

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

CR NO. C77-3003-01

UNITED STATES OF AMERICA,	*
	*
Plaintiff,	*
	*
v.	*
	*
LEONARD PELTIER,	*
	*
Defendant.	*

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

VOLUME XIII

Pages 2608-2829

{2608}

FRIDAY MORNING SESSION

April 1, 1977

9:00 O'Clock, A.M.

Whereupon, the following proceedings were had and entered of record on Friday Morning, April 1, 1977, at 9:00 O'Clock, A.M., without the jury being present and the defendant being present in person:

THE COURT: Are there any matters to be considered before the jury enters?

MR. TAIKEFF: Yes, Your Honor.

MR. CROOKS: Yes, there is, Your Honor.

MR. LOWE: I yield to the Government.

MR. CROOKS: Your Honor, pursuant to the request of the Court I did obtain from Mr. Hanson, the Department of State Oregon Police report. Mr. Hanson however has requested that this report not be turned over to the defendant in total, principally because they do have charges pending in Oregon which they do not feel that this contents of this report should disclosed at this time.

However, I have examined this report completely insofar as the question raised as to when the AR-15 was found. I can state that there's only one reference in the report to the finding of weapons. That's on page 3, and reads as follows. Now, this would be referring to approximately 7:00 P.M. on the 15th. I believe it's the 15th, at least if it's in the proper sequence. It stated: "Police in charge of arson division {2609} advised him that vehicle," and this refers to the Plymouth as I understand it, "contained a quantity of dynamite. Write; requested that Lt. McCullom contact Trooper Bill Fettig. Advise him of the dynamite. See if he would be able to come to this area to dispose of the dynamite".

During the search of the motor home on this date there were several boxes of ammunition and several rifles found. These items will be listed under exhibits on this report.

Then I believe commences on the next page, they simply start with a list of exhibits. Item 7 is the AR-15. Item 7, AR-15.

A model .223 model SP1. Obliterated serial number, four loaded magazines, two loose cartridges, backstrap, all contained in a rifle case. And that's the only reference in the report at all to this matter which counsel raises.

I'll be happy to submit this report to the Court in camera and I have no objection as far as the Government is concerned to parts of this report which the Court think might be pertinent to be disclosed. But I have been requested by Mr. Hanson that the report not be disclosed to the defendants in total because of the nature of their pending case there.

I believe the record will indicate if I'm correct that Mr. Peltier was extradited on a burglary charge in Oregon and that is still pending and papers have been filed. If the Court wishes to examine this I'll be more than happy to submit it to the Court for whatever use the Court then feels {2610} should be made of the report.

MR. TAIKEFF: Your Honor, might I ask if it's possible for the Government to indicate to the Court which sections of the report should be deleted.

MR. CROOKS: I have no idea, Your Honor. I'm not sure what parts Mr. Hanson does not wish disclosed other than obviously for tactical reasons they do not feel that the entire report should not be disclosed. And I would rely on the Court's discretion as to what parts if any may pertain to this case, and to the matter specifically which counsel requested reports for the date of finding of the AR-15.

I can't state to the Court that that information is I not contained in that report. There is nothing to indicate the time at which any weapons were found other than the general statement which I read.

MR. TAIKEFF: May I ask whether Mr. Hanson is still in the building?

MR. CROOKS: No. Mr. Hanson has returned to Oregon and this information was relayed to me by the FBI who caught him I think at the airport and obtained a copy of the report.

MR. TAIKEFF: I assume, Your Honor, that the list attached encompasses not only the AR-15 but also all of the other objects which are depicted in the photograph which is the subject matter of this inquiry. And therefore one might rationally conclude that all of those objects were found at {2611} approximately, if not at exactly the same time.

There's nothing to differentiate between the AR-15 and the other objects to the list which do in fact appear in the photograph.

MR. CROOKS: Well, I can answer that question. The list is simply their list of the items that have been either turned over to the FBI or returned in the search warrant. There's no dating. It's everything that they seized, lock stock and barrel over approximately a two day search. And the Court can examine for himself, and I'm sure that the same conclusion that the Court will come to, that there's absolutely no indication as to when any particular item was found.

It's over a period of a search of approximately two days, and those are all the items that are returned. And counsel has already the list. If counsel wishes a list, I'm sure Mr. Hanson would have no objection to the list. But it's simply the return of showing all the items that they've seized.

MR. TAIKEFF: Well, in the alternative, Your Honor, we would ask the Government to advise us of the names of the people who conducted the search so that we may serve subpoenas upon these and bring them here as defense witnesses.

MR. CROOKS: Well, Your Honor, apparently we're off on another ghost hunt. This completely collateral matter. The United States has no idea of the exact people. This was {2612} the State of Oregon search. I don 't think we have any obligation to go to the extent that counsel wishes on a collateral matter.

As understand it the issue that counsel is attempting to raise is that the AR-15 was found when the photograph was taken. This has got to be one of the most absurd arguments raised by counsel in any trial that this is supposed to be some kind of impeachment. There's no question that an AR-15 was found. Apparently this is again counsel's attempt to establish some grand conspiracy which is now also being entered into by the Oregon State Troopers. And it's absurd.

The AR-15 was found. That's never been in any way minimized by the Government. It's immaterial whether that was found at any particular time or not. We're talking about a collateral matter which at the very most would tend to impeach one statement by Mr. Hancock. And certainly I think the Court has ruled on numerous occasions, they're bond by the answer on collateral matters and they couldn't prove it anyway.

MR. TAIKEFF: The Government seems to have a magnificent talent or totally perverting and misconstruing what our position is. We say that the FBI agent who testified that the explanation for the absence of the AR-15 from the photograph was not a true explanation. That he just

made that up as a way of explaining its absence instead of telling {2613} the truth. And we're entitled to explore the question of when that AR-15 was actually found. Because if in fact that AR-15 was found along with the other guns and was not in that photograph, that's relevant to show a conscious effort on the part of the FBI to exclude at least temporarily that AR-15 from the body of evidence being collected and recorded.

Now, I think that it is perfectly simple for us to acquire the names of the Oregon State Police people through the Government who participated in that search. We're entitled to that information in Brady against Maryland and we ask the Court to order the Government to give it to us.

MR. CROOKS: Well, Your Honor, Counsel, that information is just as available to defense counsel as it is to the United States. The witnesses were on the stand. They could have asked at any time. We had two people who we knew were involved. Mr. Hanson and Mr. Zeller, and either one of them could have asked.

I haven't the slightest idea of the names of the people that were involved, and I will not offer to find it, because I couldn't care less. Counsel wants to pursue that matter. I would assume that they have ways available to assume it just as easy as the Government. United States doesn't know the answer, and I don't think we have any obligation to pursue it on a petty matter such as this.

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THE COURT: What was that picture that was referred to?

MR. CROOKS: Government's Exhibit 61. The photograph that I believe was being referred to was the photograph on page 3.

THE COURT: The Court will review this and take this home after under advisement.

Are there any other matters to be brought to the Court?

MR. LOWE: Are you finished, Mr. Crooks?

MR. CROOKS: Yes, I am.

MR. LOWE: Your Honor, we have several very brief matters. First of all, James Theodore Eagle is being held by the marshal service, I believe in Grand Forks, the Court advises us. We would like to have an interview with him. It's timely at this point and we would ask that the marshals be instructed to have him available somewhere in the courthouse, perhaps, or in the Marshal's office or in room 326, whatever Your Honor thinks would be best, a suitable place to interview him on Monday. Because of the court schedule, we would request that he be available at 5:00 o'clock on Monday. I think that would give us an opportunity to talk with him. I do not anticipate it would take long. I would anticipate perhaps an hour and perhaps two hours at the absolute outside. So they would have plenty of time to {2515} return him at an early hour Monday evening to Grand Forks. They would not have to worry about keeping him overnight or anything of that nature.

THE COURT: What about the possibility of interviewing him over the weekend?

MR. LOWE: We are, all Counsel for the defense are going to a religious ceremony being conducted for Counsel at White Earth, North Dakota. Minnesota. White Earth, Minnesota. And it's an entire weekend of religious activities.

THE COURT: Are there any other matters?

MR. LOWE: Yes, sir.

Your Honor, this is a bright clear day. I don't know if it's yet cloudless or will be cloudless, but it is substantially cloudless. We ask Your Honor to take an opportunity at one of the recesses or a special recess for that purpose or on the lunch hour to take a view through the scope on the Coward rifle. That is, to have Your Honor do it in order for Your Honor to make a finding of fact with regard to what can be observed on a bright, clear day of substantially the same conditions that were present on June 26th, 1975 when agent Coward reportedly looked through the scope.

We believe we're entitled to at least have you look through it, we believe, to make a finding of fact. We believe Your Honor will be impressed. It is not a close question. {2616} There is no light condition that would enable anybody to see a face at a half a mile which is what Agent Coward testified was what was involved there. We would ask you to do that in order for two purposes: first, in order to evaluate the question of whether you would allow the jury to look through and, second, for the purpose of making a finding for the record.

THE COURT: The Court on any findings of fact that the Court is required to make, I will make them on the basis of the evidence presented in the courtroom. Now if you can reproduce the situation and produce an expert that would look through that and present evidence, that is admissible. That of course is your prerogative. I am not, I have ruled. I cannot conceive of any way that I can duplicate the facilities. Furthermore, I'm nearsighted and I don't think it would have much probative value for me to look through that telescope.

MR. LOWE: Your Honor, I would only point out it is possible we could use one of those windows to gain access to a half a mile sighting from the courtroom. I don't know whether Your Honor was indicating that would make a difference. We offer that as an alternative if you do not choose to go outside of the courtroom.

THE COURT: It makes no difference.

MR. LOWE: Third, Your Honor, we had discussions {2617} earlier in the trial with regard to some objections, I think I'm correct in saying there were three exhibits that constitutes, or were comprised of fragments or bullets which the experts said they could not positively link up with a particular weapon but said that they could possibly be associated with a particular weapon, meaning that it was, let's say, a 30 caliber or whatever it might be. We asked that those numbers be charged because they were misleading and Your Honor overruled us on that and indicated you would allow the numbers to remain the same.

In reviewing our notes on this it occurs to us that there is no reason in face of that ruling why the exhibits in question which are charts containing, first, a depiction of the rifle involved or weapon involved which is then surrounded by depictions of various cartridge casings and comparisons of firing pin impressions and so forth. There is no reason why those fragments

which have not been linked up to the weapon in question should be allowed to be depicted on those charts.

Now that's not asking that the numbers be changed, but in putting those fragments on a particular chart such as the M1 chart, let's say, in one instance, I believe. It is a deliberate effort to suggest to the jury improperly and make them speculate that those fragments came from that gun when in fact they could have come from any number of guns {2618} that are in evidence or any other number of guns that might have been there at the time. There is at least one chart, I believe, that already has one objectionable exhibit marked out on it by just having white paper pasted over it and we ask Your Honor make a view, make an examination of the exhibit in question for the purpose of making defemination as to what we're asking and ordering that they be covered up. I think that the government has those here in the building and could make them available to Your Honor at some point to look at before the expert is called upon to identify them.

The government may want to respond to that so I'll sit down a moment.

MR. SIKMA: Your Honor, I would state, first of all, that the charts clearly state that these are not positive identifications; that they could have been fired from the firearm in question.

Secondly, it is not merely a possibility that they could have been fired from this firearm or a number of other calibers. On all of these cases there are at least some similar distinguishing marks or characteristics which relate these shell fragments to firearms in question and so that while the charts are very clear in establishing the distinction between a positive identification and a possible identification, or partial identification, these matters are set out in length and were clearly on the charts which will be presented to the jury.

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Furthermore, we would contend that the jury, on the basis of the evidence, could conclude substantially more than that these are just chance items which really have little or no significance as with regard to the weapons which are known items.

We would state that, for example, the charts state, for example, I will use as an example 34-H, which states that the bullet fragments had similar rifling only, and therefore, to that extent it is limited.

All of these on others, 33-A, for example, they are clearly set out apart, away from the rest of the items, away from the rest of the examples or samples on the chart, by saying similar rifling only, and set out by Q numbers so that the jury can connect them up with the very specific items, can look at them, and by reason -- have some additional reason to question whether or not they are sufficiently connected up.

In addition to this, the Government contends that the rest of the evidence in the case is relevant in connecting these items to the questioned items which are of similar rifling only, so I think that it is not only the fact that these are found in the particular area in question, but in addition to that, they have similar rifling and could have been fired from certain rifles.

In addition to this, there is evidence of testimony {2620} of witnesses which state and corroborates the fact that a rifle of this type was in a particular area; and I think that that is sufficient to permit the Government to very specifically set out on these charts, in order to aid the jury in making their determination, because the evidence is so voluminous in this case the

jury could be confused, and this does not confuse them. This would not mislead in any way. Counsel can bring it up on cross examination. Counsel will have the charts there and can show the jury and emphasize the fact that these are similar in nature only and are items which could have been fired from a given rifle but they could also have been fired from some other rifle of the same kind.

THE COURT: What will be the testimony of the expert on that question?

MR. SIKMA: The testimony of the expert on this -- and I will give you an example on 33-A which is a .44 magnum carbine. You will recall that a bullet fragment was found in the side of Special Agent Williams. It was the one, the bullet fragment that passed through his left shoulder and out the underarm, and then into the side. The bullet jacket of that was recovered. It is Q-1. It is identified, it is Government Exhibit 33-C.

The witness, Government firearms examiner will testify that, for example, that article or bullet was fired {2621} specifically by Government Exhibit 33-A, and that that was fired from that gun to the exclusion of all others.

Now, by contrast he will testify that Government Exhibit 33-J and 33-K, for example, are bullet fragments, one recovered from Williams' car, 33-K, and 33-J recovered from Coler's car, have rifling which has the same number of lands and grooves which could have been fired. It is also a .44 magnum caliber, and could have been fired from Government Exhibit 33-A, but it is not to the exclusion of all other firearms, that is, not to the exclusion of all other .44 magnum Ruger carbines which have a particular and distinct number of lands and grooves in the inside of the rifle. In other words, in the rifling -- but the proof in the case, I believe, we contend shows that only one of those kind of rifles was at the scene on that particular day, being fired by either the Defendant or his companions.

I think that this is relevant to the issue as to whether or not the Government should be able to present this evidence since it tends to show it is circumstantial evidence of a fact question which should be resolved by the jury.

MR. LOWE: Mr. Sikma misstates our objection. We do not believe that he should be precluded from showing this evidence. He should be precluded, however, from putting {2622} it on a chart which purports with the same numbers -- now, again your Honor is allowing them to use the same sequential numbers, you know, weapon 34-A, for example, is the AR-15 in evidence, 34-B, 34-C and 34-D, and so forth -- all purportedly relate to the .223; and with the exception of, I think he said 34-H, they will have evidence which will at least purport to show that all of those items are connected; but as to 34-H the firearms expert will say -- I believe this is a fair summary of what he would say -- is that that round could have been fired from any AR-15. It has the same number of lands and grooves, same rifling, or whatever it might be. It could have been fired from any AR-15 now in this case.

Your Honor, before the experts are finished, there will be evidence clearly that there were two AR-15's fired on that day; and we believe the evidence will show three or four AR-15's being fired by the Government's witness himself. That's why we object to having them put the bullet fragments on the chart for the weapon, 34-A. They don't have a chart for these other AR-15's, however many there may be fairly inferred from that.

Obviously they don't want to suggest there were any other AR-15's. This witness will say the weapons had markings in them and he will identify the markings from the weapon, 34-A. He will testify as to the .223 cartridges {2623} which contained no markings which could have been identified with Exhibit 34-A. There are two weapons already, and there are other reasons, as the evidence will develop, why we may very well show that there were at least three weapons fired

on that day. To allow the Government to take fragments that could have been fired from any one of those AR-15's and put them on a chart which only relates to one of the AR-15's and have the Court give its imprimatur to that by allowing it in evidence -- that's what the Government will intend to do is to ask the jury to speculate or to allow the Government improperly to suggest that there is proof that those are related to that weapon.

The expert in each case on the ones we are challenging will say he cannot say that bullet fragment came from that weapon, only a similar weapon to the M-1. He will say it could have come from any one M-1. The same as to the .44 magnum, it could have come from any one.

There is already evidence, and there will be more evidence, there were weapons fired on that day that were never recovered, people who were firing who were never found. We don't know -- I am not sure we will ever know if there was another M-1 or .44 magnum. I am not sure about this. I believe there is going to be evidence there was another M-1, or suggestion, certainly on the {2624} .223 there is going to be direct evidence by the firearms expert. This is very, very improper for them to put them on the chart. Now, if they want to put it on a separate chart or if they want to talk about it while that chart is up there, that's one thing. That's fair argument or its fair evidence for the jury to consider, but to put it right on the chart and have this Court approve it by making it an exhibit is very, very bad and very suggestive.

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MR. SIKMA: Your Honor, I would just contend that it's, it is not at all misleading since the testimony of the witness was an aid in demonstrating to the jury as to exactly what the witness will testify is contained on the chart. It's there, available, with the distinction.

Counsel can raise it, discuss it all he wants to and the Government does have a right to show, because there is substantial evidence which makes it reasonable as a matter of circumstantial evidence to draw, at least to argue a connection between the two.

Therefore, the Government should not be precluded in presenting demonstrative evidence of this nature. It is not in any way misleading.

THE COURT: I have previously indicated that the Court would instruct the jury that the fact that an exhibit may be marked, for example 33-A, 33-B, 33-C, has no significance

From the dialog and argument this morning I concluded and hold that it is proper circumstantial evidence. However, the Court will consider and request from defense counsel a proper precautionary instruction at the time the evidence is received. I would ask that you submit a proposed instruction to the jury.

MR. LOWE: Yes, sir.

Your Honor, I hope, maybe I didn't make myself clear.

{2626} I would ask that you reserve your ruling until you can see the charts. I think it will make a difference to you if you see the manner in which this is presented on the chart.

THE COURT: As I mentioned on the basis of dialogue, I can certainly reconsider at any time.

MR. LOWE: All right. Thank you, Your Honor.

MR. TAIKEFF: Your Honor --

MR. LOWE: One last thing, Your Honor, and I mentioned this to mention notice. We're trying to work out with Mr. Hultman later on this. We would like to obtain copies, at least if the copies are legible, and I think the FBI makes pretty legible copies, of all of the known fingerprint cards of Leonard Peltier so that we can use them for comparison purposes without fingerprint expert. And I don't know how many that is.

I suspect it's not too many, three or four or five at the most, and would ask that the Government have the FBI produce whatever they do of Xeroxed copies or however they produce them, photographic copies for us. I think one or two we already have, so I'm talking about, or they're already in evidence. I'm talking about any other copies that are not already in evidence or which will not be introduced in evidence in this trial.

MR. HULTMAN: Your Honor, I've gone on the record about discovery again. The knowledge on prints have been known and {2627} I will do my best. But I will be very frank about it, I'm just getting a little bit exhausted in spending my time in discovery every time I turn around concerning matters that have clearly been in the purview and capability and the requesting of the defendant's counsel.

I'm, I'll do my best and that's what I've indicated. I'm not going to certify in any way, though, that I'm going to make a search of the United States to try and discover for the next two weeks whether or not the defendant's prints are somewhere, and then be accused later that I didn't make a good faith attempt and withheld something in the process.

MR. LOWE: As long as they're the ones in the possession of the FBI that's all I ask, Your Honor.

MR. HULTMAN: And that's what I was referring to, Your Honor. Counsel, I can't walk out of this courtroom to find where in the whole United States there may be a set of prints of this particular defendant. I will do my best, Your Honor, but I want to know the conditions and understand on the record that the basis upon which I'm doing it. Not later be accused of not producing something. It was in the file somewhere, someplace of the Federal Bureau of Investigation.

THE COURT: Well, this is hardly a timely request. But I would instruct counsel to make an effort to obtain whatever information in that area you are able to.

MR. LOWE: That this is based on evidence that we did {2628} not anticipate. I don't think it's a burdensome. I appreciate --

THE COURT: Are you suggesting that you are suggesting that there wouldn't be fingerprint evidence?

MR. LOWE: No, Your Honor, there is character in the fingerprint evidence. We didn't believe it would be relevant before in view of our previous discussion.

That's all I have, Your Honor. I believe Mr. Taikeff has something.

MR. TAIKEFF: Your Honor, I have two very brief matters. The first is to indicate to indicate to Your Honor that the special visitation arrangement which Your Honor ordered on behalf of the defense included a period this evening. I mention it to Your Honor that these arrangements include the necessary of a marshal being assigned in the evening. We concluded last night the work we had to do, and therefore will not need the time this evening.

THE COURT: Thank you.

MR. TAIKEFF: I thought it would be appropriate, Your Honor, so that the marshal would not be assigned to work an evening shift.

THE COURT: Thank you. I will advise the marshal.

MR. TAIKEFF: Thank you, Your Honor.

The other matter, Your Honor, is this: Over our objection there has been brought into this trial on a number {2629} of occasions testimony, and indeed sometimes photographs, involving dynamite or other explosives. I'm not going to re-argue that matter at this time. I merely wish to indicate that after considering certain facts and factors which have come to our attention, we believe that there is a possibility that some or all of these explosive devices were supplied, either by a federal agent or by a federal informant.

And we would ask that at sometime before this trial is concluded the United States Attorney's office make appropriate inquiry and certify to the Court that none of the explosive devices which we have heard about or seen any photographs of in this case were supplied through or by federal agents or their informants.

The reason that we ask that, Your Honor, is not out of idle curiosity, but if the defendant has to suffer the prejudice of such evidence coming before the jury we believe that the defense at the very least should have an opportunity to prove to the jury if that is the case that those explosives were there with the assistance, if not with the encouragement, of federal agents or their civilian employees.

MR. HULTMAN: Your Honor, again we get a shotgun request in the middle of the trial and my only response to this is that there is a proper procedure and a proper showing that must be made. And it isn't just a bald statement by counsel in the middle of the courtroom have an infinitesimal possibility {2630} that something somehow may have happened. I would only indicate to the Court that my response is that the Government will stand on the position that we object to any such, only such time as a proper showing with proper evidence has been made by the defense, and then the Government will respond in whatever proper the Court at that time will indicate.

But I'm not about again to go out and go on a fishing expedition for the next month and a half throughout the United States and then being accused that I didn't check something out in Tubalas, wherever that is.

MR. TAIKEFF: Your Honor, Mr. Hultman has twice in the last ten minutes suggested that an accusation of the kind of which has not been heard in this trial is going to be made against him.

The one time that Mr. Hultman did not in fact produce all of the information that was available was when he himself was not accurately informed by the Canadian authorities concerning the existence of a wiretap on Mr. Peltier when he was incarcerated in Canada. And never did we

take the position that he had any complicity in that misstatement of fact. Indeed our position was clear. He was misinformed by the Canadian authorities and it was only when we produced certain documentation that the Canadian authorities then made a complete disclosure to him.

We have not to this date, and we do not anticipate, {2631} making any accusations against Mr. Hultman that he made any bad faith searches or otherwise conducted himself in an improper way.

And I wish he would not continue to suggest that such was possible because we don't think it's possible. I don't know why he thinks it might be possible. Now, the point is that Mr. Hultman need not make a search for a month or more. If he wants to go on a fishing expedition I would be glad to join him. The weather is turning quite nice. However, I would ask that he pick up the telephone and call the Department of Justice and say, or the FBI or however it's done, I've never had the privilege of being privy to the inner chamber, but however it's done he can find out whether or not there are any Government agents or informants who played an instrumental role in developing or making available the explosives about which the defendant has heard a great deal along with the jury in the course of this case.

It does not require extensive effort on his part. I think it would appropriate for him to ask, and if he's told that there is no such thing, all he has to do is repeat that to Your Honor and the matter is closed in this proceeding.

THE COURT: I would ask counsel, do you have any evidence that any explosive devices were supplied by federal agents or their civilian employees?

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MR. TAIKEFF: We have some indication that such is the case, Your Honor.

I would tell Your Honor that I personally have conducted an investigation and I have enough information that I think is reliable. To use a phrase that the Government uses quite often, I have one or two reliable informants of my own. And I am satisfied that the information I have received warrants my making the application. I am not in the habit of making a frivolous application that is not based on some rational reason. I would call to Your Honor's attention the fact that in Oregon a number of people were charged in federal court, I believe in connection with the posse d on of ten cases of dynamite, and it was promptly destroyed by the FBI, or the federal authorities. And I trust that I'm accurate in saying that it was the FBI. And as a result a United States District Court judge dismissed that case because of the improper behavior.

That is one of the factors that I'm taking into consideration in making the application because I believe the dynamite can be traced. And I believe what my confidential informants have told me is probably true, that that dynamite could have been trace and it would have been traced back to a Government informant.

Now, it is not unheard of for Government informants to act as provocateurs, particularly in small political {2633} organizations that are not looked upon with great favor. Because there's nothing better than in one way instigating people to do things which causes them to cross the line between legality and illegality and then hustle them off to jail so they can no longer be a thorn in the side of those don't appreciate their existence. I think the episode with John Trudell, the national director of the American Indian Movement, who is now serving sixty days because

he said something to the marshal which the marshal didn't like hearing is a small example of what I'm talking about.

Now, I believe, Your Honor, that there is a sufficient basis to ask the Government to make an inquiry --

THE COURT: I might interrupt you at this point and say that I take exception to the suggestion that Judge Davies would have --

MR. TAIKEFF: Not Judge Davies. I was talking about the action of the marshal, Your Honor.

THE COURT: I know, but Judge Davies would not have acted unless there was evidence to convince him that it was a proper act to take.

MR. TAIKEFF: Well, this morning they barred a very important person from the American Indian Movement on the ground that they didn't like the way he closed the door when he left the courtroom. Isn't it amazing that only American Indian Movement people seem to be doing things which the {2634} marshal finds offensive.

THE COURT: I personally witnessed a very hard slamming of the door by someone when they left the courtroom. I don't care whether they are members of the American Indian Movement or whether they are members of any other society or movement.

It is not allowed in this courtroom, and the marshals are instructed not to permit it to go on. The purpose of this courtroom is try the issues stated in the indictment without distraction from the audience, without demonstrations. And demonstrations and distractions will not be allowed.

MR. TAIKEFF: Well, Your Honor, Your Honor was sitting on the bench and I was in this courtroom when Mr. Trudell was having his exchange with the marshal. And neither one of us, I'm sure, was aware of what was going on. So it couldn't have been very disruptive.

In any event the point is that my professional experience over the last nine years shows that the nature and the quality and the extent of the things done by people who are in the employ of the United States Government as informants is outrageous, particularly in connection with the political cases I'm speaking from actual revelations, not things which I read, not things which I'm speculating about, but things which I know because they were revealed in open court.

{2635}

These things do happen, Your Honor, whether they happen in and around Fargo, whether they happen within Your Honor's professional experience is not the entire question. I represent to Your Honor that they happen, they happen regularly. They happen in drug cases, they happen in political cases.

THE COURT: This is not a political case.

MR. TAIKEFF: This is not a political case?

THE COURT: No.

MR. Taikeff: We're dealing with a person, Your Honor, who is politically active in a political organization.

THE COURT: The only issue before the Court in this case is the issue as set out in the indictment.

MR. TAIKEFF: Well, maybe if Your Honor allows the Government or requires the Government to make their inquiry and in fact we get an answer to that inquiry, Your Honor might find that this is indeed a political case.

MR. CROOKS: Your Honor, I would like to rise to one point which counsel went into, and this is the Oregon matter, the destruction of dynamite in Oregon.

Counsel misstates the record by not stating it completely. The dynamite was destroyed in Oregon because it was unstable. It presented a danger to the community and the officers. The indictment was dismissed by the district judge and that issue is now up on appeal before the 9th Circuit. And counsel is {2636} well aware of the circumstances surrounding that case, and the reason for the problem that arose. And I will not comment on the court's ruling of the district court ruling, but that is a matter which is up on the appeal.

The United States has appealed, not only the suppression of the evidence, but also the dismissal. And that decision has not yet been handed down. And I think it's unfortunate that counsel tends to bring a matter like this up which is under litigation because counsel knows full well that that dynamite was not destroyed for any purpose other than what was stated by the United States that the dynamite was unstable and could have well blown up and destroyed the evidence room or wherever else it was stored. And that is a matter of litigation which has been well established and is now up on appeal. And I think it's unfortunate that counsel even suggested something of that kind.

MR. HULTMAN: Might we move on Your Honor so that we might all be able to go fishing, Counsel, this spring as counsel has suggested?

THE COURT: Are there any other matters to be presented this morning?

MR. TAIKEFF: No, Your Honor.

THE COURT: Yesterday I reserved ruling on Exhibits 145 and 147 which were offered in evidence.

{2637}

My ruling will be that the exhibits will be received in evidence, but I will instruct the jury that the only relevant portion of the exhibit is paragraph 10 on each exhibit. And that is relevant only on the issue of credibility of Mr. Zeller.

The jury may be brought in.

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

THE COURT: As the jury probably surmises the delay this morning was again on legal matters that had to be resolved before we continued with the testimony. One of those legal matters related to an offer of two exhibits, Defendant's Exhibit 145, Defendant's Exhibit 147. Each of these exhibits is an affidavit of William P. Zeller.

The jury may recall that William P. Zeller identified himself as an Oregon State Policeman who was the supervising sergeant of the latent print fingered section of the identification bureau in the Oregon State Police.

{2638}

The testimony of the witness on the witness stand is the substantive evidence in the case. In other words, it's the evidence which the Court, which the jury should consider. However, as you may recall, there was evidence brought out that Mr. Zeller made two affidavits and these affidavits are identified as Exhibits 145 and 147, one was later than the other, and there is a difference in what was stated in paragraph 10 in each of these affidavits.

These two exhibits are received only by reason of that difference in the statement in paragraph 10. That is the only part of the exhibit that is relevant and that part of the exhibits and that part of each of the exhibits is relevant to the issue of the credibility of the witness.

As you may also recall on my opening instructions, I told you that it is the duty of the jury to determine what credibility should be given to the testimony of any witness and these two exhibits are received on that issue of credibility.

MR. ELLISON: Your Honor, before we go further may we approach the bench on that matter?

THE COURT: You may.

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

MR. ELLISON: Your Honor, upon checking my notes, it {2639} became apparent there is another passage of both of these documents which are the same in the March 4th affidavit and then then the April 4th affidavit which pertained to an alleged identification by Sergeant Zeller of a fingerprint of Leonard Peltier's on the microphone inside the mobile home. Mr. Zeller gave no testimony to that effect during trial and there was the testimony of his that he may have told Special Agent Hancock that he did not make such an identification in a November 17 interview and there was testimony by Special Agent Hancock that what he described as a preliminary examination, or the results thereof were to the effect that he had tested the fingerprints lifted from the microphone inside the mobile home and found they did not compare to those of Leonard Peltier. We would therefore ask the Court to allow for that section of his affidavits to also be pointed out to the jury because this too goes to the credibility of not only Mr. Zeller but possibly also other individuals.

MR. CROOKS: I don't have the slightest idea what he's talking about. Sergeant Zeller testified he made the examination of the microphone and he testified that he did make later identifications but the identifications, I believe, and I didn't go into it because I wasn't using him as an expert. The testimony would have been that he made the identifications basically before the Oregon incident. The FBI had no reason to go back to Mr. Zeller because Mr. {2640}

Mulholland was there and gave them the identifications. It seems to me that that issue has never been raised by the evidence one way or the other. It seems to me that all need to be said by those two exhibits has been said and we object to anything further being commented by the Court. If Counsel wishes in closing argument to raise that type of point, that's his option. I don't care to make any further comment.

MR. ELLISON: We have nothing further.

THE COURT: Very well.

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

THE COURT: You may proceed.

MR. HULTMAN: The plaintiff calls Angie Long Visitor.

THE COURT: Counsel approach the bench.

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

THE COURT: I am told that the witness cannot be located. I am surprised that her Counsel is not present. He apparently is in St. Paul.

MR. TAIKEFF: She's been on the floor all week because I've seen her from time to time.

THE COURT: All week isn't significant if she isn't here this morning. I'm told she was advised to be here at 9:00 o'clock.

MR. HULTMAN: Your Honor, as late as yesterday {2641} specifically I personally saw her. I never talked to her because of conditions she refused to, and upon the statements of Counsel here in the courtroom. I have not sought to. She was instructed yesterday that she was to appear here to testify at 9:00 o'clock this morning. I know she was specifically told here in this building.

Secondly, her counsel was called yesterday and so indicated to him. Now that's all I can do, Your Honor. I can't do any more than that when I'm placed in the posture I'm placed in.

THE COURT: I'm not suggesting you can. I'm just a little surprised, number one, she's not here and, number two, her counsel is not present because I would have expected him to be present in court if he knew she was going to be testifying.

MR. TAIKEFF: Could I be allowed to leave the courtroom for a few minutes and make some inquiries? I may be able to help.

MR. HULTMAN: If she doesn't appear, Your Honor, I'm going to move to revoke the bond.

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

THE COURT: Members of the jury, we are in an unexpected delay. It relates to the availability of a witness and inquiry is being made at this time. I think that there is {2642} nothing for us to do except to stand in recess until such a time as I have more information. So the Court will stand in an indefinite recess and as soon as we are able to we will continue.

(Whereupon, at 10:06 A.M. recess taken.)

(Whereupon, court resumed at 10:40 o'clock, A.M.)

THE COURT: The jury may be brought in.

MR. TAIKEFF: The witness is standing outside the door, Your Honor.

THE COURT: Thank you.

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

THE COURT: You may proceed.

MR. HULTMAN: Plaintiff calls Angie Long Visitor.

ANGIE LONG VISITOR,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HULTMAN

Q Would you state to the jury your name, please.

A Angie Long Visitor.

Q Angie, maybe you could put this mike closer.

And where do you live?

A Oglala.

Q And where in Oglala?

A In Oglala housing.

Q Have I ever had an opportunity to talk to you about the {2643} matters that happened on the 26th of June of 1975?

A I don't think so.

THE COURT: Speak up a little bit so we can hear you.

A I don't think so.

Q (By Mr. Hultman) You have on one other occasion testified concerning events that happened on the 26th of June under oath, have you not?

A Yes.

Q And is that in 1975?

A Yes.

Q Sometime in November?

A (No response.)

Q I want to take you back to the month of June of 1975 and ask you where were you living at that time?

A Jumping Bull's.

Q And when you referred to Jumping Bull's, would you explain to the jury what it is you mean by Jumping Bull's.

A Cecilia and Harry Jumping Bull's house.

Q And I would ask you to look --

THE COURT: Just a moment. Defense counsel did not hear the answer to the question. Would the reporter read it back.

(Whereupon, the last answer was read back.)

Q (By Mr. Hultman) I would like to have you turn and look at the exhibit Angie, that is behind you here in the courtroom {2644} and it's been marked as Government's Exhibit No. 71. On that exhibit you will see a highway which is marked U.S. Highway 18 and you will see some various objects up here on the exhibit, something in the shape of a rectangle that says,

"Jumping Bull Hall," and there are other residences that you see here and I ask you if you generally recognize what is portrayed on Government's Exhibit 71?

A Yes.

Q Speak up just a little louder so that everyone can hear.

You recognize the area that's portrayed on this map?

A Yes.

Q And what is that area?

A Jumping Bull's.

MR. HULTMAN: I think that answer was Jumping Bull's, Your Honor.

Q (By Mr. Hultman) Now you then recognized the general area here as being Jumping Bull's, is that right?

A Yes.

Q And where was it that you lived in Jumping Bull's? Could you describe the house that you lived in or slept in at that time?

A In the green house.

Q A little green house.

MR. HULTMAN: Counsel hear the response at all?

{2645}

MR. TAIKEFF: Just barely. Would the Court mind if Counsel moved over to the other side?

THE COURT: You may.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Hultman) Now would you show us, show the jury with this pointer on this map, if you can, by looking at some rectangles that appear on the map which previously have been testified to to represent houses in this area where the green house is that you have just testified to.

A Right here (indicating).

MR. HULTMAN: Let the record show that the witness has identified the green house.

Q (By Mr. Hultman) Now about how long had you lived there?

A About seven years.

Q And was there anyone who lived with you at that time?

A My husband, my kids.

Q And how many children did you have, do you have?

A Three.

Q Three youngsters. Did you have three at that time?

A Yes.

Q Now who lived, was there anybody else that lived in any of the houses that are represented here on Government's Exhibit 71 which is the Jumping Bull property, anyone that lived in the house next to where you lived?

A My grandma and grandpa.

{2646}

Q What are their names?

A Harry and Cecilia Jumping Bull.

Q Would you describe what kind of a house or what color of a house they lived in?

A It's a white house.

Q Now could you point out for the --

Could you point out to the jury which one of those houses it is, Angie?

A Right here (indicating).

MR. HULTMAN: Let the record show that she pointed out the house that is referred to as the "white house."

Now you are here under subpoena, are you not?

A Yes.

Q Were there any other houses in that same general area that anybody lives in during the period of time?

A Wanda Sears right there (indicating).

Q Is that the point here? Wanda Sears you say lived at that house during that time. Who lived in the Wanda Sears house besides Wanda Sears?

A Wanda and her kids.

Q Was there any other person that lived there at that time?

A No.

Q Now was there anybody, and I'm talking about generally now, I'm not talking necessarily the very day, whether people were there or not. Do you understand my question? I'm just asking {2647} if people lived in this general period of time in any of these houses, then we'll get to the exact day. Was there anybody that lived in any of these other houses up in this area next to the house, the green house you said you were in and the grandparents, the Jumping Bulls? Did anybody live in this house that's located here on this exhibit?

A No.

Q What kind of a house was that, do you remember?

A A log house.

Q A log house. All right.

Now there is another building of some kind shown over here in this area. Did anybody live in that house?

Q Then up here is an object called "Jumping Bull Hall." Do you recognize that?

A Uh-huh.

Q Was there anybody that lived in that house?

A No.

Q Now I'm going to take you to the -- well, at that same period of time was there anybody else that lived in the total area of Jumping Bull's property that you had seen prior to the 26th of June, 1975?

A Just around there?

Q No. In the whole area, including down by, along the stream or in the woods or anywhere on the property.

{2648}

A Yeah. Up there (indicating).

Q When you say, "Yes, up there," to what area are you referring?

A Tent city.

Q Now there were some people then that lived in some tents, is that right?

A Yes.

Q Do you remember and could you tell the jury who it was that lived in the tents during that time?

A Give the name?

Q Yes. Could you tell the name or names of any persons that you recall.

A Leonard Peltier.

Q Would you describe him to the jury. Would you describe his appearance, as you recall.

MR. LOWE: Your Honor, we could not hear the response over here.

MR. HULTMAN: The reporter would read the response back.

(Whereupon, the following answer was read back: Answer: Leonard Peltier.)

MR. LOWE: Could the witness turn around if they're not actually using the chart, while they're not using it and turn around. It would help us hear.

MR. HULTMAN: I'm going to have to come back to the {2649} chart quickly. I'll do my best to do that, Your Honor.

{2650}

Q (By Mr. Hultman) And would you describe this person to us?

A He is just sitting right there.

Q Pardon?

A Sitting right there.

Q All right -- did counsel hear the response -- and would you indicate where you met --

MR. LOWE: (Interrupting) If that was an identification of Mr. Peltier, we will stipulate that she made an identification of Mr. Peltier. I didn't know what it was, that's all.

MR. HULTMAN: Let the record so show.

Q (By Mr. Hultman) Now, was there anybody else that lived in the tents that you recall?

A Bob Robideau.

Q All right, and would you for the jury --

THE COURT: (Interrupting) Did you get that response?

MR. TAIKEFF: Just barely. Of course, I know the answers, I am able to pick it out. I don't know whether every juror is hearing the answer.

THE COURT: Are you jurors able to hear the witness? All right, proceed.

Q (By Mr. Hultman) Would you describe Bob Robideau to the jury?

A No, I can't.

{2651}

Q All right. You knew him well enough to know his name, is that right?

A Yeah.

Q All right. Now, were there any others that lived in the tent area?

A Dino Butler, Neelock.

Q All right. Just take it slow for us.

Could you describe just in a general way Dino Butler?

A Medium tall is all.

Q You knew him well enough to know his name, is that right?

A Yes.

Q And you know him well enough that you would recognize him if you saw him today, is that right?

A Yeah.

Q All right. Is the same true with Mr. Robideau, with Bob Robideau?

A Um-hum.

Q Now, you mentioned then another name, and what was that, who was that?

A Neelock.

Q All right, and would you describe Neelock to us, do you know her by any other name?

A No.

Q All right. Would you describe Neelock to the jury, please; would you tell us about how old she was, for example?

{2652}

MR. TAIKEFF: Your Honor, perhaps I could assist. Would Mr. Hultman be interested in knowing if some of these people are in the courtroom?

MR. HULTMAN: No. I have no particular reason for anybody to stand up in the audience at this particular time.

Q (By Mr. Hultman) You knew her well enough to recognize her, is that right?

A Yes.

Q And you would know her well enough to recognize her today, is that right?

A Yes.

Q All right. Who else was living in the tent area?

A Jean.

Q Jean, and could you tell the jury anything about Jean, I mean, where she was from?

A No.

Q Or anything at all about her?

A No.

Q All right. Was she associated with anybody in particular?

A No.

Q For example, any of the men or anything?

A No.

Q All right. Do you recall any other persons that lived in the tent area, were there any other women that you recall?

{2653}

A Lynn.

Q All right. Lynn, do you know her by any other name or any additional name?

A No.

Q Was she -- do you relate her to anybody else in any way?

A No.

Q All right. Do you know anything about her or where she was from or what tribe she belonged to?

A No.

Q All right. Were there any other women that you recall that lived in the tent area?

A No.

Q All right. Now, were there any other men that you recall that lived in the tent area or boys or young men?

A Joseph Stuntz.

Q All right. Joseph Stuntz. Did you know Joseph Stuntz enough at that time to recognize him?

A Yeah.

Q All right. Do you know where he was from, what tribe he belonged to?

A No.

Q All right. Were there any other men?

A Norman Brown.

Q Norman Brown, do you remember anything about him, what tribe he possibly came from?

{2654}

A No.

Q All right. Do you remember any other young men or men who lived in the tent area?

A Norman Charles.

Q Norman Charles. There were two Normans then, is that right?

A Yes.

Q And did you know what tribe or where he came from?

A No.

Q All right. Would you know him again if you saw him, be able to recognize him?

A I don't know.

Q All right. Were there any other men or boys that you recognize that lived in the tent area?

A No.

Q Had you -- about how long a time had you seen, for what period of time had you seen these persons that you have just identified?

A How long?

Q Yes, how long had you known them or had you seen them, do you remember the first time that you saw them approximately?

A No.

Q Had you seen them, had you known them very long?

A No.

Q About how long had you known them?

{2655}

A About a weeks two weeks.

Q All right. Now, prior to -- where was it that you first saw them or met them, was it on the Jumping Bull property?

A Yes.

Q All right. Had you at any time to your knowledge before the week or two on the Jumping Bull property, had you ever seen to your knowledge any of these people before?

A What do you mean?

Q Had you ever seen them or known them before that time?

A No.

Q Now, I wish to take you to the morning of the 26th of June of 1975, and I want to ask you late in the morning were you in the Jumping Bull area somewhere that morning?

A Yes.

Q And would you tell the jury where it was that you were late in the morning at the time some things began to happen?

A Right there (indicating), grandma and grandpa's house.

Q All right. What were you doing?

A I washing dishes.

Q All right. What, if anything, happened that came to your attention, did you have an occasion to look out your window at any time?

A No.

Q All right. What was it that came to your attention that morning for the first time?

{2656}

A Well, we heard something, firecracker or something.

Q All right. Where was it that you heard something like firecrackers?

A I was in the house.

Q All right. Do you recall where the sound came from in any way, what general direction?

A No.

Q All right. What, if anything, then did you do?

A Well, my husband ran out. He heard the sound too.

Q Was he in the house with you?

A Yes.

Q All right, and what, if anything, did you do next?

A Well, he told me to go see. The kids were playing outside, so I went outside.

Q All right, and what did you do next?

A I looked over and I seen them two FBI cars standing there.

Q All right, and where was it that you saw the two FBI cars standing?

A Down below the house.

Q All right. Could you on the map here show the jury where it was approximately that you saw the two FBI cars?

A (Examining) About right here (indicating).

MR. HULTMAN: Let the record show that she has identified a point that is between the areas of where two objects are located and along the road or trail that is {2657} indicated on Government's Exhibit 71.

Q (By Mr. Hultman) Now, you indicated in response to my question just in general that you saw, when I asked you what, if anything, did you see next, you responded "two FBI cars", is that right?

A Yes.

Q Now, had you seen those cars at some time earlier that morning?

A No.

Q You had not seen those cars at any time?

A No.

Q Earlier that morning?

A No.

Q How is that you recognized them as FBI cars?

A Because nobody has new cars around there.

Q All right. Is there anything else about them that led you to the conclusion they were FBI cars?

A Aerials.

Q Aerials?

A Yes.

Q And is that a conclusion then you drew at that time, that they were FBI cars, is that right, for the reasons you have stated?

A Yes.

Q Was there any other reasons that caused you to conclude {2658} at that time that they were FBI cars?

A Nobody has cars like that.

Q All right. Is that a general conclusion in the area, that new cars with aerials of that kind are FBI cars?

A Yes.

MR. LOWE: Your Honor, counsel is getting awfully leading. I would ask the witness to be asked interrogatory questions. Objection.

MR. HULTMAN: I think, your Honor, this witness, I think by her demeanor, is such that I think it is difficult for counsel and he ought to be given a little latitude. I don't think I have been leading. It is the first question in any way a response to an answer she has already given, but I will withdraw the question.

MR. LOWE: The witness may be nervous. She is answering carefully. She is trying to answer directly. She has not shown an inability to answer, and I will ask that counsel not ask leading questions.

MR. HULTMAN: I will do my best.

THE COURT: Very well.

Q (By Mr. Hultman) When you came out of the house, did you see or observe anything else other than the two FBI cars?

A No.

Q Did you see any people at any time?

A No.

{2659}

Q What, if anything, did you do next?

A Well, after I see them two cars down there, I ran back in and told my husband.

Q All right, and what, if anything, did you do next?

A I grabbed my kids and ran.

Q Now, what, if anything, then did you see when -- if anything, when you left the house?

A Nothing.

Q Did you see any persons at all?

A No.

Q Did you hear any firing?

A I don't remember.

MR. LOWE: I didn't hear the response if there was a response.

THE COURT: The reporter will read the response.

(Answer was read by the reporter.)

Q (By Mr. Hultman) Do you recall having previously testified at a Grand Jury proceeding under oath and having been asked similar question?

A Yes.

MR. LOWE: Your Honor, could the witness face this way when she is not actually directing her attention to Government's Exhibit 71? We could hear and perhaps the jury could hear then.

Q (By Mr. Hultman) Did you respond at that time with {2660} reference to a similar question, I am asking you now?

A Would you say that again?

Q Did you give some answers at another time under oath just in response to a general question as to whether or not you had seen any persons at this time or heard anything, do you remember giving some answers at another time?

A In the Grand Jury?

Q Yes.

A Yes.

Q And do you recall what your testimony was at that time?

A Seen three persons.

Q All right, and who was it that you saw?

A Joseph Stuntz.

Q All right, and where was it that you saw Joseph Stuntz?

A By the wood pile.

Q All right, and would you point out to the jury here where it was that you saw Joseph Stuntz -- you referred to a wood pile.

Would you point out to the jury as best you can where it was that you saw Joseph Stuntz?

A (Indicating).

MR. HULTMAN: All right. Let the record show that she is pointing out an area which is between the white house and the green house and to the west of the green house and on the edge of what has been marked on {2661} Government's Exhibit 71 as the crest of the plateau, a line which runs in that general area.

Q (By Mr. Hultman) Now, what, if anything, was he doing at the time you saw him?

A He was just laying there,

Q All right, and did he have a weapon of any kind?

A I don't know.

Q Do you recall at any time in the past, under oath in response to general questions of the kind I am asking you now, recall at that time whether or not he had any weapon or not?

A I don't remember.

Q You don't remember, is that right?

A No.

Q Now, if you did on that occasion, would your memory have been better then than it is today?

A Yes.

Q All right. Would you tell the jury what Mr. Stuntz was doing?

MR. LOWE: I am sorry. I could not hear the response. If counsel will have the witness turn around when she is not at the blackboard, we might be able to hear this.

THE COURT: The reporter will read the answer.

(Answer was read by the reporter.)

Q (By Mr. Hultman) What was Mr. Stuntz doing when you saw him, and when was it that you saw him, where were you when you {2662} saw him?

A I was running across the field.

Q All right. You were running across the field, you say, is that right?

A Um-hum, yes.

Q All right, and what was he doing at the time you saw him?

A He was just laying there.

Q All right. Did you see anybody else?

MR. LOWE: Excuse me, your Honor, it was not audible.

MR. HULTMAN: Counsel, could you come around here?

MR. LOWE: No. Counsel, I have got a table, and I am writing on it. You are required to ask the witness in such a way we can all hear. I don't mind the witness turning when need be, but I would like to hear the response.

MR. HULTMAN: Would the reporter read back the response?

(Answer was read by the reporter.)

MR. LOWE: Thank you.

Q (By Mr. Hultman) Who else did you see?

A Norman Charles.

Q And where was Norman Charles when you saw him?

A He was with Joe.

Q Pardon?

A Laying with Joe.

{2663}

Q He was laying with Joe. All right, was that at the wood pile?

A Yes.

Q And at the point that you previously pointed out, is that right?

A Yes.

Q Who else did you see?

A Robert, Bob Robideau.

Q And where was it that you saw him?

A By our house.

Q All right. Would you point out on Government's Exhibit 71, where is it that you saw Bob?

A (Indicating) Right there.

Q All right. Now, was that a point between the green house and an object that looks like an automobile, is that where it was?

A Yes.

Q All right. What was he doing?

A He was standing there.

Q And was there anything you remember about him at that time?

MR. LOWE: If she is finished with the chart, can she please turn around? Thank you.

Q (By Mr. Hultman) Do you remember anything about his appearance at that time?

A He had a ski mask on.

{2664}

Q And you had seen him before, is that right?

A Yes.

MR. HULTMAN: All right.

MR. LOWE: Excuse me. Before that, I object to the question as too vague.

Q (By Mr. Hultman) Well, it is obvious if you had seen him before that time, that occasion, that moment, is that right?

A That morning?

Q That moment that you are just testifying about, you had seen him on earlier occasions, had you not -- in your earlier testimony you said that you had known a person by this name during the general period of a couple of weeks, is that right?

A Oh, yes.

Q All right. So it is somebody you had seen before, that's all I am asking -- is it?

A Yes.

Q All right. Now, did he have any weapon?

A Yeah, he did.

Q All right. Would you describe it to the jury?

A I don't know.

Q All right. Just tell us in general terms what it looked like.

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

Q (Interrupting) You know the difference, Angie, between a small handgun, a pistol, and a gun that's shoulder fired, {2665} just in size?

A I think it s a big gun.

{2666}

Q All right. Would it be one that would be like this than like this (indicating)? Is that a fair conclusion?

A Yes.

Q All right. Now, where, describe to the jury where the ski mask was and where it was on him at that time.

A It was on his face.

Q All right. It was pulled down over his face; is that correct?

A Yes.

Q Now, you mentioned Norman Charles, and I don't know whether or not I asked you, did he have a gun when he was with Joe?

A I don't think so.

Q All right. Now, what if, did you hear any firing of any kind?

A Where about?

Q I'm asking you to tell the jury where it was, if you heard any firing.

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

Q You don't remember at this time, is that --

A Yes.

Q All right. Do you remember at any time being asked a similar question and giving a response concerning hearing firing in the vicinity of the trees?

A No.

Q What other object did you see if any during the time that {2667} we're talking about? Did you see any other automobiles?

A We seen a red and white van.

Q All right. And where was it, would you point out on the map where it was you saw a red and white van.

A Right here (indicating).

Q All right. Is that in a general area where on the map now there is sort of a diamond in the road and a letter "P"? Is that the general area you're pointing to?

MR. LOWE: Your Honor, I think Mr. Hultman misspoke. It's not a diamond it's a "Y".

MR. HULTMAN: Well, Counsel, the object drawn, the "Y" constitutes a diamond. Now, if you want to call it a "Y" I'll be delighted to call it a "Y".

Q (By Mr. Hultman) Did you just now point at a point which is indicated by a "Y" in the road and thus a diamond as represented in the center and the letter "P"? Is that where you just now pointed, right here (indicating)?

A Yes.

Q All right. Had you seen that car before? That van, red and white van before?

A No.

Q Had you seen it on any other day prior to the time you're now testifying to?

A No.

Q Did you know whose car it was?

{2668}

A Used to belong to Sam Loud Hawk.

Q And who is "Sam Loud Hawk"?

A What do you mean "Who is Sam Loud Hawk"?

Q Well, do you know him by any other name?

A No.

Q Do you recall, have you ever in response to a similar question under oath, remember responding who this person is by another name?

A No.

Q Is it anybody in the courtroom here?

A No.

Q Is anybody in the courtroom here to your knowledge or from your previous testimony, you've indicated that you knew that had that car?

A Yes.

Q Who was it?

A Sam Loud Hawk.

Q All right. But anybody else by any other name that you know?

A No.

MR. LOWE: Your Honor, can we go to the sidebar, please?

THE COURT: You may.

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

{2669}

MR. HULTMAN: Your Honor? I'm trying to be just as fair as I can. And I will go the Grand Jury testimony specifically --

MR. LOWE: Keep your voice down.

MR. HULTMAN: -- if I have to, but the Grand Jury testimony is that she specifically --

MR. LOWE: I must object to him speaking so loudly.

MR. SIKMA: Oh come on, John, we can hear you clear across the courtroom.

MR. HULTMAN: She specifically said Leonard, and I've been trying in a way as fair and as honest as possible to have her elicit her testimony without going back and having to use the specific words in the testimony from the previous Grand Jury.

MR. TAIKEFF: I understand that I think in doing it or attempting to do what you just described you may have left the impression whether there was any one in the audience about whom she had previously testified was Sam Loud Hawk. It left the impression in my mind, being as objective as I could under the circumstances, and it may have been very well left in the mind of jury. She previously testified Leonard and Sam Loud Hawk are the same person. She has never given the testimony because in fact they are not the same person. And all I think we want to do is make sure that you clarify that in some way, either through the witness or making a {2670} statement to the Court in the presence of the jury, that it is not your intention to suggest that she ever testified previously that the defendant was known by the name of Sam Loud Hawk.

MR. LOWE: Do you have a page in the Grand Jury transcript that you are referring to?

MR. HULTMAN: I'm referring to exactly page 17 of the transcript.

THE COURT: If you're trying to impeach her on the answers that she has now given why are you not using the transcript?

MR. HULTMAN: Well, Your Honor, I've been trying not to get to that point unless we absolutely had to. I think maybe now we are at that point. But I -- as noticed. But when I come back and ask maybe a more clarifying question she will then respond and respond --

MR. LOWE: Let me just show, Your Honor, I think it's very significant that in the testimony the only thing she said is down here (indicating). There's no area in there where she says Leonard Peltier, or made an identification of Leonard Peltier because he was not in the Grand Jury. Now, there have already been discussions about Leonard Crow Dog and there may be other Leonards. All I am saying is that the Grand Jury testimony does not identify Sam Loud Hawk or the owner of the vehicle as Leonard Peltier, and any such {2671} representation would be inaccurate.

MR. HULTMAN: Your Honor, she then goes on to describe the person. But I think they call him Leonard, and then she goes on and describes Leonard as curly hair and on and on.

MR. LOWE: Well, I'm saying it is incorrect to say and refresh her memory whether she said Sam Loud Hawk was Leonard Peltier because she did not say that. That's why we asked to come up here.

MR. HULTMAN: I'll go to the transcript at this point, Your Honor.

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

Q (By Mr. Hultman) Angie, do you recall at another time under oath you being asked this question:

"Question: You previously, you mentioned previously red and white Chevy van. You pointed on the map where it was marked. Do you know who owned this car, this van?"

"Answer: Yeah."

"Question: Pardon?"

"Answer: He used to be a guy used to own it. His name is Sam Loud Hawk. But I think they call him Leonard. He fixed it up and he owned it."

"Question: Leonard?"

"Answer: Yes."

{2672} "Question: And then could you describe Leonard for me?

Do you remember those questions and those answers being previously given?

A Say that again once.

MR. HULTMAN: Would the reporter read back the, or I could read it back if it would be easier.

THE COURT: Reporter will read back the response.

(Previously quoted questions and answers read back: "Question: Angie, do you recall at another time under oath you being asked this question: "Question: You previously, you mentioned previously a red and white Chevy van. You pointed on the map where it was parked. Do you know who owned this car, this van? Answer: Yeah, Question: Pardon? Answer: He used to be a guy used to own it. His name is Sammy Loud Hawk. But I think they call him Leonard. He fixed it up and he owned it. Question: Leonard? Answer: Yeah. Question: And then could you describe Leonard for me?

"Do you remember those questions and those answers being previously given?")

A Yes.

Q (By Mr. Hultman) Who's the Leonard you are referring to?

A Leonard Peltier.

Q All right. Now, at the time we are talking about I want to ask you whether or not there were any people in the white house {2673} other than the people you have already described, that being your husband and your children. Was there anybody else in either the green house or the white house during the time we're talking about now?

A No.

Q Was there anybody in this house (indicating) that's noted or been referred to as the log cabin?

A No.

Q Were there any women and children in this house over here or men?

A No.

Q Were there any men, women or children in Jumping Bull Hall?

A No.

Q Were there any men, women or children in the house or residence that's located here and has been referred to earlier by you?

A Yes.

Q And who was there?

A Wanda Siers and her kids.

Q And was there anybody else besides Wanda Siers and her children there?

A No.

Q Now, beyond the people that you have just described, you and your husband and your children and Wanda Siers and her children, were there any other people that lived or stayed in {2674} any of these houses, in any of those houses at this time as you knew that morning?

A No.

Q Now, I'm going to direct your attention to, you indicated that you saw two FBI cars down here (indicating). Would you describe the two FBI cars for the jury, and would you describe them one at a time, please.

A One was brown and white. Tan, tan and white.

And the other one was dark green.

Q All right. And did you see any persons in the general vicinity of the two cars you described?

A One was in the green car.

Q All right. And would you describe to the jury where it was you saw the person in relationship to the green car

A He was in a green car.

Q All right. And did you see any other person?

A The other FBI.

Q And where was he?

A He was kneeling right beside his brown and white car.

Q All right. And do you remember anything else about the cars themselves?

A What do you mean?

Q Just anything in particular, do you recall that you may have observed about the two cars other than that they were cars?

A No.

{2675}

Q All right. Now, would you tell the jury if you can recall what was the general direction that either of the cars was pointed, by reference to where you were and where they were. Can you indicate what direction either of the cars was pointed if you recall?

A One was pointing towards that way (indicating).

Q Could you, here on the map, come down and show us the direction as you are now saying.

A Well, one was parked this way (indicating) and the other one was parked right beside it.

Q All right. There are two objects here right now. And let us assume for a moment that they are two cars. Were they pointed in the general directions that the two cars or objects that are there now at the present time?

A No.

Q Would you show us then, would you move them as best you recall and show us how they were pointing?

A (Indicating).

Q All right. Now, would you tell us as you looked, would you go back, would you tell us which car, which color was the car that was pointed towards you or in your general direction? Do you recall what that car looked like from your memory?

A That brown and white one.

Q The brown and white one, all right.

And so it was the other car then that was pointed, {2676} the green car in the other direction; is that right?

A Yes.

Q All right. Now, what if anything did you do next?

A What do you mean?

Q Well, I believe we were in the area and you said that you were leaving the general area, and as you left you saw a car, a red and white van parked here, right?

A Yes.

Q Now, did you see or view anything in that area?

A No.

Q Did you hear any firing of any kind going on anywhere?

A No.

Q From the time that you were outside of your house do you recall hearing or seeing any firing of any kind?

A When I came out of the house I seen one FBI He was kneeling. I heard one shot.

Q All right. And where did that shot come from if you know?

A The FBI.

Q Is this the only shot of any kind that you heard?

A I heard one and I heard some more, but I don't know how many.

Q All right. You heard one shot from the FBI. Do you recall how it is you know that the one shot came from where the FBI was?

A Because it sounded from there.

{2677}

Q All right. It sounded from there.

Did you see somebody at that very time?

A I seen the FBI kneeling by his car

Q And by which car was he kneeling, if you recall?

A By the brown and white.

Q The brown and white car; is that right?

A (No response.)

Q And where with relationship to the brown and white car was he kneeling?

{2678}

A About on the side.

Q And with relationship to the side, which side? Could you remember which side it was?

A The left side.

Q The left side.

Would that be the left side of the car itself, is that what you mean by the left side?

A On this side (indicating).

Q Would you point out on Government's Exhibit 71 which side. You have a car there. Would you point out which side on the map so we all understand.

A Over in here (indicating).

MR. HULTMAN: Let the record show --

Q (by Mr. Hultman) Do you remember any other firing? You say you heard some other shots. Do you recall where they came from?

A I don't remember.

Q Pardon?

A I don't remember.

Q Do you remember anyone else doing any firing during that time?

A No. Did you at this time or during this period of time see any other persons other than the ones that you have testified to up until now? Do you recall seeing any other person?

{2679}

A No.

Q Do you remember seeing any persons leave the area during the time that we're now talking about?

A No.

Q Do you remember seeing any other cars in the general area of Jumping Bull's other than the ones we've talked about up to this particular time?

A No.

Q Were there any junked cars parked anywhere in the area?

A Yeah.

Q And where were the junked cars parked?

A Below our house. O And would you take the pointer and point out to the jury where those junked cars below your house were located.

A Right here (indicating).

MR. HULTMAN: Let the record show she has indicated the spot where there is a road and previously been identified as junked cars.

Q (By Mr. Hultman) Do you remember anything about the junked cars?

A No.

Q You had seen them before, had you not?

A Yes.

Q And you were generally familiar with them, is that right?

A Yes.

{2680}

Q I'm going to show you what has been marked by the defendant as Defendant's Exhibit No. 93 and I want you to look at the defendant's exhibit, first to look at the vehicle that's represented there and also look at the area, the ground, the scene, the view that is in the background of this picture.

A It's right below the house.

Q You recognize it as being right below your house, is that right?

A Uh-huh.

Q Have you seen that car before?

A It was standing there for a long time.

Q It was standing there for a long time, is that right?

A Just a junked car.

Q One of the junked cars?

A Uh-huh.

Q Do you remember about when it was that that car was put into the area of the junked cars that you're now testifying to?

A I don't know.

Q It was before this time, was it not?

A It was parked there for a long time.

Q It had been there for a long time prior to this, is that right?

A Yes.

Q Do you know whose car that was before it was parked there {2681} and had been there a long time?

A No.

Q I want you to think real hard and tell the jury whether or not, had you ever seen that car anyplace other than as one of the junked cars there?

A No.

Q Was the scene that is portrayed in Defendant's Exhibit No. 93 the place in which you last saw the vehicle that is represented there, is that the last place that you saw it?

A Yes.

Q And it had been parked there for an extended period of time prior to the day we're talking about, is that right?

A Yes.

Q There is no doubt in your mind about that at all, is where, Angie?

A No.

Q Now in looking at Defendant's Exhibit 93, can you point out to the jury anything that's in the background of that picture that you recognize?

A Can't see anything.

Q Could you on the picture point out where it is that the green house is approximately located?

A Yeah. Right here (indicating).

Q Would you show the jury where it is approximately that the green house was located.

{2682}

A (Indicating.)

MR. HULTMAN: Let the record show that she is pointing to the point on the picture where the skyline and the ground come together and there is a fairly dark green area, is there not?

THE WITNESS: Uh-huh.

Q (By Mr. Hultman) And that's the point you were pointing at, is that right?

A Yes.

Q There's also some other junked cars in this picture, isn't there? You can see one on each side of this one, can't you?

A Uh-huh.

Q And that's the general scene, as you recall it, that you pointed out as being the area of the junked cars, is that right?

A Yes.

MR. HULTMAN: Your Honor, I don't know, is the Court going to take a brief recess at all this morning?

THE COURT: No.

MR. HULTMAN: Might I just take a moment, Your Honor. I'm trying to find a spot in the transcript and the pages are not numbered, that's why I'm having difficulty.

Q (By Mr. Hultman) I want to take you back where we were discussing the man that had the mask on. Do you remember we were talking, I asked you some questions about whether or not {2683} you saw any other person and we talked a little bit about that person?

A Yes.

Q Who was that?

A Bob.

Q Now I'm going to ask you whether or not under oath at a previous time you remember being asked this question --

MR. LOWE: Counsel, give a page number.

MR. HULTMAN: Page 12 of the transcript. I'm sorry, Counsel. Page 12.

Q (By Mr. Hultman) Your response was, "He had those stocking cap on with the little holes," and the question is, "Ski mask?" Answer: "A kind of, you know one of those on." Question: "It covers his face?" Answer: "Yes." Then this question. Do you remember this question being asked of you: "Was he firing at the FBI agents?" And then the answer: "Yes." Do you remember being asked that question and your answer?

A No. I don't remember saying that.

MR. LOWE: Your Honor, I'm sorry.

MR. HULTMAN: She doesn't remember having said it.

Q (By Mr. Hultman) At the time you were asked these questions and you answered these questions, you answered them truthfully and honestly at that time, did you not?

A But I don't, I don't, I never said that.

Q Now you understand, Angie, that you've said that today {2684} earlier you didn't recall, is that right?

A Yes.

Q Now all I'm trying to do is to go back and ask you whether or not you recall being asked this question and you giving an answer of that kind and you don't recall, that's what you have now said?

A Yes.

Q Is that right?

A Uh-huh.

Q And that's very honest and truthful. You're telling me the truth and the jury, are you not?

A Yes.

Q And it's true that you did your very best under oath previously to tell the truth, did you not?

A Yes. But I don't remember saying that.

Q And I'm not trying to say you did or you didn't.

Now at the time that you gave the answers at that time, that was a time which was in November of 1975 and the event itself was on the 26th of June, isn't that right? During the year 1975.

A Yes.

Q And would it be fair for me to conclude that the memory you had at that time in the year 1975 and what you may have responded in terms of any question, you would have had a better memory then than you have here at this time, is that a fair {2685} conclusion for me to draw?

A Yeah.

Q So that you're not saying that you didn't say this, you're saying you don't remember, is that what you're telling us?

A No. I never said that.

Q I'll ask you another question on the same page later. Question: "You are sure on the gentleman wearing the ski mask? He was firing at the agents?" Do you remember a question of that kind and your answer at the top of page 13 of the same transcript: "Yes." Do you remember that second question being asked and your answer at that time?

A I don't remember.

Q Then you were asked a further question, question: "Now was the man who was standing with the ski mask and firing at the agents, do you know his name?" And your answer: "I think they call him Bob, I think."

A Yeah.

Q Now the man with the ski mask was Bob, there isn't any question in your mind about that, is there?

A No.

Q Does all of this in any way refresh your recollection as to whether or not anybody else was firing at this particular time on that day?

A No.

Q Now you testified earlier that some people lived in the {2686} white house but later there was no one there, isn't that right? You testified that, I believe it's the grandparents, the Jumping Bulls that lived in the white house during this period of time?

A Yes.

Q You also testified they weren't here on the 26th when these events took place, is that right?

A No.

Q Do you know where they were?

A They went to town.

Q And that's why you know they weren't there during this period, is that right?

A Yes.

Q Now was there anybody else who may have lived in the area anywhere that was gone that you knew were gone on the 26th?

A No.

Q Now we've covered some automobiles, or the word I've used, "an automobile." Were there any other vehicles or trucks or cars or pickups or vans, any other vehicles of any kind that you remember that morning during the time that I've been asking you questions about other than the ones that you've testified and mentioned to the jury?

A No. I never seen no cars.

Q I just want to make sure now so let me go over them with {2687} you. You said you saw two agents' cars down here, right?

A Yes.

Q And you indicated that you saw a red and white van --

A Yes.

Q --at this point, is that right?

A Yes.

Q And that was the red and white van you testified to here today?

A Yes.

Q That you had seen or knew was Leonard Peltier, isn't that right?

A Yes.

Q Now you said there was some abandoned junked cars down here.

A Yes.

Q Is that right? Including one that you've identified here.

Do you remember any other vehicles of any kind that were in the area? Were there any up in this area at all that you recall at all?

A The station wagon and the green car.

Q All right.

You recall a station wagon and a green car. Tell the jury about a station wagon and a green car.

A It was just an old junked station wagon.

Q An old junked station wagon. Had it been there for some time?

{2688}

A Yeah. For a long time.

Q Would you point out to the jury where the old junked station wagon was at that time that had been there for quite sometime.

A (Indicating.)

Q All right.

And then you mentioned a green car, and where was the green car?

A Right here (indicating).

MR. HULTMAN: Let the record show that the junked car she referred to is generally to the south of the green house and a second object, a car which is shown on Government's Exhibit 71 which is to the east and south of the green house.

Q (By Mr. Hultman) Now tell us about that particular car.

A It's just an old junked car, too.

Q That's an old junked car, too. Had it been sitting there for quite some time, too?

A Yes.

Q Now with reference to those cars, either one of them or both of them, I want to ask you, do you recall anyone in the vicinity of those cars doing any firing?

A No.

{2689}

Q Do you remember any more firing of any kind other than what you have testified to the jury?

A No.

Q Now, where did you go after you left the green house, white house area, would you point out on Government's Exhibit 71 where it was that you went, and could you use the pointer again and maybe start on Government's Exhibit -- first, the house that you were in, the general area that you were in, and then trace the direction, the general direction that you went?

A Right here (indicating).

Q Could you go down and maybe it would be a little easier?

A Me and my husband and kids ran across the field and went down to the little road that goes to the highway.

Q And then you went to the highway, is that right?

A Yes.

Q All right, fine, thank you.

Now, about how long a period of time was it from the time you first heard what you have testified to here as sounding like firecrackers, from that time until you left, about how long a period of time were you there that these events that you have testified to took place?

A About five or ten minutes.

Q All right --

MR. TAIKEFF: (Interrupting) Could I have that answer, please?

{2690}

MR. HULTMAN: Five or ten minutes.

Q (By Mr. Hultman) And where -- did you see anybody then when you got to Highway 18?

A Yeah. There was a lot of cop cars going by.

Q All right. Did you talk to any of those people at all?

A No.

Q Was there any reason why you didn't talk to any of them on that day?

A Because they didn't stop.

Q Just didn't stop, all right.

Now, at the time you left, Angie, were there any other people back here (indicating), as far as you know, that you had seen other than the persons that you have testified to, were there any other persons?

A No.

MR. LOWE: I object to the form of the question, your Honor, as to the witness' previous testimony. The question is leading. I think a simple interrogatory question should be asked.

MR. HULTMAN: I asked a general question, if there were any other people she saw.

THE COURT: I am going to overrule the objection. There is a certain amount of leading that will be allowed on this witness.

Q (By Mr. Hultman) Were there any women and children in the {2691} area?

A No.

Q That you know of?

A No.

MR. LOWE: Your Honor, may we identify the area either by reference to something or by reference to a previous question or something? There has already been testimony that at least Angie and -- Mrs. Long Visitor and her children were in the white house and some in the Siers' house.

THE COURT: You may clarify your question.

MR. HULTMAN: That's the reason for my question.

Q (By Mr. Hultman) Did you see -- you said earlier that Wanda Siers and her children were in the house in which they live in, is that right?

A Yes.

Q And did you see them leave?

A I don't know. I didn't even look over there.

Q You didn't see anybody leave at the same time you did, or approximately the same time?

A No, I didn't see anybody.

Q Do you remember ever having been asked that question on any previous occasion and --

A (Interrupting) No.

Q When was it that you saw Wanda Siers and her children {2692} that day, where was it that you saw them and when?

A They were home.

Q That's what I am asking you. How do you know they were home?

A Because the door was open.

Q Did you see them at any time during the time that we are talking about here?

A No.

Q Did you see them that morning at any time?

A No.

Q So you don't know whether they were there or not that morning?

A I don't know. When they leave, they close the door. When they are home, their door is open.

Q Angie, I am just asking you whether or not that morning you saw anything other than their door being opened or closed.

A No.

Q All right. When you left in a hurry, as you left that morning, were you concerned about whether your door was open or closed?

A We closed it before we left.

MR. HULTMAN: I see.

I have no further questions, your Honor.

MR. LOWE: May we approach the bench, your Honor?

THE COURT: You may.

{2693}

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

MR. LOWE: As I think your Honor realizes from previous proceedings that we have been through, that there have been a lot of interactions involving this witness in this court and otherwise. She is obviously quite upset.

The issues of the Grand Jury testimony have come up here today, and how to deal with it will create some very significant tactical questions for the defense; and frankly, as to the types of questions that we would ask in this emotional state, I think it would be very difficult to get meaningful responses.

I would suggest and would urgently request your Honor to make an exception today and break away for lunch so that she can regain her composure and also to enable us some consultation so we may be able to tailor our cross examination -- to avoid upsetting her further -- perhaps on the basis of what her direct testimony has been.

She is sitting there crying and sobbing, and that is no mental state for us to have such an important witness on cross examination. It is shortly after noon already; and while this would be earlier than your Honor's practice, I think under these circumstances, with such a critical witness, that it would warrant it; and we would {2694} respectfully ask that we break for lunch now and let us start cross examination after lunch.

MR. HULTMAN: Your Honor, I strongly resist. Every time during this trial requests have been granted. They have been accommodated. I think it is only fair that counsel proceed and will not delay this trial. She is in a state to answer and respond to the questions. She has on direct examination displayed the same emotion.

I submit that we will get a more fair and more honest response from this witness in the courtroom now than we would at a time, at a later time when this witness again, your Honor, is kept, as she has been from the very beginning as the Court knows the record on this without counsel's stating it, placed in a posture where she has to face the very people that are here in this room. That's what is going to happen again the minute she walks off that witness stand, and it is for these reasons that I strongly resist that we take any recess other than at the normal time, and that counsel proceed with his questioning.

MR. LOWE: May I have just a moment to consult?

(Counsel confer.)

MR. LOWE: Your Honor, I understand the concern that Mr. Hultman expresses, and I take no exception with him holding that concern. That is not in any way contradictory of the concern that I express, and in order to meet his {2695} concern we would ask that this witness be simply designated a material witness, if you want to, or whatever the Court wants to do, and have her have the lunch hour under the supervision of the Marshal's Service, if necessary, but to give her the time to regain her composure. She is obviously upset. She is sobbing. Let her have lunch in the custody of the Marshals.

However, if you want to do it, the Court could rule that nobody shall have any contact with her over the lunch hour, not to have conferences with her or allow anybody to interfere. I think it is quite reasonable rather than to have her sitting here sobbing hysterically --

THE COURT: (Interrupting) The record may show that she is not sobbing hysterically. You are exaggerating. She is emotionally upset obviously, but not to the extent you have described.

MR. LOWE: She is sitting over there crying.

THE COURT: You may proceed with your examination, and if it appears that she is in no condition to answer, then I will consider your request.

MR. LOWE: Then, your Honor, we ask for a brief moment to be able to confer because there are some very significant tactical questions we have to deal with prior to going to cross examination, as to which areas to go, particularly of this Grand Jury testimony.

{2696}

THE COURT: You have had this Grand Jury testimony -- I do not know how long?

MR. HULTMAN: An extended time.

MR. LOWE: The point is: It was used on direct, and we must decide how we should respond to it.

THE COURT: You are capable of responding. You may proceed.

MR. LOWE: All right, sir.

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

CROSS EXAMINATION

By MR. LOWE:

Q Mrs. Long Visitor, can you hear me from there?

A Yes, sir.

Q I am going to ask you if you could speak up so that we can all hear what your answers are. Take whatever time you need, but when you do make your answer, if you could speak loud enough so we can all hear, it will help to get your testimony before the jury.

I believe you indicated that you lived in the green house which you identified on Government's Exhibit 71, and am I correct in saying that you have lived there for seven years?

A Yes.

Q Was it actually in that house or just in the cluster of houses that you lived for seven years?

{2697}

A Well, I stayed there seven years. I haven't lived in that house for seven years.

MR. LOWE: I am sorry, your Honor. Could you speak a little louder? Try and talk into the microphone. It will magnify your voice a little, and I can hear.

Q (By Mr. Lowe) Would you tell me again whether the seven years was all in that house or just in the Jumping Bull area?

A Just in the Jumping Bull area.

Q Jumping Bull area, and during the seven years that you lived there, were there times when you observed FBI Agents on the Reservation?

A No.

Q Was that the first time that you ever saw what you believed to be FBI Agents on the Reservation?

A Yes.

Q Are you familiar with the BIA Police who are on the Reservation?

A Yes.

Q If I use the word or the term "goons", do you know what I mean, or do you have an understanding in your mind what the word, "goons", refers to?

A Say that again.

Q If I talk about goons on the reservation, do you know what I am talking about?

A Yes.

{2698}

Q Did the goons -- did you see goons from time to time or people who were pointed out to be goons or people who you believed to be goons?

A Say that again.

Q All right. Do you know any people on the Reservation that you believe are goons?

A Yes.

Q Do some of the goons have new cars?

A Yeah.

Q I am sorry?

A Yes.

Q Do some of the goons who have new cars have aerials on their cars?

A Yes.

MR. HULTMAN: Your Honor, I would object at this time. First of all, it is beyond direct examination, but I am objecting not really primarily for that reason, but for the reasons that there has been no foundation showing on the basis for this question as to specifically in time and place what new cars it is, where and who, you know, who is it that is this "goon", so I am objecting for that reason, indefinite foundation of any kind.

MR. LOWE: Your Honor, this witness has testified on questions from the Government, that she sighted these cars as FBI agents. They had new cars and had aerials. {2699} I think it is proper for me to ask if there were other cars that she saw that had aerials, many new cars, that didn't belong to FBI Agents. That's perfectly proper cross examination.

THE COURT: You may continue.

MR. LOWE: May the reporter read back the last question and answer? I didn't hear the answer. I think that would be the simplest way to deal with it.

(Question and answer were read by the reporter.)

Q (By Mr. Lowe) Now, you answered Mr. Hultman, I believe he asked you a question about the time of the shooting and who were in different houses around the Jumping Bull Area; and I would like to ask you, first of all, if you knew a person named Wilford Draper?

A No.

Q Did you know anybody named "Wish"?

A Yes.

Q Was Wish living in the Jumping Bull area?

A Yes.

Q I am sorry.

A Yes.

Q Do you know where he was living?

A Down at Tent City.

Q Isn't it true, Mrs. Long Visitor, that from time to time people stay in different houses in the Jumping Bull area who {2700} were among the different people you have talked about here this morning?

A What do you mean by that?

Q Maybe I will have to be a little more direct.

A Say it again.

MR. LOWE: Can I have a moment, your Honor?

THE COURT: Very well.

(Counsel confer.)

Q (By Mr. Lowe) Isn't it true that some of the people who lived or who you have described as living in Tent City actually stayed in one or more of the houses up near where you lived from time to time?

A No.

{2701}

Q Now, you said that Leonard Peltier lived in the tent area?

A Yes.

Q And I'll ask you whether Leonard Peltier ever lived in the log house or stayed in the log house, and I don't mean lived there necessarily, but stayed overnight in the log house?

A Yes.

Q Pardon?

A Yes.

Q I'm sorry, I didn't hear it.

A Yes.

Q Yes. And in fact he stayed there on more than one night, didn't he?

A Yes.

Q Do you know who Jean Day is?

A Yes.

Q Will you tell the jury who Jean Day is.

A Jean Day is Leonard's girl friend.

MR. LOWE: May Mr. Taikeff approach the witness with a photograph, Your Honor?

THE COURT: He may.

MR. TAIKEFF: 158.

Q (By Mr. Lowe) Mrs. Long Visitor, in front of you we have just put a piece of paper that has a copy of a photograph, and {2702} it's identified as Defendant's Exhibit 158. And I will ask you if that is a picture of anybody you know?

MR. HULTMAN: Could I take a look at it, Counsel?

MR. TAIKEFF: I'll show it.

A No.

MR. HULTMAN: She's responded.

MR. LOWE: I'm going to ask additional questions. If you want to see it you'd better look at it now because I'm going to ask her additional questions.

(Mr. Hultman viewing Defendant's Exhibit 158.)

Q (By Mr. Lowe) You indicated that that is not a picture of anyone you know. In order to be specific is that a picture of Jean Day?

A No.

Q Do you know who Myrtle Poor Bear is?

MR. HULTMAN: Well, now if it please Your Honor, I'm going to object. Clearly this witness has asked and answered this question emphatically. Now, counsel is trying to bring particular names into the record after it's been clearly established, and I say it's improper.

She has answered to the very best of her ability and responded to a specific picture and to a specific question. And I object now, it being repetitious

THE COURT: Objection is sustained.

The witness has testified that it's not a picture of {2703} anyone she knows.

MR. LOWE: I think it's important, Your Honor, to establish -- I think she answered before there was an objection that it was not a picture of Jean Day, and that's the only other question I'm going to ask about it.

THE COURT: She also stated in response to your question that that is not a picture of anyone she knows.

Q (By Mr. Lowe) Do you know a person named Myrtle Poor Bear

A No.

Q To your knowledge has anybody named Myrtle Poor Bear ever been on the Jumping Bull Reservation, excuse me, the Jumping Bull area during the seven years you lived there?

A No.

Q You talked about a person who had a ski mask on, I believe who you observed?

A Yes.

Q And I believe in response to Mr. Hultman's questions he asked, you said that he had a long weapon, or a rifle instead of a short weapon or a handgun; is that correct?

A Yes.

Q I show you what has been marked as Government Exhibit 34-AA and I ask you if this in any way resembles the gun that you saw this person using?

A No.

Q Mr. Hultman read to you certain portions of a transcript {2704} with regard to this person that you saw wearing a ski mask. He only read certain portions of it and I want to read additional portions to you and see if you also stated this information at that time.

"Question: --

MR. LOWE: And, Mr. Hultman, I'm on page 13 at the top if you'd like to follow. I'll try and identify pages and line numbers for you. Line 2.

"Question: Now, was the man who was standing with the ski mask and firing at the agents, do you know his name?"

"Answer: I think they call him Bob I think."

"Question: Bob?"

"Answer: Yeah."

"Question: Do you know his last name?"

"Answer: No."

Q (By Mr. Lowe) Now, do you remember whether on the date you were in the Grand Jury you knew his last name, or was that correct that you did not know at that time?

A I didn't know his last name.

Q Have you found out since that time that a person named Bob Robideau was arrested and involved in this case in some way?

A Yes.

Q Is that where you found the name Robideau and is that the source of your saying that the last name of that person was Bob Robideau?

{2705}

A Yes.

Q Now, on page 14, line 15.

"Question: Had you seen this Bob with the ski mask before?"

"Answer: No, I didn't see him. I don't know how he looks. I know he is kind of slim and he had a vest on."

"Question: He had a vest and a ski mask?"

"Answer: Yes."

"Question: What else can you tell me about his physical description, what he looked like?"

"Answer: He had long hair."

"Question: Long hair?"

"Answer: Yeah. That's all I can say."

"Question: About how tall?"

"Answer: Oh, about 5-5, 5-6 I would say. I don't know how tall that is."

"Question: If I can help you on height I will stand up. I am 5-9 1/2. Does that help you to remember the height of this Bob with the ski mask?"

"Answer: I think about that tall."

"Question: As tall as me?"

"Answer: Yes."

"Question: Taller than 5-6 then?"

"Answer: Yeah, I would say."

"Question: What color was the ski mask?"

{2706}

"Answer: Black, blue, dark blue."

"Question: Dark blue?"

"Answer: Yeah. I will say that kind of dark."

"Question:

A solid color?"

"Answer: Yeah."

"Question: What color was the vest?"

"Answer: Brown."

Q (By Mr. Lowe) Do you recall being asked those questions and give those answers, or does that help to refresh your recollection?

A Yes.

Q I'm sorry?

A Yeah.

Q You are saying "yes"?

A Yes.

MR. LOWE: Now, on page 23, Mr. Hultman, I'm going to ask the next question.

Referring to line 6.

"Question: I don't believe I asked you to give a weight for Bob, the individual wearing the ski mask. Could you give a weight for him?"

"Answer: About, anyway he is a kind of light, 120."

"Question: Do you know his approximate age?"

"Answer: No, I don't. About, he is, I think he is around 20, 21 I will say."

{2707}

"Question: What hair color?"

"Answer: Light brown I will say."

Q (By Mr. Lowe) Does that refresh your recollection, or do you remember giving those questions and answers at that time?

A Yes.

Q All right. Now, let me ask you something about the Grand Jury testimony. When you gave that testimony where were you located? What town, if you will tell us.

A Rapid City.

Q Rapid City?

A Um-hum.

Q And in what building were you in?

A Federal building.

Q And do you remember if there's a particular kind of room that, was it a courtroom, small office, or what kind of a room was it?

A Grand Jury room.

Q And who was in the room while you were being questioned? I don't mean by name necessarily, but that, just types of people. If you know the names, give the names.

A There were a lot of people there.

Q First of all were there grand jurors in there?

A Yes.

Q Do you remember how many, about just an estimate? Was it {2708} just -- give a rough estimate of how many there were of grand jurors.

A Probably nineteen.

Q Pardon?

A About nineteen.

Q Nine to ten, is that what you are saying?

A Nineteen.

Q Nineteen. Thank you.

Was there a court reporter?

A Yes.

Q How about United States Attorneys or Assistant United States Attorneys or other Government attorneys? Were there any of them in the room?

A I can't remember who was all there.

Q I ask you if you can remember anybody in particular that you see in the courtroom here who was in the grand jury room with you?

A That man there (indicating). He's the --

Q Which one are you referring to? What color suit does he have on?

MR. HULTMAN: Let the record show that the transcript, it shows counsel Mr. Sikma. If you just would have read his name you would have had the response.

MR. LOWE: I'm trying to be fair and not lead the witness in suggesting answers to --

{2709}

MR. HULTMAN: We would stipulate that that is the name that does appear in the transcript along with other counsel.

MR. LOWE: Will you stipulate that Mr. Sikma and Mr. Cutler who were Assistant United States Attorneys who were present and interrogating Mrs. Long Visitor in front of the grand jury?

MR. HULTMAN: One or the other were asking questions, that's correct.

MR. LOWE: May I ask the witness whether Mr. Clayton was also present?

MR. HULTMAN: That I do not know. I haven't, I didn't see his name in the transcript. You read it.

MR. LOWE: Mr. Sikma can probably solve it for us and tell us.

MR. SIKMA: Your Honor, Mr. Clayton was not there. Mr. Cutler and myself were in the grand jury room.

MR. LOWE: Thank you.

MR. HULTMAN: As stated in the transcript which you have in front of you.

Q (By Mr. Lowe) Mrs. Long Visitor, were you permitted to have an attorney in the room with you while you were being questioned?

MR. HULTMAN: Now, if it please the Court I object and I request to approach the bench.

{2710}

THE COURT: You may approach the bench.

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

MR. HULTMAN: Your Honor, I think it's wholly improper for the question first of all to be asked. He's now prejudiced the jury to something that now is within the jury's mind that there's something improper that took place as far as those proceedings.

This counsel knows one, that there's no counsel present in the grand jury room. Clear prejudice to this jury by making a statement that he made as a matter of law. Secondly, he also knows that this particular witness was a witness who refused to testify in that grand jury. That she had counsel all through the proceedings that took place. Mr. Tilsen was there, all kinds of proceedings took place. She had counsel available to do anything any time that she needed, and I object strenuously on the record, Your Honor, that this conduct and this question was totally improper. And I'd like the jury to be so admonished.

MR. LOWE: I have no objection to either the Court or Mr. Hultman or myself, I'll bring it out, bring out the facts of whatever counsel might have been available outside of the courtroom of the grand jury room. It's entirely proper in showing the pressure on this witness and to cast doubt on credibility of what she may have said there. Her state of {2711} mind, whether she was being, whether she was in a state of terror or whether she was -- what the state was to whether she had counsel present. There's nothing improper, and I don't suggest anything improper by the question.

I don't mind the Court instructing the Grand Jury that that's a normal procedure. I'm only seeking properly to show who was present and to show what assistance if any she had, and what state of mind she had. Now, I'm not trying to cast any questions about it being improper, and I don't think that can be derived from my question,

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

THE COURT: Counsel have indicated that when this witness appeared before the grand jury she was advised by an attorney outside of the presence of the grand jury and was represented by an attorney. Jury is advised that under the procedures according to law a witness before a grand jury is not entitled to an attorney in the grand jury proceedings itself.

MR. LOWE: Thank you.

THE COURT: The court is in recess until 1:30.

(Recess taken.)

{2712}

AFTERNOON SESSION

April 1, 1977

Whereupon, the following proceedings were had and entered of record on Friday afternoon, April 1, 1977, at 1:30 o'clock, P.M., the defendant being present in person:

THE COURT: The jury may be brought in.

You may proceed.

You're short a witness?

MR. LOWE: We are short a witness or have a short witness.

THE COURT: Counsel approach the bench.

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

THE COURT: I'm informed the witness is still having lunch at the Soup 'n Such.

MR. HULTMAN: I can't verify anything, Your Honor, have no knowledge.

MR. TAIKEFF: Neither do we. We stayed in our office throughout the lunch period.

MR. CROOKS: We did see her over there but she was there when we left.

MR. LOWE: Did anybody think to tell the witness what time to be back?

MR. CROOKS: I'm not sure.

MR. TAIKEFF: She may have heard the Court say "in {2713} recess. I don't think she comprehends everything being said to her.

MR. CROOKS: Here she is now.

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

CROSS-EXAMINATION CONTINUED

BY MR. LOWE:

Q Mrs. Long Visitor, I wonder if you would try to keep as close to the microphone as possible to make it easier for all of us to hear, then you would not have to strain your voice.

Are you a little bit nervous on the witness stand today, Mrs. Long Visitor?

A Yes.

Q We'll try and ask the questions so that you can understand them the first time. If you don't understand, just ask and I'll speak slower or I'll state the question again.

You stated that on June 26 on the day that the shooting took place you were in your grandparents' house which is called the white house, is that correct?

A Yes.

MR. LOWE: May I approach the witness, Your Honor?

THE COURT: You may.

MR. LOWE: Excuse me, Your Honor.

Q (By Mr. Lowe) I show you a transparency marked Defendant's Exhibit 161. This is just a sketch map and I will tell you that {2714} it is a sketch map which is generally the same as Defendant's Exhibit, excuse me, 71 which is behind you here except that it's a picture of a smaller copy of that and I'll ask if you will first of all just look at it and see if you recognize that just as you recognize the map behind it. Take a minute or two and look at it.

A All right.

Q Okay?

A Uh-huh.

Q There is a place here just the same as it's marked up here where it says, "residences." I'll ask you if you can identify in your own mind and say whether the building that I'm pointing to right now, let me just put a circle in purple around this building, if that building is not the building here which is marked as the "white house"?

A It is.

Q And is that the building you were in when you and your husband took your children and left the area?

A Yes.

Q Now what I'd like to ask you, a little bit more orientation, this area up in here, can you identify and see is the same area marked up in the upper right-hand portion of Government Exhibit 71 as the tent area?

A Yes.

Q And you recognize the various roads that are shown on this {2715} exhibit as they are marked on here also, do you?

A Yes.

Q And this little thin line here which reads, "crest of plateau," the same thin line is marked on that map, isn't it, or appears to be?

A Yes.

Q Will you take this purple ink pen, starting at the purple circle where you say you began and just draw as best you can recall the route that you and your husband and your three children used when you left the area that day. You might want to take a moment and study it, then when you've decided go ahead and just mark it in purple.

A (Indicating.)

Q All right.

And at that point you started running out of diagram.

You've drawn, now is that an accurate, as accurate as you can recall the general route that you and your husband and your children took when you left the area on June 26th?

A Yes.

Q Thank you.

MR. LOWE: Your Honor, I would offer this as Defense Exhibit 161 in evidence.

MR. HULTMAN: The Government has no objection.

THE COURT: 161 is received.

{2716}

Q (By Mr. Lowe) So the jury can see, the purple line is the line you marked on there, isn't that right?

A Yes.

MR. LOWE: For the information of the Court and the jury, these pens that we are using are permanent and they are not water soluble or anything so this is a permanent mark on this exhibit in case anyone wondered about different exhibits we may have.

Q (By Mr. Lowe) Now when you left the area on that day, were you frightened?

A Yes.

Q Did you and your husband and your children run?

A Yes.

Q Did you run the whole way out of the area that you have marked?

A Yes.

Q Did you see anybody else while you were running away?

A No.

Q Did you see Mike Anderson while you were running away?

A No.

Q Do you know who Mike Anderson is?

A Yes.

Q After you ran away on June 26th, what was the first time that anybody contacted you from the government, FBI agent or BIA police officer or anybody like that to ask you questions {2717} about what may have taken place on the day of the incident?

A The U.S. Marshal I think.

Q The U.S. marshal?

A Yes. Uh-huh.

Q How long; in days was that after you left your house on that shoot-out day?

A About two days after.

Q And you say the U.S. marshal contacted you, or was anybody else with him or did anybody else contact you?

A There was another guy with him. I don't know who he is.

Q Did anyone identify themselves as FBI agents that were in that group?

A No.

Q Did you talk to anybody about the events that day or did they simply tell you something or give you something?

A No.

Q When was the first time that you ever talked to an FBI agent about that particular day?

A Two days after the shooting.

Q Two days after the shooting?

A (Witness nods affirmatively.)

Q Where did you talk with them?

A We was going back to our place and they stopped us.

Q I'm sorry. I didn't hear.

A We were going back to our place and they stopped us.

{2718}

Q When you say you were going back to your place, are you referring to the house, the green house that you have talked about earlier?

A Yes.

Q And was it in the general area of the houses that they stopped you?

A No.

Q Where was it?

A By Wanda Sears' house. The road.

Q All right.

And do you know the name of the agent who talked with you?

A Stull or something like that.

Q Stull?

A Yeah.

Q How long did that conversation take place? How long did he talk with you or you talk with him?

A About 20 minutes.

Q When was the next time that anybody from the FBI talked with you about that day? I don't mean in exact date. If you can say in rough terms approximately.

A The same two FBIs came to the house again.

Q About how much later?

A About a week later.

Q You said two weeks?

{2719}

A A week.

Q Week later.

And on that time how long did you meet with the FBI agents?

A We didn't talk to them.

Q What was the next time that you had any contact with the FBI?

A They came to the house twice but I can't remember every day.

Q On the occasion when you didn't talk with them how long were they actually there, do you recall?

A About five minutes.

Q And on the other occasion, do you remember?

A No.

Q Now about any times after that, were there any other times?

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

Q I believe you said it was two days later you came back to your house and the agents, Stull I think you said it was, talked to you. Did you actually get back to your house to stay there or visit there on that day?

A No. We made --

Q When was the next time after the shooting you actually got back to look in your house or stay in your house?

A We couldn't go back there for a long time. They wouldn't {2720} let us in.

Q Do you know about how long it was before you were next able to go back to your house?

A It was a long time. I can't remember how long.

Q Was it more than a week?

A Yeah. It was more than a week.

Q Was it more than a month?

A I would say about a month.

Q What about your personal belongings that were in the green house at the time you left on June 26th, were you able to get any of them or did they stay also?

A They stay there also. They wouldn't let us get anything out.

Q Did you have any clothing or other personal belongings located anywhere else or were they all in the green house?

A They were all in the green house. O When you finally did get back to your home, will you describe what you found in terms of the condition, first of all, of the green house in which you lived?

A Everything was messed up.

Q Was it messed up when you left on June 26th?

A No.

Q What about the condition of the house about any bullet holes or holes of any kind?

A There was so many bullet holes on the house.

{2721}

Q How about windows, what was the condition of the windows?

A They were all broken. Tear gas all over the house.

Q What about the inside of your house, were there any indications of bullets that were fired inside of your house?

A I don't know.

Q What about the conditions of your grandparents' house which was called the white house, what was the situation on the outside of that house, what did it look like?

A There was so many holes all around the house.

Q So you know what the holes were caused by, could you tell from --

A Guns.

Q Had those holes been there before June 26th?

A No.

Q How about the inside of your grandparents' house?

A It was really messed up.

Q Was it messed up on June 26th when you left?

A No.

Q In what way was it messed up?

A Papers laying all over, dishes scattered all over the place, everything was messed up there.

Q There's tissues and water in front of you, Mrs. Long Visitor, if you need to use some and I'll wait until you're ready to proceed.

{2722}

Q (By Mr. Lowe) Inside of your grandparents house were there pictures on the walls?

A Yes.

Q Tell the jury what the condition of those pictures were?

A Well, the pictures that were hanging had bullet holes in them.

Q Where in the pictures were the bullet holes?

A I don't know, there were so many bullet holes in those pictures.

Q I am sorry, I didn't hear you.

A There were so many bullet holes in those pictures.

Q Were the bullet holes in some of the pictures directly in the faces of the pictures?

A Yes.

Q Was it obvious in looking at the pictures that the bullets were fired from inside the house rather than bullets coming through the walls?

A Yes.

MR. HULTMAN: I object. This is calling for an opinion and conclusion of the witness. There has been no foundation laid.

MR. LOWE: This witness saw these pictures. This is an opinion of a lay witness as permitted by the Federal Rules of Evidence. I asked her if she could tell. She did. I asked her when she was there -- it was obvious.

{2723}

MR. HULTMAN: I think an expert in the trial earlier has indicated there were many instances when he couldn't even tell.

THE COURT: Well, she has answered the question.

MR. LOWE: Your Honor, I am afraid I did not hear what the response was in the middle of the interruption. May we have the response read back?

MR. HULTMAN: If it please your Honor, I have a right to object and that doesn't constitute an interruption.

THE COURT: She answered "yes".

MR. LOWE: Thank you.

Q (By Mr. Lowe) Was there tear gas in your grandparents house?

A Yes.

Q Prior to leaving on June 26th, did one of your children have a doll?

A Yes.

Q Did you find the doll when you finally returned to your home?

A Yeah, we found it.

Q Will you tell the jury what the condition of the doll was?

A Well, it was pretty bad.

Q Were there any holes in it?

A Oh, yes.

Q Where were the holes?

{2724}

A There was on the face.

Q One on the face?

A Yes.

Q And could you tell what caused the hole?

A Probably a gunshot.

Q I am sorry?

A Gunshots.

Q Now, on June 26 you indicated you were in the white house, I believe, washing dishes. Am I remembering that correctly?

A Yes.

Q And I believe you said you heard a noise or something that caused you to go outside and look. Am I correct about that?

A Yes.

Q When you got outside, you described seeing the two cars; and am I remembering correctly that you went back inside and said something to your husband?

A Yes. I said there were two FBI cars down there.

Q Is that what you said to him?

A Yes.

Q At that point did you and your husband your children immediately leave and run away?

A We didn't know what to do at first.

Q I am sorry?

A I said we didn't know what to do at first, just closed the door and stayed in there for awhile.

{2725}

Q O.k. Stayed in there for a minute or two or longer, could you tell how long?

A About two minutes.

Q About two minutes?

A Yes.

Q Then did you leave and immediately run away?

A Yes.

Q How long would you estimate it took you from the time you heard the noise to walk out and see the cars and walk back in to tell your husband?

A About a minute.

Q All right. Do you have any idea how long it took you to run from the house you were in out past the tent area?

A About 15 minutes.

Q O.k. Were you watching your watch at that time, or is that just a guess, an estimate?

A Just a guess.

MR. LOWE: May I approach the witness, your Honor?

THE COURT: You may.

Q (By Mr. Lowe) I show you what has been marked as Defendant's Exhibit 78-A, a set of pictures; and I show you the third page, the photograph which has been marked as No. 3, and ask you if that is a picture of Norman Charles?

MR. HULTMAN: Could I see, counsel, so I might have an opportunity to interpose an objection?

{2726}

MR. LOWE: I thought you had seen that several times.

MR. HULTMAN: I don't know.

MR. LOWE: It is an exhibit you provided us.

(Counsel confer.)

Q (By Mr. Lowe) Again I show you Exhibit 78-A, Page 3, No. 3, and ask you if that is picture of Norman Charles?

A (Examining) I don't know.

Q You don't know?

A No.

Q O.k. Do you know what Norman Charles looks like?

A Yes.

Q Do you know who Sammy Loudhawk is?

A Yes.

Q Where does he live?

A In Oglala.

Q Does he have any particular relationship or has he in the past with your husband?

A They were related.

Q Do you know what he looks like -- you not only know him in the sense you are related, you have actually seen him and you know what he looks like, do you?

A Yes.

Q Do you know that this is Leonard Peltier sitting here?

A Yes.

Q Do you know that this is not Sammy Loudhawk?

{2727}

A No.

Q All right. Let me ask my question again. This is not Sammy Loudhawk, is it?

A No.

Q To your knowledge has Leonard Peltier ever used the name, Sammy Loudhawk?

A No.

Q To your knowledge has Sammy Loudhawk ever used the name, Leonard Peltier?

A No.

Q To your knowledge has Sammy Loudhawk ever used the name "Leonard"?

A No.

Q When is the last time you saw Sammy Loudhawk, if you remember?

A This past year.

Q This past year?

A Yes.

Q Thank you.

At any time on June 26, the day of the shooting, did you see Leonard Peltier?

A No.

Q I show you what has been marked as Government Exhibit 50-A and 50-B, and ask you to take a look at them and see if you have ever seen these items or ones that look like those?

{2728}

A Never seen them before.

Q Never seen them before?

A No.

Q Did you see those in the white house?

MR. HULTMAN: Well, now, I object.

MR. LOWE: I will withdraw the question.

MR. HULTMAN: The question he asked was if she had ever seen them. It is fairly obvious she has never seen them at any place any time.

MR. LOWE: I will withdraw the question.

Q (By Mr. Lowe) Mrs. Long Visitor, you described two little identification markers here as two cars that you saw on the period of time that you looked out from your house before you and your husband left the area; and Mr. Hultman talked you through putting them where you wanted to put them to describe where they were; and I would like simply to describe them, I think, a little bit more precisely for the record; and you look and listen and make sure that I describe them accurately.

The car which is as we are facing Exhibit 71 is on the left, is a rectangular piece of what appears to be cardboard of some sort that says "SA Coler's car", and it has got what looks like a little gold emblem of an automobile on it; and if I understand how you have the front and back of the

car, it is pointing with the headlights towards the top of Exhibit 71 generally, am I correct in that?

{2729}

A Yes.

Q And if you look at it directly it is pointing approximately in the direction of the log cabin, is that correct?

A Yes.

Q And if somebody were to sit in the front seat behind the driver's seat, the steering wheel of Special Agent Coler's car, the green car which is the little rectangle marked "Special Agent Williams' car", and has a blue symbol of a car on it, would be seen by the driver of the Coler car by looking out the right side of the car next to it, is that correct?

A Yes.

Q All right, and as I understand the way you have these positioned, the Williams' car was pointing with its headlights generally up towards the "Y" in the road like this (indicating), is that correct?

MR. HULTMAN: Your Honor, I don't have any objection as long as counsel will refer to the colored cars because she obviously doesn't know which is Coler's car and Williams' car. I have no objection if he asks what color car and what direction.

I think the record clearly shows also that upon my next question of her with relationship to which car was on which side, she made a response that in effect was different from where the two cars as we call them by name {2730} are placed. I just say I have no objection to counsel asking what colored car was where and what direction and so forth, but to refer to them, counsel, as Coler's car and Williams' car, I think is not a proper way to examine the witness.

MR. LOWE: I don't think there is any confusion in the way I ask the question, but I will make sure the witness had it straight.

MR. HULTMAN: I want her to answer whatever car she was talking about, not Coler's and Williams', she doesn't know.

MR. LOWE: I think she understood the question. I will make sure.

Q (By Mr. Lowe) Is that color on this little symbol on the right-hand side --

MR. HULTMAN: (Interrupting) Well --

MR. LOWE: (Interrupting) May I ask the question without being interrupted?

THE COURT: Proceed.

Q (By Mr. Lowe) This little car shown on the right-hand of these two rectangles appears to be blue or blue-green, is that the way you describe it?

A Green.

Q Green, all right; and is that the car which was in the location shown on here with its headlights pointing generally {2731} up towards this "Y" in the road where there is a point marked "P"?

A Yes.

Q And is that the correct position of that car in relation to the yellow car, the gold car?

A Yes.

Q And is the gold car -- does that appear to be a gold or tan symbol of a car on that little rectangle, the way you look at it right now?

A Yes.

Q And is that the one that you described as being pointed generally in the direction of the log cabin where it is now?

A Yes.

Q And as these are now put here, as they were put here, I believe, by Mr. Hultman when he was doing the direct examination with you, is that the correct position of those cars as you saw them when you looked at them?

A Yes.

Q Mrs. Long Visitor, on June 26th during the time that you were present there at the residences, did you see Wish at any time up there?

A No.

Q Did you see Wish at any time fire a gun on June 26th?

A No.

Q Do you remember being asked that question when you testified {2732} before the Grand Jury and giving a different answer?

A No, I don't remember.

MR. LOWE: All right, counsel, turn to Page 11. I am going to ask some questions.

MR. HULTMAN: I will have no objection as long as you read all of them that concern this particular matter.

MR. LOWE: I am going to read what I want to ask the witness. I am going to fairly. If Mr. Hultman wants to ask more on redirect examination, he is free to do that.

Q (By Mr. Lowe) I am turning now to Page 11, Line 9 -- I better back up a little bit so we can see where they were. me first line there, it says:

Question: Between House No. 6 and the point that is marked I on the map as letter "B", there is a wood pile?

Answer: Yeah, right here.

MR. LOWE: Mr. Hultman, may we stipulate so we don't confuse the Court or the jury, that there was a map used in the Grand Jury that had different letters and designations than Exhibit 71?

MR. HULTMAN: I believe it is the one, counsel, that you have got in as an exhibit.

MR. TAIKEFF: This one (indicating).

MR. LOWE: Fine, good.

MR. HULTMAN: Which is a reproduction.

MR. LOWE: May the witness have Exhibit 133? It may {2733} refresh her recollection while we are describing this.

(Counsel hands document to witness.)

Q (By Mr. Lowe) I will start over again.

Question: Between House No. 6 and the point that is marked on the map as letter "B", there is a wood pile?

Answer: Yeah, right here.

Question: And you saw two men laying there?

Answer: Yeah.

Can you point on Exhibit 71 to the area that we are generally talking about, Mrs. Long Visitor.

A The wood pile.

Q Pardon?

A The wood pile.

Q me wood pile. Where is that, generally just describe it with relation to one of the houses you have been talking about?

A (Examining).

Q Is it near one of those houses?

A It is between the white and the green house.

Q Between the white and the green house, and that's the same and white and green house we have been talking about in Exhibit 71, is it?

A Yes.

Q All right.

Question: And you saw two men laying there?

Answer: Yeah.

{2734}

Question: What were they doing?

Answer: They had guns and they were facing towards those two FBI cars.

Question: Would you describe these two men?

Answer: Well, one was Joseph Stuntz.

Question: Joseph Stuntz, o.k.

Answer: I think the other one, I think they called him "Wish", I think.

Question: Wish?

Answer: Yes.

Question:

A fellow named Wish was lying there with Joseph Stuntz?

Answer: Yeah. Those are the only two persons I seen.

Does that refresh your recollection, do you remember giving those questions and answers, or giving the answers, rather?

A No, I don't remember.

Q All right. Now, on Page 16 at Line 20, you were talking about, you just talked about the "Bob" with the ski mask, and you were asked:

How about the other Indian named Wish?

Answer: I think I only heard one.

Question: He fired one shot?

Answer: Yeah.

Do you remember giving that testimony at that time?

{2735}

A No, I don't remember.

MR. LOWE: All right.

MR. HULTMAN: Your Honor, I rise now to enter an objection on the grounds that counsel has taken only out of context some very brief remarks, and thus by the question has left an impression that is a totally unfair one; that if the total remarks are taken in there to the context, there is a very clear explanation by this witness as to what that response is.

I object on the grounds that he selected to remove only for the questioned purposes a sentence or two which, out of context, leaves a totally misleading conclusion.

MR. LOWE: Your Honor, I would be very happy right now, and I would offer to interrupt my cross examination for the purpose of letting Mr. Hultman ask this Government witness questions out of the transcript that he thinks should be asked in addition to this, instead of waiting until redirect examination. I certainly think, as I pointed out before, Mr. Hultman can ask any questions he wants to on redirect. In order to meet this objection, I would ask that Mr. Hultman

ask those questions and answers so he can bring out anything he wants as far as this information is concerned.

{2736}

MR. HULTMAN: May I proceed, Your Honor?

THE COURT: You may proceed.

MR. LOWE: If you would tell the page --

MR. HULTMAN: Would you just -- may I proceed, Counsel?

MR. LOWE: I thought you were going to read from the transcript.

MR. HULTMAN: Mrs. Long Visitor, do you remember during the course of the proceedings with reference to the people that you were asked questions about at another time in the proceedings being shown a large group of pictures and asked to identify which ones of those individuals were the particular ones, and particularly the ones that counsel has just now been asking you about? Do you remember selecting pictures as to who the person was that you had testified earlier and specifically the person that he's now asking you about?

THE WITNESS: I can't remember.

MR. HULTMAN: May I go ahead and proceed, Counsel?

MR. LOWE: I've invited you to read anything about that in here. I want to be open and fair and let the witness respond completely.

MR. HULTMAN: Do you remember from a large number of pictures, looking at a large number of photographs?

THE WITNESS: Oh, yes.

MR. HULTMAN: And from those photographs you picked out {2737} specific pictures that referred to the very people that you were talking about in the proceedings in that transcript, did you not?

THE WITNESS: Yes.

MR. HULTMAN: All right. Your Honor, I'll go back on cross-examination on the pictures specifically.

MR. LOWE: This is the Government's witness. This would not be cross-examination. Redirect.

Mr. Hultman has implied that I somehow fully misread to the jury by not reading parts of the transcript. I offered to have him read the portions that are pertinent. Do I understand that he chooses not to read those portions that were pertinent as to make an objection?

MR. HULTMAN: Yes. It's the remainder of the transcript that has to do with the specific identifications of the individuals that you have specifically talked to her about.

MR. LOWE: I thought you were going to read to her.

MR. HULTMAN: All right. That's the part which I said, and I thought you would agree that you would wait on that, that I would take up.

MR. LOWE: All right. That's fine.

Your Honor, we'll still give Mr. Hultman the opportunity right now. We're through with our cross-examination

THE COURT: You may proceed with your redirect.

{2738}

REDIRECT EXAMINATION

BY MR. HULTMAN

Q All right. Mrs. Long Visitor, do you recall identifying pictures of persons as well as testifying that you knew those particular people in the grand jury proceedings? The people that you have been asked about and have answered questions about here today.

A Yes.

Q Who was it that, who were the two persons that were lying between the green house and the white house?

A Joseph Stuntz and Norman Charles.

Q Now, was there any question about that in your mind on the day that you saw them?

A What do you mean?

Q You've indicated to us here just now as to who those two people were. Is that because you remember them on that particular day?

A Yes.

Q There wasn't any doubt in your mind about it then, was it?

A No.

Q And there hasn't been any doubt in your mind since?

A No.

Q Now, you also mentioned that there was somebody with a ski mask; is that right?

A Yes.

Q And who was that?

{2739}

A Bob Robideau.

Q And where was he?

A He was standing by the station wagon.

Q All right. Now, there are, you mentioned there were two Normans; is that right?

A Yeah.

Q And was there also somebody, do you know what the names of the two Normans were at that time?

A Yes.

Q And what were their names?

A Norman Brown, Norman Charles.

Q All right. And you knew them then; is that right?

A Yes.

Q Now, did you also know somebody named Wish?

A Yes.

Q And was that Norman Brown or Norman Charles?

A No.

Q Now, my question now then is to you, was Wish at any time, did you see Wish at any time in the area on the hill to which you've testified?

A No.

Q Did you see anybody other than those you have specifically identified at the specific places that you've identified?

A No, no.

Q All right.

{2740}

MR. HULTMAN: I have no further questions.

MR. LOWE: May I just have a moment, Your Honor, please?

THE COURT: You may.

MR. LOWE: We have no further questions, Your Honor, for this witness.

THE COURT: You may step down.

MR. HULTMAN: May we approach the bench, Your Honor?

THE COURT: You may.

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

MR. HULTMAN: Your Honor, in light of the bond situation with this particular witness I would at this time move that her bond be released and --

MR. LOWE: We have no objection.

MR. HULTMAN: -- and she might be able to leave and proceed accordingly.

THE COURT: The material witness bond of Angie Long Visitor is exonerated and may be returned to the owners.

MR. LOWE: Do I understand she is no longer under subpoena to the Government either then?

MR. HULTMAN: That is also correct

THE COURT: And the witness is discharged from the subpoena.

MR. LOWE: Thank you, Your Honor.

{2741}

MR. HULTMAN: Thank you, Your Honor.

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

MR. CROOKS: If it please the Court the United States would next call Mr. Dale Parlane.

DALE ROBERT PARLANE

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS:

Q Mr. Parlane, would you give you full name again for the record, please.

A Dale Robert Parlane.

Q And where do you live, sir?

A Edmonton, Alberta. Canada.

Q What is your occupation?

A Member of the Royal Canadian Mounted Police.

Q How long have you been with the Royal Canadian Mounted Police, Mr. Parlane?

A Six years.

Q Excuse me?

A Six years.

Q What is your present duty station?

A I'm a member of the general investigation section stationed in Edmonton.

Q And was that also your post on or about February of 1976?

A That is correct.

{2742}

Q Now, Mr. Parlane, during the course of your employment with the Royal Canadian Mounted Police did you have occasion to go into the Hinton area of Alberta to make an arrest?

A I did.

Q And with regard to the individual who you went in to arrest, well, let me be a little more specific, was this concerning an area known as the Small Boy Camp?

A That is correct.

Q And when you went into this area what, first of all would you describe the physical buildings or out buildings that are present in the area?

A There was a number of buildings, somewhat like one room buildings in the area. Makeshift buildings kind of. And small portable school rooms. There were several tents around the area.

Q All right. Is there a, with regard to your arrest, or entry of the area, did you enter a school house area?

A I did.

Q And did you find a subject there who subsequently was arrested?

A Yes, I did.

Q And who was that?

A Mr. Leonard Peltier.

Q And with regard to Mr. Peltier, where was he when you first saw him?

{2743}

A I first saw him sitting down in the east area of the school building, the one room school house.

Q And who had entered the school house first, you or some other officers?

A I went in by myself.

Q Were there other officers in the area?

A Yes, there was.

Q And when you entered the school room you described Mr. Peltier seated in a chair. I would hand you Exhibit No. 163. Ask if this is something you can identify?

A Yes. This is the school house that I entered. In fact I am in this picture myself.

Q Is Mr. Peltier in that picture?

A No, he's not.

Q All right. Insofar as the scene depicted, what roughly is shown there?

A It's the general area where I found Mr. Peltier sitting and the area where an amount of luggage and assortment was found.

Q How long after the actual arrest was this photograph taken as best you recall now?

A Probably fifteen minutes.

Q All right.

MR. CROOKS: United States will offer Exhibit 162 -- or 163, I'm sorry.

{2744}

MR. TAIKEFF: No objection.

THE COURT: 163 is received.

Q (By Mr. Crooks) Now, would you hold this up to the jury so they can see it and point out where in the room was Mr. Peltier sitting when you first observed him?

A When I first observed him he was sitting in this area right here (indicating), right over by the blackboard.

Q Be in the area where the man is seated in the black --

A That is me sitting there.

Q That is you sitting there?

A Yes.

Q Okay. So that would be where he was seated when you arrived?

A That is correct.

Q Approximately what time of day did you arrive?

A 3:00 P.M.

Q And when you, well, would you just simply describe the circumstances under which the arrest was made.

A I entered this building at approximately 3:00 P.M. Observed Mr. Peltier sitting in this chair. I walked over to the chair and placed him under arrest.

Q All right. Insofar as Mr. Peltier was concerned was there any luggage or other personal effects in his immediate area?

A Yes, there was.

{2745}

Q I would hand you Exhibit No. 162 and ask you if you can identify that photograph?

A This photograph appears to be the photograph of a suitcase which we found, which I observed the day of the arrest in the area of where Mr. Peltier was sitting.

Q And with regard to that photograph, or the suitcase contained, or shown thereon, where was that with reference to Mr. Peltier?

A It was, I would say within seven feet of him.

Q All right. And insofar as the contents of that photograph without revealing what they are specifically, are those the contents as you viewed them when the photograph, or when the suitcase was opened?

A Yes, sir.

Q With regard to Mr. Peltier were there other people in the area other than himself?

A Yes, there was.

{2746}

Q And if you know, were these people local residents or were they people who were not local residents?

A Not being --

Q Or some of both?

A Not being familiar with the general camp itself, but it would appear that most of the people in there were from around the area.

Q All right.

During the course of the time that you were in the schoolhouse itself, did you make any observations of any types of weapons at all?

A Initially when I entered the building I never saw any weapons as such in the open area; however, it was not until later a subsequent search of the luggage that we found numerous weapons.

Q I show you first Exhibit No. 67A and ask if this is something you've seen before?

A It would appear this is the 30-30 rifle that I observed on the 6th of February. It has R.C. Tweedy on it which was my partner at the time, his signature on it.

Q Where was that first observed by you?

A This was observed within seven feet of where Mr. Peltier was sitting, in that area on the east end of the building.

Q I now hand you Exhibit No. 65 and ask if that is a weapon that you have seen before?

{2747}

A This also has a Corporal Tweedy signature on it, Royal Canadian Mounted Police, and what appear to be the weapon I observed in that schoolhouse.

Q Calling your attention back to Exhibit No. 162, does that correspond in any way with the weapon depicted there?

A Yes. That is the one depicted in the holster.

Q The holster in the suitcase?

A Correct.

MR. CROOKS: Your Honor, the United States will offer Exhibit 65 and 162.

MR. TAIKEFF: No objection.

THE COURT: Exhibit 65 and 162 are received.

Q (By Mr. Crooks) Calling your attention back to Exhibit 65, upon that being examined by the individuals who were making the arrest, including yourself, what condition was that weapon found in?

A That weapon was loaded and had a live round in the chamber.

Q So that that weapon would have then been fired merely by pulling the trigger or releasing the safety and pulling the trigger if it has a safety?

A Just by pulling the trigger that would have fired it.

Q Now that this has been introduced in evidence, hold that up so the jury can see it and describe the contents of the suitcase as you saw it.

Q This was the weapon that I observed that is sitting here in {2748} the holster area, and these two other weapons were also found in there and all the weapons, the two other revolvers were both loaded also.

Q All right.

Insofar as this weapon, I'm not sure I ever got so far as to go into an actual description, what caliber weapon is that?

A That's a .380 Browning.

Q Insofar as the 30-30 is concerned, did you find any cartridges, live cartridges that would have been useable in this weapon?

A Yes, I did.

Q Where did you find those?

A I found them in a pack sack right beside where the rifle was.

MR. CROOKS: United States will offer Exhibit 67A also.

MR. TAIKEFF: No objection.

THE COURT: 67A is received.

Q (By Mr. Crooks) Now calling your attention to late in that day, did you have occasion to interview Mr. Peltier?

A I did.

Q And where was that and would you basically describe the circumstances under which the interview took place.

A The interview took place around 10:45 on the 6th of {2749} February at the same date of the arrest and the interview was in the RCMPD attachment at Hinton approximately 70 miles from the small boys' camp in the province of Alberta.

Q This would have been after Mr. Peltier had been removed to basically the office?

A That is correct.

Q And under Canadian law, is there any type of warning that is required to be given to a man who is being interviewed?

A There is.

Q And would you relate basically what that is, what the contents of it are?

A I have the warning with me I read to Mr. Peltier and he signed on that day.

Q Would you refer to that and relate from it refreshing your memory, if necessary specifically what he was told.

A On the heading it has, "Royal Canadian Mounted Police, name: Leonard Peltier, address: no fixed address, place: Hinton, Alberta, date: 6th of February, 1976, time: 10:45 P.M." This is the warning that was read to Mr. Peltier: "Clearly understand that anything said to you previously should not influence you nor make you feel compelled to say anything at this time. Whatever you felt influenced or compelled to say earlier, you're not now obliged to repeat nor are you obliged to say anything further. Whatever you do say may be given in evidence. Question: Do you understand what has been said to {2750} you?" The answer was "Yes." "Would you sign here that you full understand the warning." Signed "Leonard Peltier."

Q Now I don't believe I ever asked you to identify the individual who you have been calling by Leonard Peltier. Do you see that man in the courtroom today?

A I do. O Where is he seated?

A Sitting at the end of the table (indicating).

MR. TAIKEFF: Identification is conceded, Your Honor.

THE COURT: Very well.

Q (By Mr. Crooks) Insofar as the warning that you have previously read, is that a standard form used by Canadian authorities?

A This is what we call a secondary warning. It's a warning read by a peace officer to a person that has been previously warned. There is another warning that is usually read at the first instance; however, if somebody has already been previously warned and you wish to re-interview this person, you must read him the secondary warning advising him that anything that he said earlier was not now compelled to say.

Q That would be basically the distinction between the two warnings is the secondary warning would include the provisional that anything he may have said further should not influence him?

{2751}

A That's correct.

Q And insofar as the warning that was given, to the best of your understanding was it done in compliance with Canadian law?

A Yes, it was

Q Do you know whether or not he had been given a previous warning?

A I understood from previous conversation after the arrest that he had been warned earlier.

Q Now I have just a few questions concerning your conversation with him. How long basically did the entire conversation take?

A One hour.

Q Now during the course of the interrogation or interview, whichever you call it, did he state to you whether or not he knew --

MR. TAIKEFF: I object to the leading.

THE COURT: Sustained. You can ask him what he stated.

Q (By Mr. Crooks) What if anything did he state concerning his knowledge or lack of knowledge of what he was being arrested for?

MR. TAIKEFF: At this point, before the witness answers, I ask I be permitted to inquire on the voir dire in order to establish a basis for an objection to this entire line {2752} of questioning.

THE COURT: You may.

MR. TAIKEFF: May I have this document marked for identification, please.

I'm placing before you Defendant's Exhibit 164 for identification. It is not in evidence, it's contents may not be revealed to the jury. Do you recognize it?

THE WITNESS: It would appear to be a document from Staff Sergeant E.W. Mitchell.

MR. TAIKEFF: Have you ever seen that document before?

THE WITNESS: I can't say as I have, no.

MR. TAIKEFF: Would you be kind enough to read any part of you like, but I'd like to suggest to you a particular part that would perhaps shorten the process, basically down to the middle of that paragraph which is the third paragraph, but you're free to read the entire thing if you choose to do so.

THE WITNESS: It's a statement of --

MR. TAIKEFF: Don't reveal what it is or what it says. Read it to yourself, please.

MR. CROOKS: Could I see the document when he gets done with it?

MR. TAIKEFF: Yes. Here's a copy of it.

You've read some of it, I gather.

THE WITNESS: I have.

{2753}

MR. TAIKEFF: Do you recognize the document in the sense that you've seen the document before?

THE WITNESS: No. I have never seen the document.

MR. TAIKEFF: Could you turn the microphone a little bit so that we can get the maximum use of it.

Thank you very much.

You read part of that document to yourself, at least up to the point where I asked you to read?

THE WITNESS: Yes, I did.

MR. TAIKEFF: Do you recognize that as a copy of an official police report of your police organization?

THE WITNESS: It may well have been.

MR. TAIKEFF: Do you include that note of uncertainty because you're not sure whether it's authentic?

THE WITNESS: No. I was not looking after the file. I was involved in the arrest and the subsequent statement. I was not looking after the entire file. It was Corporal Tweedy that was doing that so I did not have access or never did have the occasion to read over the complete file.

MR. TAIKEFF: Do you have any personal facts, personal knowledge of facts concerning any earlier warning that may have been given to Mr. Peltier and what he may have said in response to that warning?

THE WITNESS: Yes. As I stated earlier I understood that a warning had been read to him.

{2754}

MR. TAIKEFF: Were you a witness to that warning?

THE WITNESS: No, I wasn't.

MR. TAIKEFF: Are you able to say what was his response, if any, at the time he was given the first warning?

THE WITNESS: No, I wasn't.

MR. TAIKEFF: Now when you gave the secondary warning, am I using the right phrase?

THE WITNESS: Correct.

MR. TAIKEFF: Part of that says that you're not obliged to say anything but whatever you do say may be given in evidence, right?

THE WITNESS: That's correct.

MR. TAIKEFF: And you when you read that warning were talking about this very occasion or one just like it, right?

THE WITNESS: Correct.

MR. TAIKEFF: You're about to tell us what he said?

THE WITNESS: Correct.

MR. TAIKEFF: May I come to the side bar, Your Honor?

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, there's not now before the Court a witness competent to testify sufficiently for Counsel to make an objection to this line of questioning; however, I {2755} advise Your Honor that there is a Sergeant Mitchell who apparently is the person who gave the first warning. I'm not sure whether I understood this witness correctly but Tweedy may have been present at that particular time. According to the report Mitchell says that the defendant essentially, what we refer to it as the Miranda Warnings, and Peltier said yes, he understood and said he didn't want to give a statement and then asked if he could obtain counsel and they told him yes, it would be possible for him to obtain counsel and indeed if he couldn't afford it they would provide free legal aid for him. Then he proceeded to interrogate him and engage him in conversation. And then they gave him the secondary warning and I gather that another statement was made by Peltier. This one followed the secondary warning.

Now I would suggest most respectfully that before this witness can give the testimony that he was about to give that an opportunity should be for us to prove what I just asserted unless the government is willing to accept that for purposes of this application as being a fact, in which case I would then ask Your Honor to suppress the statement because he had already said that he did not want to give a statement and that he was seeking the assistance of counsel. They told him he could get counsel and proceeded to interrogate him nevertheless.

MR. CROOKS: Your Honor, I think Counsel is {2756} substantially correct. I don't vouch for exactly what Sergeant Mitchell will say. He will be one of the next witnesses and it would be an interesting point Counsel raised had this taken place in the United States. However, we're talking about the Canadian interview by Canadian authorities and the law is completely unanimous that the Miranda Warning simply have no application whatsoever to a foreign country.

I can cite the Court a couple cases that I have available if the Court wishes, the first of which being *United States vs. Chavarra*, find the right page number, 443 Fd 2d, 904, Ninth Circuit, (1971). The next case would be the *United States vs. Welch*, 455 Fd 2d, 211, Second Circuit, (1972). Both of those are recurring opinions.

Another one which I believe speaks generally to this area is the *United States vs. Cotroni*, 527 Fd 2d, 708, Second Circuit (1975). But the general thrust, cases and unanimous rulings of the courts are Miranda warnings simply have no application to interrogation by foreign countries unless it's of such a nature to shock the conscience of the Court, and obviously this man has complied with the Canadian regulations and that should end the issue.

MR. TAIKEFF: I expect the cases stand for the proposition it's not necessary that a foreign police official give the Miranda warnings to a person or to an American citizen, but once given it is obligatory that they comply with the {2757} requirements. They wouldn't have given such a warning if it wasn't necessary for them to cease and desist once the Defendant or arrestee says, "I don't want to give a statement I want a lawyer."

MR. CROOKS: The thrust of the case is simply the exclusionary rule has no application.

THE COURT: It would seem to be the only purpose of the exclusionary rule is to control the activities of American law enforcement officials and not foreign law enforcement officials because you have no jurisdiction over the foreign law.

MR. TAIKEFF: They're within Your Honor's jurisdiction right now. I'm trying to control his behavior in this courtroom.

MR. HULTMAN: You apparently give him a warning now.

THE COURT: I'm going to permit the witness to testify.

MR. TAIKEFF: Thank you, Your Honor.

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

MR. CROOKS: I'm not sure on the state of the record. I assume the objection has been made and overruled, if that be correct.

MR. TAIKEFF: That's correct.

THE COURT: No objection was made.

{2758}

MR. TAIKEFF: Not in the formal sense. Legal inquiry was made of the Court.

Q (By Mr. Crooks) Mr. Parlane, going back specifically to your interview with Mr. Peltier. Did he state to you whether or not he had knowledge or did not have knowledge as to why he was being arrested and detained?

A He advised that the knew why he was being arrested.

Q And what did he advise you in that regard?

A It was for the murder of some policemen in the United States.

Q With regard to your interview, did he state anything concerning recent wounds that he may have suffered of some sort?

A Yes, he did.

{2759}

Q And what did he state with regard to that?

A He stated that he had been picked up in Oregon by the police there, taken back to the office and shot in the back with something. He didn't know what he was shot with.

Q All right. Do you recall whether or not he displayed to you yourself those wounds?

A Not at that time, no.

Q Did he at some later time?

A No.

Q All right. With regard to the interrogation, calling your attention specifically to the two firearms, one of which -- I don't recall the numbers -- is lying before you, 65, and also 67-A, did he make any statement concerning whose firearms they were?

A He said they were his.

Q He said they were his firearms?

A That's correct.

Q Were there any other long guns, as opposed to pistols, found at the time that you arrested him?

A There was.

Q And what would that have been?

A There was an M-1 semi-automatic rifle also found beside the 30-30.

MR. CROOKS: All right. I have no further questions.

MR. TAIKEFF: May I have a moment, your Honor?

{2760}

THE COURT: You may.

(Counsel confer.)

MR. TAIKEFF: May I inquire?

THE COURT: You may proceed.

CROSS EXAMINATION

By MR. TAIKEFF:

Q Constable Parlane, when you entered the room in which you found Leonard Peltier, was he alone?

A He was sitting by himself.

Q Was there anyone else in the room besides you and him?

A Yes, there was.

Q How many people?

A I would say between 10 and 15.

Q Were you armed?

A Yes, I was.

Q Did you have your weapon exposed?

A I did.

Q Did he at any time make any effort to escape, resist, struggle with you in any way?

A He did.

Q What did he do?

A At the initial point of the arrest, I put him up against the wall, and at which time he shouted to me, "I am not going to do anything you say. I have got nothing to lose", at which time he started to struggle, at which time I had to push him {2761} harder against the wall.

Q That's the extent of what he did?

A That's correct. I had my gun at him.

Q And did he have any conversation with you concerning his concern about returning to the United States?

A Yes, he did.

Q What was that conversation?

A That was later that evening, after the warning had been read to him?

Q Yes.

A He stated that he didn't want to go back to the States because he feared for his life and said if he didn't fear for his life, he would never get out of jail.

Q And did you have any conversation with him about the American Indian Movement?

A I did.

Q How did that come up?

MR. CROOKS: Your Honor, I will object to this. This is beyond the scope of the direct, and it is self-serving statements; and I feel that it is within the subject matter of the areas of the interrogation which I didn't inquire about.

THE COURT: Sustained.

MR. TAIKEFF: Could I ask how the subject came up without getting to the content of it?

{2762}

THE COURT: You may.

MR. TAIKEFF: All right.

Q (By Mr. Taikeff) My question was: How did the subject come up?

A I asked him what he was doing up here, at which time he advised that he was a member of the American Indian Movement, presently a fugitive from the United States.

Q Did he say thing about his desire to remain in Canada?

A Yes. He expressed the desire to stay in Canada.

Q Did he say why?

A Well, like I said before, he felt that if he did go back to the States, he would not get out of jail or possibly get killed.

MR. TAIKEFF: No further questions.

MR. CROOKS: We have no further inquiry, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: The Court will recess until 3:25.

(Recess taken.)

{2763}

(Whereupon, the following proceedings were had out of the presence and hearing of the jury, the Defendant being present in person:)

THE COURT: Sometime ago the defense counsel made a request for an interpreter; and on the basis of that request, I had my staff go to work and secure an interpreter.

Now, I have just been informed that the defense counsel have also secured an interpreter. My inclination would be to use the Court's interpreter. Then there could be no question as to the interpreter being neutral. I do not think any of us understand the language that is involved.

MR. TAIKEFF: I assume, your Honor, there would be no objection that if the interpreter we have found would be present in the courtroom so that if there is -- excuse me one moment.

(Counsel confer.)

MR. TAIKEFF: All right. It has been suggested to me that I make the following suggestion to your Honor: That the interpreter which the Court has found stay in the courtroom and monitor the translation, the reason being this: The witness is 87 years of age, and we believe that he will have certain difficulties in speaking and making himself known, making his testimony known. The {2764} person we asked to act as interpreter is someone who knows him and has in the past acted as interpreter for him when it is necessary for him to speak with someone who doesn't speak the Lakota language, so we think it would be easiest for the witness to communicate through this interpreter; but we have no objection to the other interpreter being present, so that if there is any problem about the translation of anything, that interpreter can make his position known right on the spot.

THE COURT: Well, it will be the ruling of the Court that the Court interpreter will be used unless some difficulty develops. There is no objection to the defense having their own interpreter in the courtroom to monitor the Court interpreter, if that is what you have in mind.

MR. TAIKEFF: All right. Thank you, your Honor.

THE COURT: Very well.

The jury may be brought in.

(Whereupon, at 3:29 o'clock, p.m., the jury returned to the courtroom and the following further proceedings were had in the presence and hearing of the jury:)

MR. CROOKS: If it please the Court, the United States would call as its next witness Mr. William Mitchell.

EDWARD WILLIAM JOHN MITCHELL

being first duly sworn, testified as follows:

{2765}

DIRECT EXAMINATION

By MR. CROOKS:

Q Mr. Mitchell, would you again give your full name for the record, please?

A Edward William John Mitchell.

Q And where do you live, sir?

A I live in Ledue in the Province of Alberta, Dominion of Canada.

Q And what is your occupation?

A I am a member of the Royal Canadian Mounted Police.

Q How long have you been with the Royal Canadian Mounted Police?

A 23 years, sir.

Q Calling your attention back to February, 1976, did you have occasion to participate in the arrest of an individual who was involved in this case?

A I did, sir.

Q And who was that?

A Leonard Peltier seated there at the defense table with counsel.

MR. TAIKEFF: Identification is conceded.

THE COURT: Very well.

Q (By Mr. Crooks) Mr. Mitchell, during the course of the arrest of Peltier, did you have occasion to go into the schoolhouse building wherein the arrest took place?

{2766}

A I did, sir.

Q And did you observe various items which were located in the area where Mr. Peltier was arrested?

A Yes, I did observe certain items.

Q I would call your attention to what has been received into evidence now as Exhibit 163, and ask if that depicts the scene of the arrest?

A (Examining).

Q Or the physical scene.

A Yes, it does, as I observed it on that date.

Q And I call your attention to Exhibit 162, and ask if those items depict anything that you have seen before?

A I observed particularly the handguns in the suitcase that are contained in this item. I believe it appears to be the same items that I observed on that date.

Q All right. During the course of the afternoon did you make an attempt to ascertain the owner -
- who the owner of the handguns were?

A Yes, I did, sir.

Q And did you make inquiry of any of the people that were in the vicinity of the handguns concerning the ownership?

A Yes, I did.

Q And to whom did you make inquiry?

A I took Mr. Peltier, Leonard Peltier and Mr. Blackhorse who was with him out to an unmarked police car that was {2767} situated outside the schoolhouse. Both of these persons were placed in the rear of the police car, and I then gave them what is known as the police warning of the type used in Canada.

Q And then what happened?

A And I then -- shortly after this time a third person, male person was brought into the camp in another car. I had encountered him earlier that date on a road near the camp, and I then asked Mr. Peltier if this third person, Mr. Blackman, was involved with Mr. Peltier and Mr. Blackhorse in possession of weapons that I observed in the schoolhouse, the same weapons I have just pointed out in that photograph. If I may refer to my notes?

Q Yes, if you would, please.

A (Examining) During this time, that would be the time that Mr. Peltier and Mr. Blackhorse were seated in the police car with me.

Q Right.

A One Ronald Blackman was brought into the camp in another police car.

Q Right.

A I pointed to Mr. Blackman and asked Peltier and Blackhorse if Blackman was involved with them in the possession of the rifles and the revolvers found in the room at the school.

Q Right.

{2768}

What was the response, if any was given?

A Mr. Blackhorse was non-committal. However, Mr. Peltier said -- referring to Mr. Blackman -- "He was not with us. Those guns in the suitcase were mine." Peltier also said, "The suitcase is mine also."

Q Now, with regard to the guns that you had observed at the scene, I would hand you Exhibit No. 67-A, and ask if that is also one of the guns that you observed at that time?

A It appears similar to the gun that I observed, sir.

Q Did you see markings on it which identify it to any of your fellow officers?

A I would -- yes, I see the name of Corporal Tweedy on a Exhibit label on the gun.

Q Is he a fellow member of your force?

A Yes, sir.

Q All right. Now, did you have occasion to talk to Mr. Peltier again at a later time?

A Yes, I did, sir.

Q And would you describe the circumstances under which that conversation took place?

A On the 7th of February, 1976, I accompanied Mr. Peltier via aircraft from Edmonton, Alberta, to Vancouver, British Columbia; and during that time we had a general conversation en route to Vancouver, and he made certain statements to me.

Q All right.

{2769}

A I did make some notes on them.

Q All right. Specifically with regard to that transportation, was this after you had given him the warnings originally at the camp?

A That is correct, sir.

Q And were you aware that Mr. Parlane had previously given him warnings?

A No, I was not aware. I cannot swear to Officer Parlane's warning. I had myself personally given Mr. Peltier a warning.

Q In any event, was one of the items discussed, or was the subject discussed of any recent wounds which Mr. Peltier may have had?

A Yes, there was. If I --

Q (Interrupting) What was said with regard to the wounds specifically?

A If I may refer to my notes again, sir?

Q Yes, if you would, please.

A (Examining) During the flight from Edmonton, Alberta, to Vancouver, British Columbia, on the aircraft I discussed the general topics with Mr. Peltier and had asked Mr. Peltier -- I noted scars on his chest, and he indicated he had acquired them in a sacred ritual. He referred to his strong belief that the magic in a necklace -- or in his necklace had cured his buckshot wounds after he had been gunned down, shot in the back -- that was his term -- on a highway in the United States {2770} or U. S. during recent months. He said that he had been unable to get a Doctor but had phoned Pine Ridge, and they held a prayer session for him. This plus the necklace had supposedly resulted in a quick cure, he attributed this to this cure.

Q All right. With regard to the wounds which he referred to in his back, had you seen those yourself prior to this time?

A I cannot recall, sir, if I had seen that wound.

Q Do you recall that you saw them later?

A No, sir. He mentioned the wounds in his back during this flight. I cannot recall that I actually observed them earlier.

Q The only wounds that you had apparently observed were the markings on the front which indicated the Sun Dance, is that correct?

A That is correct, sir, yes.

MR. CROOKS: We have nothing further.

MR. TAIKEFF: May I inquire, your Honor?

THE COURT: You may.

CROSS EXAMINATION

By MR. TAIKEFF:

Q You refer to certain scars on -- Mr. Peltier's scars. When did you have occasion to see those?

A I would just believe, sir, I cannot recall with certainty, I believe they were during the afternoon at the school or during that same date, the 6th of February. I can't recall that with certainty though.

{2771}

Q What was the occasion, putting aside the question of the exact date or time for the moment?

A It would have been at some time during the evening, possibly after he had been searched or something to this effect.

Q Was his clothing removed during the search?

A I hadn't removed his clothing. Someone else would have done a search on him.

Our conversation regarding scars actually was more referring to the ritual of the Sun Dance which I, of course, knew nothing of; and he explained to me the ritual, what went on during this, and his strong beliefs.

Q There came a time when you asked him whether he and Mr. Blackhorse were members of the American Indian Movement, isn't that correct, on February 6th?

A That's correct, sir.

Q What prompted you to say that?

A Pardon me, sir?

Q What prompted you to ask him that question?

A Because it was my information, sir, that they were.

Q Was there any special significance to the fact that he was a member of the American Indian Movement as far as your role as a police officer was concerned?

A I was looking for a Mr. Peltier, sir; and it was my understanding that Mr. Peltier had been or was a member of the {2772} AIM, as I understood the movement. I am not acquainted with the AIM movement, and this was just a natural police curiosity in asking that question.

{2773}

Q And what was the source of your information concerning the fact that Mr. Peltier, whom you were searching for, was a member of the American Indian Movement?

A This would have been just instructions, or at least comments passed on to me which led me to organize a search in the first place. That would be during the morning of the 6th of February.

Q Did you have any contact with the Federal Bureau of Investigation before you made this arrest?

A No, sir. I was sleeping in my motel at White Core, Alberta at 12:30 in the morning when I got a phone call right out of the blue and they told me to go to Hinton and organize a search.

Q As far as you know was he sought for any crime committed in Canada when you left your house that morning?

A It wasn't my house, I was in a motel.

Q Your motel.

A No. To my knowledge he had not at that time committed any offense in Canada.

Q Now, the three people who were in custody on the 6th, Mr. Blackman, Black Horse and Peltier, what were they taken in custody for, what was the charges against them as of that moment?

A Well, sir, we understood that there was a, number one, a warrant that was held for the return of Mr. Peltier to the United States. It was extraditable.

{2774}

As a result of a check on the road approximately 12:30 P.M. on the 6th of February while we had been going down to look at this camp, Chief Small Boys Camp, it was my belief that they had in their possession loaded firearms or firearms that had been fired that date. And I'm talking about revolvers handguns, which there was obviously a question as to whether they were legally in possession of these weapons.

Q Because you need a special license in Canada for a handgun; is that --

A That is correct, sir.

Q So initially at least and perhaps not with respect to Mr. Peltier but with respect to Mr. Blackman and Black Horse you placed them under arrest for possession of the weapons, the handguns?

A No. There was an outstanding warrant for Mr. Blackman, sir. That was in Vancouver; and there was also an outstanding warrant in Calgary. We had confirmed that during the time we had him in our custody.

Q But when you took him into custody what did you take him into custody for?

A I wanted to find if he was with Mr Peltier down in that camp. He was searched and some ammunition was found in his possession. .38 caliber ammunition.

Q And did you make this known to Mr.Peltier in any way?

A That Mr. Blackman was -- I wanted to know if Mr. Blackman {2775} was involved with Mr. Peltier and Mr. Black Horse because it was Mr. Blackman's contention that he was not.

Q And I gather that your inquiries with Mr. Peltier revealed the fact that you were trying to determine whether or not Mr. Blackman had any involvement with those guns, or with Mr. Peltier; is that correct?

A Would you rephrase that again.

Q Yes, I will.

You made certain inquiries of Mr. Peltier?

A Yes, sir.

Q Concerning Mr. Blackman?

A That is correct, sir.

Q And concerning Mr. Blackman and those handguns, correct?

A That is correct, sir.

Q And is there any doubt in your mind that it was clear to Mr. Peltier that you were holding Mr. Blackman?

A I don't know what was going on in Mr. Peltier's mind. He saw Mr. Blackman in another car.

Q Held by the police?

A Well, he was in the car. Whether he was held or under arrest or just along for the ride I don't know. I can't state his state of mind at the time.

Q Well, did you see anything with your own eyes or hear anything with your own ears which would indicate that Mr. Peltier did not know that Mr. Blackman was in police custody when you {2776} put the question to Mr. Peltier as to whose guns those were?

A Mr. -- I asked Mr. Peltier if Mr. Blackman was involved with them in the possession of those weapons because they were supposedly in Mr. Blackman's suitcase. Mr. Peltier answered me as I have indicated.

Q And then Mr. Peltier said, "No, that man had nothing to do with it, those guns were mine"?

A That is correct, sir.

Q That's what I'm trying to establish. But at the time he made that statement he could see that Mr. Blackman was in police custody.

A He could see that he was with the police members, yes.

Q That's what I wanted to know.

Now, before you had any conversation with Mr. Peltier you said certain things to him as required by Canadian law; is that not correct?

A That is correct, sir.

Q And you said either in these exact words or comparable words you need not say anything, you have nothing to hope from my promise or favor and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence at your trial". Is that a fair rendition of what you said to him?

A That is correct, sir.

Q And did you then ask Mr. Peltier whether he understood what {2777} you said?

A If I may refer to my notes again, sir.

Q Well, see if you can do it without looking at your notes first.

A I always ask any accused person if they understood the warning. I will read to them --

Q Did you get an answer?

A If I may refer to my notes, sir.

Q Only if you tell me you cannot answer without looking.

A I cannot answer without looking.

Q Please look at your notes then.

A I asked both Peltier and Black Horse if they understood the warning.

Q I'm only talking about Mr. Peltier.

A They both answered yes.

Q Now, please listen to my question. I am asking about your conversation with the defendant on trial.

A Yes, sir

Q And they said something to you in response, right?

A Yes, sir.

Q What did Mr. Peltier say to your question as to whether or not he understood the warning which you've just gave? Did he say yes, I do understand, or no, I don't understand?

A Just the word yes.

Q Okay. Did he say anything else immediately thereafter?

{2778}

A Yes, he did, sir.

Q And what was that, sir?

A If I may refer to my notes again, please.

Q If you have to.

A They both answered yes And Mr. Peltier said, "I won't give a statement."

Q And did he make any inquiry of you after he said he won't give a statement?

A Yes, he did, sir.

Q And what inquiry did he make?

A Mr. Peltier asked if he could obtain legal counsel. I believe words to that effect.

Q And your answer if any?

A Yes. That he would be entitled to obtain free legal counsel.

Q If he couldn't afford to retain his own counsel; is that right?

A I didn't use the last words you used. I said he would be entitled to obtain free legal counsel.

Q Okay. And then you proceeded to question him; is that correct? Yes or no. Or have conversation with him in which he made statements? Yes or no.

A Are you referring to, sir, the weapons in Mr. Blackman's arrival in the camp then?

Q Anything whatsoever that you've testified to in this court-^{2779} room. Following that dialogue did you have conversations with him which resulted in your testimony which you gave here? Yes or no.

A I will have to refer to my notes again, sir.

Q You have no recollection?

A I would have to refer to my notes.

Q I ask you a question, sir. I didn't get an answer yet. Do you have no recollection of whether the sequence of events was your warning then, the dialogue about whether he understood it, then the inquiry about counsel and then you had the conversation or conversations that you've testified to. Are you telling us you do not recall now without looking at your notes whether that was the sequence of events? Yes or no.

A I do not recall exactly, sir, without referring to my notes. That was one year ago.

Q Please look at your notes.

A It would be during this time then that Mr. Blackman was brought into the camp. That was after the visits of counsel.

Q Sir, my question to you is simply this: Do I state correctly the sequence of events, first to give the warning, you have a right to remain silent and et cetera, or the equivalent?

A Yes, sir.

Q When he said he understood what you were saying, then he said I don't want to make a statement, then he asked you whether {2780} he could get a lawyer and you said you can get free legal aid, and then after all of that you had one or more conversations with him that you've testified about in this courtroom; is that a correct sequence of events? Yes or no.

A Yes, it is, sir.

MR. TAIKEFF: I have no further questions.

REDIRECT EXAMINATION

BY MR. CROOKS

Q Just one final question. Was your questioning of Mr. Peltier in accord with Canadian laws as you understood it?

A Yes, it was

MR. CROOKS: No further questions.

RECROSS-EXAMINATION

BY MR. TAIKEFF:

Q Tell us what aspect of Canadian law you understand to be operating when someone says to you I don't wish to make a statement, and indicates that he wants legal counsel and you then proceed to have a conversation in which you extract some information out of the mouth of that person?

MR. CROOKS: Your Honor, I'll object to the form of this question. Number one, the question is argumentative, and number two the use of the word "extract" I would assume implies some type of force or violence and --

MR. TAIKEFF: I'm not implying that.

MR. CROOKS: Completely unsupported by the record.

MR. TAIKEFF: I'm not implying that at all.

THE COURT: The objection to the form of the question {2781} is sustained.

Q (By Mr. Taikeff) All right. Sir, on redirect examination Mr. Crooks you whether in your opinion you were operating in accordance with Canadian law and you said yes?

A That is correct.

Q Okay. Now, you give the warning about the right to remain silent in order to inform a person that they do in fact have a right to remain silent; isn't that correct?

A That's correct.

Q And if a person chooses to remain silent you have no reason to believe that they should not be permitted to remain silent under Canadian law?

A They have that right to remain silent, sir.

Q And if a person who's under arrest asks for the assistance of legal counsel may they have such assistance?

A Yes, they may, sir.

Q Now, what principle of Canadian law do you refer to in your answer to Mr. Crooks' question on redirect when you, when you question someone who says I don't want to make a statement and I want to know if I can get a lawyer, and you proceed to interrogate that person by way of casual conversation?

A Are you through now, sir?

Q Yes. I am at least with that one question.

A My comments, sir, were directed to two people and you keep referring to one. There were two people in the back of the {2782} police car. My comments were directed to both of them now. And I indicated Mr. Peltier stated that he did not wish to give a statement. I had not heard from Mr. Black Horse who was also in the police car at the rear, and when Mr. Blackman came in I had asked both Mr. Peltier and Mr. Black Horse the question was directed at both accused persons seated behind me in the police car.

Q You directed your question to both of them, right?

A That's correct. There were two people there. They both would have heard.

Q You just said a moment ago you directed your question to the both of them; isn't that correct? Yes or no. Did you not say that?

A I can't say that yes or no. I didn't ask each one individually. I directed my question towards both of them as they were seated.

Q Now, you are modifying that a little bit as to the direction; isn't that true?

MR. CROOKS: That is argumentative and that is not a correct statement of what the witness said.

THE COURT: Objection is sustained. It is argumentative.

Q (By Mr. Taikeff) When you conversed with Mr. Peltier after your response to him about legal counsel you knew, did you not, that any answer he gave at that time might be used in evidence in a trial?

{2783}

A I wasn't aware, sir, what his final position would be on that.

Q Do you think that answered my question?

A As well as I could, sir.

Q Let's try it again, see if you can do better.

MR. CROOKS: Your Honor, I'll move to strike those last remarks.

MR. TAIKEFF: I'll withdraw the remark.

THE COURT: The remarks will be withdrawn.

Q (By Mr. Taikeff) When you were having your casual conversation with Mr. Peltier after the time you told him that he could get free legal aid were you aware, did you know that his answers, even to casual conversation, was something that could be offered in evidence against him? Yes or no.

A I can only answer you with an assumption, sir, on that one.

Q An assumption about your own state of mind?

A Yes.

Q All right. Let's have it.

A I assumed that possibly it could be, but my next question was to see if Mr. Blackman's involvement, or his presence meant that he was involved with them. In other words to eliminate him as a party to the possession of the weapon.

Q But you did assume that it was possible that any answer he gave to any conversation could be adduced against him at a {2784} trial?

A Yes, sir I didn't dwell on it. I would later assume that's possible, but I didn't dwell on it at that time.

Q I read to you before what I suggested was your advice to Mr. Peltier, and I think you said that indeed you had in words or in substance said those things to him. I want to read to you the last sentence that I read to you before. "Anything --

MR. CROOKS: Your Honor, I'll object to this as completely repetitious. That statement has been read once. It has no probative value of reading it again. I think it's cumulative, repetitious and argumentative.

{2785}

THE COURT: Well, I presume it's preliminary to a question he's going to ask. I'll let him read the sentence.

Q (By Mr. Taikeff) Reading the last sentence quote "Anything you do say may be used as evidence at your trial," unquote, did you understand when you uttered those words that only certain categories of things which he said might be adduced as evidence at his trial?

A No. Sir. The word "anything" is there.

Q So then you knew when you spoke with him that day as to the next day on the airplane that anything he said to you would be used against him at a trial, isn't that a fact, sir?

A At his trial, sir.

Q Isn't that a fact?

A Yes, sir. I did not know what charges, if any, would be made.

MR. TAIKEFF: I have no further questions.

MR. CROOKS: Just one further question and I ask this at the risk of prolonging this.

MR. TAIKEFF: Your Honor, if Mr. Crooks doesn't want to prolong, he ought not have a further question because we have had direct and cross and redirect and recross.

THE COURT: You may ask the question.

REDIRECT EXAMINATION

BY MR. CROOKS:

Q Mr. Mitchell, under Canadian law does an individual have right to change his mind?

{2786}

A Are you talking about the accused, sir?

Q Yes.

A Yes, he does.

Q Did you beat Mr. Peltier and force him to change his mind and give you a statement when he gave you the statement to recite?

A No way, sir, was he harassed.

Q Was he in any way flogged, harassed, done anything to induce him to change his mind and give you a statement?

A No, sir. Definitely not.

Q Any force or duress of any kind used by the Royal Canadian Mounted Police force?

A Pardon me?

Q Was any duress of any kind used to induce him to change his mind and give you a statement?

A No, sir.

MR. CROOKS: I have no further questions.

RECROSS-EXAMINATION

BY MR. TAIKEFF:

Q When you engaged in the conversation, did you tell him that by merely conversing with you he might be acting as if he changed his mind about not wanting to give a statement, that the effect of it was exactly the same as if he had changed his mind?

A No, sir.

Q Did you give him any further warning when you were on the {2787} airplane that even indulging in casual conversation with you about the American Indian Movement, the problems of

the American Indians, even that might give rise to information which could be adduced against him at his trial?

A No, sir, I did not.

MR. TAIKEFF: I have no further questions.

MR. CROOKS: I have no further questions, Your Honor.

THE COURT: You may step down.

MR. CROOKS: The United States would next call Corporal Doll.

DAVID GOLDEN DOLL

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS:

Q Corporal Doll, would you again give your full name for the record.

A Corporal David Golden Doll.

Q And where do you live, sir?

A I live in Hinton, Alberta, Canada.

Q What is your occupation?

A I'm a member of the Royal Canadian Mounted Police.

Q How long have you been a member of the Royal Canadian Mounted Police?

A 16 years.

Q Calling your attention back to February of 1975, what was your duty station at that time?

{2788}

A I was in charge of the Hinton Detachment of the Royal Canadian Mounted Police.

Q And during the course of your employment with the Hinton Detachment, did you have occasion to be called upon to participate in the arrest of an individual who is at trial here?

A Yes, I did.

Q And who was that?

A Chap sitting to my left with black hair, black moustache with the buckskin vest on.

MR. TAIKEFF: I'm glad he identified the best, Your Honor, I thought for a moment it might be me. But in any event, the identification is conceded.

THE COURT: I hope that doesn't arise out of a guilty conscience.

MR. TAIKEFF: Not at all, Your Honor. Just a description.

Q (By Mr. Crooks) Corporal Doll, have you ever seen the man in the grey suit with the goatee beard before?

A No, I haven't.

Q You never arrested him?

A No.

MR. TAIKEFF: Not yet.

MR. CROOKS: Make that clear in the record, Your Honor.

{2789}

Q (By Mr. Crooks) With regard to the individual you did arrest which you identified as Defendant Leonard Peltier, I would ask you whether or not at any point you participated in securing the fingerprints?

A Yes, I did.

Q I would not hand you what has been marked as Exhibit No. 67C and ask if that is a document you've seen before.

A Yes, it is. These are the fingerprints of Leonard Peltier which I took on the 6th of February, 1976.

Q Is that again the same individual you're previously identified in the courtroom?

A That is the same individual.

Q With regard to the Exhibit-67C, the small box in the diagram, do these represent individual fingers as they would appear and as are designated?

A Yes.

Q And what process did you use to put the fingerprints on to 67C?

A By rolling the individual fingers from each hand and placing the corresponding finger in the corresponding slot on it and rolling the finger across the ink pad and then onto the paper.

MR. CROOKS: The United States will offer Exhibit 67C.

MR. TAIKEFF: There is no objection. No objection to the entire exhibit.

{2790}

THE COURT: Is that 67C?

MR. CROOKS: 67C, Your Honor.

THE COURT: Thank you. 67C is received.

Q (By Mr. Crooks) Now Corporal Doll, previous witnesses have related the arrest of Mr. Peltier and I would ask you, did you also participate in the arrest at a Small Boy Camp?

A Yes, I did.

Q Now I'm not sure that anyone ever pointed out on the large exhibit, we have a large map of the Western United States and included on that is a part of the Canadian province of British Columbia and Alberta. Could you take the pointer behind you and point out to the jury the approximate location of the place where the arrest took place as is depicted on Exhibit No. 70.

A (Indicating.) Right in here.

MR. CROOKS: Let the record show that the witness is pointing to the approximate orange dot placed within the Jasper National Park to which two green stickers are pointing.

Q (By Mr. Crooks) You may retake the witness stand.

Now during the course of the arrest were you present when Mr. Peltier was searched?

A Yes, I was.

Q And did you observe any documents, or, excuse me, any items taken from his person?

A Yes. Before he was placed in a police car I observed a {2791} member take about a handful of bullets.

Q And what type of bullets were those?

A Appeared to me to be about the caliber .380.

Q I show you Exhibit No. 65 which has been received in evidence. Have you seen that exhibit before?

A Yes, I have. G And what does it appear to be to you?

A Appears to me to be a Browning model .380 semi-automatic.

Q And with regard to the shells that you previously identified having been taken, the handful of shells having been taken from the defendant's pocket, would those operate or function in that pistol that you have before you?

A To my knowledge they would.

Q Now during the course of Mr. Peltier's apprehension or arrest, did you overhear any conversations between him and some other person not a member of your police force?

A Yes, I did.

Q And would you describe the circumstances under which you overheard conversations?

A Yes. There is an elder native from the camp that Mr. Peltier had approached after his arrest which he had asked him to pray with him.

Q Where did the conversation take place?

A Took place in the schoolhouse.

Q Inside of the school building?

{2792}

A Yes.

Q Go ahead and relate the conversation as you recall it.

A He requested that this elder pray with him, which they did. Following the first prayer there was a second prayer which he asked him to pray with him again to his grandfather and this sort

of thing. Following the second prayer the elder directed a question to Mr. Peltier which I heard the response as well as the question that he directed to him.

Q What was the question?

A He asked him what would have happened if he had seen the police coming into the camp, or coming into the schoolhouse.

MR. TAIKEFF: Your Honor.

Q (By Mr. Crooks) And what --

MR. TAIKEFF: I object at this point and ask to come to the side bar.

THE COURT: You may.

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

MR. TAIKEFF: We have received no notice of any such statement exists. We ask whether the government has in fact served such a notice.

MR. CROOKS: Your Honor, I am not sure what Counsel is talking about. This is not a written statement, it's not a report, it's not a statement made to police officers. We at no time have ever represented to Counsel that we would be {2793} representing statements of this kind. We have furnished them with complete copies of all of the police reports. I don't --

MR. TAIKEFF: It's not in any police reports either and Mr. Hultman --

MR. CROOKS: I know it's not in a police report.

MR. TAIKEFF: Why mention you gave us the police reports if it's not in the police reports. It's misleading to the court.

MR. CROOKS: I don't see what your objection is.

MR. TAIKEFF: My objection is that Mr. Hultman said personally in a pretrial conference informal that we had in our office that he would supply us with all statements purportedly made by the defendant. He said first and foremost he would give us those which were clearly and unequivocally produceable under Rule 16 and that sometime prior to trial if there were any statements purportedly made by the defendant, even if they were not strictly produceable under Rule 16, he would voluntarily supply them and there has been nothing even indirectly notifying us about any such statement. I just checked it while this witness started testifying.

MR. CROOKS: Insofar as this statement that we are about to relate, the United States did not learn of this statement until I was preparing the witness for testimony today, and, secondly, I did not recall us ever having represented {2794} that we would make the type of statement that he is relating available. We certainly have made available all statements that were made to

the police personnel, but this statement was not to police personnel, it was a statement made and which the overheard and which I had no knowledge of until today.

MR. HULTMAN: I had no knowledge at all until now what he may or may not --

MR. TAIKEFF: I didn't misstate our understanding before trial, did I?

MR. HULTMAN: I'm not saying you misstated, Elliot. I didn't, I had no knowledge that there was any statements other than those which were in writing and I still don't know even, I guess maybe there may now be at this particular point. I think in all fair --

MR. TAIKEFF: Could I have the answer?

MR. HULTMAN: That's what I was about to say. I think in all fairness counsel would at this time indicate whatever now he anticipates to the response so that it would be on the record and you would have knowledge.

MR. CROOKS: Yes. I can do that, Your Honor. As this witness related to me basically as I came back into the courtroom, or into the federal building --

THE COURT: When is that?

MR. CROOKS: Today.

THE COURT: I mean what time? What's the time frame?

{2795}

MR. CROOKS: 1:20 I assume.

As we were discussing the preparation of this witness he related to me that he had overheard this conversation and basically the question was by the elder, "What would you have done had the agents shot at you or had you seen the agents coming," and the answer was, "I'd have blown them right out of their socks." The elder then responded, "You're saying that you would have done this even with my grandchildren sitting here?" And the defendant said to the elder again, "Yes." And that is in substance what the witness will testify.

MR. TAIKEFF: He was in custody at the time when this happened?

MR. CROOKS: Yes. This was after the arrest and after the prayer meeting that he has discussed and so forth. And the first notice I had of it was, as I said, at 11:00, or, well, around lunchtime, whatever time it was I came back. But it is not in a written report. It is just a recollection that this man recalled.

MR. TAIKEFF: We object to it being offered in evidence, Your Honor.

THE COURT: On what basis?

MR. TAIKEFF: No prior notice.

THE COURT: On that basis the objection is overruled.

MR. TAIKEFF: All right.

Now at this time before the witness gives the answer {2796} we'd like Constable Parlane to leave the courtroom.

MR. CROOKS: As far as I know no one else overheard. it.

MR. TAIKEFF: I want him to leave the courtroom nevertheless. I'm going to call him to the stand on this subject.

MR. CROOKS: All right. All right.

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

MR. TAIKEFF: Could I have one moment, please, Your Honor?

THE COURT: You may.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Crooks) Before I got into this statement, Corporal Doll, is this a statement which you have related to me earlier today or the contents of the statement you related to me earlier today?

A Yes.

Q And when was it that you related this to me approximately, if you can recall?

{2797}

A Right around the noon hour.

Q With regard to this statement, were you in any way interrogating Mr. Peltier?

A No, I was not.

Q Was anyone else interrogating him other than the person, the elder to whom you referred?

A Nobody else was interrogating him.

Q You described a brief prayer session.

How did this come about?

A Through the promptness of Mr. Peltier. He had invited this elder to pray with him.

Q And did your force authorize this to be done?

A Yes.

Q All right. Do you know whether anyone else was present other than yourself to have overheard the conversation?

A I didn't pay any attention as to whether anybody else was within hearing distance or not. There could have been. There were several people in the room.

Q There were several people in the room. No one in your immediate vicinity, would that be correct?

A That I could recall, sir. There was just the three of us standing there.

Q O.k. Now, you had started to relate the substance of the conversation, and would you relate, first of all, again what the question was that had been raised by the elder?

{2798}

A The elder had asked him what would have happened had he seen the police, the RCMP coming into the camp as well as to where he was at the schoolhouse.

Q And what was Mr. Peltier's response?

A He indicated that he would blow us out of our shoes.

MR. TAIKEFF: I didn't understand that question. Could I have that read back?

THE COURT: me reporter will read back the answer.

(Answer was read by the reporter.)

Q (By Mr. Crooks) And what further conversation was there at that point?

A There was a response by the elder in the form of another question. He said, "Do you mean that you would open up fire with my grandchildren and children in the immediate vicinity, in the immediate area here?"

Q And what response, if any, was made to that?

A He replied, "Well, it is my life."

Q He replied it was his life?

A It was his life he was protecting, yes.

Q All right. Now, what was the next thing that occurred insofar as Mr. Peltier was concerned?

A Following that he was escorted out of the building and placed in one of the cars. Prior to being placed in the police car, he was searched by another member in my presence.

MR. CROOKS: All right. We have no further questions.

{2799}

MR. TAIKEFF: Your Honor, I have had a single sheet of paper marked Defendant's Exhibit 166 for identification. I show it to the Government and ask them whether they provided at some time in connection with these proceedings that document.

MR. CROOKS: (Examining) Yes, your Honor, this is a --

(Counsel confer.)

MR. HULTMAN: Your Honor, I cannot respond to counsel directly except upon the knowledge that he has indicated to me it would appear that this particular document was provided in another matter in another proceedings on the 6th of February of 1976.

MR. TAIKEFF: I am not sure about the date. I don't wish to mislead Mr. Hultman into thinking that there is accuracy to that date. My principal point is that it is Government prepared, not prepared by defense counsel. That's the only concession I want from Mr. Hultman.

MR. HULTMAN: I have no knowledge, and I have indicated that to counsel; but I certainly -- if that is the information that counsel has and so indicates, I would accept it.

MR. TAIKEFF: I do make that representation in order to get the concession from Mr. Hultman.

MR. HULTMAN: I am not trying to equivocate in any way. I am not escaping the knowledge.

{2800}

MR. TAIKEFF: Now, your Honor, I need a moment to get papers marked for identification.

(Counsel confer.)

MR. HULTMAN: Counsel, could I ask --

(Counsel confer.)

MR. TAIKEFF: Your Honor, after consulting with Mr. Hultman and in looking at the handwritten date in the lower left-hand corner of this typewritten form which is Defendant's Exhibit 166 for identification, I am prepared to state that the greatest probability is that this document, 166, was prepared by the Government sometime early in the year, 1976, and may in fact have been prepared in the month of February of 1976.

MR. HULTMAN: There is a date that appears on it, 2-6-76, some type of description.

MR. TAIKEFF: May I cross examine at this time, your Honor?

THE COURT: You may.

CROSS EXAMINATION

By MR. TAIKEFF:

Q How long have you been a police officer, sir?

A A little more than 16 years, sir.

Q And is it not a fact that you are aware that statements supposedly made by a Defendant are very significant evidence as opposed to all other kinds of evidence, such as eyewitness {2801} evidence and things of that sort; is it a fair statement that in your opinion as an experienced police officer, you know that testimony concerning what a Defendant supposedly said carries a lot of weight with a jury?

A Yes.

Q Is it also fair to say that you are acquainted with the commonplace practice of police officers writing reports of their activities?

A That is correct, sir.

Q And that for a number of reasons perhaps, but at least for one reason, is because often the police officer who is busy and has many events occurring in his professional life frequently has to testify at a trial many months or sometimes years after the event?

A That is correct.

Q And indeed, the events of which you speak occurred in February of 1976; and this trial is taking place right now in April of 1977, 14 months later, isn't that right?

A Yes, sir.

Q Now, did you read any police reports before you testified today?

A No, not today, sir.

Q I didn't ask you whether you read them today. I said, did you read any police reports before you testified today?

A Yes, I did.

{2802}

Q I show you Defendant's Exhibits 167, 168, 169, 170 and 171; and ask that you look at them for the purpose of determining whether or not you looked at any part or all of those documents in preparing yourself to testify here?

A (Examining) Yes. I perused this Defendant's Exhibit No. 167, and the other exhibits I haven't seen at all today.

Q Did you ever see them before today?

A No, I haven't.

Q 167 is a report concerning the events which I might briefly describe as the arrest of Mr. Peltier in Canada, is that not correct?

A That is correct, sir, yes.

Q Now, do you recognize what 169 is, whether or not you looked at it before you testified -- I am not asking you whether you can read the words, the descriptive words on it because I trust that you can. I asked that by looking at it, do you recognize it for what it purports to be?

A I haven't seen it before, sir. I would have to read this.

Q Well, if I showed you a shoe and you had never seen it before, you would recognize that it was a shoe, wouldn't you?

A That is correct, yes.

Q Now, I am asking you to look at that document, whether or not you have seen it before, and tell us, generically speaking, what is it, if you recognize what it is; otherwise don't tell us what it is?

{2803}

A No, I don't know, sir.

Q It is not a police report, Canadian police report?

A Not a standard report, sir.

{2804}

Q All right. Did you ever have any conversations with Mr. Peltier?

A Yes. When I fingerprinted him.

Q And did he tell you he was seeking political asylum in Canada?

A He didn't tell me that. I overheard that. I don't know who he was speaking to.

Q And when you observed him praying with this older Indian person is there doubt in your mind that he knew you were near by?

A No. There's no doubt. I was standing right next to him, sir.

Q Now, sometime today you told of this supposed episode to Mr. Crooks; is that correct?

A To this gentleman with the glasses? Yes.

I believe that's Mr. Crooks.

Q What prompted this, how did this come about that you told this to Mr. Crooks?

A We were just reminiscing as to what transpired at the time of the arrest and talking about the two prayers that were said, and of Mr. Peltier as a matter of fact asking me if it would be all right if he could pray with him for a moment before they left the room.

Q Until that time it had made little or no dent in your memory? I mean, obviously you say you remember it today {2805} fourteen months later. Did it make no impression on you before?

A Certainly it made an impression on me.

Q You knew that there was a prolonged extradition proceeding in Vancouver as it was occurring, did you not?

A Yes, I knew there was an extradition hearing there.

Q And that lasted about ten months, did it not?

A I'm not certain how long it lasted sir.

Q But it was along here, wasn't it?

A The initial hearing itself?

Q Yes. Before any appellate action was taken.

A I don't know whether it lasted that long. I don't know, sir.

MR. TAIKEFF: Excuse me one moment, please.

(Defense counsel conferred.)

Q (By Mr. Taikeff) Were you aware of the fact that the hearing in Vancouver centered around the fact that Mr. Peltier was seeking protection from the Canadian government and wanted to stay in Canada and not be returned to the United States?

A Yes. I had heard that he wanted to stay in Canada and not be returned down here.

Q And is it fair to say that as an adult person and as an experienced police officer you would consider anyone who would shoot in the vicinity of children, let alone other people, someone who would not be a worthwhile candidate for being a citizen of Canada?

{2806}

A Could you repeat that, sir.

Q Yes. Wouldn't you do something to prevent the Canadian government from allowing a person who would shoot in the vicinity of children from staying in Canada, from getting permission from the Canadian government to remain there and not to go back to the United States?

A Had it occurred, yes.

Q Well, did you go to the authorities and tell them that you wanted to testify that this was a dangerous man who should be gotten out of Canada immediately because you overheard that he's willing to shoot bullets?

A No, I didn't go to any authority, sir.

Q Did you ever go to anyone other than Mr. Crooks and tell them about this statement?

A Yes I've told it to several members of our force.

Q Other police officials?

A Yes. Other policemen.

Q Was it ever written down in a report?

A No. I don't believe it was.

Q Don't you think that's a significant piece of evidence?

A Not in Canada it wasn't, sir.

Q You didn't write a report that day, did you? h No. I haven't submitted a report on this incident at all, sir.

Q You never asked anyone to incorporate this particular {2807} additional piece of information in the report, did you, so that it would be preserved for the future were it ever necessary to use it?

A No, I did not.

Q Now, you identified Defendant's Exhibit 167 if my memory serves me correctly as something you reviewed; is that correct?

A Yes. I perused that.

Q Now, that is a report of the activities of the Royal Canadian Mounted Police who arrested Mr. Peltier; isn't that correct.

A That report was written and submitted by my immediate supervisor.

Q That's a nice answer but it's not the answer to my question.

My question was: Is it a report of the arrest of Mr. Peltier?

A It includes his arrest, yes, sir.

Q And the activities and events of the day on which he was arrested, right?

A That is correct sir.

Q Did you at any time go to your superior and advise him of the event that you've just recently testified to?

A Yes. I've mentioned it to him.

Q Did you see any reference to that in his, let me finish my question, five page single-space typewritten report?

{2808}

A No, I did not, sir.

Q Now, you said that you did not read the other documents which I place before you, 169 which is a two page document You say that that is not a regular police report?

MR. TAIKEFF: While the witness is contemplating that may I have a word with Mr. Hultman, Your Honor?

THE COURT: You may.

(Mr. Taikeff and Mr. Hultman conferred.)

A This is a statement which often with regards to our official police reports are attached as an appendix A. I didn't see the appendix A when I first looked at it. I do see it right now.

I have not read the statement before and I still haven't finished reading it. I've read a half a page of it, sir.

Q (By Mr. Taikeff) Please read it, not so you absorb the contents, but so that you become aware of the nature of the contents because I'll put a question to you that only requires that cursory look.

(Witness examining Defendant's Exhibit 169.)

Q I see that you've finished. Is it fair to say that that document of appendix as the case may be is on legal size paper, is single spaced in the main, and contains essentially the following: statements purportedly made by Mr. Peltier to one of your colleagues?

{2809}

A That is correct, sir.

MR. CROOKS: Your Honor, in the interest of saving time this man is being asked to read all the reports. I will stipulate in front of the jury that this statement was not in any of the reports furnished defense counsel or furnished to the United States Attorneys' office.

MR. TAIKEFF: Your Honor, that's not the issue.

MR. CROOKS: In answer to that I think anything more than that is repetitious. The contention made that this thing was recorded --

MR. TAIKEFF: That's not the issue. I'm not exploring whether it's present. I think it's clear, or should be clear to all that it's not present in these reports. I'm exploring another aspect,

another facet of these reports. Namely their character. The witness has just testified that this document, two full pages single spaced concerns primarily statements made by Mr. Peltier, either at the time of his arrest or the next day.

Q (By Mr. Taikeff) That's correct, sir, is it not?

A That statements made to the right.

Q To the right of that report.

MR. TAIKEFF: I'm not asking whether it's accurately written or anything of that sort.

Q (By Mr. Taikeff) Now, I show you No. 170. That's another report, another police report of the Royal Canadian Mounted {2810} Police; isn't that correct?

A Yes, it is, sir.

Q And doesn't that document in the main, one page long, single spaced typing, contain what purports to be statements made by Mr. Peltier?

A This is dealing with the writer's had any contact or action with Mr. Peltier. And this is what they put down on paper, yes.

Q Put on paper that he purportedly said either on February 6th or February 7th, 1975, isn't that -- 1976; isn't that correct?

A Also, that is correct, sir, but it also purports as to what action they took, what action they did, yes.

Q But in the main the text relates to things which he said and the circumstances under which he said them, right?

A Yes. I perused it fastly.

Q Now, there's another one page report Defendant's Exhibit 168, that's only two paragraphs long, single-spaced, not quite a full page. I'd say half a page. And doesn't that also purport to put down on paper what Peltier said to one of your colleagues in the RCMP?

A Yes, that is correct, sir.

Q Now, was Constable Parlane nearby when this incident that you've told us about allegedly took place?

A He was in the same room, yes, sir.

Q How far away from you was he?

{2811}

A I don't know for sure.

Q Approximately.

A Somewhere within that room, sir. He could have been ten feet away from me, he could have been twenty-five feet away from me.

Q Tell me, sir, whether Defendant's Exhibit 171 is a one and a half page single-spaced typewritten report by Constable Parlane which lists hour by hour a chronology of everything Mr. Peltier said, or purportedly said on February 6, 1976.

{2812}

MR. CROOKS Your Honor, I'll object to the form of the question. That is not correct. That is what was said to Mr. Parlane. That is not a statement of everything that was said, does not purport to be.

(Whereupon, the last question was read back.)

MR. TAIKEFF: Mr. Crooks is correct, Your Honor. I must rephrase that question.

THE COURT: I was going to suggest that you do.

Q (By Mr. Taikeff) Does the document you're now looking at contain what appears to be the writings of Constable Parlane arranged in a chronological way stating times before each paragraph and does it purport to contain statements made by Mr. Peltier on February 6, 1976?

A Yes to your first question. I'll have to read it in full, sir, with regards to statements made by him.

Yes. They were statements made to Officer Parlane.

Q In fact, the latter half of the first page and all that's on the second page, essentially that's the latter half of the first page and on the second page purports to be what Mr. Peltier said on February 6th, isn't that correct?

A That is correct, sir.

Q Did you have any knowledge that any of these documents were going to be prepared before they were prepared?

A To be honest with you, with Constable Parlane, I haven't seen him in an official business or visit from that time, from the {2813} 6th of February and I haven't had occasion to discuss this file with him since that time other than the past couple of days that we have been here together in Fargo.

Q But you knew, did you not, on February 6th, 1976 that any police officer who is going to write a report and who heard the arrestee, Mr. Peltier, say anything of any importance whatsoever concerning his criminal prosecution was supposed to put that down in a report, isn't that correct?

A If he felt it was of importance; yes, sir.

Q That was part of my question.

A Yes, sir.

Q And did you then think what you heard Mr. Peltier say was something of importance?

A As a result of a discussion today; yes.

Q When you heard it you didn't think it was important?

A It wouldn't be important insofar as being relevant to a charge of that statement itself. That wouldn't be relevant.

Q What did you hear today that triggered your memory?

A We were just reminiscing as to what transpired with regards, from the very time we drove into the camp until we left the camp what was being said. Upon reminiscing it was suggested that this was of relevance.

Q So you're saying when you heard it you didn't think it was important at all?

A Insofar as a conviction of any charge, no. He didn't make {2814} a threat to me.

Q Well, are you aware of the fact that some of your other fellow officers recorded everything that was said or apparently everything that was said on all kinds of subjects, religious ceremonies, the American Indian Movement, the scars on his chest, prayers for his health, a telephone call to Pine Ridge so that people would pray for his recovery? Is that uncommon practice to put down such great detail on police reports?

A Not if you're directly involved in handling the investigation which I wasn't.

Q But you were the only person who overheard that statement, isn't that correct?

A No. I imagine the person that made it and the person that was made to heard it.

Q You were the only police officer who overheard that statement, isn't that correct?

A I don't know, sir. I heard it. I don't know whether Constable Parlane or Corporal Tweedy heard it or Staff Sergeant Mitchell. Staff Mitchell wasn't even in the building. He couldn't have heard it, I presume.

Q Didn't it occur to you you should check with someone else to make sure they heard to make sure it gets down on paper?

A No, I didn't.

Q At any time in the last few days did anyone discuss with you any event which supposedly took place in Oregon?

{2815}

A No.

I've heard bits and pieces, sir, from newspapers. I haven't heard the exact story.

Q Tell us again, sir, what happened. What did you hear?

A With regards to this conversation between the elder and Mr. Peltier?

Q The one that you say took place.

A Yes. He asked him to pray with him, to his grandfather and the elder's grandfather, both of them to pray for grandfathers. Following that he asked him again to say another little prayer. Following that, before he was escorted out the elder asked him a question. He asked him what would have happened had he seen the police coming and Mr. Peltier replied that he would have blown us out of our shoes, consequently resulting in a further question by the elder, "Do you mean to say you would have opened fire with my grandchildren and other children present?" And he said, "Yes," that was his life that he was defending.

Q Before you go to sleep tonight are you going to pray to your grandfather?

MR. CROOKS: Your Honor, I object to this.

THE COURT: Objection is sustained. The question will be stricken from the record.

MR. CROOKS: We have no further questions.

THE COURT: You may step down.

{2816}

MR. TAIKEFF: I would ask that Parlane be recalled for further cross-examination at this time, Your Honor. He's available. He's outside.

MR. CROOKS: I have no objection to that.

MR. LOWE: Can we approach the bench.

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

MR. LOWE: Your Honor, I do not believe that I will take very much longer than five minutes and I note that it's five to 5:00 and Your Honor, of course, is very prompt. I would ask Your Honor under the circumstances to allow me the leeway to finish.

THE COURT: Very well.

MR. CROOKS: Your Honor, while we're here, perhaps I do have one more Canadian witness who is the fingerprint man. Now I would kind of like to get him done before the weekend if possible.

MR. LOWE: From Canada?

MR. TAIKEFF: We would stipulate that if you want so either way you want to go. I have no objection.

THE COURT: How long will it take?

MR. CROOKS: If Counsel will stipulate, the only thing is there was a fingerprint found on the 30-30 rifle which he will identify as Peltier's. Will Counsel stipulate that?

MR. TAIKEFF: We have no problem with that. We can {2817} stipulate or you can put him on and lead him with two questions, either way.

MR. CROOKS: The only thing I hate to have him staying over the weekend for ten seconds' testimony.

THE COURT: I will in view of those circumstances. As long as you're going to be that brief I will permit you to complete that testimony.

MR. CROOKS: Thank you.

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

DALE ROBERT PARLANE

being previously sworn, testified further as follows:

CROSS-EXAMINATION CONTINUED

BY MR. TAIKEFF:

Q Constable Parlane, I place before you Defendant's Exhibit 167 for identification and ask you only to tell us whether that is an RCMP report which deals with the events of February 6, 1976?

A It would appear to be the report.

Q Now Defendant's 169, that's Sergeant Mitchell's supplemental report or addendum?

A Correct.

Q And you've read it before?

A Just the part of the first page.

Q Is it fair to say that in the main it concerns statements purportedly made by Mr. Peltier?

{2818}

A To Sergeant Mitchell; yes.

Q Yes, of course.

And a similar document No. 170, another supplement. dealing with Mr. Peltier and statements that he may have made to another individual?

A Yes.

Q And likewise with respect to 168, at least as to the first paragraph?

A Yes.

Q Now Defendant's Exhibit 171, that's your report of a similar nature, that is to say, the events but with some considerable emphasis on things which Mr. Peltier supposedly said to you, right?

A Correct.

Q Now, sir, I ask you whether in your experience as a police officer you recognize that things which an arrestee or defendant says are very, very important evidence?

A Yes. That's correct.

Q And in fact that's why you warn a person when you place a person under arrest, that the person has a right to remain silent, isn't that correct?

A Right.

Q Because such evidence is taken very seriously by jurors, isn't that correct?

A Right.

{2819}

Q And basing the following on your experience, I ask your professional opinion, sometimes a statement allegedly made, supposedly made by a defendant, if believed by a jury can often convince him to convict no matter what other kind of evidence there is in a case, isn't that true?

MR. CROOKS: Your Honor, I'll object to the form of this question. This is wild speculation.

MR. TAIKEFF: Asking for his opinion.

THE COURT: Objection is sustained. There's no foundation he ever even served on a jury.

MR. TAIKEFF: I wasn't suggesting he was.

THE COURT: How would he know?

MR. TAIKEFF: As a police officer.

THE COURT:

A police officer would have no way of making a determination as to how the jury reached its decision. The question is improper.

MR. TAIKEFF: All right, Your Honor.

Q (By Mr. Taikeff) Is it not part of your instruction and understanding as an officer that it's very important to get down every single word that you can get down on paper that a defendant supposedly says?

A Yes.

Q Now would you tell me whether in your report this hour by hour supplemental report or special report which has been marked Defendant's Exhibit 171 for identification, it indicates {2820} that at any time Leonard Peltier said to you in words or in substance, "If I knew you were a cop I would have shot you, I've already done it once"?

A You're asking me if he said that to me?

Q I'm asking you whether it's in your report. Yes or no.

A Doesn't appear to be in my report.

MR. TAIKEFF: Your Honor, at this time I offer the fourth paragraph of Defendant's Exhibit 166 in evidence, a government prepared document in connection with this litigation.

MR. CROOKS: Your Honor, I'll object to this on several reasons; Number one, I haven't the slightest idea exactly where 166 came from. I don't think Mr. Hultman does either and there is absolutely no foundation for it in any event. This witness was recalled for apparently having something to do with what the sergeant, Corporal Doll was testifying about and it's improper question and improper redirect and absolutely nothing to do with what he was recalled for.

MR. TAIKEFF: Your Honor, Mr. Crooks says he doesn't know where that document came from. Mr. Hultman conceded before it was prepared by the government and not by Mr. Hultman and supplied to the defense in connection with these proceedings, although at an earlier time.

{2821}

MR. HULTMAN: Your Honor, Counsel, I said that if this, there was evidence that this was the fact, then I would be willing to accept it. I have seen no showing of any kind as to the source of this document. I am willing to accept any proof or showing of any kind.

What my statement was, one, I had no knowledge of this document; two, that I would accept any showing, of any kind, but there's no showing of any kind as to where this document came from or the source for it, Counsel, and that's the reasons now for the objection.

MR. TAIKEFF: All right. Your Honor, in fairness and in the hope that we only deal here accurately, I would ask Your Honor not to rule on the offer until Mr. Hultman has an opportunity, and I'll give him a photocopy of that exhibit to check, and see whether or not a duplicate of it is in the files of the Government. And whether they can ascertain if they indeed supplied it.

Other than that I have no further questions.

MR. HULTMAN: May we approach the bench, Your Honor?

MR. CROOKS: We have no more questions of the witness and we'd ask that he be excused.

MR. TAIKEFF: I have no objection. I hope he enjoys his trip home.

THE COURT: You may step down.

MR. CROOKS: Can we approach the bench briefly on the {2822} second matter, Your Honor?

THE COURT: You may.

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

MR. HULTMAN: Your Honor, one, as I indicated to counsel anything that's been said or done about this document has been purely on the basis of whatever representations counsel have made to me.

MR. TAIKEFF: I understand that, Mr. Hultman.

MR. HULTMAN: And I think we're in agreement there. One, I have no knowledge of any kind of this document. I've never seen it before and I've never seen in our files before. I think it's incumbent upon the defense, it's their document.

MR. TAIKEFF: It's the Government's document. It was turned over as Brady material in connection with the last trial.

MR. HULTMAN: Well --

MR. TAIKEFF: And that's my understanding. I represent to you that it's my understanding. I wasn't on the last case, so I can't represent that as a fact.

MR. HULTMAN: I think there has to be a showing of some kind.

THE COURT: Well, on the basis of the foundation now I sustain the objection.

Now, you are still free to --

{2823}

MR. TAIKEFF: But, Your Honor, I would like to point out technically Mr. Hultman made the concession. I don't want to hold him to a rigid and unreasonable way. I ask Your Honor to withhold his ruling giving Mr. Hultman an opportunity to check on that document. And as I said I will give him a photocopy of it, or the Clerk can do so. I'm sure when he checks, he will find out that this was a document produced by the Government as Brady material in connection with the Robideau-Butler trial. And then the authenticity of it and its source is not in question.

MR. HULTMAN: Well, first of all the document, I haven't read it. I glanced at it at the sidebar, but I don't see where it has anything to do with the statements that concern --

MR. TAIKEFF: Be glad to tell you what my opinion is in that regard. We have had a previously unrevealed serious admission testified to and there is on that document a comparable one which is not in Parlane's report, was not testified to by Parlane on his direct examination, and our position is going to be that this is just evidence of the kind of stuff that law enforcement people will do in an effort to convict somebody. And I think --

MR. CROOKS: Apparently the Mounties are in on the conspiracy, too.

MR. TAIKEFF: It is too close a call to be just one {2824} of those unbelievable coincidence. Now, I think you may argue against that. You may feel that we're wrong, but surely as to whether or not we should have an opportunity to make that argument to the jury I think there

is no doubt. That other statement is essentially the identical statement, but it happens to come out of someone else's mouth in a slightly wrapping.

MR. HULTMAN: Well, then I don't see the problem. I don't see where the duty, there's any duty on me at this particular point. And that's the resistance I'm making at this particular time.

MR. TAIKEFF: Do you want me to call one of your assistants as a defense witness in the middle of the trial to establish the authenticity of this document, or do you want to make a concession if you find that a concession is warranted.

MR. HULTMAN: If you will indicate specifically what it is, what involvement, where specifically that you are seeking what the information is I will then be glad --

THE COURT: Just a minute. To shorten this record this evening I will reserve my ruling on 166.

MR. TAIKEFF: We thank you.

MR. HULTMAN: At least give me a copy.

MR. TAIKEFF: I will absolutely. There's a piece of evidence that the Government wants to put in this afternoon.

{2825}

THE COURT: I know. That's why I want to shorten this proceedings.

MR. LOWE: I don't want custody of this over the weekend, Judge. I'm going to leave this with the Clerk. Mr. Hultman and I have discussed this. We'll take it up sometime on Monday. Is that agreeable?

MR. HULTMAN: Fine, fine.

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

MR. CROOKS: Your Honor, the United States would like to call now Mr. Gerald Plastow and hopefully it can be very brief.

THE COURT: Members of the jury, it's Friday afternoon, we're running a little bit beyond my usual recess time and the reason for that is that this next witness has been represented to me as a witness from Canada. His testimony will be very brief and counsel have asked to be permitted to put him on this afternoon so that he would not have to stay over the weekend.

GERALD EDWARD PLASTOW

being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CROOKS:

Q Mr. Plastow, would you again state your full name for the record, please.

A Gerald Edward Plastow.

{2826}

Q And with regard to, first of all, what is your employment and where do you reside?

A I'm with the Royal Canadian Mounted Police and I reside in Edson, a province of Alberta in Canada.

Q And do you have any special duties with the Royal Canadian Mounted Police?

A I'm an identification technician.

Q And I will, because of the latest of the hour and without objection of counsel, I will try to be extremely brief.

Have you testified and qualified as an expert in the area of fingerprints?

MR. LOWE: We'll stipulate to that, Your Honor. There's no question about his qualifications.

MR. CROOKS: All right.

THE COURT: Is that acceptable?

MR. CROOKS: We will accept the stipulation and move directly into the examination.

MR. LOWE: It's quite permissible in this instance for Mr. Crooks to make one foundation leading question and let the witness acknowledge it. If he wants to do it this way, that's fine, too.

THE COURT: Very well.

Q (By Mr. Crooks) With regard to Exhibit 67-A, which is a 30-30 rifle, did you raise a fingerprint on this rifle, and I hand you Exhibit 67-B for identification?

{2827}

A I raised a fingerprint on a Winchester rifle. That one is the one I examined. My initials would be inside the butt plate. You'd have to take the screws off.

MR. LOWE: We'll stipulate to the identification. We'll stipulate to the whole thing if you'll state it. We don't really need to spend a lot of time on this.

MR. CROOKS: I will represent for the record that this is the rifle without removing the butt plate. We would offer 67-B which is the negative.

MR. LOWE: On the representation of counsel, if that is the one, we'll stipulate it, stipulate the identification as being the fingerprint that was taken off of that weapon.

Q (By Mr. Crooks) And I would now hand you 67-C and 67-B and ask whether or not you made a fingerprint comparison between the latent negative and the ink print?

A Yes, I did.

Q And do you have an opinion as to whose print is contained on 67-B, I believe, isn't it?

A 67-B.

Q Right.

A The two fingerprints found on the rifle and shown in the photographic negative were the right ring and right little finger prints on Exhibit 67-C.

Q And that would be the fingerprint card of Leonard Peltier; is that correct?

{2828}

A That is correct.

MR. LOWE: So stipulated subject to the record, Your Honor.

THE COURT: Very well.

MR. CROOKS: We have no further questions, Your Honor.

THE COURT: Just a minute. Which exhibits have you offered?

MR. CROOKS: I believe that, excuse me, I'm not sure 67-A was offered.

THE CLERK: It's offered and C is offered and B is offered.

MR. CROOKS: So all three are offered.

MR. TAIKEFF: No objection.

THE CLERK: The Judge has not ruled yet on B nor has counsel.

MR. CROOKS: I thought they had stipulated to that, Your Honor.

THE COURT: I know, but I have not actually ruled on it. Now, is that 67-B?

MR. CROOKS: 67-B is the negative,

THE COURT: Very well. That's received.

MR. CROOKS: We have no additional questions.

THE COURT: Has 67-A been received?

THE CLERK:

A is in, Your Honor, and C is also in.

{2829}

THE COURT: Very well.

MR. LOWE: We have no questions, Your Honor.

THE COURT: You may step down.

I expect that it is not necessary for me to again remind you that you must keep an open mind, not discuss the case and not reach any conclusions in the case until after all the evidence is in.

Court is now in recess until 9:00 o'clock on Monday morning

(Whereupon, the court recessed at 5:15 o'clock P.M. on April 1, 1977; to reconvene at 9:00 o'clock A.M on April 4, 1977.)