this 23<sup>rd</sup> day of February, 1976.

Andrew W. Bogue  
Andrew W. Bogue  
United States District Judge

18N

UNITED STATES OF AMERICA )  
STATE OF SOUTH DAKOTA )  
COUNTY OF PENNINGTON )

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 )

A F F I D A V I T

130

Myrtle Poor Bear, being first duly sworn, deposes and states:

1. That I am the Myrtle Poor Bear, of Allen, South Dakota, United States of America, who was the deponent in an affidavit sworn the 23rd day of February, 1976. This affidavit is sworn by me to give further information.

2. Attached hereto and marked Exhibit "A" to this, my Affidavit, is a photograph marked February 12, 1976, and I testify and depose that the person shown on the said photograph is a person known to me as Leonard Peltier and is the person I spoke of in my deposition of February 23, 1976, and the person referred to herein as Leonard Peltier.

3. I recall the events of June 26, 1975, which occurred at the area of Jumping Bull Hall near Oglala on the Pine Ridge Indian Reservation in the State of South Dakota, United States of America.

4. Sometime during the early part of that day, at approximately 12:00 Noon, Leonard Peltier came into the residence of Harry Jumping Bull which is located in the area of Jumping Bull Hall and said, "They're coming." I understood this to mean that police or agents of the Federal Bureau of Investigation were in the immediate area. A short time later, I saw a car which I recognized to be a government car near Harry Jumping Bull's house. I went down to the creek bottom a couple of hundred yards from the house. I heard shooting. I left the creek bottom area and walked approximately 50 yards to where I saw two cars, both of which I recognized to be government cars, because of the large radio antennae mounted on the rear of these cars and I had previously seen many cars of a similar type driven by government agents in the same area. When I got to the car, Leonard Peltier was facing a man which I believed to be a special agent of the Federal Bureau of Investigation. This man was tall with dark hair. This man threw a handgun to the side and said something to the effect that he was surrendering. Leonard Peltier was pointing a rifle in the direction of this man. The man was

his arm as if he was wounded and was leaning against the car previously mentioned. There was another man who I believed to be a special agent of the Federal Bureau of Investigation lying face down on the ground and there was blood underneath him. I started to leave and was grabbed by the hair by another person and could not get away. I turned again and saw Leonard Peltier shoot the man who was standing against the car. I heard a shot come from the rifle that Leonard Peltier was holding and I saw that rifle jump up still in his hands. I saw that man's body jump into the air and fall to the ground. The man fell face down on the ground. This happened in an instant. I freed myself from the person that was holding me and ran up to Leonard Peltier just as he was aiming his rifle at the man who had just fallen to the ground. I pounded Leonard Peltier on the back. He yelled something at me which I cannot recall. I turned, ran and left the area. As I was running away, I heard several more shots from the area from which I had just fled.

Subscribed and sworn to before )  
 me this 31st-day of March, 1976. )

J. M. Hansen )  
 Deputy Clerk )  
 United States District Court )  
 District of South Dakota )

Myrtle Poor Bear )  
 Myrtle Poor Bear )

(1870)

56. Affidavit of Myrtle Poor Bear sworn before clerk B. Berry,  
March 31, 1976.

UNITED STATES OF AMERICA )  
STATE OF SOUTH DAKOTA )  
COUNTY OF PENNINGTON )

1138  
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

A F F I D A V I T

Myrtle Poor Bear, being first duly sworn, deposes and states:

1. That I am the Myrtle Poor Bear, of Allen, South Dakota, United States of America, who was the deponent in an affidavit sworn the 23rd day of February, 1976. This affidavit is sworn by me to give further information.
2. Attached hereto and marked Exhibit "A" to this, my Affidavit, is a photograph marked February 12, 1976, and I testify and depose that the person shown on the said photograph is a person known to me as Leonard Peltier and is the person I spoke of in my deposition of February 23, 1976, and the person referred to herein as Leonard Peltier.
3. I recall the events of June 26, 1975, which occurred at the area of Jumping Bull Hall near Oglala on the Pine Ridge Indian Reservation in the State of South Dakota, United States of America.
4. Sometime during the early part of that day, at approximately 12:00 Noon, Leonard Peltier came into the residence of Harry Jumping Bull which is located in the area of Jumping Bull Hall and said, "They're coming." I understood this to mean that police or agents of the Federal Bureau of Investigation were in the immediate area. A short time later, I saw a car which I recognized to be a government car near Harry Jumping Bull's house. I went down to the creek bottom a couple of hundred yards from the house. I heard shooting. I left the creek bottom area and walked approximately 50 yards to where I saw two cars, both of which I recognized to be government cars, because of the large radio antennae mounted on the rear of these cars and I had previously seen many cars of a similar type driven by government agents in the same area. When I got to the car, Leonard Peltier was facing a man which I believed to be a special agent of the Federal Bureau of Investigation. This man was tall with dark hair. This man threw a handgun to the side and said something to the effect that he was surrendering. Leonard Peltier was pointing a rifle in the direction of this man. The man was

... his arm as if he was wounded and was leaning against the car previously mentioned. There was another man who I believed to be a special agent of the Federal Bureau of Investigation lying face down on the ground and there was blood underneath him. I started to leave and was grabbed by the hair by another person and could not get away. I turned again and saw Leonard Peltier shoot the man who was standing against the car. I heard a shot come from the rifle that Leonard Peltier was holding and I saw that rifle jump up still in his hands. I saw that man's body jump into the air and fall to the ground. The man fell face down on the ground. This happened in an instant. I freed myself from the person that was holding me and ran up to Leonard Peltier just as he was aiming his rifle at the man who had just fallen to the ground. I pounded Leonard Peltier on the back. He yelled something at me which I cannot recall. I turned, ran and left the area. As I was running away, I heard several more shots from the area from which I had just fled.

Subscribed and sworn to before )  
 me this 31st day of March, 1976. )

Jean M. Hanson )  
 Deputy Clerk )  
 United States District Court )  
 District of South Dakota )

Myrtle Poor Bear  
 Myrtle Poor Bear

(18-0)

57. Details of Myrtle Poor Bear's retraction and her description of the coercion, see United States v. Leonard Peltier, April 13, 1977, Transcript of Proceedings, pp. 4584-4679.

April 13, 1977

4584

U.S. v. Leonard Peltier

024

(testimony heard outside  
presence of jury)

This is Exhibit 5 referred to in the  
affidavit of Frank Adakwio  
sworn before me, this 17  
day of April 1977.

Marcus Pratt

A COMMISSIONER, ETC.  
Marcus Gordon Pratt, Student-at-Law,  
a Commissioner, etc., Province of Ontario  
for Karten, Barhydt & King, Associates,  
Barristers and Solicitors.  
Expires October 21 1991.

MYRTLE POOR BEAR,

being first duly sworn on the sacred pipe, testified as follows:

MR. TAIKEFF: May I inquire, Your Honor?

THE COURT: You may inquire.

BY MR. TAIKEFF

DIRECT EXAMINATION

Q What is your name?

A My name is Myrtle Poor Bear.

Q Do you know who is the person sitting on the bench, the  
man with the gray hair to your left up there?

A The judge.

Q And you know that you are in court?

A Yes.

Q Do you know what court you are in?

A Yes.

Q What court?

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A Federal Court.

Q Are you nervous?

A Not exactly.

Q Are you frightened?

A Yes, I am.

Q What are you frightened of?

A I don't know.

Q Did you ever meet me before just now when you walked in the courtroom?

A No.

Q How about last night when you got off of the airplane, did someone come to get you at the airport?

A Yes.

Q Who was that?

A You.

Q Okay. Did we speak with each other last night?

A Yes, we did.

Q For about how long?

A It's about fifteen to twenty minutes.

Q Do you know an agent of the FBI by the name of Mr. Price?

A Yes, I do.

Q And do you know an agent by the name of Mr. Wood?

A Yes, I do.

Q And did they ever have a conversation with you about June 26, 1975?

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A Yes, they did.

Q Do you know a person by the name of Leonard Peltier?

A No.

Q Would you look to your left and there is a distinguished young man there with gray hair and next to him there is another man. Do you know the other man, the one with the dark hair and the moustache?

A Yes.

Q Do you know him personally or do you know who he is?

A I know who he is.

Q Who is he?

A It's Leonard.

Q How do you know it's Leonard?

A I don't know.

Q Is it because he's sitting there and he doesn't look like a lawyer?

A Probably.

Q Did you ever see him in your life?

A No.

Q Before just now?

A No.

Q Do you remember the first time that either Agent Price or Agent Wood came to talk to you about June 26, 1975?

A You mean the first time?

Q Go ahead. Do you want me to ask more question or do you want me to repeat my question?

A Repeat it.

Q You said either Agent Price or Agent Wood or maybe both of them came to see you about June 26, 1975 about what happened on June 26, 1975. I want you to tell us what happened the first time either Wood or Price or both of them came to see you about June 26.

A You mean what happened at Oglala? I don't understand.

Q Okay. Let me start at another point.

Would you turn around and look at that big chart behind you which we call Government Exhibit 71. Do you recognize that in any way?

A No, I don't.

Q Were you ever shown anything that looked like that by the FBI?

A Yes.

Q Where was that?

A Federal building in Rapid City.

Q Do you remember when that was?

A No, I don't remember.

Q From where you are sitting can you see that model in the far left-hand corner from where you are sitting now?

A Yes.

Q Did you ever see that before?

A I think I did.

Q Where did you see that?

A In Rapid.

Q You say "Rapid," you mean Rapid City, right?

A Right.

Q Did Agent Price or Agent Wood ever tell you that they heard that you were at Jumping Bull's when the agents were killed?

MR. CROOKS: Your Honor, before this question is answered I'll interpose an objection that this is clearly a leading question even in an offer of proof it is not proper on cross-examination.

THE COURT: Sustained.

MR. TAIKEFF: All right.

Q (By Mr. Taikeff) Were you ever at the Jumping Bull area on the Pine Ridge Reservation?

A No.

Q Did you ever live with Leonard Peltier?

A No.

Q Did you see the woman who was sitting in the witness seat when you came in with Mr. Ellison about four minutes ago?

A Yes.

Q Do you know her name?

A Yes. I just met her last night.

Q Where did you meet her?

A Where did I meet her?

Q Yes. Where?

A On the plane.

Q Did you speak with her on the plane?

A Yes.

Q And why did you speak with her on the plane?

A I wanted to know who she was.

Q Was that the first time in your life you had ever seen her?

A Yes.

Q Now I want you to try to remember signing some papers for the FBI. Do you remember signing some papers for the FBI?

A Yes, I do.

Q Do you remember the month and the year?

A No, I don't.

Q Do you remember how long ago it was?

A It was about a year.

Q About a year did you say?

A Yeah. I don't really remember.

Q Who took care of those papers?

A The FBI.

Q What were the names of the people who took care of the papers for the FBI?

A The two FBI agents.

Q I beg your pardon?

A The two FBI agents.

Q Which two?

A Bill Wood and Dave Price.

Q And did they ever tell you anything about June 26th, 1975?

A Yes, they did.

Q What did they tell you?

A They just asked me if I was there and telling me stuff about the killings.

Q And what did you say to them?

A I told them I didn't know much about it.

Q Do you know a person by the name of Jimmy Eagle?

A Yes, I do.

Q Where does he live?

A I don't know where he lives now. He used to live in Pine Ridge.

Q Do you know anything about guns?

A No, I don't.

Q Did anybody ever tell you anything that you supposedly did at Jumping Bull's on June 26th, 1975?

A No, I don't remember.

Q I want to show you three pieces of paper that we've put numbers on, 115, 116 and 117. I want you to take a look at that first piece of paper. It's got two separate pages. First

look at the first page. Have you ever seen that piece of paper before or anything that looked like it?

A Yes, I did.

Q Do you remember when you saw it for the first time?

A No. I don't remember.

Q Do you remember approximately how long ago you saw it for the first time?

A About a year and a half.

Q Now I'm going to show you the second page. Did you ever see that page before?

A Yes.

Q There's a typewritten name here that says, can you read that typewritten name?

A Right.

Q What does it say?

A Myrtle.

Q What does that say?

A Poor Bear.

Q And is there a signature above that name?

A Yes, there is.

Q Is that your signature?

A I don't think so.

Q Did you ever go into the courthouse in Rapid City and sign a piece of paper in front of a woman clerk?

A Yes. I think I did.

Q Okay.

Let me just move the microphone so it can pick up your voice.

How many different pieces of paper did you sign or how many different times did you go into that courthouse and sign a piece of paper in front of the woman clerk?

A About two times.

Q Two times?

A Uh-huh.

Q Could it possibly have been three times?

A No.

Q Did you read the piece of paper that you signed before you signed it?

A No.

Q Did anyone read it to you?

A No.

Q Did anybody tell you what was in the piece of paper?

A No.

Q What did you think you were signing when you signed it?

A I don't know.

Q Why did you sign it?

A Because they told me to.

Q Who told you to?

A The agents.

Q Which agents?

A Bill and Dave.

Q Do you know what it says in this piece of paper that has the number 115 on it?

A Yes.

Q What does it say? Without looking at it. I'll let you look at it but I want to know whether you know what's in it before you look at it.

A I don't.

Q Would you read it to yourself, please. Take all the time you need and when you're finished let me know.

Did you finish reading it?

A Yes, I did.

Q Is that the first time in your life you ever read that piece of paper?

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

Q Did you understand what it said?

A Yes.

Q Is it true what it says in there?

A No.

Q Do you want to take a little rest from the questioning?

A Yes. I'd like to.

Q All right. Do you want to stay here in the courtroom?

A No.

MR. TAIKEFF: Your Honor.

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

Aquash matter should not be inquired into in any manner, shape or form, it had nothing to do with this case or even these proceedings; and I think it is grossly prejudicial. I would assume that counsel is speaking for the galleries, not for the Court, because it has no relevance to even these proceedings.

MR. TAIKEFF: You can make that assumption. I am telling you that. According to what she has to say, that is what in part influenced her earlier conduct in connection with this matter. She volunteered that fact to me.

MR. HULTMAN: Could I address one issue, and that is, your Honor, that the position of -- my position is that I made a decision based upon everything -- the analysis I could make was that she was not a competent witness. That is the reason I did not call her, and I put it on the record right now; and I think it is fairly obvious.

Mr. Lowe in his opening statement put it even more bluntly than I have just put it right now. Counsel has indicated that on numerous other occasions, and that is the specific reason why I did not call her. I want the record very clear.

MR. TAIKEFF: That's exactly our position.

MR. LOWE: This is an offer of proof.

MR. HULTMAN: This is my one time.

MR. TAIKEFF: One lawyer conduct it on this side, and

one lawyer on that side.

MR. HULTMAN: I have a right to make that determination at this time, and that is the determination I made.

That has nothing to do with what she had stated, and the things that I have knowledge of -- the things that were stated in the records, the affidavit, et cetera, is a basis in which she could have been and might well be a material witness, without any question; but I made an analysis, not back in 1967, I made an analysis in preparation for this trial. Even after counsel here had spoken to her and the responses that she gave to him and the story she told him was exactly the story she had told before as far as the 302's and as far as the affidavits. I still made a determination based upon everything I had, and I have a right to make that determination; and I want the record to show what that determination was, and I think it is within my responsibilities as a lawyer that were I to bring that witness on this witness stand, who in my judgment at this time I didn't feel was a competent witness, then I would be doing something other than being responsive as to the person. That is why I did not call her. That has nothing to say as to what her posture was at any time in the past or that I served any conclusions as to what her posture was in the past. I made that determination in preparation here, and that is the reason

and that's why I say it is not relevant.

MR. TAIKEFF: Your Honor, our very point is that what your Honor sees and hears today is precisely the kind of response and reaction that this person was capable of a year and two months ago, and that's going to be part of our proof on the offer of proof, and the actions of the FBI in connection with her and in connection with taking her affidavit and having her sign the affidavit is what we are trying to prove to your Honor.

THE COURT: Well, you may continue the interrogation.

MR. TAIKEFF: Thank you, your Honor.

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

Q (By Mr. Taikeff) I want to go back to the name, Aaron Yellow Robe. You said a few minutes ago that the agents told you that name, am I right about that?

A Yes.

Q What did they tell you about that name?

A Told me Leonard had gotten him.

Q Did they tell you anything else about him?

A No.

Q Did you ever go to the Jumping Bull area with the agents?

A Yes, I did.

Q How many times?

A About two times.

MR. TAIKEFF: Now, may the witness step down for the purpose of approaching the model, your Honor?

THE COURT: She may.

Q (By Mr. Taikoff) Would you be kind enough to walk over there to that model?

Would you take a good look at it, please?

A (Examining).

Q Would you now go back to the witness seat?

arrangements to help you go into the marshal's program, protection program and go to California?

A Uh-huh.

Q And that's what you wanted to do, wasn't it?

A I don't know.

Q Well, it wasn't my idea that you go to California, was it? I didn't even know you had a brother in California, did I?

A I don't know.

Q Neither did Bill. We had to make some calls down to the reservation even to find out where your brother lived, didn't we?

A Uh-huh.

Q When you came to Fargo I never told you at any time that you shouldn't talk to the defense lawyers, did I? Didn't I say that that was your choice on whether you wanted to talk to them or not?

A Yes.

Q And you told me you didn't want to talk to them, didn't you?

A Yes.

Q And didn't you tell me that the reason you didn't want to talk to them was because they were the people that were harassing you?

A I don't remember.

Q Now you said earlier you didn't know Leonard Peltier before

walking into the courtroom, isn't that right?

A Right.

Q Myrtle, why was it when you walked into the courtroom that you gave Leonard Peltier a big smile?

A I don't know.

Q You just picked him out as a person you wanted to smile at?

A Probably.

Q Has anybody threatened to do something to you if you did not change your story?

A No.

Q Nobody has even talked to you?

A No.

Q Nobody even suggested it?

A No.

Q So from 15 minutes of talking to Mr. Taikeff you decided to change your story entirely, is that right?

A I don't know.

Q Myrtle, when you made out these affidavits to the woman that signed here, Betty B. Barry, she's a clerk of the United States District Court, isn't she?

A I don't know.

MR. TAIKEFF: I have to object to the form of the question, Your Honor, because of the assumption of fact which is not in evidence.

THE COURT: Sustained.

MR. CROOKS: Well, Your Honor, I'll then state for the record I'm reading from Exhibit 115 and I'm pointing to the signature line, "Betty B. Barry, deputy clerk of the United States District Court, district of South Dakota."

Q (By Mr. Crooks) That's a name that appears there, isn't it?

A Uh-huh.

Q And that's the person you signed that affidavit before, isn't it?

A I don't know.

Q You don't even remember signing that, do you?

A No.

Q Do you remember a woman in the federal building in the courthouse, in the federal building asking you to raise your hand and swear to tell the truth?

A No.

Q You don't recall that ever happening?

A No.

Q Is the same thing true with everyone of these affidavits, all three of them, do you remember signing any of those?

A I remember signing only two.

Q Well, how did that happen when you signed those two? How did it happen that you got your name on there and the deputy clerk of court put her name on there with her seal?

A I don't know.

Q Didn't she ask you to be sworn to tell the truth and the whole truth and nothing but the truth or words to that effect?

A No. I don't remember.

Q Didn't she have you raise your right hand and swear to tell the truth?

A I don't remember.

Q Well, it wasn't Mr. Wood or Mr. Price that signed that paper, was it?

A I don't know.

Q Well, would you look at it. Do you see their names there? Do you see their name on any of those affidavits?

A No.

Q It was the deputy clerk of court that signed it, wasn't it?

A I don't know.

Q You said you remembered signing two of these affidavits. How was that done?

A The agent asked me to sign them.

Q The agent asked you to sign them?

A Right.

Q And they were the only ones there when you signed them?

A I don't remember.

Q Do you remember the deputy clerk of court being there at all?

A No.

Q Didn't somebody have you read those affidavits, swear to tell the truth and then you signed them, isn't that the way it worked?

A No.

Q How did it work?

A I don't know.

Q Why were you signing these affidavits?

A I don't know.

Q Well, did Bill Wood threaten to harm you or hurt you if you didn't sign?

A (No response.)

Q Can you answer that question?

MR. TAIKEFF: Your Honor, I'd like the record to reflect a 45 second pause measured by the courtroom clock between the last question and the following question.

Q (By Mr. Crooks) Can you answer the question, Myrtle?

A I was forced to sign both of these papers.

Q By whom?

A By the agents.

Q By which agents?

A They said one of my family members was going to be hurt if I didn't do it. By Dave Price and Bill Wood.

Q Dave Price and Bill Wood?

A Right.

Q And is this the same Bill Wood that you told me in Rapid City was a good friend of yours?

A Right.

Q The same guy you said was a good friend?

A He's not a good friend.

Q You didn't consider Bill Wood a friend?

A No.

Q Do you consider him a friend now?

A No.

Q Did you ever consider him a friend?

A No.

Q Didn't you tell me in Rapid City that you did?

A I don't remember.

Q When did they tell you that they were going to harm you or your family by signing that if you didn't sign it?

A That wasn't too long ago. I don't know. Probably last year sometime.

Q And where were they when they said that?

A They came down the house.

Q Came down to the house?

A Right.

Q And they had the papers with you there?

A Yeah, they did.

Q And then did you sign it in front of them after?

A I don't remember.

Q Well, you said that they threatened to harm you or your family if you signed it and I'm asking you, did you sign it then?

A Yes, I did.

Q You signed it right there on the spot down at your house?

A Right.

Q Then when did this lady put her name on it?

A I don't know.

Q That would have been sometime later or was that already on there?

A I don't know.

Q Was there any other name on there when you signed it?

A I don't remember.

MR. CROOKS: We have no further questions.

BY MR. TAIKEFF:

REDIRECT EXAMINATION

Q Miss Poor Bear, you said you signed something at home. Was it one of these affidavits that you signed at home?

A I don't remember.

Q Could you say whether it was any one of them?

A No. I don't know, remember which one.

Q Do you remember Mr. Crooks, that's the man with the dark glasses, asked you a couple of times this afternoon about whether you ever were threatened by Agent Price or Agent Wood. Do you remember him asking you those questions?

A Which one?

Q The man with the glasses.

58. United States v Leonard Peltier U.S. Court of Appeals for the  
Eighth circuit, (No. 77-1487) Excerpts from Oral Argument.



APPELANTS ARGUMENT

THE COURT: Mr. Hultman.

MR. HULTMAN: Your Honor, may it please the court.

Your Honor, since the last issuing is freshest in your memory and because a question was asked, or two, I would like to address the issue concerning Myrtle Poor Bear first, and then go to some of Mr. Kunsler's remarks. So that Your Honor will know the posture in which Myrtle Poor Bear appears, I would refer you to Page 24 and 25 and 26 of the Government's brief. And in response, Judge Stevenson, I believe it was to your question, as we point out there, and the things I'm about to say are documented at the record at the pages in our brief, the Government's.

The counsel for Mr. Peltier in opening statement spoke of one witness in the trial that was about to proceed, and that was Myrtle Poor Bear. As he later specifically said during the course of the trial and at the opening statement, he said, as we have indicated to you on the page in the record, that in his opening statement that the Government was going to bring a witness whose mental-- I'm quoting the record now-- "a witness whose mental imbalance is so gross as to render her, her testimony, unbelievable", unquote. Now that was the posture that defense counsel placed this witness in in opening statement. And I submit to you that that was a correct statement without any question. And the record from that point on, likewise, will make that statement of defense counsel's in opening statement correct.

Both of the defense attorneys referred to her at Page 1464 of the record as being unstable when applying for a material witness warrant. Now, this is a second time, officially, in the record when they wanted to get a material witness warrant that they characterized this particular witness. Now, the government didn't call her very simply, and I made that decision myself.

JUDGE ROSS: And they were subpoenaing her?

MR. HULTMAN: That is correct, Your Honor, that is correct. And that's found on page 1464 of the record, Your Honor.

JUDGE ROSS: Assuming that she was incompetent, what about the affidavit that they utilized in the extradition proceedings?

MR. HULTMAN: All right, Your Honor. When the -- To go back in time frame, Your Honor, so that maybe I can better explain that, these affidavits were in the early part of the year, in January, February. I don't remember the exact dates, but the dates were on the affidavits themselves. And at that time that was all that was known by anybody concerning Myrtle Poor Bear. And I can stand before this court and say that that is the only thing that the prosecutor, because I was the representative for the Government, that was the only thing of which I had any knowledge of any kind. So the affidavits were accepted on their face as being statements of a witness who was present

who was present who was testifying in the affidavit under oath as to what it was she saw.

JUDGE ROSS: But anybody who read those affidavits would know that they contradict each other. And 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.

MR. HULTMAN: Yes.

JUDGE ROSS: Because you should have known, and the FBI should have known that you were pressuring the woman to add to her statement.

MR. HULTMAN: Your Honor, I personally was not present at that stage. I read the affidavits after they had been submitted, so I want this court to know that.

JUDGE ROSS: The Government --

MR. HULTMAN: And I don't excuse, by my remark just now to Your Honor, I don't in any way excuse what the court has just indicated. Your Honor, I have trouble with that myself, and Your Honor that is the exact reason which I did read these affidavits and put together the fact that -- And that gets to the second point, Judge Gibson and Judge Ross. It was clear to me her story didn't later check out with anything in the record by any other witness in any other way. So I concluded then, in addition to her incompetence, first, that secondly, there was no relevance of any kind. Absolutely not one scintilla of any

evidence of any kind that had anything to do with this case. And it was then that I personally made the decision that this witness was no witness. First of all, because she was incompetent in the utter, utter, utter ultimate sense of incompetency as recognized by defense counsel on more than one occasion.

See, Teletype, 1/25/79 p.3

And there was some more indicia here in the record where they likewise further did. But, secondly, as Judge Ross, you are indicating, and I take no issue at that, Your Honor, but when I then tested those statements once they came to me, and that

See Memo betwe Keach + Malone 5/10/79 p.2

was after they had gone to Canada, and I had a chance to look at them and tested them with all of the record, all of the witnesses, there was not one scintilla that showed Myrtle Poor Bear was there, knew anything, did anything, et cetera. And so, it is for those two reasons that I believe the court, very realistically, and very fairly, and in the total interest of justice determined for the reasons that the court then gave, that Myrtle Poor Bear's testimony would go totally to a collateral matter, even if it were a collateral matter with some relevency

JUDGE ROSS: But can't you see, Mr. Hultman, what happened happened in such a way that it gives some credence to the claim of the --

MR. HULTMAN: I understand, yes, Your Honor.

JUDGE ROSS: --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.

MR. HULTMAN: Judge --

JUDGE ROSS: And if they are willing to do that, they must be willing to fabricate other evidence. And it's no wonder that they are unhappy and disbelieve the things that happened in our courts when things like this happen.

MR. HULTMAN: Judge Ross, I in no way do anything but agree with you totally.

JUDGE ROSS: And you try to explain how they get there is not legally relevant in the case, and they don't understand that.

MR. HULTMAN: I understand, Your Honor.

JUDGE ROSS: We have an obligation to them, not only to treat them fairly, but not give the appearance of manufacturing evidence by interrogating incompetent witnesses.

MR. HULTMAN: Your Honor, I agree wholeheartedly, and I certainly have no quarrel with that, and that is why I say, as I indicated, I ultimately made a decision that I made, and I made that decision personally. I think the trial, itself, Your Honor, and the record in its totality, as well as its individuality will show the very posture that the court has now indicated. And as a legal matter, I think that that is correct. Although, I certainly accept what the court has just said in totality, and I agree with it one hundred percent, Your Honor.

Now, later on then, the counsel again indicated at Page 3455 at the record, that anyone who talked to her, and he was referring

to Myrtle Poor Bear, for even a few minutes would immediately know that she was an unbelievable witness. Now, those are just that's all from the defense's side of the house, Your Honor. That has nothing to do from the Government's side of the house. So I believe that the ruling was a proper, discretionary one on the court, and he would have opened up a Pandora's Box into things that had absolutely nothing to do with the ultimate issues at trial, because she knew nothing, absolutely nothing, without question, about what took place.

JUDGE ROSS: Was she there at the time?

MR. HULTMAN: No, she was not. I don't think there is any question on the part of anybody, there is not one scintilla of evidence that indicates, finally, that she is there and has anything to testify to the events.

JUDGE ROSS: All of this was in the affidavits?

MR. HULTMAN: Yes, that is correct, Your Honor. Now, let me move, Your Honor, for a minute or two to the other crime issues that Mr. Kunsler addressed.

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59. Richard Marshall v. Herman Solem, in the United States District Court, District of South Dakota, File CIV 82-4072, Deposition of Evan L. Hultman, sworn August 23, 1983 at p. 55 l 3 -l 20, p. 64 l 22 - p.66 l 7. Paul William Halprin voluntarily gave evidence in the same case regarding the credibility of Myrtle Poor Bear. The challenge to Poor Bear and more particularly the F.B.I. use of her was accepted only by a dissenting judge. Marshall ultimately accepted a deal whereby his sentence was commuted in exchange for an admission of guilt. 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 335-342.

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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Richard Marshall,	:
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Petitioner,	:
	:
vs.	:
	:
Herman Solem, Warden,	:
South Dakota State Penitentiary,	:
and Mark Meierhenry, Attorney	:
General for the State of	:
South Dakota,	:
	:
Respondents.	:
	:
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DEPOSITION OF EVAN L. HULTMAN,  
taken by and for Respondents pursuant to Order  
and Notice before Mary K. Bintner, Notary Public  
in and for the County of Hennepin, State of  
Minnesota, at the Law Firm of Kenneth E. Tilsen,  
400 Minnesota Building, St. Paul, Minnesota,  
on August 23, 1983, commencing at 10:00 a.m.

\* \* \*

1 refer to here in the total colloquy that I make that  
2 kind of an analysis.

3 Q Mr. Hultman, if I understand your testimony and you  
4 can correct it and change it if you want and correct  
5 me if I'm misstating you, you did make a determination  
6 not to call Myrtle Poor Bear as a witness in the  
7 Butler and Robideau cases among other reasons  
8 because there was not a scintilla of evidence that  
9 she was there? You have so testified?

10 A Yes.

11 Q All right. Now, --

12 A But that was not based upon my reading of three  
13 Affidavits and comparing them.

14 Q You have now indicated it was not based upon your  
15 reading?

16 A Yes.

17 Q Was it based upon your knowledge of the existence of  
18 those Affidavits?

19 A No, it was not.

20 Q Did you know that they existed at that time?

21 A My very, very best recollection to you is that I --  
22 I have no recollection of that effect. I think it  
23 would be fair to conclude that at some time in the  
24 discussion of witnesses with the attorney who had  
25 the assignment of that witness that he would indicate

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1 statement, does it?

2 A I'm not indicating that. I'm saying an event took  
3 place, that's all I'm saying.

4 Q The event is that they were acknowledged by the Clerk?

5 A So they're an open matter, that is correct. They  
6 aren't done back in a U.S. Attorney's office or in  
7 an FBI office or something else.

8 Q You don't know where they were typed, do you?

9 A I have no knowledge about the Affidavits.

10 Q You don't know whether they were typed in an FBI  
11 office or in a U.S. Attorney's office?

12 A I have no knowledge because at that time that  
13 responsibility --

14 Q You have no knowledge today of where and how they  
15 were typed?

16 A That is correct.

17 Q Or by whom?

18 A That's correct.

19 Q All right.

20 A All I have knowledge is what I've read in the record  
21 that I have just referred to.

22 Q Mr. Hultman, was it based on all of the available  
23 evidence in this case that you made your statement  
24 to the Court of Appeals that "It was clear to me,"  
25 and I'm quoting from page three "that her story

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1 didn't later check out with anything in the record by  
2 any other witness in any way"?

3 A Yes, that's a very true statement. That is the  
4 ultimate reason that I determined that she's  
5 incompetent. And I felt ultimately that she was  
6 incompetent, I felt that to the Court and I feel it  
7 yet here today, incompetent in a factual, primary  
8 way because there's no evidence to support that  
9 she's there.

10 Q And the "no evidence," and I don't want to expand  
11 the record by getting into the details but I do want  
12 to get into it just this much. This no evidence  
13 means that if one were to look at all the witnesses  
14 who were there, who testified and who gave  
15 statements to the FBI and there quite a number of  
16 them, and all the physical evidence, the clothing,  
17 there was a lot of clothing, there were fingerprints,  
18 there was personal property of various sorts that  
19 none of that checked out to indicate she was there.

20 That's why I used the word scintilla, no, that's  
21 absolutely correct. Absolutely no evidence to point  
22 that she was physically there.

23 Q Now, --

24 A You see, I don't have any -- it wouldn't be on any  
25 other basis primarily because I don't have -- and

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1 I've never seen any medical reports as to her mental  
2 condition or anything of that kind. The reason why  
3 I say that secondarily is because when she is saying  
4 different things at different times and to different  
5 people, that then goes to me to a state of mentality  
6 and that's the other part that I'm referring to.

7 Q All right. Mr. Hultman, I want to direct your  
8 attention now to page three of the statement.

9 A All right. To page three of what?

10 Q Of the exhibit --

11 A The exhibit we're still talking about?

12 Q Yes which is Hultman Deposition Exhibit Number 1.

13 A Yes.

14 Q You make the statement, "Your Honor, I was personally  
15 not present at that stage. I read the Affidavits  
16 after they had been submitted so I want the Court  
17 to know that," and then Judge Ross interrupts and  
18 says "The government -- " and then you go on and say  
19 "I don't excuse by my remark."

20 Now, I want to direct first -- my first question;  
21 "I read the Affidavits after they'd been submitted,"  
22 that would be the Myrtle Poor Bear Affidavits in  
23 the Peltier extradition?

24 A Yes. Yes.

25 Q And you mean to convey to the Court that you had not

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