

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

THE COURT: The jury may be brought in.

(Whereupon, at 3:13 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:)

THE COURT: I have two bits of information to give to the jury at this time. One is that, due to a personal appointment of one of the jurors, the Court will recess this afternoon for the day at 4:30; and the second point of information is that the next witness to be called will take the oath in a little different form than that which is usually administered.

The law as expressed by the Rule states that before testifying every witness shall be required to declare that he will testify truthfully by oath or affirmation administered in a form calculated to awaken his conscience and impresses his mind with his duty to do so.

The next witness, because of his religion, has requested that he be permitted to take his oath on the pipe, and that permission has been granted.

The Government may proceed.

MR. HULTMAN: The Government calls Norman Brown, your Honor.

THE CLERK: Mr. Brown, you do swear on the sacred {1392} pipe that the testimony you are about to give will be the truth?

THE WITNESS: Yes.

THE CLERK: Would you be seated, sir?

NORMAN BROWN,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HULTMAN:

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

A Norman Brown.

Q And where do you live, Mr. Brown?

A Minifarms, Arizona.

Q And about how long have you lived in Minifarms, Arizona?

A All my life.

Q Do you have some brothers and sisters?

A Right.

Q And would you tell the jury how many brothers and sisters you have?

A Six brothers and three sisters.

Q Mr. Brown, I have not discussed the facts of this event with you since the time in open court, have I?

A No.

Q What is your birth date?

A March 17th, 1960.

Q So you were just last week 17, is that right?

{1393}

A Right.

Q And how old would you have been on the 26th of June, 1975, two years ago?

A 15.

Q How far in school have you gone?

A Sophomore.

Q Did you ever have an occasion during the year, 1975, to go from your home at Minifarms to some other place to attend any meeting of any kind?

A Yes.

Q Excuse me?

A Spiritual conference in Farmington, New Mexico.

Q And would you explain to the jury about when this was?

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

Q Do you remember who it was that you met there and saw there?

A Who? What do you mean?

Q Any persons that you knew or recognized?

A Yeah.

Q And would you tell the jury who it was that you recall specifically that you met there?

A Leonard.

Q Now, when you refer to "Leonard", would you tell the jury what his full name is?

A Leonard Peltier.

{1394}

Q And is he in the courtroom here today?

A Right.

Q And would you tell the jury where he is seated here in the courtroom?

A He is seated over there.

MR. TAIKEFF: The identification is conceded, your Honor.

THE COURT: Very well.

Q (By Mr. Hultman) Had you known Mr. Peltier before?

A Yes.

Q And approximately how long had you known him?

A About four years then.

Q And where was it, if you recall, approximately four years before that you had met Mr. Peltier?

A Crow Dog sundance.

Q Was that a religious ceremony that you attended?

A Right.

Q And how old would you have been at that time?

A 13.

Q And how did you go to the ceremonial, Crow Dog's, on that occasion?

A What do mean?

Q Did you go by yourself or did you go with somebody?

A Yes.

Q You went by yourself?

{1395}

A Yes. You mean four years ago?

Q Right.

A Yes.

Q When was the next occasion you were with Mr. Peltier?

A In Farmington.

Q And that's the time which we are now discussing, is that right?

A Right.

Q All right. Who else that you had known before did you see in Farmington?

A Dino and Joe.

Q So the jury will know, who is Dino?

A Butler.

Q And what was the next name that you used?

A Joe Stuntz.

Q Joe Stuntz?

A Yes.

Q How long had you known Dino?

A About four years too.

Q And where, Norman, did you meet Dino?

A The trials in Minneapolis on Banks and Means.

Q And about how old were you at that time?

A 13.

Q Was the third person that you just mentioned named Bob, is that correct? I didn't quite hear. Was it Bob that you {1396} said?

A No.

Q Who was the third person?

A Joe.

Q Joe, all right.

A Yes.

Q Who is Joe?

A Stuntz.

Q And how long had you known Joe Stuntz?

A Four years.

Q And where did you first meet Joe?

A Sundance too.

Q And was that at Crow Dog's also?

A Right.

Q And had you known Joe then after meeting him at the sundance at Crow Dog's?

A Yes.

Q About how many times had you been with Joe?

A What do you mean?

Q About how many times or occasions had you been with Joe after that?

A Just in Farmington.

Q All right. Did you consider Joe to be a very close friend of yours?

A Right.

{1397}

Q Is he a brother of yours?

A Right.

Q Who else did you meet at Farmington that you had known before?

A Norman Charles.

Q Norman Charles?

A Yes.

Q And where had you met Norman Charles before?

A Sundance, Crow Dog's.

Q And had you had occasions to see him after that?

A Well, just in Farmington.

Q The next time was in Farmington. Who else did you see in

Farmington that you had met before?

A That's all.

Q Now, did you meet some other people for the first time that you continued to know after being in Farmington?

A What?

Q Did you meet some new people that you continued to know after Farmington?

A Yes.

Q Would you tell the jury who those people were?

A Lynn.

Q And when you say "Lynn", do you know any additional name other than Lynn?

A No.

{1398}

Q All right.

A And Jean.

Q And do you know the person "Jean" by any other name?

A Bordeaux.

Q How old was Lynn at the time you met her there to the best of your knowledge?

A Oh, about 17, 18.

Q And how old was Lynn?

A I just said that.

Q Who was the other person that you referred to?

A Jean.

Q How old is Jean?

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

Q (Interrupting) Was she a young person?

A Right.

Q A young lady?

A Yeah.

Q All right. Who else did you meet at that time that you continued to be with for some period of time?

A Wish.

Q And does Wish have another name?

A Yeah, Wilford Draper.

Q Wilford Draper. You know him by "Wish", is that right?

A Yes.

Q Is that what his friends knew him by?

{1399}

A Right.

Q All right. Who else?

A Mike Anderson.

Q Anyone else?

A Norman Charles.

Q Norman Charles?

A That's all. Bob Robideau.

Q Bob Robideau. Had you known Bob before?

A No.

Q The first time you met Bob Robideau?

A Right.

Q All right. Would you tell the jury -- did you later leave Farmington and go somewhere?

A Yeah, went to Oglala, South Dakota.

Q And do you remember about what time of the year, 1975, that was, what month approximately?

A About June.

Q Sometime in June?

A May.

Q 1975?

A Yeah, about the second week in June.

Q Now, would you tell the jury who you left with -- did you leave with any other persons?

A Yeah, I left with all the people I named.

Q You left with the people that you have just named in {1400} response to my questions?

A Right.

Q All right, and would you tell the jury how you went, did you go in an automobile -- or automobile?

A Yeah, pickup with a camper on it.

Q All right, and who did that belong to?

A The pickup?

Q Yes.

A I don't know.

Q All right.

A Just got a ride.

Q Who went in the pickup with the camper, who were the persons?

A Joe and Leonard.

Q Was there anyone other than Joe and Leonard that went in the pickup?

A No, I can't remember.

Q Who did you go with -- did you go in that car?

A Yeah, I went in the pickup, yeah.

Q So you went with Joe and Leonard?

A Yes.

Q Now, the other people then basically went in a second car, is that right?

A Yes.

Q And do you remember what kind of a car that was or a {1401} description of that car?

A Well, it was an old car. It was a green car.

Q Now, where was it that -- did you go to a particular place once you got to South Dakota?

A Oglala, South Dakota.

Q And where in Oglala or in the vicinity did you go specifically?

A Jumping Bull, the ranch.

Q And had you ever been to the Jumping Bull ranch before?

A No.

Q Had you met the Jumping Bulls before?

A No.

Q What was it that you did once you got to Jumping Bulls?

A Got some tents and set up a place where we could stay.

Q And did the others that you have mentioned also participate and help you, and did you help them?

A Right.

Q I don't know whether I asked you specifically about Mike. Had you known Mike for quite some time?

A Yeah.

Q How long about -- when did you first meet or know Mike?

A About seven years ago, eight years ago.

Q And that's Mike Anderson?

A Right.

Q That I am referring to and you are responding to, right?

{1402}

A Right.

Q Where was it that you first met Mike Anderson?

A I can't remember where, but I met him a long time ago.

Q Would you know just generally where, for example, in what state?

A Oh, yeah, Arizona.

Q All right, and does he come from the same tribe or nation that you do?

A Right.

Q And do any of the others that you have mentioned come from the same tribe or nation?

A Right.

Q And which ones or ones would that be?

A Wish and Mike. Wish, be just Wish and Mike.

Q Wish, Mike and you come from that nation then?

A Right.

Q All right. What was the reason for setting up a camp at Crow Dog's?

A Crow Dog's?

Q I am sorry, at Jumping Bull's, I am sorry.

A We had no other place to stay, no room in the houses, and I don't know, just put up some tents.

Q I want you to turn around and look for a moment or two at what has been marked and entered as an exhibit in this case, Government's Exhibit No. 71; and ask you whether or not you {1403} recognize the general scene that's portrayed in that Government exhibit?

A What?

Q Have you previously seen a map of this kind and nature before, Norman?

A Yeah, right.

Q Now, I want you to look at it, and then I want to ask you whether or not you understand the area, the place that that represents?

A Right.

Q And would you tell the jury what it is or where it is?

A It is right up there (indicating) where it says "tents".

Q Is this generally a map of the Jumping Bull ranch that you talked about a minute ago?

A Yeah.

Q All right.

{1404}

Q And on that map can you show the jury where it was that you set up the tents that you have mentioned? There is a pointer and maybe that

might be of a little help and assistance.

Would you point out to the members of the jury where the tents were set up.

A (Indicating.)

MR. HULTMAN: Let the record show that the witness pointed out the area on Government's Exhibit 71 which is portrayed there as "Tents."

Q (By Mr. Hultman) How many tents were set up at that time Norman?

A There was five tents.

Q Is that an approximation on your part?

A No. About six. No. Five. I don't know. Five or six.

Q Would you tell the jury starting with yourself who it was that lived in a particular tent. It was the same people, was it not, that came, that you went on the highway with from Farmington to live in the tent area generally speaking?

A Yes.

Q Tell the jury, first of all, what tent you lived in and with whom, if anyone?

A It was that box tent.

Q Did anyone stay with you in the box tent or you with them?

A Yeah.

Q Would you tell the jury who those people were.

{1405}

A I can't remember.

Q Maybe if we talk about some of the others for a minute it might help.

Was Wish in the tent area when you first set up the tents?

A Yeah.

Q And did he stay there in the tent area itself all the time you were there?

A No. I don't think so.

Q Did Wish leave at some time, as far as being right in the tent area that we're now talking about, did he go sleep some other place?

A Yeah.

Q Do you remember where that was?

A That was around Jumping Bull's place there at the housing.

Q And was that a tent in which he set up and he slept by himself, is that right?

A Yeah.

Q Do you know why Wish left the tent area and set up a tent of his own out by Jumping Bull's house?

A At that time I didn't but now I do

Q You know from your own knowledge?

A From reading the papers now I know.

Q Well, I don't want you to respond to anything you may have {1406} read.

A You mean then?

Q Yes.

A No, I didn't.

Q All right.

A No.

Q Would you tell the jury a bit or two about Wish Draper. Was he a person who handled guns?

A No.

Q What kind of a person is Wish Draper, as you've known him?

A He's quiet and stays to himself. That's about all.

Q Now do you remember who stayed in any other tents, for example, let's talk about Dino for just a moment. In what tent and with whom did Dino stay down in the tent area?

A Stayed in his teepee.

Q In a teepee. Was there anybody that stayed with him?

A Yeah. Neelock.

Q Now were there any other tents that you recall that certain individuals stayed in?

A There is a little pup tent.

Q Was it an orange pup tent?

A Yeah. It was orange. It was Mike and Jimmy stayed there.

Q All right. Mike and Jimmy stayed in the orange pup tent. Who is Jimmy? Do you know him by another name, additional name?

{1407}

A Jimmy Zimmerman.

Q Jimmy Zimmerman.

And how old at that time was Jimmy Zimmerman at the time we're talking about in 1975?

A 11, 12.

Q Approximately 11 or 12 years old?

A Right.

Q Was he close to the person he stayed with?

A Yeah.

Q Does this help in any way for you to remember who it was that you stayed with?

A In the green tent. In the orange tent, too, yeah.

Q Who stayed in that tent?

A Which tent?

Q In the orange tent we're still talking about. Did anybody else stay in the orange tent?

A Yeah. Mike and Jimmy.

Q Was there anybody else other than Mike and Little Jimmy?

A There was me. You know, that's, I slept where, I don't know just, I stayed with Jim some nights and some nights I'd stay in another tent. Like that.

Q All right. Did Leonard live down in the tent area?

A No.

{1408}

Q Where did he stay?

A In one of the houses up here.

Q Do you remember which one of the houses up there? Maybe I could ask you with a pointer to show the jury by each house, Norman, would you start here on this side and tell the jury and you point out the first house on the right-hand side. Do you remember, there is a green house on the right-hand side?

A Yeah.

Q Tell the jury who it was that lived in the green house.

A Ivis and Angie Long Visitor.

Q Do you remember what the next house over was then?

A Yeah. It was --

Q Ttaybe there was a shed of some kind in between.

A Yeah. There was a shed.

Q Did anybody live in the shed?

A No.

The next house is Jumping Bull's live there.

Q Do you remember what color a house that was?

A It was white.

Q What kind of white, was that sort of the largest house of all of them in the area?

A Yeah.

Q That's where Mr. and Mrs. Jumping Bull lived, is that right?

{1409}

A Yeah.

Q And was there another house then beyond where the Jumping Bulls lived?

A Yeah. Was a log house.

Q And would you point that house out to the jury so that the jury can see.

A (Indicating.)

Q And who was it that lived there?

A Dennis Banks.

Q Now is there another house then or a building of some kind still beyond the log house? Is there a house of some kind or a building over here?

A Right.

Q Was there anybody that lived in that place?

A No.

Q What was that? Do you know what that was, that building, at all?

A No.

Q Now down here to the, where I am now pointing is also on Government's Exhibit 71, a marking and some letters that refer to a residence. Do you remember who lived there?

A I knew it was Dusty lived there.

Q Was Dusty related in any way to anybody that you knew?

A Yeah. Jumping Bulls.

Q And was there a lady that, did his wife live in that {1410} residence, too?

A His wife?

Q Did he have a wife, Dusty?

A No.

Q Was there anybody else that lived there in that residence besides Dusty?

A Yeah. But I don't know the names. I saw the people around there.

Q Do you know how many people live there besides Dusty?

A About three other people I guess.

Q Now where was it that Leonard lived then up in the houses?

A I think it was that log cabin.

Q He lived in the log cabin.

Now what was it that you did during the time up until the 26th of June, the day when some events happened? What did you do during that period of time generally from day to day and during the weeks that you were there? What did you do?

A Chopped wood, hauled water and pulled security.

Q Who was it that gave you any instructions as to pulling security?

A Well, Leonard asked me if I wanted to pull security. He didn't tell me or nothing, he said, "Do you want to," and I said, "Yeah. I'll pull security."

Q Now what would you do when you pulled security?

A I just walked around the camp and looked out for the roads, {1411} watched the cars and see how everybody is. I'd watch the camp, you know.

Q Were you armed?

A Yeah. And what kind of an arm would you take on those occasions?

A .22.

Q And did you take ammunition?

A Yeah.

Q What did you do at other times that you weren't involved in security? What did you do other times?

A Hauled water.

Q And chopped wood, is that right?

A Right.

Q You've named the same people who came from Farmington, or you came from Farmington with. Was there anybody else during the time that you lived in the tent area that lived in the tent area for any period of time other than the ones that you've mentioned?

A No. Just --

Q IF there was you don't recall, is that a fair answer?

A Yes. Yes.

Q There wasn't anybody else that lived there for any extended period of time, is that right, that you know?

A No.

Q What would the others do that, let's talk about the men {1412} for a little while, the men and the boys. What would the boys do other than security during the time that you were there? How would you spend your time?

A What?

Q How did you spend your time, the boys, the young men that you have referred to?

A Like set up camp, cut wood for the tents and, you know, haul water for the camp.

Q What did the older men do during this period of time, Leonard and Dino and Bob?

A They were up there in this housing. I don't know what they done. I mean, what they did.

Q Were you at various times in and out of the houses there on Jumping Bull's ranch?

A Yeah.

Q Were you ever in the log house?

A Right.

Q Tell us what it was that you saw on occasions when you were in the log house.

A .30.30.

Q When you refer to .30.30, would you explain to me and to the jury what it is that you're referring to.

A Well, it's a rifle. There is a lever on the bottom that you move back and forth. You cock it.

{1413}

Q Now is this description you're now giving something that you saw and you observed and you know from your having seen it or something that somebody has told you?

A What?

Q I'm simply asking you whether or not an FBI agent or myself has told you that some gun that you saw at that time was a .30.30.

A No.

Q IT's because --

A Yeah.

Q -- you yourself have that knowledge, is that right?

A Right.

Q And you had it back at that time?

A Yeah.

Q Did you see any other weapons in the log house?

A Yeah.

Q Would you tell the jury what other weapons as you knew them and you observed them and not what somebody else may or may not have told

you. What other weapons did you see in the log house during the time that you were there?

A There was one that looked like an M-16.

Q Now you say it was one that looked like an M-16. Did I ever tell you that a weapon of any kind looked like an M-16?

A No.

Q Tell the jury how it is that you are saying to them in {1414} response to my question that a weapon you saw in the log house while you were there looked like an M-16. Where did you first hear of an M-16?

A Radio. You know, news, pictures.

Q So that when you use the word "M-16," this is something that you knew back at the time you saw the weapon, is that right, from news or TV or whatever it is?

A Yeah.

Q And it isn't because anybody from the FBI or the United States attorney it was an M-16?

A No.

Q Now do you know whether or not it was an M-16?

A No.

Q Would you explain to the jury specifically what the object, the weapon looked like. Describe it to the jury for them, if you can. What color was it, for example?

A Dark color.

Q And do you remember anything else about it?

A Had a handle on the top.

Q Do you remember anything else about it?

A Clip on the bottom.

Q Do you remember anything else about it?

A That's all.

Q Did you see that weapon or a weapon of that kind on more than one occasion while you were there at Jumping {1415} Bull's? Did you see it more than just the time in the log house?

A Yeah. I saw it at that time.

Q Who did you ever see with that weapon?

A You mean who did I see? Leonard.

Q With Leonard?

A Yeah.

Q I'm going to show you now what has been marked as Government's Exhibit 34AA and ask you, Norman, whether or not the weapon that you

have just been describing is the one which is of a general type and looks and description of the kind that you just told the jury. Was the weapon that you have been describing to the jury one that looked like this?

A Yeah. Right.

Q So that I might be very clear and not mislead you or in any way

--

A Yeah.

Q -- ask you something that you don't understand, you understand and know the difference between, do you not, something that a weapon that looks like one different from one you know exactly is the one, is that right? Do you understand there is a difference between that?

A I don't understand you.

Q All right.

You don't know whether or not this weapon here is the {1416} one that you saw up there at all, isn't that right?

A Right.

Q It's just one that looked like it?

A Yeah. It looked like it.

Q Did you see any other guns in the log house?

A No. I don't think so.

Q Did you see any other guns in any of the other houses during this time, short time that you lived there in June?

A No. Not in any of the houses.

Q Did you see any guns in the tent area?

A Yeah.

Q Would you explain to the jury what guns you saw in the tent area during the time that you lived there.

A Well, I saw three rifles inside the tent where we kept our food and, you know, stuff like that.

Q And would you explain to the jury, let's take them just one at a time and I want to ask you what it is you remember about each one of them in terms of telling the jury to the best of your remembrance what they looked like.

A It's a rifle.

Q What do you remember about a rifle?

A Bolt action.

Q It was a bolt action?

A Right.

Q Do you know the caliber of weapon?

{1417}

A No.

Q Do you know the difference between a .30.30 and a .22 for example?

A Yeah.

Q Did you know at that time the difference between a .22 and a .30.30?

A You mean did I know if that was one or not?

Q Yes.

A I don't know. I just saw it. No. I don't think so, you know. If I saw it I'd know what it was.

Q But you don't recall now specifically what it was?

A Yeah.

Q But it was a rifle, is that right?

A Right.

Q Now what was the second weapon that you recall having seen there in one of the tents? The food tent I believe, as you described it, right?

A Yeah. Another rifle.

Q And would you describe to the jury what that rifle looked like.

A Well, it was the same as the other one. Bolt action.

Q Now would you describe to the jury what bolt action means. Is this something you're describing you knew at that time?

A Right.

{1418}

Q Tell us what it is you mean by bolt action, that you remember a weapon that was bolt action.

A Well, it moved from the side like this, you know (indicating). I don't know how to explain it, you know.

Q Well, is it one that you have to pull the bolts back?

A Yeah. Pull it back; yeah.

Q In order to fire it again, is that right?

A Yeah. That's right.

Q So there was a bolt action rifle there?

A Yeah.

Q That's the second one?

A Yeah.

Q What was the third one that you recall?

A It was like the other two.

Q It was like the other two?

A Yeah.

Q Do you remember seeing any other weapons of any kind until the day of the 26th in the tent area?

A No.

Q Do you remember having any training or any sessions with people that showed you how to use a weapon of any kind while you were there in the tent area at Jumping Bull's?

A Yeah.

Q Would you explain to the jury who was there at that time.

A Me and Norman Charles.

{1419}

Q Did you ever while you were there fire the black weapon that I showed you a little while ago that you referred to as looking like an M-16?

A No.

Q I want to take you now to the evening of the, afternoon or evening of the 25th of June. Do you remember that day what you were doing, what you did that day or that evening?

A That night; yeah.

Q Yes.

A Pulled security that night. June 26.

Q And did you talk to anybody before you pulled security?

A Yeah. It was Wish. I think it was Wish. Wish or Mike. One of them.

Q Do you remember any event of any kind during that period of time?

A I think it was Wish, he told me that, it was Mike, it was one of them. He told me that, it was either Wish or Mike, that they were hitchhiking to Oglala and he got picked up by FBI and took him to Pine Ridge. They questioned him and they said somehow a clip being taken away from Norman Charles and that's what he told me. And then they brought him back.

Q Do you remember talking to Norman at all that evening?

A Yeah. I think so. Yeah.

Q Did he indicate anything or do you recall anything about a possible conversation that you might have had with Norman {1420} that night about the events that you're talking about?

A Yeah. He told me that he took the clip from him. The clip (indicating).

Q Did he indicate what kind of a clip it was? I notice you're forming your hands. Was that as you remember what the clip looked like?

A Yeah.

Q Would you indicate to the jury the general shape of the clip that you remember being talked about at that time?

A About this big (indicating).

Q Now you didn't see the clip at that time, is that right?

A Right.

Q That's as you best recalled the discussion concerning it, is that right?

A Right.

Q You pulled security that night you said. Were you on security all night?

A Yeah. From about 8:00 to 10:00. It was, I think it was mostly the night, most of the night.

Q And would you tell the jury what specifically you did that night during the time that you pulled security? Tell us where you went and what you did.

A Well, like just walked around camp and looked, you know. Just walked around and see how everything was because, reason why we had security was because we were afraid of the goons.

{1421}

Q Had you ever seen a goon?

A Yeah.

Q When did you see a goon?

A We passed one and saw two cars and they were inside the cars, two cars and the goons.

Q Is that the only time you saw a goon?

A Yeah.

Q Did you ever see a goon down at Jumping Bull's property at all?

A No. You mean before June 26th?

Q Yes. That's what I'm referring to.

A No.

Q At the times that you were at, who was it that lived in the green house, the first house that you referred to as the green house? Do you remember who lived there during that period of time?

A Ivis and Angie Long Visitor.

Q Were you in and out of there, that house, during the time that you were there in June?

A Yeah.

Q Did you ever see any goons at any time when you were there?

A No.

Q Were you in and out of Jumping Bull's house while you were there?

A Yeah. Just, sometimes. Take the water, chop wood for him.

{1422}

Q Did other people come and go at times that you saw at the Jumping Bull's?

A Yeah. Some people came, some left.

Q Did you ever see any goons at Jumping Bull's?

A No.

Q From what you've already testified you had been in the log house on occasions, is that right?

A Yeah. Log house.

Q Did you ever see any goons when you were at the log house?

A No.

Q When you were over at, I don't recall the name of the gentleman that you referred to over at this residence. What was his name again you referred to?

A Dusty.

Q Dusty. At the times you were over at the house where Dusty lived, did you ever see any goons over there?

A No.

Q So is it fair for me, did you ever see any goons down in the tent area?

A No.

Q Is it fair for me to conclude, Norman, that you never saw up to the 26th, that's the time you said to me a minute ago, any goons at all in the Jumping Bull property area?

A No.

Q And the only time you saw a goon was this one time you {1423} a goon was this one time you referred to?

A Yeah. Goons.

Q Now what did you do in the morning when you got up in the morning on the 26th of June, 1975?

A I got up and Jim was up and Jean and Lynn were up and Jimmy was

there, too. The girls, Jean and Lynn were cooking. Ready to have, I think it was lunch or breakfast. I don't know what time it was.

Q Would you tell the jury so that they might know, how many girls or women were in the camp?

A There was three.

Q There were three. And would you for the jury's sake tell the jury again who those three were.

A Lynn and Neelock and Jean.

{1424}

Q All right. Would you tell the jury approximately how old Lynn was?

A About seventeen, eighteen.

Q And how old approximately was Neelock?

A About twenty.

Q About twenty. And who was the third?

A Jean?

Q Well, you said Lynn, you said Neelock.

A And Jean.

Q And Jean, and how old was Jean about?

A I guess about fifteen, sixteen. Fifteen or sixteen.

Q Fifteen or sixteen. All right.

Those were the three women or girls that lived in the tent area and they were there that morning?

A Yes.

Q Those are the three you were referring to; is that right?

A Yes.

Q Was Leonard there that morning?

A No.

Q Did you see Leonard that morning in the tent area at any time?

A No. Not when I got up, no.

Q Again, I am going to ask you, did you see Leonard in the tent area at any time that morning, in the morning now I'm talking about?

{1425}

A You mean -- I can't remember. I think -- I don't know. I can't remember.

Q All right.

A I might have, I might have seen him, but I can't remember.

Q All right. Your best and most honest, that you can't remember; is that right?

A No, I can't.

Q You do remember other people specifically, though?

A Yeah.

Q All right. And he didn't live in the tent area, did he, as you said before. He lived up in the log house?

A Yeah.

Q All right. Did you see any of the fellows there at any time that morning? Do you remember when you first got up who the fellows were if any that you saw there?

A Just Joe and Jimmy.

Q And by "Joe," you are referring to Joe Stuntz?

A Right.

Q And Jimmy, Little Jimmy as you referred to?

A Yeah, Little Jimmy.

Q Now, I'm going to, was there any, did you do anything different that morning from what you had done any other morning? Anything unusual or different?

A We just, just like regular mornings. Like we just got up like we do every day.

{1426}

Q All right. Now, at a time during that day sometime did you hear some firing of some kind?

A Yeah. I got up and Jean and Lynn were cooking and I was talking to Joe for a while on top of that green car, on the hood sitting there talking.

And we heard some shots, about eighteen, eighteen, about twenty shots. And Joe said, "Let's go see, let's go see where the shooting is coming from." So we ran up to a little hill, and it was coming in the direction of the houses.

So he said, "Let's go run back and get the guns," he said. So we were running back and then he said, "There's a gun in the car there, that green car." So I picked it up. Then I went there. I told Dino. Dino come running out and we told him that there was shooting up there. And Bob came. Then we met right outside of camp. Then we told the sisters, we told them, you know, don't you run out of here because there's shooting going on.

At that time then we all started running up together. Then we split up, me and Joe went up to that housing and, you know, Bob went around this way (indicating), toward where that road is. That's what we

done.

Q All right. Now would you take the pointer and point out to me, or would you tell the jury first where it was that you heard the shooting, where was it that you heard the shooting?

A Right over here (indicating).

{1427}

Q All right. In the general area you are making a circle of some kind; is that right?

A Yeah. Where the shooting was coming from.

Q All right. Now, you didn't see the shooting; is that right, at that time?

A No.

Q You heard shooting?

A Yeah.

Q All right. And you say you thought it was about twenty shots, is that --

A Yeah.

Q -- a fair characterization?

A Right.

Q Would you describe to the jury what the shooting sounded like since you couldn't see it, from the first shot that you heard through the approximately twenty? Would you describe to the jury what it sounded like to you or how it happened, the twenty shots approximately? Would you describe to them what it was you heard.

A I didn't hear just twenty shots like that.

Q That's why I want you to explain how you did hear them, Norman.

A Well, I don't know. Just shooting, just -- I heard about five go at one time.

Q You heard about five at the first; is that right?

{1428}

A Yeah.

Q And would you tell us, tell the jury what it sounded like, those five.

A Not the first, but I heard it, I heard those five shots. I heard, first there was a shot, then a couple shots, and the five shots. Then a couple shots again, and then shots, and just taking turns like shooting. Just, just one right after another shots.

Q All right. And when you stated then that you separated, and I understand that you indicated that two of you at some point went one

direction and two went another direction; is that right?

A (No response.)

Q Would you show me first of all, and show the jury where it was that you first went when you heard the first shots. You said that you left the tent area and you went somewhere. Would you start at the tent area and kind of draw where it was that you went.

A Right over here to this place (indicating).

Q And when you are marking that area, let me mark it with a pen so that we will, although I'm not quite that tall, so that's going to be a little bit impossible for me, would you point it out again.

A (Indicating.)

Q Would it be approximately in the area of the word "Plateau" {1429} that --

A Yeah.

Q This word right here (indicating)? It would be in that general area; is that right?

A Right.

Q All right.

MR. HULTMAN: Let the record show that the witness was pointing out an area where there is the word "Plateau" and it's the only word "Plateau" in the upper right-hand corner, or right-hand quarter of Governments Exhibit No. 71.

Q (By Mr. Hultman) Now, is that spot out in the open, or is that in the trees?

A It's in the open.

Q It's out in the open. As you look at Government's Exhibit 71, Norman, are the areas that show no little vegetation or little circles, is that basically an open area where there is no trees or bushes of any sights to where you can see literally everything?

A Yeah.

Q All right. Now, was that an area where you could see generally most of the area where there are no bushes on this map here?

A Yeah.

Q Now, tell us when you got there what did you do, and what did you see if anything when you got up to the point where you {1430} said you ran up to in the general area of the word "Plateau". Can you see good from there?

A Yeah.

Q What could you see from there?

A You mean me see from here (indicating)?

Q No. When you ran up to the plateau, right.

A Yeah.

Q Did you have any gun with you at that time?

A No. Ran through here, then they were shooting us from --

Q And where did you gather the shooting was coming from then?

A From around -- the sound was coming from here (indicating).

Q But did you see any specific shooting?

A No.

Q Still did not see any?

A No.

Q Did you observe any people at that very time?

A No.

Q All right. So what did you then do next?

A We ran back. Joe told me to get a gun inside of the green ar.

Q All right. So you testified earlier there were guns in he tent, in the supply tent, or the food tent; is that right?

A Yes.

Q Now, at this time the guns, or at least some guns are not {1431} in the tent, they're in a car, a green car; is that right?

A Yeah.

Q Now, had you ever seen that green car before?

A Yeah.

Q And where did you first see it, remember seeing that green car?

A Farmington.

Q Is that one of the cars you came back in?

A Yeah.

Q Do you know who the green car belonged to at this time? The time we're now talking about?

A No. Just some people just drove it, you know.

Q All right. Did you ever, who do you remember seeing driving it?

A The green car?

Q Yes.

A I don't think anybody, because I mean --

MR. TAIKEFF: Your Honor, because the witness is turned, we can't hear. Could the microphone be put near him.

I don't mind that he's turned, but I'd like to hear the answer.

MR. HULTMAN: I don't think he's given an answer yet, Counsel.

A I can't remember.

MR. HULTMAN: The answer is he can't remember.

{1432}

Q (By Mr. Hultman) Did you in fact at that time then pursuant to what you did at that time secure a weapon of some kind?

A Yeah.

Q And where did you get it?

A From that green car there.

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

A It was right there (indicating).

Q All right. About where there is an object at the present time; is that right?

A Yeah.

Q An object that indicates green car; is that right?

A Right.

Q And have you ever seen this map here with any of these objects in front of it before in the courtroom here today?

A Yeah.

Q Did you see one that was similar at sometime in the past?

A Yes.

Q Have you seen one in the last seven, eight -- six, seven, eight months at all?

A Yeah. It was Cedar Rapids.

Q You haven't seen any since then; is that right?

A No.

Q All right. Now was there any other weapons in the green {1433} car?

A No.

Q And would you describe to the jury the weapon that you got from the green car.

A It was a 22.

Q Well, now did you know at that time that it was a 22?

A Yeah.

Q Then it is not something that somebody told you since, or put any words in your mouth or anything?

A No.

Q All right. So is it fair for me to conclude, Norman, that at the time we're talking about that you had a general knowledge of weapons of one kind or another?

A Yeah. Just kind of like most everybody has.

Q All right. Now, would you describe that 22 as you've called it to the jury. Tell them what you remember about it.

A It was bolt action. It was a single shot.

Q And had you ever seen it before?

A No.

Q All right. Do you remember anything else about that particular gun on that particular day by way of anything other than it being a 22? Do you remember anything about the weapon that you would remember?

A You mean the one I took?

Q Yes.

{1434}

A It was a single shot.

Q Single shot. Do you remember anything else about that --

A Yeah. It had little rounds.

Q Little what?

A Rounds.

Q Little rounds?

A Yeah.

Q It fired small rounds?

A Yeah.

Q All right. Do you remember anything else about that particular weapon, anything that you would remember that weapon by as being different from some other 22?

A You mean --

Q Well, was there anything about any of the parts of it that you would remember?

A Yeah. It was a single shot.

Q It was a single shot, all right.

Anything else that you remember?

A No.

Q All right. Now, I'm going to -- the FBI or nobody told you those at any time, those are things you remember, right?

A Right.

Q Those are the things that you are talking about are the things that you remember from that day, all right.

I'm going to show you what has been marked as Govern- {1435}ment Exhibit 41-A, and I want to ask you whether or not in looking at 41-A is there anything about this weapon, does it generally resemble the weapon

that you are talking about?

A Yeah. I think that's the one.

Q You think that it's the one?

A Yeah.

Q All right. Now, in saying that you think it's the one, that doesn't mean that you know exactly this is the one; is that right? Is that fair for me to conclude?

A Yeah.

Q All right. Now, what is it that makes you think that it's the one?

A Well --

Q And I'll let you look at it. I don't mean in any way to be -- it's inoperative.

A Yeah. I think it was this thing here on that (indicating). I think that's the one.

MR. HULTMAN: Let the record show that the witness pointed out some carving that is very unique and distinct as a part of the stock of this particular weapon in looking at it.

Q (By Mr. Hultman) Did I ever at any time before right this very second ever show you or indicate to you that there was anything in particular about this weapon that was unique or unusual?

A What?

{1436}

Q Have I ever, have you ever pointed this out to me before?

A No.

Q All right. And the FBI hasn't told you it was there, and to point it out, have they?

A No.

Q All right. It's because you remember; is that right?

A Right.

Q All right. Anything else about this weapon that looks, make it such that you think maybe you had seen it before, or like the one on the time you are talking about?

A Well, I think it was that scope there (indicating).

Q All right. It did have a scope on the one that you had?

A I think that's the one, yeah.

Q All right. And it is a bolt action type of the kind that you described, is it not?

A Yeah. That's right.

Q All right. Now, what is it then that -- did you get any ammunition?

A Yeah.

Q Where did you get the ammunition?

A From the car. It was, it was in the socks. I don't know how many rounds in there. It was about half full. I can't remember where I got it, but it was inside a sock, boots there.

Q All right. Now, I believe you then said that somewhere you saw Dino and Bob. When was it that you first saw Dino and {1437} Bob after the shooting, or with relationship to the shooting, when was it that you first saw Dino and Bob?

A Well, I told them that, I told Dino that there was shots coming from around the house. And he got up.

Then as we got my gun, then he met up with us. I think he was with Bob. Yeah, Bob. Bob was -- we met up with them, though.

Q You know you met up with them?

A Yeah.

Q Do you remember where it was that you met up with Dino and Bob insofar as a place?

A Right here (indicating).

Q All right.

MR. HULTMAN: And let the record show that the witness is pointing out an area just below the words "SA Williams' car," which is along the small road.

Q (By Mr. Hultman) Did they have any weapons at that time?

A Yeah.

Q All right. Let's start with Dino, and that's Dino Butler; is that right?

A Right.

Q Now, would you describe for the jury the weapon that Dino Butler had.

A It was a big rifle. Had a big stock. It was just big.

It was long, it was long. About this long (indicating). {1438} And it had -- it was just a big rifle.

Q All right. And was there anything else descriptive about it that you remember that was different from other rifles?

A There was a clip on there.

Q And where was the clip, what with relationship? Does it come from the top or from the bottom?

A I think it was from the top.

Q All right. Do you remember about the size or the length of the clip?

A I don't know. I think it was about five rounds, ten rounds.

Q All right. Now, do you remember what kind of a weapon that Bob had at that time?

A It was a -- I don't know what kind of a gun it was, but --

Q I want you to describe. You didn't know what kind of a gun. Would you please describe it to the jury.

A Well, it had a long clip, and it had a handlebar trigger.

Q When you say "long clip," you mean that one -- would you show about how long it is to the jury.

A About this long (indicating).

Q All right. And is that the way that it goes to the weapon, the way you are now describing it?

A Yeah, it goes in like this (indicating).

Q What kind of shells does it fire, the shape or the size of them?

{1439}

A I think it was a 45 or 44.

Q Now, is that something that you knew at that time, or is that something that somebody has told you since then?

A Yeah, since then.

Q All right. Would you describe the size of the, of those shells, compared, for example, to a 30 caliber. Do you know what the size of a 30 caliber shell generally is?

A Yeah. About this big (indicating).

Q All right. How in size, in either length or in fatness or thickness?

A It was pretty fat and it was small.

Q All right. Now, where did you, where did you go from there?

A After I met up with them?

Q Yes.

A Okay. We met up with them. We started, me and Joe ran up here, and Bob and Dino went on this trail here (indicating).

Q All right. And where was the last point that you saw Bob and Dino? Would you point out on the exhibit where it was the last spot that you saw Bob and Dino?

A About right here (indicating).

Q All right.

A Along this road (indicating).

Q All right. Along the road?

A Yes.

{1440}

Q Now, you drew a line along the road. Would you show the jury where it was you recall you, they left you, or you parted, and how far down that road did you see them?

A It was about, I saw them about right around here somewhere (indicating).

Q And where was the last spot that you saw them, to the best of your recollection? Where were they, Bob and Dino, at the time you last saw them?

A It was on this road here (indicating). And I last saw them when I split up.

Q You split up?

A Me and Joe were up here, and Bob and Dino went on this road here (indicating).

Q Did you see them after you split up along the road at any place?

A Yeah. It was, I think it was down here somewhere, down this area here (indicating).

Q All right.

MR. HULTMAN: Let the record show that the witness encircled an area that includes at the left edge the letter "P" as it now exists on the map and included the road and the edge of the woods itself.

Q (By Mr. Hultman) Now, where did you go then? You say you split back there, and then you went someplace. Would you show the direction that you went.

{1441}

A Towards the housing right here (indicating).

Q All right. Did you run across ground then? You didn't follow any road; is that right?

A No. We just ran across on top.

Q You ran across on top.

And was there firing going on at this time?

A Right.

Q Was there firing going on all the time that you were running from the tent area with the weapon that you are now describing?

A Just off and on.

Q Off and on?

A Right.

Q All right. And would you describe the nature of the firing that you heard off and on. Did you hear a few rounds, or many rounds or approximately how many rounds?

A Yeah. I heard a few rounds then off and on. I heard one time about eight rounds go off once.

Q Eight rounds go off all at once; is that right?

A Yeah.

Q Well, does that mean they were very close together when you say "go off at once"?

A I think it was eight. There was, it was pretty fast. Yeah, it was fast.

Q All right. That's while you are funning up here; is that right?
{1442}

A Yeah. About right here (indicating).

Q All right. Now, where specifically did you go with reference to the area, the Jumping Bull area? Would you point out on the map the spot, or the general area to which you went.

A I think it was that -- I think it was that white house and --

Q When you say "the white house" you mean the Jumping Bull house?

A Yeah.

Q Okay. You think you went to the white house!?

A (No response.)

Q Or if you didn't, I mean you think about it for a minute.

A No. It was, I think it was that shed there.

Q All right. Would you point out the shed. Is that the one between the green house and the white house?

A Yeah.

Q There is a shed there, all right.

Now, was there anybody else there at that time when you got there?

A Well, when I was, when I was running across, Angie and Ivis were carrying two little kids. I think it was two or three little kids. They were running over towards that crest there (indicating).

Q All right. As you came up to this area then, there was, would you describe again who it was and where they were going?

{1443}

A It was Angie and Ivis Long Visitor.

Q All right. And are they the people that live in the green house?

A Yeah. And well, well, when we split up we started running about right here (indicating), then we saw them. We passed them.

Q You passed them; is that right?

A Yeah. Not real close, but we just passed them.

Q And do you know where they were going or what general direction?

A Yeah. They were, I guess they were running up opposite from where they were coming from.

Q With relationship to the highway, or tent city, do you where the general direction they were going?

A About towards where this line is, like that direction (indicating).

Q All right. Would that be along sort of the crest of the plateau, the high ground; is that right?

A Right.

MR. TAIKEFF: May I ask, Your Honor, for Mr. Hultman to state approximately the point where they seem to have passed each other. That was not put into the record.

MR. HULTMAN: I don't know, but I'll ask the question, Counsel, for clarification.

Q (By Mr. Hultman) Would you point out approximately where {1444} it was as you best can recall that you saw the Long Visitors. You said in response that they weren't, you didn't pass them very close, but you were going the opposite direction. Would you point out approximately where it was that you saw them. Where were they when you saw them?

A About right here somewhere (indicating).

Q All right.

MR. HULTMAN: Let the record show that it's in the general area on the plateau.

Q (By Mr. Hultman) Now, who was at, if anybody, who did you see when you got to the shed between the white house and the green house?

A It was Mike and Norman.

Q Mike and Norman; is that right?

A Right.

Q Would you tell the full names to the jury again.

A Mike Anderson.

Q Mike Anderson.

A And Norman Charles.

Q And Norman Charles.

Now, where was Mike Anderson when you first saw him?

A He was by, I think he was by that white house there, the Jumping Bull house.

Q All right. By Jumping Bull's house, all right.

And where was the other young man that you referred to?

{1445}

A They were both around that white house there.

Q Both around the white house, all right.

Now, did you see anything in the general area other than those two people? Did you see anybody else?

A Yeah. Me and Joe ran up here (indicating). We were by that green house, that shed there. There was Mike and Norman. Then I looked down around here and I saw Leonard there.

Q All right. Now, you saw Leonard. Would you come to the map, and so that the jury can see where it is now at this time that you saw Leonard. Would you point that out specifically where you saw Leonard.

A (Indicating.)

Q All right. Let me draw a circle as you did and you tell me if it's any different. It's in that general area that you saw Leonard, is that a fair representation?

A Yeah. It's about right I guess.

Q Well, if it isn't -- is this the general area where you saw him?

A The general area.

Q All right. If it's any different I want you to make sure what it is.

A No, it's right, it's right.

Q You go ahead and put it on the map the way it was, not the way I maybe drew a circle because you were there and I wasn't.

A What do you mean?

{1446}

Q Well, where was the general area that you pointed out where you remember seeing Leonard at this point?

A Right here (indicating.)

Q All right. You drew the circle a little larger. Would you draw it so it's clear on the map.

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that the line, that circle area that has a number of black marks, and I'm going to designate that circle area with the letter "L".

Q (By Mr. Hultman) Now, what was he doing at that time?

A Well, he was, he was laying down and he'd get up and shoot, and then he'd lay back down and get up and shoot, and lay back down.

Q Now, what kind of weapon did he have at that time that you observed him?

A It was like the one -- looked like an M16.

Q It's like the one I showed you; is that right?

A Right.

Q All right.

THE COURT: Mr. Hultman, we have reached the time when the Court is set for recess. Court will recess until 9:00 o'clock tomorrow morning.

(Whereupon, the court adjourned at 4:30 o'clock P.M. on March 24, 1977 until 9:00 o'clock A.M. on March 25, 1977.)

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{1450}

FRIDAY MORNING SESSION
March 25, 1977
3:45 o'clock, A.M.

MR. HULTMAN: Plaintiff calls Norman Brown.

IF it please the Court.

THE COURT: You may proceed.

NORMAN BROWN,
being previously sworn testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. HULTMAN:

Q And you understand that today as a witness that you are still in your renarl;s sworn on the pipe to tell the truth, do you understand

that?

A Yeah.

Q And that what you did yesterday continues today?

A Yeah.

Q I want to go back to where we left off yesterday, and at that time I believe you indicated that there were certain people in certain places when you got to the area, the general vicinity of the green house, the little shed between and the white house, is that right? Do you recall that?

A Yeah.

Q Now I want to direct your attention again to Government's Exhibit No. 71. As I recall, one of the persons you indicated that was there when you arrived there was Norman Charles, is that right?

{1470}

A What?

Q Was Norman Charles one of the persons who was in this area when you got into the area yourself?

A Yeah.

Q Where we left off yesterday.

A Yeah.

Q Where was Norman as best you recall when you first saw time?

A He was at the white house.

Q At the white house. And that's the house that's been referred to here as the Jumping Bull house is that correct?

A Yeah.

Q And do you remember, did he have any weapon of some kind t that time?

A Yeah.

Q And would you describe it to the jury for us, please.

A Well, it was long rifle. Just a long rifle.

Q It was a long rifle of some kind.

Now you also indicated that there was another person here when you got there. Do you remember who that was?

A Mike.

Q And who is Mike? Mike who?

A Anderson.

Q Mike Anderson.

Where was Mike Anderson when you saw him when you {1471} arrived?

A By the white house.

Q He was also by the white house. And that's the same house you just talked about that's the Jumping Bull house, is that right?

A Yeah.

Q And you indicated that there was another person that you saw not in the area of the houses but in another part of the area down in an area which you circled with this "P" in the general area of the "P," is that right?

A Right.

Q Who was that?

A Leonard.

Q Now did the other person that was here at the -- pardon? Leonard was here?

A Yeah.

Q I want to take you back. The person you just referred to prior to Leonard, did he have a weapon of some kind at the white house?

A Who?

Q This second person. You indicated you saw two persons here. You talked about one of them having a weapon of some kind did you not?

A Yeah.

Q Did the second person have a weapon of any kind?

{1472}

A Yeah.

Q And who was that person?

A Mike.

Q Mike.

Now what kind of a weapon? Would you describe what the weapon was as it looked like as you best recall.

A I think it was a .22.

Q And was it a .22 that you also had?

A I think so.

Q Now you described that. What kind of a weapon did Leonard have?

A Well, when I, it looked like M-16.

Q And that was the weapon that you described for the jury a little earlier, is that right?

A Right.

Q I'm going to show you now that has been marked as an exhibit in this case and ask you at the time that you are now talking about and the person you are referring to and the actions that you described at the end of yesterday, was it a weapon of this general type and description?

A Yeah. Looked like that.

Q All right.

Now you indicated that one of those two persons also had a weapon that looked like a .22, is that correct?

A Right.

{1473}

Q And that you had a weapon Norman Brown l t 73 that you had earlier described, is that correct?

A Right.

Q And I'm going to show you now the weapon that has been introduced or marked as evidence in this case as 41A and ask you whether or not it was a weapon of this kind that you had at the time you're now testifying.

A That kind?

Q Yes. A weapon. Yes.

A Yeah.

Q Was the weapon that you saw in the hands of Mr. Anderson at that time, was it one of a general description of this kind?

A What do you mean?

Q Well, you said, I believe, you thought it was a .22, is that right?

A Yeah.

Q Did the .22 in any way resemble one like this in any way?

A No.

Q No. All right.

Was there anything else in particular about the one you had from the one he had as you recall?

A Well, mine had the scope.

Q Yours had the scope. Did his have the scope?

A I don't remember.

Q Is there anything else about Mr. Anderson's weapon that {1474} you do recall?

A Just a rifle.

Q Just a rifle. And a .22 you thought?

A Yeah. .22.

Q Now you said that just as you came to the hill that you were with another person, is that right?

A That's right.

Q And who was that?

A Joe.

Q And did Joe have a weapon of any kind at that time?

A Right.

Q And what kind of a weapon? Describe it to me.

A Well it was lever action (indicating).

Q All right.

A lever. And you made --

MR. HULTMAN: Let the record show that the witness made a signal in this direction (indicating).

Q (By Mr. Hultman) What else do you remember about that particular weapon that Joe had?

A It was a rifle.

Q And it was a rifle. Is there anything else you remember about it? Had you ever seen it before?

A Yeah.

Q And where had you seen it before?

A In the log cabin there.

Q You had seen it before here in the log cabin. The same {1475} place that you had seen the weapon that you have previously referred to that Mr. Peltier had at this time is that right?

A Say that again.

Q You saw it in the same place, the log house, which in earlier testimony you said that is likewise a place where you saw a weapon of the same kind and nature that Mr. Peltier had at this time?

A Yeah.

Q Now I'm going to show you what again has been marked as an exhibit in this case and ask you whether or not the weapon that Mr. Stuntz had was one of a general description of the same type as I'm now going to show you?

MR. HULTMAN: Let the record show I have in my hands Government Exhibit No. 32A.

Q (By Mr. Hultman) I want you, Norman, to look at this weapon and ask you whether or not the one that you have describe that Joe had was one of this general description?

A Yeah.

Q And wren you referred to a lever or a lever handle, is his what you were referring to?

A Right.

Q You said you had seen the weapon that he had before, is that

correct?

A Yeah.

Q And you had seen it in the log house?

{1476}

A Right.

Q Now we've talked about the two people that were here when you arrived in the general vicinity of the white house. You've talked about Mr. Stuntz, you talked about Mr. Peltier. Was there anyone else other than the two men that you said you had split with and those two persons were who, as you recall?

A Bob and Dino.

Q Bob and Dino. You had split with them.

Were there any other people that you saw in the area that I have inscribed here, in this area (indicating)? Do you remember seeing anybody else?

A No.

Q At that time.

A No.

Q That's everyone?

A Yeah.

Q Is there --

A That's all I saw.

Q Is there any question in your mind about that at all, whether or not there was any other persons?

A Yeah.

MR. TAIKEFF: I have to object to the form of that question, Your Honor, as assuming a fact not in evidence. I think the witness said he did not see anyone.

{1477}

MR. HULTMAN: I will restate it and it's correct, Counsel.

THE COURT: Very well.

Q (By Mr. Hultman) My question to you, Norman, are there any other persons that you saw, there may have been people you didn't see, of course --

A Yeah. I saw Angie and Ivis.

Q The Long Visitors that you talked about. They didn't have any weapons with them of any kind, did they?

A No. No.

Q Were there any other persons at all that you can recall?

A No.

Q Now at the time that you said you saw Mr. Peltier and you described his actions and the type of weapon that he had and the shooting, did you see any other persons in the entire area that's represented here? Did you see any other people of any kind?

A Yeah. We were running, when we got to the houses, two FBI Agents started shooting at me and Joe.

Q Two FBI agents started shooting at you and Joe. Where were the two FBI agents?

{1478}

A (Indicating.)

Q All right. And would you point out on Government's Exhibit 71 where they were.

A (Indicating.)

MR. HULTMAN: Let the record show that, the witness has pointed out the area of Coler's car as it's represented in writing on Government's Exhibit No. 71.

Q (By Mr. Hultman) Now, would you tell us when it was, where you were when you saw the two agents first here in the area you've pointed out, where were you when you first saw them?

A I was right by that green house (indicating).

Q By the green house, and that's this house here (indicating); is that right?

A No.

Q You point out and you tell us, I don't mean to --

A (Indicating.)

Q Would you maybe stand up if you have to in order to actually touch the board.

A (Indicating.)

Q All right. You are showing the green house. And where, where around the green house were you as you best recall with relationship to the green house? Where were you?

A About right here (indicating).

Q All right. You were somewhere between the green house and {1479} shed the shed. Is that the general area that you are pointing out?

A Right. Around that area.

Q Now, what were you doing at the moment that you saw the two individuals down in this area (indicating)? What were you doing when you

first saw them?

A Well, when I first, when they come running we saw them. And I stood by that house ready for the shots, and I was going across. And they started shooting and, you know, I could hear the rounds go by. And that's when I started shooting back again.

Q All right. Now, would you describe what it was you saw here. Would you describe the scene that you observed in front of you for the jury. In other words, you tell the jury what it was you saw.

A Well, I saw there was, I saw two cars.

Q All right, you saw two cars.

Would you tell us where the cars were in terms of each then and how would you describe the two cars?

A Well, one was pointing, you know, south, and the other was pointing west.

Q All right. Would you come here and point with the pointer or us the direction that each of the cars were pointed, and let's start with one car and just talk about one car for a moment. Would you do that?

A (No response.)

Q Okay. Tell the jury one car, start with one car.

{1480}

A Well, this one was south, pointing south and north.

Q All right. So was it in a position, if this were to represent a car itself, was it pointed in generally the direction that that drawing is right now?

A Yeah.

Q All right. And was it in the general area or position that represented in this Government's Exhibit No. 71? Is that about how you would best recall it was?

A Yeah.

Q All right. Can you tell the jury anything more about that car. Do you remember anything about the car?

A The hood, the trunk hood was open.

Q All right. So that, which the direction you say was, it faced this direction; is that right?

A Yeah. The front was facing that way (indicating).

Q But the trunk hood was up, is that what you are saying?

A Yeah.

Q All right. Now, is there anything else you remember about car?

A There was an agent.

Q And where was the agent with relation to the car itself?

A He was behind that trunk hood.

Q He was behind the trunk hood of the car we are talking about?

A Yeah.

Q Would you describe, did he have a weapon of any kind?

{1481}

A Yeah.

Q And do you remember what it looked like?

A I think he had a handgun, or he had one than pumped, a rifle.

Q He had one that pumped?

A A rifle.

MR. HULTMAN: And let the record show that the witness gave a motion with his left hand like a movement of some kind.

Q (By Mr. Hultman) All right. Have you seen a gun, a pump gun before this particular time? Had you ever seen a pump gun?

A No.

Q Hadn't seen one?

A No.

Q All right. Have you seen one since of any kind, any time, anywhere?

A No.

Q All right. Now, so as you best recall then the man standing behind this car (indicating) was behind an open trunk, and he had a weapon that looked like he was pumping; is that a fair conclusion of what you've just said?

A Right.

Q Was there anything else that you remember about that car, that person, anything in particular?

A (No response.)

{1482}

Q If you don't, we'll move to the second car.

A I don't remember.

Q All right. Now, would you point out to the jury where the second car was with relationship to the car you've just talked about.

A Right there (indicating).

Q All right.

MR. HULTMAN: And let the record reflect that he pointed to a position that was to the left.

Q (By Mr. Hultman) Do you remember seeing any junked cars or

abandoned cars that were in the area at all? Do you recall any junked or abandoned cars at all?

A You mean these here (indicating)?

Q Well, any where.

A Yeah. These here junked cars (indicating).

Q There were some junked cars.

MR. HULTMAN: And let the record show that the witness refers to a row of six approximately objects in the area just to the West and a little south of the intersection which is marked with a "P".

Q (By Mr. Hultman) Do you remember any other junked cars of any kind?

A No.

Q All right. Now, tell us with relationship to the first car that was pointed generally in the direction that you were, {1483} is that a fair description by me of the hill?

A Yeah.

Q What direction was the vehicle, car pointed?

A West. He was pointing east, the front was pointing east.

Q All right. Would you, by taking the object that is here, and is just in the general shape longer than it is one direction to another, would you put it on the map and place it in the direction, or in the position that it was sitting as you best remember. This is the second car now we are talking about.

A (Indicating.)

Q Maybe we should put the first car first where you thought the first car was and that might help.

A Yeah (indicating).

Q All right. And then put the second car.

A Where's the front one?

Q Well, was the front of the car pointed toward the first car?

A Yeah.

Q All right. So that in other words you are saying as you put it here this is the front of the car; is that right?

A (No response.)

Q Nearest, or pointing in a general southerly direction?

A Yeah. It had to.

Q Now, what can you recall about that car, and anything about that car? Is there anything in particular that you remembered about the car?

{1484}

A It was shooting. There was an agent shooting.

Q There was an agent shooting.

Where was that agent?

A I think he was on this side (indicating).

Q All right.

MR. HULTMAN: Let the record show that the witness has pointed to the side which is away from the position where he was.

Q (By Mr. Hultman) The car was between you and the agent; is that right?

A Yeah.

Q All right. Now, did he have a weapon of some kind?

A Yeah. It was a handgun.

Q It was a handgun.

And could you see what position he had the handgun?

A Yeah. He'd get up and shoot some rounds and back down.

Q So you saw him shoot and then get back down; is that right?

A Right.

Q Now, were there any other people now that you saw in the area other than the ones that you described up to this point? Do you remember any other persons, seeing any other persons in the area that is shown here as Government's Exhibit 71 up to this time?

A Did I see anybody in this area besides these two?

Q Yes.

{1485}

A No.

Q All right. Did you see anybody, any other people in the entire area that you were looking at, the scene you were looking at from up here in the place that you were located? Did you see any other persons?

A Well, after a while two cars came in.

Q All right. Now, would you show the jury where those cars came in on Government's Exhibit 71.

A Can I talk to my lawyer?

Q Oh, yes. Oh, yes.

MR. HULTMAN: Your Honor, the witness has requested an opportunity to visit with his lawyer.

THE COURT: Very well.

(Whereupon, the witness conferred with his counsel, Mr. Maring.)

Q (By Mr. Hultman) Now, Norman, I believe we were at the point

where you indicated you now saw some other people somewhere; is that right?

A Right.

Q All right. Would you maybe, if you'd come over in this side so that the jury could see, and you point out on the map, Government's Exhibit 71, where it was now that you saw any other persons. And if you don't remember exactly, tell us as est you can where it was.

A I saw two cars coming in right here (indicating).

{1486}

MR. HULTMAN: And let the record show that the witness has indicated that two cars, he saw two cars coming in on an extension of the road that comes from Highway 18 past Jumping Bull Hall into the residences that we know as Wanda Siers; and the area he specifically is referring to is a, an area approximately the length of a pencil if you put one end of the pencil at the Siers' residence and left the rest of it in a generally northeasterly direction on the road that is there.

Q (By Mr. Hultman) Now, what is it then that, what is it that happened at that time?

A You mean right there (indicating)?

Q Yes. Tell us what it is you saw and observed.

A Well, I saw two cars were coming in. When they were coming in we started shooting at those two cars.

Q You say "we started shooting;" is that right?

A (No response.)

Q And who do you mean by "we"?

A Me and Norman Charles.

Q All right. Now, where were you and Norman at that time? Would you show the jury again on Government's Exhibit 71 where you were at that time.

A Yeah. I moved from here (indicating) to this white house the propane tanks.

Q All right.

{1487}

MR. HULTMAN: Let the record show that the witness now had moved from where he had indicated previously to a point near the Jumping Bull house near some propane tanks.

Q (By Mr. Hultman) Is that what I heard you say?

A Right.

Q All right. Where were those propane tanks with relationship to

the Jumping Bull house?

A They wore on the east side of the house.

Q All right. Would you point out approximately where they were.

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that he points to the east side of the Jumping Bull house.

Q (By Mr. Hultman) Were these tanks seemingly tanks that are up against a house and used somewhere in the house?

A Yeah.

Q All right. Now, where was the other person that you refer to at that time, the time you say, "We started shooting"?

A There was two cars. There were some people in there. I don't know how many people, though.

Q All right. And they were coming into the Jumping Bull area; is that right?

A Yeah.

Q All right. And how far, as you recall if you do, about {1488} where was it that she first car got, as far as it got?

A Right there (indicating).

Q All right. And let me make an "A" at that particular point where the witness has just marked a pencil "At" on Government's Exhibit No. 71.

The first car got to that point; is that right?

A Right.

Q All right. Now, where was the second car?

A Right there (indicating).

Q All right. And let me put a "B" at that point. In other words, one car was following the other, is that a fair conclusion on my part?

A Right.

Q All right. Now, at what point did you, when you referred to to "we," the two of you start firing at the two cars, "A" and "B"? Where were they when you started firing at them right where you pointed it out there?

A Well, right here (indicating).

Q little short of the point of where they stopped.

Now, describe what it was that then happened as far as the two cars.

A Well, started shooting at them. I think a couple of the tires.

Then they moved back, they practically stopped and, and they moved back to about right here (indicating), somewhere around this area here (indicating), and they were parked there.

{1489} And they got out and they started shooting at us.

Q All right. Where they finally parked, where was it with relationship to the Highway 18? Was it a long way from the highway, or a short way, or somewhere --

A You mean right here (indicating)?

Q Yes. I just want to find out generally.

That's generally where you think it was; is that right?

A Yeah. Around this area here (indicating).

Q All right. Somewhere in this area (indicating.)

I'm going to draw a circle.

A Yeah.

Q Now, could you continue to see all of those two cars?

A You mean from there (indicating)?

Q Yes. From where you were?

A Yes. I could see them.

Q You could still see them, all right.

How far away from the Siers' residence, or the house that you are talking about that they got up to in front of almost "A" and "B", how far away from it as you remember back your mind in the scene, how far away did the two cars back in distance from the house that was known as the Siers' residence? Could you give the jury an estimation of some kind?

A You mean how far they moved back here (indicating)?

Q Yes. How far did they move back?

{1490}

A About seventy-five yards.

Q All right. Approximately seventy-five yards?

A About, yeah.

Q All right. Now, what if anything then happened next? What do you remember next?

A As soon as we started shooting at them, shooting at us, we saw some more cars coming around, around this area where that highway is.

Q All right. You know the area generally, do you not?

A Yeah.

Q Is there another road or highway that comes around on the other side of the creek which would be below Government's Exhibit 71?

A Yeah.

Q And is it on the side of a hill somewhat the same height as this general area in here (indicating)?

A Yeah. I could, you could see the road from --

Q You could, all right.

A From around there, yeah.

Q You could look across the wooded land where the creek was over to where that road is and see it; is that right?

A Yeah.

Q All right. Now, what was it that you saw happening over here on the road, that's over on this side of the creek?

A Saw some agents. Well, we got out of the car and they {1491} started going across the field this way (indicating). They got out of the car. I think there was three or four of them got out of the car and started coming up this way (indicating).

Q So they got out of their car and they started coming towards your direction, is that a fair conclusion on my part?

A Yeah.

Q All right. Do you remember, do you know any of the houses or any of the people that lived across from the creek along that road that you are talking about?

A No.

Q You don't know any of them?

A No.

Q And did you know any buildings of any kind over there?

A Yeah. I think there's a couple houses back there somewhere.

Q All right. And were the men that you saw anywhere in the vicinity of any of those houses that you talked about? If you recall whether they were or they weren't.

A I don't know. I saw them get out of the car and they come this way (indicating).

Q All right. Now, you said that they were agents, and I want to ask you about that. Did you know at the time or is this something that you concluded at that time?

A You mean --

Q That they were agents?

A Yeah. At that time when I saw them, you know, people would {1492} tell me, you know, there's agents on Pine Ridge and there's goons. And when everything happened from then, you know, I thought it

might be agents.

Q All right. So you thought they were agents, that's the point you are making?

A Yeah.

Q You didn't know of your own knowledge --

MR. TAIKEFF: Your Honor, I object to the repetition because the witness said he thought they might have been agents. And it was made, the repetition was made in a very positive sense.

{1493}

MR. HULTMAN: I withdraw, and that is correct.

THE COURT: Very well.

Q (By Mr. Hultman) Now, what was the next thing that you saw and observed; were you still at the same position here in the general area of the tents, of the white house?

A No, slipping around the house, and then we saw a couple of cars go by up here (indicating).

Q All right. Could you see Highway 18 then from where you were?

A Yes.

Q Could you see the -- any cars coming and going?

A Yes, saw them coming and go by, past.

Q What direction were those cars going, if you remember, would you show the jury what direction?

A (Indicating).

Q And they were going fast, you said?

A Yes.

Q Now, what was the next thing that you saw and observed?

A Joe came up to me, and he said, "There is women and children in the camp, you know. Our sisters are down there," he said. Then he said, "Why don't you go down there? The agents are coming in this way (indicating), so this is the time to be a man. This is the time to be a warrior," so he said, "Why don't you go over there and take somebody with you?" "They might be coming in from this side (indicating)."

{1494}

Q What general area were you discussing at that time, would you point out on the map generally?

A Right up there (indicating).

Q Generally where the tents were, is that right?

A Yes.

Q All right. Now, did you at any time while you were on the hill

itself look down where the agents were again and see anything down where the agents were?

A Yeah. I saw one of them. I think it was this guy here (indicating).

Q That's the one that was behind the first car, behind the trunk, is that the one that you are pointing out now?

A Yeah, I think it was that guy (indicating).

Q All right.

A One of them I saw crawl through the car and crawl back to the original positions they were at. I think it was this one here (indicating). I don't remember, but I know I saw one of them.

Q What you remember then is that you saw one of them, you don't know which one, is that a fair conclusion?

A Yes.

Q And what was it you observed him doing if you did see him doing anything, you said he was crawling?

A Yeah. He crawled through the front of the car and he crawled out. He was there for awhile, and then he crawled back {1495} out and got in the same place where he was at.

Q All right. Did you see the second person at this time that you are talking about?

A Yeah. He was shooting away there.

Q Now, what kind of a weapon did he have, what kind of a gun?

A Handgun.

Q The handgun, all right.

Now, did you at any time see anybody else down in the area where the two men were?

A Besides those two?

Q Yes, at any time during the afternoon.

A No.

Q You didn't see anybody else in that area at all?

A No.

Q Now, did you see the men at the cars, the two men at any other time than the two times you have now talked about, prior to the time that you left?

A You mean, did I see them right after I saw them them times that I saw them?

Q You talked about two times. Did you see them any other time?

A No. That's when Joe told me to go around and take them, so we

ran across over here (indicating). Then we were over here by this gate here (indicating), around here (indicating).

{1496}

Q All right. Would you tell me, and I will mark it, I will move my pencil and you tell me when -- have I gone too far, can you reach it? You show me where so I can make a mark, or you make a mark.

A (Indicating) It is right here (indicating).

Q All right. Let me make a mark where you are pointing right now.

A Right there (indicating).

Q Use the pointer, and I will make the mark where you place the pointer.

A (Examining) There is a gate right here somewhere (indicating).

Q Gate somewhere in here, in that general area (indicating)?

A Yes.

Q All right. Let me put a "G" there for "gate", somewhere in that general area?

A (Indicating). (Examining) Around here some place (indicating).

Q All right. I will draw a circle in there.

A Yes.

Q And I put a "NB" there for Norman Brown, that's the area generally where you are talking about, is that right?

A Yes.

Q Now, did you then go to that point is that what you are saying?

{1497}

A Yeah, me and Mike ran over there.

Q All right. You and Mike ran to a point that is the general area of the circle "NB", is that right?

A Yes.

Q All right. Now, what was the route, would you point out the route that you generally took, you and Mike?

A About like this (indicating).

Q All right. It was in a general direction from the areas of the houses to the area that is known as "NB", is that right, generally in that direct?

A Yes.

Q Not in a straight line, but just generally?

A Yes.

Q All right. Did you see anybody down there when you arrived there?

A Yeah, just me and Mike, us two were there, that's all I saw.

Q Did you see anybody at all?

A No.

Q All right. Now, how long approximately had you been up in this area (indicating), that you have been talking about, from the time you got there until the time you are now talking about that you left, can you give --

MR. TAIKEFF: (Interrupting) Your Honor, just to make clear, a clarification for the record, by the phrase {1498} "this area", I believe Mr. Hultman intended to be the area --

MR. HULTMAN: (Interrupting) "NB", the area to which he left. The area from which he left to the area which he went to.

MR. TAIKEFF: The "from" place is the residence, and the "to" place is near the gate.

MR. HULTMAN: Yes, near the gate.

MR. TAIKEFF: I wanted to make sure the record was complete.

MR. HULTMAN: Right.

Q (By Mr. Hultman) How long approximately, if you have any idea at all, as you best recall were you here on the hill area, in the area of the houses, from the time you got there until the time you are now talking about when you left?

A Well, when we ran, me and Joe up here (indicating) 20 minutes and these cars came. I don't know. It happened fast, you know. I didn't keep track of time.

Q All right, but am I clear in what your response to me was, that it was about 20 minutes from the time you got here (indicating) until the cars came in, is that what you just now said in your answer? I want to make sure of what you said.

A I don't know for sure.

Q Approximately?

A I don't know.

Q How long then was the total time that you were there before {1499} you left?

A It was about an hour, hour and a half.

Q Hour, hour and a half, that's the best you can do?

A Yes.

Q All right. Now, did you at any time, Norman, go from the hill area back to the tent area, other than the time you are now talking about; do you recall ever going back there during that period of time

other than the one you are talking about now?

A I don't think so.

Q All right. Let me ask you this: Did you have the same weapon from the time you left and came to the hill until the time you are now talking about when you went to the area that we have marked on the map as "NB", did you have the same gun during that period of time?

A Well, I don't know. I don't remember.

MR. TAIKEFF: I didn't hear the answer, your Honor?

THE WITNESS: I don't remember.

Q (By Mr. Hultman) You don't remember.

Now, other than the two occasions that you said when you looked down at the bottom of the hill, do you recall at any time during the hour to an hour and a half, which was an approximation you made, do you remember any other occasion when you looked down at the bottom of the hill?

A I don't understand the question.

{1500}

Q You were here in this area (indicating) for an hour, an hour and a half approximately, is that what you told the jury?

A I said I didn't know, about.

Q I know, about, approximately?

A Yeah.

Q All right. Whatever the time was when you were up on the hill during that period of time that you were there, did you look down and view anything at the cars other than the two times that you have described to the jury?

A No.

Q You did not, so that all the rest of that time then you were doing things that didn't have anything to do with this area down here (indicating), is that right?

A I take these people over here (indicating), that were over here (indicating), and shooting back here (indicating), and then saw some cars coming around and went back here (indicating) we were waiting for them.

Q So is it fair for me to conclude that you didn't do any other shooting of any kind?

A Yeah, I shot at them, yes.

Q When did you first --

A (Interrupting) The first time I came down. They shot at me, and

I shot at them.

Q Is that the only time you fired down there?

A The next time I saw them, they were shooting at us -- {1501} when I saw them, three times, the third time is when I shot back.

Q All right. Let me take them one at a time

There are three times that you looked at them now, is that correct, as best you remember?

A Yes.

Q Have you told us about the first time already?

A Yes. When I was coming across here (indicating) they shooting at me and I shot back.

Q All right. Now, when you say they were shooting at you could they likewise have been shooting at somebody else in same general direction?

A Yeah, they could.

Q As far as you felt at that time, they were shooting at is that right?

A You know, probably. Probably, yeah, shooting at all of us.

Q Now, the second time, did you shoot at that time?

A Back?

Q Yes.

A Yeah, I shot back.

Q The second time you say you saw the two men down here (indicating), if I recall you correctly -- you correct me if I say anything that is different than what you saw -- that there was one man who was standing still with the handgun, is that right, talking about the second time?

{1502}

A Standing still?

Q Standing, but he had a handgun, he was standing shooting, firing?

A He was shooting going down.

Q All right. Now, there was also a second man, and you say he was crawling, is that right?

A Yeah, he was crawling.

Q All right. Do you recall anything about the man that was standing in terms of what he looked like that might or might not have been different from the first time that you saw him?

A What do you mean?

Q Did he look any different in any way than the first time?

A No.

Q Now, did you fire back on that occasion when you looked the second time that are referring to?

A No, because he was shooting at me and I didn't shoot that time.

Q Now, what is the third time again that you are referring to now?

A When I was back here (indicating), you know, when I saw the car come around this way (indicating).

Q The car?

A It was this way (indicating), I saw the car.

Q When you are referring to you saw other cars, where is it that you are now talking about, where were those cars?

{1503}

A Back here (indicating), the highway, the dirt road.

Q You are talking about the road that loops around, this one you were talking about a little while ago, you saw some more cars on that road?

A From the time I saw those, he told me to go over there.

Q Is that the time then that you saw and looked down where the two cars and the two men were, the third time, is that the time?

A Right.

Q All right. Now, what is it that you saw at that time?

A In here (indicating)?

Q Yes.

A Shooting at me, so I shot back. I don't know if they were shooting at me, you know, the guns were pointing that way.

Q Would you describe what the two men were doing at that particular time as you best recall?

A One had a pump rifle (indicating), and the other one had handgun.

Q All right. One had a pump rifle, and you pumped again, is that right?

A Yes.

Q And the other one had the handgun?

A Yes.

Q There were the two men at that time?

A That one was right behind this car (indicating), and the {1504} other one right behind this one (indicating).

Q Were they in the same general positions they were the first time you saw them?

A Not the same position, but moved around the two cars, you know, and shooting back of it.

Q All right. Now, did you see any other people other than the ones you talked about while you were on the hill up to the time that you left and went to the area on the map that you have pointed out as "NB"; do you remember seeing any of the same people or any additional people, any other places on Government's Exhibit 71?

A Yeah, Dino.

Q Where was Dino?

A I think he was around -- let's see. I am not sure, probably around here (indicating), around the cars. I am not sure. Around the area (indicating) -- I saw him, yeah, the cars there.

Q All right. It is correct your response is by the cars, in that general area. Would you point out on the map the area that you are referring to so that the jury will be able to see?

A Right here (indicating).

Q All rights Can I draw a circle here approximately that you were, generally?

A (Indicating).

Q All right. Let's make your circle very dark here, and who {1505} was in that general area?

A Dino.

Q I am going to put the word "Dino" there. Now, what was Dino doing?

A He was shooting.

Q He was shooting.

Do you remember what, would you describe for the jury the kind of weapon that he had that he was shooting with at that time?

A It was a big rifle, big stock, just big.

Q Big, is that right?

A Yes.

Q All right, big stock, big rifle?

A Yes.

Q Had you ever seen it before?

A You mean before June 26th?

Q Yes, before June 26th.

A No.

Q Had you seen it before that very moment on June 26th, had you seen it earlier any time?

A Yeah. It was up here by these bushes here (indicating). We split up, and we were running over here (indicating).

Q Yes. He had it at that time, and you saw it at that time, this same one?

A Yes.

{1506}

Q So you saw it when you were fairly close together up there, when you split up, is that right?

A Right.

Q And that's how you can describe it?

A This big rifle, and clip, I think it was, clip put in from the top.

Q It was a big rifle and a clip that you put in from the top?

A Yes.

Q Now, was there anybody else -- did you see anybody in the same general area that you saw Dino?

A Leonard.

Q You saw Leonard?

A Yes.

Q Where was Leonard?

A Right here (indicating).

Q All right. Now, did you see anybody else?

A No.

Q All right. Now, would you describe the firing that you have just referred to, would you describe to the jury what the firing sounded like.

A Kind of fast.

Q Kind of fast, all right.

How many shots did you see or hear when you were looking over here (indicating) at the time we are now talking about?

{1507}

A It was just off and on, about, you know, five shots and then stop, and then shooting back to the Indians here (indicating), and get down; and that side stop, shot five more, some like pretty fast. I don't know how many rounds. We shot back again.

Q It sounded pretty fast.

Where was it that it sounded pretty fast?

A Around here (indicating).

Q All right. The area where Dino and Leonard were, is that the area you are pointing out?

A Yes.

Q You are very clear it didn't sound like it was fast down here (indicating), is that a fair conclusion for me to draw?

A This was fast, but not, you know, really fast, just kind of like, like, like -- (indicating). It was kind of fast, not as fast as down where it was fast.

{1508}

Q Compared to the two then, that's what you're saying. This one was faster than this one, is that a fair conclusion from what you just said?

A Yeah. I guess so.

Q I just want what your answer is, what you remember, not what I said.

MR. TAIKEFF: May I make the suggestion, since the chart is not playing the important role it was 10 or 15 minutes ago, could we have the benefit of the use of the microphone in the witness box because some of the answers are not audible here.

Q (By Mr. Hultman) Were there any other individuals that you saw while you were up on top of the hill doing anything other than what you have told the jury up to this point, Norman? Do you remember any other people doing --

A Besides those two I just said?

Q Yes.

A No.

Q Do you remember seeing anybody else firing?

A You mean besides those? Yeah. The agents. They were firing.

Q Besides the ones you've talked about, any others?

A No.

Q Now I'm going to show you what has been marked, first of all, as Government's Exhibit 29A ask you whether or not you have {1509} a weapon of this general description before?

A Yeah. It looked like that.

Q When you say it looked like this, what is it? You tell the jury.

A It was long. It was a big stock.

Q And what time are you referring to now that you're talking

about?

A You mean when I first saw it?

Q Yes.

A It was right up there (indicating).

Q Who was it that had a weapon generally this description?

A That looked like that?

Q Yes.

A Dino.

Q And is it a weapon that generally looks like that that you saw him with at the time we just finished talking about? Did he have the same weapon of the same general description that you saw him with earlier?

A You mean from up there (indicating)?

Q Yes.

A I don't know. It was long. Couldn't hardly see. It might have been. I don't know.

Q You don't know for sure. All right.

Now I look at this and I ask you from your own knowledge, because you were the one that said that a clip went {} in and you used a motion, is that the kind of general type of situation as to how you would load this kind of a weapon from the clip from the top?

A Yeah. From the top.

Q So this kind of a weapon would meet the description with reference to the clip in the top that you described a while ago, too, is that right?

A Yeah.

Q Now I'm going to show you what has been marked as Government's Exhibit 37A and ask you whether or not just from a general description have you seen a weapon that resembles one of this general description?

A You mean did that look like --

Q I'm just asking you, Norman, whether or not you have ever seen a weapon on this day or before that we're talking about that generally looked like this kind of a weapon?

A Yeah.

Q And would you tell us where it was and with whom that you saw a weapon that was generally of this description?

A Bob.

Q And when you refer to Bob, who are we referring to?

A Robideau.

Q Where was it that you saw Bob with a weapon that fit this general description, if you remember?

A No, I don't remember. I just remember seeing that with him.
{1511}

Q Now what did you do when you got to the point, and you went with Bob, is that right? When you got to the point that I we've marked on the map as "NB," who was with you at that time?

A Mike Anderson.

Q What if anything did you and Mike do?

A We were just waiting because they were coming in that direction, people.

Q And did you see anybody while you were there in that area once you got down there where the area we've marked as "NB"?

A Besides meeting Mike there?

Q Yes.

A No.

Q Did you see anybody while you were down there?

A No.

Q How long approximately did you stay down there before you saw anyone? When was it that you first saw anyone after the two of you went down to that area? Were you there for some time?

A Yeah. Was there about, about an hour, two hours. It was long time but I don't know.

Q It was a long time?

A Yeah.

Q Maybe an hour to two hours?

A I don't know. Maybe. It was a long time.

{1512}

Q These are all approximations that you're giving, is that right?

A Yeah.

Q Just to the best that you can remember?

A Yeah.

Q Now did you see anybody other than your companion during that time that you were there, see anybody else?

A Yeah. Was Norman Charles.

Q All right. How long after the two of you were there approximately, that you best can remember was it before you saw Norman Charles?

A I think it was Wish. It was one of them. It was Wish. No. It

was Norman. I don't know.

A About an hour and a half, two hours. It was a long time.

Q Long time. All right.

And you tell me who it was and what you did.

A You mean that came?

Q Yes. Who came?

A It was --

Q Did you learn something at that time that might be of help to you as to who it was?

A Yeah. Mike came. Not Mike, Norman. He told me that Joe had been hit, you know, he's dead.

Q So you know it was Norman. There isn't any question in {1513} your mind about that, is that right?

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

Q You don't know for sure?

A I don't know. I don't know.

Q What if anything then did you do next?

A Well, we went to, he took us, said, "Let's go back to camp." So we went to camp and got a tent.

Q All right.

Would you point out then where it was you were. Let's start from where you were.

A (Indicating.)

Q All right. You're pointing out the area generally with a circle marked "NB". And where from there did you go?

A (Indicating.)

Q You went back to the general area where the tents were, is that right?

A Right.

Q Now what was it that you saw -- withdraw that.

Who was it that you saw when you got back to the tent area? Who were the people, if any, that you saw when you got back there?

A You mean, all the people that I saw?

Q Yes. Who are the first people that you saw or persons that saw?

A Was Bob, Dino, Leonard. That is all. Bob, Dino, Leonard and {1514} Wish. It was Wish or Norman. I can't remember.

Q But you're sure about Leonard, Bob and Dino, is that right?

A Right. They were at camp there

Q They were there when you got there, is that right?

A Yeah.

Q Now what if anything did you observe them doing at this particular time?

A They were loading a van. It was a van.

Q Had you seen the red and white -- van at some time on any other day that you're now referring to? Did you see that red and white van before?

A (No response.)

Q The van that you're referring to that they were loading.

A Yes.

Q When had you seen it before?

A I don't know. It was before June 24.

Q Who had you seen with the van on those occasions before June 26th? Do you know whose van it was?

A I think it was Leonard, but I'm not sure.

Q And you seen Leonard drive it while you were at Jumping Bull's?

A Yeah. I saw him drive it. Once.

Q Now I want to take you back just for a moment from the point we are now and ask you whether or not when you were here {1515} on the top of the hill did you see any other vehicles other than the ones that you have told the jury about? In the general area of the Jumping Bull property. Not out on the highway or back here (indicating) or cross the creek and down on the other road but in the general area of the Jumping Bull's do you remember seeing any other cars than the ones that we have talked about up to this point while you were on the hill from the time you got there until the time you left?

A It was around the houses I saw that red and white car.

Q That's the same one we're talking about now?

A I remember seeing it around there.

Q Would you point out in a circle generally where you best recall, if you do, if you don't I'm not I don't want you in any way to do anything other than what you best can remember.

A Yeah. Around there. Around the houses around there.

Q Around the houses area?

A Yeah. Around the area.

Q Is that as you best recall?

A Yeah.

Q When was it that you saw the red and white van?

A It was the first time when I was running up the hill. The first

time when you were running up with Joe. Was there anybody around the red and white van?

A All right.

Q So that the red and white van was not down in the tent area {1516} in the morning while you were cutting, chopping wood and doing those things?

MR. TAIKEFF: Objection to that question, Your Honor. It's both leading and assumes facts not in evidence.

MR. HULTMAN: I withdraw the question. I withdraw the question.

Q (By Mr. Hultman) Did you see the red and white van down the tent area in the morning?

A No. I don't know. Got up, then we were going to eat and then we heard the shots.

Q Now what was it that they were loading? Do you remember what they were loading at the time we're now talking about, what the objects were?

A Clothes, CB and food I guess. I don't know. Just loading. What I mostly saw was the clothes.

Q Now do you remember any other car or cars that were in the general area of the tent area?

A There was a green car.

Q Now was that the same green car that you talked about earlier, or yesterday when you said that you went and got the weapon that you got?

A Yeah.

Q Is that the same green car?

A Yeah.

Q And I'm going to show you now what has been marked as {1517} Government's Exhibit No. 55 and it is marked as page 23 and also with an orange "1" on it and ask you whether or not you have seen that particular car before?

A Yeah.

Q And would you tell the jury what it is, what car that is.

A It's a green car.

Q Is that the same green car that you just now were talking about?

A Yeah.

Q Now is that green car in generally the same place that it was that you're now testifying to?

A Same.

Q Is that where you saw it? Look at the area around it and see if you recognize the area.

A Yeah. I think so; yeah. Yeah.

Q Now do you remember seeing any objects of any kind on or about or in the green car at the time we're now talking about?

A There. No.

Q Did you still have your weapon?

A Yeah.

Q What if anything did you do with your weapon?

A Well, I put it on that green car there.

Q All right. So that if I were to show you again the same picture, {1518} do you see any weapon on that green car?

A Yeah. There (indicating).

Q Is that the weapon to the best of your knowledge?

A Looks like it.

Q It looks like it anyway?

A Yeah.

Q All right.

Now do you remember any other objects that were there, if any, at the time you put the rifle that you had secured from the green car and had in your possession up to that time and left on the hood of the green car, do you remember seeing anything else there from your own recollection at that time?

A I don't remember.

THE COURT: The Court is in recess until 11:10.

(Recess taken.)

{1519}

THE COURT: Counsel ready to proceed?

MR. HULTMAN: Government is, Your Honor.

MR. TAIKEFF: Yes, Your Honor.

THE COURT: Bring the jury in.

(Whereupon, the jury was brought into the courtroom.)

THE COURT: You may proceed.

Q (By Mr. Hultman) Norman, I believe we were talking about some automobiles, and I had showed you a Government Exhibit a little earlier in a big book, and there is one that's a separate item. And I just want you to look at it for a second. It's Government's Exhibit 13-B. Is the automobile that portrayed in 13-B the same green automobile that you've

been talking about?

A Yes.

Q And on Government's Exhibit B is a rifle, and there are some letters. Next to it is -12. Is that the weapon that you had been referring to?

A Yeah.

Q And in the earlier descriptions and discussions?

A Yeah.

Q All right. Now, we talked about another automobile, red and white van. Do you recall?

A (No response.)

Q I'm going to show you what's been marked as Government's Exhibit 12 and ask you whether or not you in that photograph see {1520} anything that you would recognize?

A Yeah. That van there.

Q All right. Is that the red and white van generally that you've been discussing?

A Yeah.

Q Does it generally give the appearance of being the one that you were talking about?

A Yeah.

Q All right. Now, I'm going to show you what's been marked Defendant's Exhibit 93 and I want you to look at the scene that is portrayed there, and the automobiles that are portrayed there, and ask you whether or not you recognize the general scene that is portrayed in that exhibit?

A Are these the junk cars here (indicating)?

Q Well, I'm supposed to ask the questions and you tell us. Not you ask me.

A Yeah. I guess these are junked cars that I saw.

Q Go ahead and give you answer, whatever you answer is.

A (No response.)

Q Do you recognize, take a look at the photo and the scene that's there, the area, the ground, the hills, whatever is shown there. Do you recognize anything there?

A Yeah.

Q All right. Would you tell the jury what it is you recognize Defendants Exhibit 93?

{1521}

A The hill here (indicating).

Q Yes. What is the area at the top of the picture that you are pointing at?

A The houses.

Q All right. Is that the general area of the houses that you were referring to in your earlier testimony?

A Yeah.

Q And if you were, is that the general area where you were during this time that you were talking about that you were up by the houses?

A Up there (indicating)?

Q Yes.

A Yeah.

Q All right. Now, if you looked down from the top of this photo, which is the area where you said you were, do you recognize the area that's in the foreground of this picture where these automobiles are down?

A Yeah.

Q Could you turn, and on Government's Exhibit No. 71, and I seem to have lost the pointer.

MR. TAIKEFF: I put it on the ledge below the map, Your Honor.

MR. HULTMAN: Thank you, Counsel.

Q (By Mr. Hultman) Would you point out to the jury what it is that is portrayed in that exhibit.

{1522}

A (Indicating.)

Q All right.

MR. HULTMAN: Let the record show that he's pointing out the row of abandoned cars on Exhibit 71.

Q (By Mr. Hultman) Now, let me put a 93 at that point and it will coincide with the exhibit that he has just referred to.

Now, do you remember seeing those cars on any occasion that you were in Jumping Bull's? Those junked cars?

A You mean real close or just seeing them?

Q Did you ever go by them, over walk by them?

A No.

Q Did you ever see them from any other place while you were there at Jumping Bull's?

A Yeah.

Q Where were you when you saw them?

A Right around up there? the area where the houses are.

Q All right. And is, do you see anything different in this picture than what you remember seeing all the times you were up at the housing area that generally what you remember you saw?

A What?

Q Is this generally what you saw, some abandoned or junked cars down there?

A Yeah.

Q Now, I'm going to ask you point blank, did you ever remember {1523} specifically seeing the car that is in the center of this picture?

A No.

Q Are you sure about that? Is there any question, have you ever seen that car that you can remember at all?

A No.

Q All right. Did you see it at any time on the 26th of June, 1975 that we're talking about?

A No.

Q All right. Now, there is one other weapon that I wish to show you, and this has been marked as Government's Exhibit 30-S for the record. You testified that you saw the man who did not have the hand gun down where the two cars were here, I believe as somebody who had a gun that he was pumping; is that right?

A Right.

Q Do you remember that?

A Right.

Q Now, I want to ask you whether or not, I'm not asking you that this is the weapon because you wouldn't know, there's no way for you to know whether this would be that gun, is there?

A No.

Q Because you only saw it from that distance. And all you indicated you saw was a man with a rifle pumping it; is that right? {1524}

A Right.

Q Now, just in a general way, would this weapon here fit the general description of what you saw and remembered at that time, just generally?

A What does that mean?

Q Well, it means whatever it means to you. Does this particular

gun have something that could be pumped?

A Yeah. It has something that can be pumped.

Q All right. And is it a rifle of some kind?

A Yes, it's a rifle.

Q All right. And is that what you remember the weapon being that the man, the second man had?

A Yeah.

Q And where was it that he was standing when you observed him?

A That car there (indicating).

Q All right. Will you come and tell us which car it was again so that the record might show. You can just point to it with your finger.

A (Indicating).

MR. HULTMAN: Let the record show that he's pointing to the object that indicates the car on the right-hand side as you view the map farthest to the south, and the one that is pointed in the general direction of the houses to the general direction of east by southeast.
{1525}

Your Honor, at this time the Government would offer into evidence Government Exhibits 30-AA, 29-A, 37-A, 32-A and 69-A.

MR. TAIKEFF: Assuming, Your Honor, that those numbers represent the objects which this witness has testified to, there's no objection.

MR. HULTMAN: They do, Your Honor.

MR. TAIKEFF: No objection.

THE COURT: Would you state the exhibits again.

MR. HULTMAN: And exhibits that other witnesses have previously identified and referred to.

Exhibits 29-A, 30-AA, 29-A, 37-A, 32-A and 69-A.

30-AA, 29-A, 37-A, 32-A and 69-A.

THE COURT: Exhibits 29-A, 30-AA, 32-A, 37-A and 69-A are received.

Q (By Mr. Hultman) Now, I want to go back to the point where you are at the red and white van. Do you remember, I believe we were talking when you were at the red and white van.

A Yeah.

Q And there was some other people there when you got there; is that right?

A Yeah.

Q Now, what, do you recall anything more specific than what you've indicated up to this point that anyone was doing in your presence

at that time other than loading the van?

{1526}

A What do you mean?

Q Was there any discussion of any kind as to what you were going to do or where you were going to go?

A Yeah. Leonard said, you know, there's no way out because there's, you know, we are just surrounded. We didn't know what to do. And I don't know, we were surrounded.

He said, "There's only one way out," you know. "Let's try it." "So let's get in the car, we'll make a run for it."

Q Now, who was it that said that?

A Leonard.

Q All right. And what if anything did happen after that?

A We told him that, you know, we're not going to make it. There's no way we're going to get out. So he changed his mind, we changed our minds, too. And we started going, started going oh, kind of southeast to the woods.

Q All right. Would you now with the pointer indicate the general direction then that you started to leave by.

A (Indicating).

Q All right. Now, I want to ask you now, and let's talk about each individual at a time, and I think it might be a little clearer, who it was that left with you. Let's start with Leonard. Did Leonard leave? Did you go, was he a part of the group that left?

A When all of us left?

Q Yes.

{1527}

A Yeah. There was Leonard.

Q All right. Let's just talk about Leonard for a second.

A Yeah. It was Leonard.

Q Did Leonard have anything with him when you left?

A Yeah.

Q What was it?

A It was a gun, rifle.

Q All right. And will you describe it for the jury.

A What I said it looked like, an M-16.

Q All right. The same general description of the one you had seen earlier in the day?

A Yeah. Right.

Q Who else left with you?

A Dino.

Q And when you talked about the same rifle that Leonard had with him during the day, I want to take you back to the time that you saw Leonard in the area that was marked with a "P", which was this area with this circle here (indicating). Did he have the same type of weapon with him when he was at this point?

A Yeah.

Q All right. And now he has a similar weapon with him when you leave; is that right?

A Yeah.

Q Now, Dino was the second person that you said left with you; {1528} is that right?

A Yeah.

Q You all left together, all right.

Did he have anything with him when you left?

A Yeah.

Q And would you tell the jury what it was that he had?

A It was a rifle.

Q And do you remember what description, would you tell the jury the description of the rifle he had.

A It was that big one like I said last time.

Q All right. And that's the same one you described before; is that right?

A Yeah.

Q Now, who else left with you together?

A Mike.

Q All right. And do you remember whether or not Mike had any weapon with him?

A Yeah, I think so. I'm not sure.

Q All right. Let's talk about somebody else and then go back and maybe it will help you remember.

Was there anybody else in the group? Talking about the men now?

A Yeah. Wish.

Q All right. And did Wish have any weapon of any kind?

A No.

{1529}

Q Did you ever see Wish at any time during the time that he was at Jumping Bull's with a weapon?

A No.

Q All right. I guess I didn't ask you, did you have a weapon?

A Yes.

Q And what weapon did you have?

A 35.

Q When you say "35", is this something different from the weapon that you have described and talked about earlier? Is it a different weapon than the 22 you were talking about?

A Yeah.

Q Well, now, where was it and when was it that you got a 35?

A It was when I came back to the camp. Norman came.

Q All right. You said that when I showed you what was Government's 13-B, I believe that that was the 22 that you have been carrying all the day, was it not?

A Yeah.

Q And you put it on the hood there; is that right?

A Right.

Q And did you leave it there?

A Yeah.

Q And have you ever had anything to do with the weapon itself along the trail, did you ever see it along the trail again as you left that day, or the next day, or the next day?

{1530}

A No, I don't think so.

Q All right.

A Might have been. I don't know.

Q All right. So the last you knew you left it here on this hood; is that right?

A Right.

Q All right. So now you are talking about a weapon that's different from this one; is that right?

A Right.

Q All right. Now, would you describe that as best you can for the jury.

A Well, it's a small rifle and bolt action (indicating).

Q All right. And where did you get that weapon?

A I think it was one of the tents, yeah, it was a tent I think.

Q All right. Now, was there anybody else, any of the men who left with you that we haven't discussed up to this point? Did Bob leave with

you?

A Yeah.

Q All right. And did Bob have a weapon of any kind?

A Yeah. It was a shotgun.

Q And do you remember anything in particular about that shotgun?

No. Just a pump. It was a big shotgun.

{1531}

Q It was a big shotgun and it had a pump you indicated; is that right?

A Yeah.

Q Had you ever seen that shotgun before?

A No.

Q In all of the weapons that all the times you'd been at Jumping Bull's?

A No.

Q So this was the very first time you had seen it?

A Yeah.

Q No question in your mind about that, is there?

A Yeah.

Q All right. I'm going to show you now what has been marked as Government's Exhibit 36-A and I'll ask you to look at it. Is this a weapon that has one of those pumps that you indicated on earlier occasion?

{1532}

A What?

Q Is it one of those weapons that has a pump?

A Yeah.

Q I would like you to look at the end of it, and I would like you to look at it just in general; and I would ask you, you were saying that Bob had a shotgun with him that you had seen for the first time. Was it a shotgun that in some way or any way is similar to the one that I have now?

A It had the pump, the pump is.

Q All right. You wouldn't know whether or not this was the one or not, would you?

A No.

Q All right. Now, did Bob have anything else, did he carry anything else?

A Yeah, he had a rifle. That was a rifle.

Q All right. Would you describe to the jury what that rifle looked like, as you recall?

A I knew it was a rifle, but I don't know what kind it was, wouldn't remember.

Q All right. Do you remember anything about the rifle itself, anything that you might recall in your mind as you think about it, that might describe it in any way?

A No, I can't.

Q All right. Had you ever seen it before that time?

A I think -- I am not sure, but I think it was the one I {1533} told you he had before. I am not sure.

Q You are not sure, is that right?

A I can't remember.

Q That's a fair answer, that you are not sure?

A Yes.

Q That's your best answer, is that right?

A Yes.

Q Now, we have talked about Leonard, we have talked about Bob, we have talked about Dino, we have talked about yourself. Were there any other men or young men that went with you?

A Norman.

Q All right. Now, did Norman have any weapon of any kind?

A Yeah, he had a rifle.

Q Do you remember anything about that rifle, could you describe anything you remember to the jury?

A It was a long one, a long rifle. It had a bolt action too (indicating).

MR. HULTMAN: All right.

(Counsel confer.)

MR. HULTMAN: Your Honor, let the record reflect that 37-A was already in evidence when I made my last offer, and I didn't realize that, so that it was already in evidence, your Honor.

THE COURT: I am aware of that.

MR. HULTMAN: All right, sir.

{1534}

Q (By Mr. Hultman) I am going to show you what has been marked as Government's Exhibit 69-A, and ask you whether or not this weapon has a type of action of the kind that you are just describing?

A Yeah.

Q Do you remember seeing the weapon that you are just referring to with anybody earlier that day, had you seen that weapon before that you are talking about right now?

A That one there?

Q No, no. I am asking you, the weapon that you have been describing to the jury, do you remember which one of your group we were just talking about that had a rifle in leaving, that had a bolt type of action?

A Norman?

Q I am sorry?

A Talking about Norman?

Q I am asking you, are you talking about Norman now? I wanted to make sure that there is no confusion. Let's talk about Norman.

Did Norman have a gun when he left?

A Yeah, he had a rifle.

Q What do you remember about that rifle?

A It was long and had a bolt action.

Q Had you seen that one earlier in the day?

A Yeah, I think so. I am not sure.

{1535}

Q Norman was up on the hill with you at the time all the firing was going on, wasn't he?

A Yes.

Q Do you remember what kind of a weapon he had at that time?.

A Yes, I think it was the same one he had.

Q Would that be your best recollection?

A You mean the one he carried out?

Q Yes.

A Yeah, I think it is the same one he had, yes.

Q It is the one that had a bolt action?

A Yes.

Q Would it be fair for me to conclude that it would be a weapon generally, just in general of a kind like this with a bolt, at least a bolt?

A Yes.

Q Do you remember anything else about the particular weapon that he had during the day, description-wise, that you would recall or that you recall at that time?

A I don't understand.

Q Was there anything else you remember about the weapon that he had?

A No.

Q All right, very fine.

Now, we mentioned for just a moment Wish, did we not?

A Yes.

{1536}

Q He was in the group, was he not?

A Yes

Q And I believe you said he didn't have any weapon?

A No.

Q All right. Did he carry anything out?

A He was carrying out a bag.

Q Could you describe to the jury generally what it was he carried out?

A It was a bag, about this big (indicating), had a handle on top where you could carry it.

Q All right. Did any of the rest of you carry that bag at any time?

A No, just until we got out, you know, started going back to the hill.

Q Did you know any time during the time what was in that bag?

A No.

Q All right. Now, was there anybody else that we haven't discussed up to this point?

A I think we talked about everybody that was there.

Q All right. Here there any -- let's make sure now so there isn't any question. We have talked about Leonard, right?

A Yes.

Q We have talked about Bob?

A Yes.

{1537}

Q You have testified about Dino?

A Yes.

Q We have talked about Wish?

A Yes.

Q We talked about Norman?

A Yeah.

Q And have we talked about Anderson?

A Yeah.

Q All right. Now, was there any other men or boys that went out with you?

A Yeah, I went out with them.

Q And you yourself?

A Yeah.

Q Now --

A (Interrupting) You should have asked me that.

Q All right. Were there any women or girls that went out with you?

A Well, right after we were going out we were walking, like I pointed --

Q (Interrupting) Um-hum.

A (Continuing) -- we were walking in that direction, when we met them about a hundred yards from camp.

Q Was this the first time you had now seen them?

A Yeah.

Q From the time that you left when you heard the shots?

{1538}

A Yeah.

Q All right. Now, would you point out, if you can, just generally where it is you now saw the people that you are now referring to, if you can, on the map -- if you can't -- show us wherever it would be?

A Little bit here (indicating), little bit higher, where the corner is down there (indicating).

Q little bit higher, a little off Government's Exhibit 71?

A Yeah.

Q And where with relationship to the creek would that have been?

A It was right by the creek there. We asked them why they were coming back, and they told us that they had the roads blocked off and there was no way out. We were just there, and they were coming. We didn't know what to do, you know. That would be the end of us, but we got together and told Jimmy to give himself up because they might hurt him or might shoot him.

Q Now, when you say "we", were you close to Little Jimmy yourself?

A Yes.

Q You were very close to him, were you not?

A Yeah, I guess so, yeah.

Q Kind of like an older brother, would that be a fair conclusion on my part?

A Yeah.

{1539}

Q And did you have conversation with Little Jimmy at that time?

A Yeah.

Q All right, and were you in fact the one who told him what you thought he ought to do?

A Yeah.

Q All right. So what, if anything, then did Little Jimmy do?

A Well, he went back to where -- towards the houses, and we heard some shots and we didn't know what to think. We thought he might have got shot, so we stood there, and we sat down and sat in a circle and started praying, you know, all of us, that, you know, they tell us -- ask our creator to help us get out. So we were all there sitting there praying and saw an eagle come down, big eagle, so he came down; and I saw -- then he flew kind of south, southeast, or flew -- I don't know, just followed it across some creeks and we were kind of like bending over real low and could tell the people were out there; and we were just quiet, so you know, we were all scared; and wasn't -- all I was thinking about was our sisters, you know, and we crossed through a road. There was a culvert. It was big enough so you could crawl through, so we crawled through; and we went to this tree -- right across, about 10 yards from the road, 20 yards, there was two trees, two big trees; and some of us went and climbed the tree and we were sitting there, and there was -- Mike and Wish were still in the culvert, told {1540} them to stay there; and there was a plane on top of us, kept flying over, around us; and a couple of cars, you know, two cars went by and saw somebody on 16 looking out the window. They passed, the windows were rolled down, and one passed by this way (indicating).

We were there for awhile, and we thought they saw us; and we thought, you know, didn't know what to think, you know, so we seen that plane was flying on top of us right above us. guess he knew we were there, so started praying again, just our minds that something happened to that plane, I don't know, that's what I was praying, so the rest of the group were praying, so the plane, you know, took off, flew on over towards Pine Ridge.

So as soon as that plane took off, we started running up the hill. Then we told the sisters, said, "Why don't you go ahead first?" So they

took off, and we were down here (indicating), and this road here (indicating), about half a mile down, it was about down -- 14, 15 cars lined up.

So we were running up the hill. They were shooting at us like -- I don't know, just shooting at us. We were out there in the open. We were running up.

Q How far away were you approximately from the people that you are now talking about?

A From the road there?

Q Yes.

{1541}

A I don't know. About half a mile, I guess. I don't know. It was pretty close then, not too far and not too close.

Q All right. Let me ask you a question, Norman. You said that you were in the culvert during this discussion, these remarks you have now made, is that right?

A I wasn't.

Q You weren't?

A No.

Q But some were?

A Yes.

Q You were in the trees, is that what you said?

A Yes.

Q It was heavy foliage, I believe you said, or something to that effect?

A What does that mean?

Q Could somebody from the airplane see you in the trees where you were?

A Yeah, they could.

Q What about in the culvert?

A No.

Q O.k. Now, did anybody in your group do any shooting at the time that you are now talking about?

A Yes, all the men, you know, because you know, we weren't worried about ourselves. We were just worried about, you know, our sisters, so we told them to go ahead; and while we were {1542} running up the hill, these go by us like a bee, go by, you know, like bees, you know, going by.

We ran up a hill, a real little hill, with the rest of them there.

We told the ladies or women to go ahead and keep running up that hill.

Q Let me ask you here: Do you recall whether or not Mr. Anderson did any firing during the time that you were going up the hill?

A No, I don't think so, no.

Q Do you remember anybody that did any firing, did somebody do some firing when you went up the hill, I mean, in your group?

A Yeah.

Q All right. Do you remember what kind of a weapon Mr. Anderson had?

A No, I don't know.

Q All right.

A And we were there --

Q (Interrupting) Let me ask you this question: Do you remember the weapon that Joe Stuntz had during the day?

A You mean the 30-30?

Q At least when you left the tent area, 30-30, as you described it?

A Yes.

Q Did you ever see that weapon or one that looked like it any other time later during the times that we are now talking {1543} about?

A No. No, I don't think so.

Q All right. O.k.

Now, what, if anything, did you do next?

A Well, we kind of like spread out, and they were shooting at us. We saw two cars that came off the road, and they -- I don't know, they were just -- they went around the hill we were going up, and were still shooting at the other people down there, so we got up and we ran up that hill.

Then we met the sisters up there and started praying again and that eagle we saw --

Q (Interrupting) When you say the "sisters", would you tell the jury who these people were so that the jury will know who the sisters were?

A It was Jean Bordeau, and I just know the other girl by the name of Lynn and Neelock.

Q So there is three?

A All right.

Q And those are the three that lived in the tent area with you, is that right?

A Yes.

Q Now, what is the next thing that happened -- did you see any other people other than in your group that anybody talked with; from the point we are now talking about, did you run into anybody?

{1544}

A Yeah. It was getting kind of dark, and two people on a horse -- I don't know who they were, and I don't know -- there was me, Norman, we were looking over where those two cars were at. We were up on the hill here (indicating), they were down here (indicating). I think they were crawling up there and saw two horses and two people, and they are the ones that, you know, helped us out.

Q All right, and what happened next?

A So they helped us out and went down the hill, then we just started going into the hills. That's how we got out of there.

Q All right, and where did you next go, did you go to any house of any kind or in the vicinity of a house?

A Yeah. Went to the -- up in the hills for about five hours, six hours, long time, I don't know how long, about six hours, and we were walking, and we met this guy. He wasn't wearing shirt. We met him.

Q Did he talk to anybody?

A Yeah. He was with Bob, and I think, yeah, Bob gave him shotgun; and then he left. Then we started walking, walked through this big culvert, just walked through it, walked through that, walked for an hour and a half, walked over a bunch of hills, came up to a house; and there was an old man who was living there, I think about 85. He was old, and we asked him if we could stay there; and he could barely understand English, you know, asked him if we could stay there and he said {1545} "Yeah," and he let us stay there.

Q Do you remember what his name was or --

A (Interrupting) Yeah, it was -- let me see. I know his name. but I can't -- let's see.

{1546}

Q Maybe it will come to you as we talk a little more.

Did you all stay there then at the cabin that night?

A The small cabin, real small.

Q About what was the size of it?

A About eight by ten. You know, pretty small. Real small.

Q Now what did you do with the weapons that night?

A Soon as we got there, Leonard asked me, "You want to go on

security," you know, "You want to, want to go up there and watch out."

Q Who was it that asked you?

A Leonard. He didn't tell me, you know, he said, "Do you want to"; I said, "Yeah. I'll go up there." So me and Wish, we went up there for about three hours and we, you know, talking.

Q Where were your weapons put that night, if you recall?

A Well, right after security I come in and we switched with Norman. I don't know who the other one was. And I walked into there, saw some guns laying up against the wall.

Q All right.

Did you see any pistols of any kind?

A Yeah. Saw two of them.

Q And would you describe the two pistols that you saw at this time. Let's take them one at a time and describe one and describe the other.

A One had a short barrel and the other one had a long barrel, {1547} pretty long barrel (indicating).

Q Did they look somewhat the same except one had a longer barrel and one a shorter barrel?

A I don't know. It was pretty dark. There was a kerosene lamp, you know. Just saw it. I didn't really look at it or nothing, I just saw it.

Q Had you ever seen those before?

A No.

Q I'm going to show you now what has been marked as Government's Exhibit 31A and Government's Exhibit 35A and ask you whether or not one of these has a long barrel and one has a short barrel?

A Yeah. One has a short barrel.

Q And with what little you saw that night, as you've described, did the weapons you saw at that time in some way resemble the two weapons that I now hold in my hands?

A I don't know. I saw one with a short barrel and I saw one with a long barrel.

Q All right. And that's as much as you remember, is that right?

A And I saw a holster but there was no gun in it.

Q So you saw one handgun with a short barrel, one with a long barrel and a holster. Those are the three things you saw?

A Yeah. The holster was just rolled up and laying there.

Q And you had not seen the two guns, the handguns before?

{1548}

A No. I don't think so.

Q All right.

Did you see those two handguns at any time after on the table in the small cabin by the kerosene lamp that night? Did you see them the next day or the next day or the next day?

A No.

Q Now what if anything did you then do? Did you leave there the next day?

A Yeah. We left early in the morning, then we started walking. Then we, we hid in some bushes. Walked about three miles from there, four miles. We just laid down staying in some bushes. Stayed there all day. About 10:30 or something like that till it was dark. Then we started walking. Then we did the same thing again the next day, we laid under some bushes.

Q So is it fair that you did the walking in the nighttime and you stayed in the bushes and the other things in the daytime, is that right?

A Right. But, yeah. You might say that.

Q And where did you stay then the second night?

A We stayed out under some bushes. Then we started walking again. Next evening, came across day, see, we thought we were going to Manderson but we ended up in Pine Ridge.

Q How was it that you thought you were going to Manderson?

A Because we thought, old man. We asked him, "How do we get {1549} to Manderson?" And he showed us the way. We were supposed to take this trail but we took this one (indicating).

Q Did he help you in any way by giving any assistance other than just telling you on how you might find the way to Manderson?

A It was pretty hard to talk to him. Like, couldn't hardly understand English. And asked, you know, "Give us some food," and he said, "Yeah " He got us some food for one meal, you know. You know, enough for that day.

Q Did he write anything down for anybody, if you recall?

A No.

Q And so where did you stay then the next night?

A You mean after we left there?

Q Yes.

A Out in the bush, under the bushes.

Q Then where did you stay? Where did you go and stay then the

next night or day?

A Well, right after that we were walking, came upon a place, you know, there was a hill. Then we looked over and it was Pine Ridge. So we didn't know what to do so we started walking this way again (indicating). We saw a house, I don't know, somebody knew who lived there but I don't know who. We went up to the door and asked if we could stay there and they said, "Yeah." So we stayed there that night. The man was kind of fat and his wife, too.

{1550}

Q And were there any other people there?

A There was a, I think two daughters there.

Q And would you describe what the lady looked like in terms of her size?

A You mean the old lady?

Q Yes.

A Yeah. Pretty fat. Yeah.

Q She was fairly heavy, is that right?

A Yeah. Yeah.

Q About how old were the daughters would you guess? Would they have been teen-agers?

A About 16, 17, around there.

Q Now where did you go from there?

A Somebody came and gave us a ride and went to Crow Dog's paradise.

Q Would you indicate who went. When you got a ride, who went? Did you all go in one car at one time?

A No. Me and Norman and I think it was Wish, Wish or Mike. It was a lady and a man that drove us out. I don't know who the lady was or the man with the car.

Q Do you know who went in the other group?

A Yeah. I think it was, there's three groups there went. We were first, I think. The girls were first. Second. Then I think it was Bob, Dino and Leonard got in Crow Dog's. Bob, Dino and Leonard went in one group, is that right?

{1551}

A Yeah. I think so.

Q Now I want to take you back to ask you a question or two on leaving the camp and getting to where you are now. Do you remember taking any other objects with you of any kind?

A Oh, it was a canteen; Yeah.

Q What happened to the canteen?

A It got dropped.

Q would you describe what the canteen looked like to the jury.

A I don't know. Had stripes on it, on the side.

Q Was it covered with anything?

A Yeah. It was some kind of cloth. I don't know.

Q All right. I'm going to show you marked as Government's Exhibit No. 17. Did you have any water in it when you left?

A Yeah.

Q I want you to look at this canteen and see whether or not you recognize it in any way.

A Yeah.

Q You do recognize it?

A Yeah. I think that's the same one.

Q And at least you left with one like this? Yeah.

Q Is that right?

A Yeah.

{1552}

Q Is there anything you remember about the canteen other than the cloth, the one you had with you on that occasion, specifically?

A What?

Q Did it have a strap of the kind that's here?

A Yeah.

Q Like this?

A Yeah. It had a strap.

Q Was it this size?

A Yeah. I think that's it.

Q This general shape. You think this is it. All right.

Where was it that you remember you dropped it or whatever you said you did? Do you remember about where that was or when it was?

A Yeah. When we started running up, ran about 100 yards. We was running. Yeah. That's when I dropped it about.

Q Now is that after you went through the culvert and you were going up the hill?

A Yeah.

MR. HULTMAN: I don't know whether, has 17 been offered yet?

MR. TAIKEFF: It is in evidence.

Q (By Mr. Hultman) Now where did you go then in the car?

A I think it was Crow Dog's. Yeah. Crow Dog's.

Q And how long did you stay about at Crow Dog's?

{1553}

A Until the sun dance.

Q And when was the sun dance approximately, if you remember?

A August.

Q Early part of August?

A End of July.

Q End of July, early part of August?

A Yeah.

Q All right.

Did any of the people go to any other place than Crow Dog's that was in your group?

A Yeah. As soon as we got there, you know, we all split up. And got there, like nothing happened. You know, we were just, went our ways and I think some went to Al's I, I didn't tell Crow Dog and I don't think anybody else told Crow Dog about what happened. I don't think they knew. Just like nothing happened. We just split up.

Q In fact, did you all discuss whether or not you would tell anybody anywhere along the trail?

A No.

Q But did anybody tell the old man? Would that have been Noah Wounded?

A Yeah. Noah Wounded; yeah.

Q Did anybody tell Noah, the old man, about the things that had happened earlier on the 26th?

{1554}

A I don't know. They might have. I don't know.

Q But you didn't hear anybody tell him?

A No. I didn't hear anybody.

Q What about the place that you stayed the second night, the next place that you stayed, did anybody tell them about how you got there in a group under these kind of circumstances out of the woods and in the night? Did anybody tell those people that you know?

A I don't know.

Q You didn't hear anybody tell them anyway?

A No.

Q You definitely said that you didn't tell Crow Dog, is that right?

A No. I didn't tell Crow Dog.

Q Did anybody tell Crow Dog that you know?

A No. I don't think so. I didn't hear. No. I don't think so. I don't think they'd tell Crow Dog; no.

Q Any reason why you wouldn't tell Crow Dog? Because he's a spiritual man, you know. I don't know. Just good man. You know, probably didn't want to get him in trouble. I didn't.

Q Now you said, I believe you used the name Al, was that right?

A Yeah. Al.

Q Would that be Mr. Al Running?

{1555}

A Yeah.

Q Who was it that went to Mr. Al Running's place?

A I don't know. See, as soon as we got there, we got there in the night and I stayed at Leonard's at night and I don't know who went to Al's, but some of the people that we came with, you know, I don't know where they were at.

Q Did you go to Al's?

A Yeah. I went to Al's to visit.

Q We went to Al's? Who was at Al's that was in the group that went out on the 26th from the tent area?

A Neelock and Dino and Jeannie.

Q So Dino, was there any other men besides Dino? Did Bob go?

A Bob was there; yeah.

Q Bob and Dino were at Al's and you were at Al's, is that right?

MR. TAIKEFF: Objection, Your Honor.

A We're like --

THE COURT: Just a moment.

MR. TAIKEFF: I believe that is not what the testimony is.

MR. HULTMAN: If it wasn't, I certainly want it corrected.

MR. TAIKEFF: Could I confer with Mr. Hultman for a moment? {1556}

MR. HULTMAN: Yes. All right.

Q (By Mr. Hultman) When you referred to staying at night at Leonard's, this is up until this time we have been basically talking about when you used the word Leonard, Mr. Peltier, is it not? Leonard was Mr. Peltier. Leonard Peltier. The person that you have been talking about being with on the 26th and going --

A Yeah.

Q And so forth. Now you referred to Leonard, staying somewhere at

Leonard's.

A Crow Dog.

Q This wasn't Mr. Peltier. This is now a new Leonard?

A Yeah.

Q This is Leonard Crow Dog's, the medicine man you're talking about?

A Yeah.

Q We want it made clear you didn't stay at Leonard Peltier's that night. It was Leonard Crow Dog's. All right.

A Yeah.

Q Now I want to ask you now, were there any other people -- did you leave Leonard's and then go to Al Running's, is that the way it happened?

A You mean Crow Dog's?

Q Yes.

A Yeah. I just went there to visit.

{1557}

Q Were there any others that stayed at Al Running's other than, I believe you said Bob and Dino. Was there anybody else that stayed at Crow Dog's that you know?

A Yeah. Neelock, then Jeannie. Like I stayed at Crow Dog' for awhile, then stayed at Al's. You know, just visiting, every once in awhile.

Q Is it fair for me to conclude from what you're saying that the people that went from the tent area with you stayed back and forth between Leonard's and Al Running's, is that a fair conclusion for me to draw?

A What do you mean, "stayed back"?

Q You said something about you were one place --

A Yeah. Just visiting.

Q Visiting back and forth?

A Yeah.

Q Do you know at any other place that any of you stayed during the days following or during the sun dance and the days following Leonard's and Al Running's, do you know any place that anybody in the group stayed specifically?

A No. I was just -- no. No.

Q I just have one last question. Has everything that you've told the jury yesterday and today been on the sacred pipe and been the truth?

A Yeah.

Q Thank you. I have no further questions.

{1558}

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

{1559}

CROSS-EXAMINATION

BY MR. TAIKEFF

Q Mr. Hultman referred to you by your first name. Do you want me to call you Mr. Brown or Norman?

A Don't matter.

Q All right. Defendant's Exhibit 93 in evidence is a photograph of a red white vehicle, and I think you looked at it before, and I think you said that you thought that vehicle at one time or another was in the vicinity of the so-called junked cars; is that right?

A Yeah.

Q Do you know whether that vehicle was ever operated, or was it possible to operate that vehicle?

A I don't know.

Q I show you what has previously been marked Defendant's Exhibit 94 for identification. It is not in evidence. Can you tell us if you know of your own knowledge the relationship between what's in that photograph and what is in Defendant's Exhibit 93 in evidence?

A What?

Q Do you know what this is in this picture No. 94?

A It's this one (indicating).

Q When you say "this one" you pointed to No. 93?

A Yeah. Looks like it, yeah.

Q All right. 94 is the back end of 93?

A Yeah.

{1560}

MR. TAIKEFF: Offer it in evidence, Your Honor.

MR. HULTMAN: If counsel so indicates it is, I no objection.

THE COURT: 94 is received.

Q (By Mr. Taikeff) Now, in October of 1975 you were interviewed by the FBI, in fact the date I believe was October 10 1975 at approximately 12:00 noon; is that correct?

A (No response).

Q October 10, 1975?

A 12:00 noon?

Q 12:00 in the afternoon.

A No.

Q No. In Arizona?

A It was -- what time did you say there?

Q I said I believe it was on October 10th at approximately five minutes after 12:00..

A No.

Q Do you recall whether you were interviewed --

A It was in the evening I got interviewed that first time.

Q In other words could it have been around midnight, five minutes after midnight?

A Yeah. I think so.

Q All right.

A I know the time.

Q And were there four law enforcement officers present?

{1561}

A (No response.)

Q If you're not sure, tell us how many you remember.

A I remember three.

Q Were there three FBI agents?

A Yeah. There was three.

Q Three FBI agents?

A I think there was five of them. But one kept moving in and out, bringing coffee. I don't know if there was another one.

Q Was there someone from the BIA?

A Yeah.

What's his name?

Q First name Frank?

A Frank Adake.

Q All right.

A No. That's -- he wasn't there that time. I think you got different one there.

Q Well, did you sign a statement that night?

A Yeah. Signed a statement.

Q And do you recall whether Frank Adake witnessed the statement?

A You mean that first time they came?

Q Well, I'm talking about October 10, '75. I wouldn't know whether that was the first time or the second time or the third time.

{1562}

Well, let's skip past that particular name. Do you remember the names of the agents who were there?

A The first time was a Victor Harvey, J. Gary Adams. I don't remember the other one.

Q Was there ever a time when you were interviewed by an agent named James Doyle?

A Yes.

Q And did you sign a statement on that occasion?

A Yeah, I think so.

Q And was Gary Adams there that time with Doyle?

A Yeah.

Q And was there another agent by the name of Michael Ness or Ress from Albuquerque?

A What time are you talking about?

Q I believe October 10th. I'm not trying to pin you down to the date.

A No. I know I'd remember if I knew what time, because it was twice.

Q I see.

A I might --

MR. TAIKEFF: Let me have this marked so I can show it to you.

(Mr. Taikeff had exhibit marked.)

Q (By Mr. Taikeff) I'm placing before you this folder which contains, what has now been marked Defendant's Exhibit 110 for {1563} identification. Do you recognize that sheet?

A Yeah.

Q And do you recognize that the following sheets are handwritten statement?

A Handwritten?

Q Yes. Written by someone's hand. It's not typewritten?

A Yes.

Q Did you ever see that handwritten statement before?

A What?

Q Before I just showed it to you, did you ever see that statement?

A Yeah. Yeah, I saw it.

MR. TAIKEFF: Your Honor, may I have a moment to confer with Mr. Hultman?

THE COURT: Very well.

(Whereupon, Mr. Taikeff conferred with Mr. Hultman.)

MR. TAIKEFF: Your Honor, with Mr. Hultman's consent and subject to Your Honor's ruling, I'm going to give to the witness a duplicate of what has been previously marked Defense Exhibit 110 for identification to facilitate the questioning.

THE COURT: Any objection?

MR. HULTMAN: I may object to the question, Your Honor. I have no objection to the procedure that we're using.

THE COURT: I have reference to the procedure.

{1564}

MR. HULTMAN: I understand, Your Honor.

THE COURT: That is approved.

MR. HULTMAN: Thank you, Your Honor. And the statement is now in the hands of the witness.

Q (By Mr. Taikeff) What I want to know is whether you put your initials at least once on every page of that document?

A Yeah.

Q Who wrote out that statement?

A Doyle, James.

Q And were you speaking with the agents while they were, or the agent while he was writing that statement?

A Yeah. But --

Q All right. Just answer my questions and I'll take it a step at a time with you.

A Yeah.

Q Look at the third page of the statement four lines from the bottom.

MR. HULTMAN: Are we referring to page 3, Counsel, so I can follow?

MR. TAIKEFF: I'm going to show it to counsel, Your Honor.

(Whereupon, Mr. Taikeff showed Mr. Hultman Defense Exhibit 110.)

Q (By Mr. Taikeff) Are you looking at the page, Norman, where the word "lunch" is crossed out and the word "breakfast" {1565} is written in?

A Yeah.

Q And your initials are next to the word "lunch" that's been crossed out; isn't that correct?

A Yeah.

Q Now, at the beginning of that particular sentence four lines from the bottom are the words "at approximately 11:30 A.M.". Would you read that sentence to yourself.

A You mean from --

Q From the words "at approximately 11:30 A.M." until the end of that sentence.

A Okay. At approximately --

MR. HULTMAN: Well, now just a second, Your Honor.

Q (By Mr. Taikeff) Not out loud. Read it to yourself.

A Yeah.

Q Now, before you put your initials on the page you read each page, didn't you?

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

Q Did you say "yes"?

A I think so. I'm not sure.

Q Okay. Now, did you tell the agents that day that while you were preparing to have a meal you were with Joe Stuntz, Zimmerman and Michael Anderson?

A Yeah.

I mean did I say that to them?

{1566}

Q Yes.

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

Yeah, I think so, yeah.

Q Now, on your direct examination you said that when you were in tent city just before the firing begin you weren't sure where Anderson was.

A Yeah.

Q Now, isn't it a fact that Anderson was in tent city with you and the other people?

MR. HULTMAN: Well, I object, Your Honor, on the grounds that this question has been asked and answered and that it is an attempt on the part of counsel. No objection to him asking the question as to who was there, but on attempt on the part of counsel to confuse the witness.

MR. TAIKEFF: Your Honor, I think it's a perfectly properly phrased question.

THE COURT: The witness may answer.

MR. TAIKEFF: Beg your pardon?

THE COURT: The witness may answer.

MR. TAIKEFF: Thank you, Your Honor.

Q (By Mr. Taikeff) Do you remember the question?

A Say it again.

Q Isn't it a fact that when you were preparing to have your meal

--

A Yeah.

{1567}

Q -- just before the firing started Mike Anderson was in tent city with you and the other people?

A No, he wasn't.

Q He wasn't?

A No. This was a long time ago. This is the second time when they came to me.

Q June 26, 1975 was a long time ago, wasn't it?

A Yeah.

Q And this statement was taken from you on October 10, 1975?

A Yes.

Q And today's date is March 25, 1977, isn't it?

A Yes.

Q Which is closer to June 26th, the day they took the statement or today?

A The day they took the statement.

Q And as a general rule is your memory better closer to an event or far from an event?

A Yeah.

Q Yeah what?

A Yeah, my memory's good closer to the event.

Q Is it possible that you forgot that Mike Anderson was with you in tent city?

A Yeah, it's possible.

Q Now, I notice as I've said before that the word "lunch" is crossed out and the word "breakfast" is put in. Is it a fact {1568} that that was the first meal you were all going to have that day because you had just gotten up before that?

A Yeah, right.

MR. HULTMAN: Well, I object, Your Honor, now to the question because it included an alleged fact that was not a part of the record, that he had "just gotten up". I believe it shows, the record shows that that is not to be the record. If counsel will ask the witness that

question, I'll have no objection.

MR. TAIKEFF: Your Honor, I believe that Mr. Hultman accurately states the fact, but I don't think that's the basis for finding my question objectionable. I'm seeking information from a witness on cross-examination.

It's my understanding that if I have a good faith basis for asking a question as a question rather than making a statement that it's proper for me to do so. And the good faith basis is what I saw in that statement.

MR. HULTMAN: Might we approach the bench just one time.

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

MR. HULTMAN: Your Honor, and Counsel, I'm not in any way trying to interfere, and I won't interfere with your questioning. I think, though, I'm under a duty with the witness of this kind with a far greater degree of necessity {1569} make absolutely certain that there is no misunderstanding in the mind of the witness that he understands what statement included. Because I think without any question a witness of this kind, and that's why I was so deliberate in the course of my questioning to make absolutely certain in all fairness that he understood the question, that he responded to the question accurately. And that's the only reason for my objection now, Counsel.

MR. TAIKEFF: I can assure Your Honor that there was no sense on my part that the witness had not misunderstood question. I would not proceed on that basis, and I to clarify one point here so that counsel doesn't have any unnecessary exchanges during the cross-examination. Your Honor earlier in the trial made a ruling that it was for counsel to state facts as if they were facts in trying to elicit an answer because it left the wrong impression with the jury in a way that it could be said that counsel is testifying when counsel does that. But --

THE COURT: Not state facts, state facts which are not supported by the evidence.

MR. TAIKEFF: Right. But I understand that it is proper to say to a witness "isn't it a fact that," if there's a good faith basis for doing it. And it is not an attempt to parade information in front of the jury for which there legitimate basis.

{1570}

MR. HULTMAN: I have no objection to that.

MR. TAIKEFF: As long as I understand that.

THE COURT: There's good faith basis for doing it, but my

objection to it is stating, making an assertion which there is no apparent, no factual basis for it.

MR. TAIKEFF: I understand.

MR. HULTMAN: Your Honor, the reason I wanted to approach the bench is I want counsel to know that I feel with a witness of this kind, his demeanor, his background, his hostility, in terms of, not to counsel now, but I'm referring now as to relationships in what terms they might be, leads us to one position that I don't want counsel to reel that if I become vigorous in an objection that I'm not attempting in any way to take from counsel or to distract from counsel, but I feel with a witness of this kind there may be occasions when I would have to do that, otherwise I wouldn't.

MR. TAIKEFF: I think, though, up to this point it's fairly clear that the witness has been responsive to Government counsel, and apparently there was a clear-cut rapport of a positive nature between Government counsel and the witness. So I don't think there can be any indication at this time that there is any hostility, either legal or personal. And I just wanted to comment on that to make sure that the record was not confused. And I see that Your Honor has closed his {1571} book.

THE COURT: I have closed my book.

MR. LOWE: That is what is known as a signal.

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

THE COURT: Court is in recess until 1:30.

(Recess taken.)

AFTERNOON SESSION

(Whereupon, at 1:30 o'clock, p.m., the trial of the within cause was resumed pursuant to the noon recess heretofore taken; and the following further proceedings were had, the Defendant being present in person:)

(Mr. David Maring also appeared).

THE COURT: Are we ready for the jury?

MR. TAIKEFF: Yes, your Honor.

THE COURT: The jury may be brought in.

(Whereupon, at 1:32 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:)

THE COURT: You may proceed.

MR. TAIKEFF: Thank you, your Honor.

NORMAN BROWN,

having been previously duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION (Cont'd.)

BY MR. TAIKEFF:

Q Norman, I want you to try to remember the time when you heard the first shot on June 26th when you were in Tent City. How long after you woke up was that?

A I don't know. I just got up.

Q Could you tell from what you saw around you in the camp what time the other people in the camp had gotten up?

{1573}

A Well, they got up before me, so I had just gotten up, and was talking to Joe for awhile, and that's when I heard the shots. I don't know what time.

Q What kind of things were being done in the camp when you got up?

A Well, they were cooking, they were making pancakes, and don't know. I had just gotten up, and I was talking to them so I woke up and I went with Joe and I was talking to Joe for awhile, and I don't know where the rest of the people were. They might have been still sleeping, I don't know.

Q Now, you spent some time up on the ridge near the houses, is that right?

A Yes.

Q After the shooting started?

A Yeah.

Q And Mike Anderson was up there on the ridge with you, wasn't he?

A Yeah.

Q Now, after you were up on the ridge by the houses, you then went up to this area here (indicating) which has been marked in a circle "NB", is that right?

A Correct.

Q And what was the next place you went to after you were in that spot?

A To the camp.

{1574}

Q And then from the camp you left the area?

A Right.

Q Now, when you made your way from the area of the houses to that spot, where was Leonard Peltier?

A When I saw him, way over there (indicating), he was right There in the circle.

Q To the right on the chart of this "Y" intersection?

A Yes.

Q Now, where was the next time you saw him?

A Inside the camp.

Q Did you ever see him when you were in this area marked "NB"?

A No. I just saw Mike, me and Mike.

Q From this area marked "NB", are you able to see down into the area of this intersection, the "Y" intersection?

A No.

Q Now, when you said a few moments ago that you were talking with Joe in Tent City right after you got up, you were talking about Joe Stuntz, weren't you?

A Right.

Q And is it accurate to say that Joe Stuntz was in Tent City when the shooting began?

A Yeah.

Q And did he go over to --

MR. HULTMAN: (Interrupting) Well, may it please the {1575} Court, I didn't have time to enter an objection, your Honor.

I object on the grounds that that is not a statement of the record, that the statement was that he did not know, that he was in the area, was the exact words; and I went into that at least on two occasions, and so I now object on the grounds that the question is a misstatement of the record.

MR. TAIKEFF: Your Honor, I think we have to get one thing straightened out so that there is not unnecessary colloquy. I am not bound by answers of a prosecution witness. If I ask a question in good faith and I get an affirmative answer, I don't see what the prosecution can object to; and I think on top of that, that Mr. Hultman has made a mistake and he is thinking of the wrong person.

I would be glad to confer with him for a moment and perhaps call that to his attention.

MR. HULTMAN: Your Honor, I think the matter can be resolved if I

just get the opportunity from counsel before the response, that's all I am asking. I think within the Rules I have a right to make my objection at the end of the question before the response in order that the response not come, if it is legitimately to be withheld and not to come before the jury. That's my only point.

MR. TAIKEFF: I have no quarrel with that, your Honor.
{1576}

I would like the jury to know that counsel are permitted on cross examination to put a factual proposition to a witness to see whether the witness will agree with it or disagree with it providing counsel has a good faith basis for asking such a question, and it is not improper conduct on the part of counsel.

MR. HULTMAN: I didn't in any way infer -- I want counsel to know flat out, I wasn't inferring it was an improper act.

MR. TAIKEFF: May I have a moment to confer?

THE COURT: You may.

(Counsel confer.)

MR. HULTMAN: I withdraw my objection, your Honor.

THE COURT: Just a word to the jury.

You may recall that in my preliminary instructions at the opening of the trial I advised you that it is your responsibility to listen to the evidence and to determine what weight should be given to it. The problem that has arisen here and which has arisen before, and which will arise again, is that a witness may make a statement on direct examination; and if the cross-examining lawyer may have information before him which indicates that the witness made a different statement -- and if he asks -- on a different occasion relating to the same thing; and if he asks that witness, "Isn't it true that you made such {1577} and such a statement," and the witness says "Yes," then you have a direct conflict such as has just arisen; and it is for the jury to determine what the truth is in the statements of the witness, and that same test should be applied in judging the weight and credibility of any witness.

(Counsel confer.)

MR. HULTMAN: Your Honor, may I state for the record at this time with counsel that there is no -- because there may be a misunderstanding as far as the record, there is no disagreement between counsel that Joe Stuntz was with the witness at the time; and that's a consistent statement and there is no disagreement about that.

MR. TAIKEFF: Yes. My position is that his direct and his cross are consistent in that regards, your Honor.

THE COURT: Very well.

Q (By Mr. Taikeff) You said something on your direct examination, you know what your direct examination means?

A No.

Q When Mr. Hultman was asking you questions, that's your direct examination, so when I refer to it, I mean when Mr. Hultman was questioning you.

A Yes.

Q You said something on your direct examination about some concern about a possibility of an attack, do you recall that?

{1578}

A Right.

Q Would you explain what was the basis of your concern, what specifically you were concerned about?

A Well, I read in papers about goons, BIA goons, FBI, people tell me what they done to their homes, goons do, and how many people have been killed; and that's why we were concerned, not only for us, for the women and children there. Is that what you are asking the question.

Q (Interrupting) That's what I am asking about, the people who said certain things to you.

Are you talking about the people who were living in Tent City or people who lived elsewhere on the Reservation?

A Yeah, elsewhere, and some people in Tent City. Like I say, you know, the goons, watch out for them, they are dangerous.

Q Now, when you went up to the area which is marked with the letters "NB", you had a certain concern about the women who were there, did you not?

A Right.

Q You had seen something just before you went up there, just before you left the area of the residences to go up there, do you remember?

A Right.

Q What did you see?

A Some cars and some people coming across from the road over here (indicating) towards the area where the tents were {1579} (indicating).

MR. TAIKEFF: I believe that the witness has motioned with his hand in such a way as to probably indicate from Highway 35 in the south

pointing towards the north.

Q (By Mr. Taikeff) The people you saw coming from south to north, were they Indian people?

A Coming from this way (indicating)?

Q Yes, sir.

A No.

Q They were not Indian people?

A No.

Q The people you saw arriving in cars on that part of Highway 35 which is west of the houses, where the bottom of the chart is?

A Yes.

Q Were those Indian people?

A I didn't see any.

Q Did you see any cars pull up there?

A You mean -- what are you talking about, right there?

Q No. I am talking about a place that isn't on the chart but would be on the chart -- Highway 35 comes all the way around?

A Yes.

Q And down here in the west (indicating), did you say that you saw some cars pull up just before Joe Stuntz told you to {1580} go?

A Yes.

Q Up towards Tent City?

A Yes.

Q What kind of cars were they?

A They were just plain cars, you know, one color of car.

Q Did you know who was in those cars?

A No, but I saw them carrying some guns.

Q Did you think it was possible that people would come into your tent city area and harm or shoot these women?

A You mean me?

Q Yes, I am asking you whether you thought it was possible that such a thing could happen.

A Yes.

Q Now, you said that Joe Stuntz said something to you about, "This is the time to be a warrior." Did I say that correctly?

A Right.

Q What does that mean to you, what did it mean to you?

A Well, I think whet he meant was, shouldn't be scared to die, that I should think of the people that were there and not of myself, I

think that's what he meant.

Q Mr. Hultman asked you a number of questions concerning the Jumping Bull community with reference to the possibility of seeing goons in that area, and I don't remember all the places that he pointed out to you; but I think he asked you whether {1581} you ever saw any goons in the vicinity of the tan and red house and any goons in the the vicinity of the white house and a number of other places. Do you recall that, whether you ever saw any goons?

You remember Mr. Hultman asking you whether you saw any goons in those various places?

A Goons?

Q Yes.

A No, I didn't see no goons.

Q I know you didn't. I am asking you whether you recall being questioned about that when Mr. Hultman was questioning you.

A No, he didn't say that.

Q He didn't say that, o.k.

You have never seen any goons on the Jumping Bull compound, have you?

A No.

Q Do you know any reason why they never came around there?

MR. HULTMAN: Well, I object, your Honor, to this. This clearly calls for an opinion and conclusion of the witness for which there is no proper foundation.

MR. TAIKEFF: I believe, your Honor, the question was the foundation. I asked him if he knew the reason why they didn't come around there.

MR. HULTMAN: That's the very reason for my objection.
{1582}

It calls for an opinion and conclusion for which there is no foundation.

THE COURT: Overruled. He can state whether he --

THE WITNESS: (Interrupting) Could you say that again?

Q (By Mr. Taikeff) You are permitted to tell us, if you know, why the goons didn't come around to the Jumping Bull's community.

A Because there was already people there.

THE COURT: The answer was "Do you know."

Q (By Mr. Taikeff) Do you know why?

A No, I don't know why. I don't understand the question.

Q All right. Let me try again.

Goons didn't come around the Jumping Bull community, did they?

A No, I didn't see them.

Q O.k. Do you know why?

A No.

Q O.k. You said that you went to a religious gathering in Farmington, New Mexico?

A Right.

Q Would you explain what you meant by "religious gathering", what was happening there?

A Well, spiritual gathering there?

Q Yes. Maybe I wrote down the wrong word. Maybe you said "spiritual gathering".

{1583}

A Well, it is when a lot of people meet together, and they talk about their unborn and they talk to their elders, and to us that's sacred. That's why I said "spiritual gathering".

Q And who sponsored that activity in Farmington, New Mexico, in the early spring of 1976?

A The American Indian Movement.

Q Briefly tell us what you mean when you make reference to "elders"?

A Our medicine men, our old people, that they know more, you know, than we do so we are asking them what kind of direction to take; and they tell us things about the sacred pipe and sweat lodge, stuff like that.

Q I may have made a mistake before -- I want to correct myself -- when I spoke about that gathering in Farmington, New Mexico. That was the early spring of 1975, right?

A Right.

Q Not 1976?

A Right.

Q Do you know or have you ever heard the expression, "traditional Indian"?

A Right.

Q Are the elders you speak of people who are described as traditional Indians?

A Yes.

Q Can you briefly explain what that means in terms of how {1584}

they live their lives?

A They depend on themselves and nature and the medicines; and their thoughts are always concerned about people. You mean how they live?

Q Yes. I am following your answer. You can continue your answer, just as you are giving it.

A "Traditional", what I think it is is people that live in harmony with nature and that -- well, that's about all I can say.

Q Is there any special connection between traditional people and the American Indian Movement?

A Yeah. They are the same because the thoughts are the same and both thoughts are for the unborn, I think that's what you wanted to know, I don't know.

Q You live on a Reservation?

A Yeah.

Q How many people live on that Reservation?

A About 145,000.

Q How many of those would you say live a traditional Indian life?

A Well, about 120,000, I guess, yeah, almost three-fourths of the people there.

{1585}

Q Do you know anything about the political activities of AIM concerning life and political matters on the reservation?

A What do you mean?

Q Well, besides the religious aspects of the activity, there are aspects concerning who governs the Indian people and how they are governed on behalf of AIM.

A Well, I guess they're trying to put across that native people want to live, you know, in the sovereign way and depend on themselves and their own traditional kind of government.

Q Were Leonard and Dino and Bob involved in any activities like that on the Pine Ridge Reservation in June of 1975?

A What do you mean? I don't understand.

Q Were they working with the people there?

A Right. They were. Were working with them and they were with us. Medicine man come into our camp. There was a spiritual camp and it was, we took sweat lodges together, other people. They come and talked to us and, you know, help us with the food and, you know, help us in that way. And, you know, that's what the people came to the camp for.

Q The people who live on Pine Ridge came to your camp?

A Yeah. Lot of people.

Q Lot of people?

A Yeah.

Q Were you trying to encourage them to do something? Were you trying to get them to do something, to live a certain kind of way?
{1586}

A Yeah.

Could you say that again?

Q Yes. These people who came to you, were you trying to persuade them to live their lives a certain kind of way and take up the old traditional Indian way?

A Yeah We told them that, you know, that we think that the traditional form of government would be better than the present government there because the traditional form of government is a, it's with nature, the law of nature, and we feel that no law is greater than our law, that's the law of nature: love, peace and respect. That's what, you know, we tell them that way is better.

Q While you were on the reservation, did you talk to other people about their treaty rights?

A No, I didn't. No.

Q Do you know if Leonard did?

A Yeah. Yeah. I don't know too much about it. Oglala, their nation, I don't know their treaty. Know very little about it.

Q I'm not asking you about the content of the subject matter. I'm just trying to find out about the activities of the people who lived in tent city, what their work was, what their activities were. Do you understand that?

A Yeah.

{1587}

Q When you speak of treaty, or when I ask you about the treaty, what kind of a treaty are you talking about? With whom was the treaty that you referred to?

A With the government. I think the one you're talking about is 1868 Fort Laramie Treaty.

Q Yes. Tell us briefly of what your understanding is about that as far as it concerned the activities of the people from tent city, what connection they had with the subject of the 1868 Fort Laramie Treaty.

A Well, the subject, the way I understand is when they first,

when our nation first signed a the treaty with the government, I guess they did with all Indian people, is when they signed that paper, or they were forced to sign it, I don't know, I think the understanding is that we go on separate roads. This road would be traditional form of government, the native people on this side and our white brothers and sisters on this side (indicating). So we're trying to tell them, you know, "Not supposed to touch, stay on this side because there come a time when," like there is two boats, two canoes, the white people on this side and the Indian people on this side. You're either in one boat or the other and you can't sit in both boats at one time.

Like my elder told me this that when there is a wind, he said a wind is going to come and separate these and the people that live the white way and the Indian way, the boats are {1588} going to separate and those guys are going to fall to disaster. Just take this side, this is the only way. This is the creator meant for us to be.

Q Your message to the people on the Pine Ridge Reservation was don't live your life like a white person if you're not a white person, live your life like the native American has always lived his life, is that a fair summary?

A Well --

MR. HULTMAN: Your Honor. Excuse me, Norman. Your Honor, I haven't entered any objection at this time and I think I have been lenient but I would at this time now interpose an objection that the matter we're now getting into there is no showing of relevancy and it's clearly beyond the scope of direct examination.

MR. TAIKEFF: Your Honor, I recognize Mr. Hultman in fact has restrained himself. However, on direct examination he asked the witness whether he knew anything of the work that was being done by Leonard Peltier and the other adult males. The answer was no. I don't know that the witness understood the question at that time and I'm addressing myself to that direct testimony at this particular time.

MR. HULTMAN: Your Honor, my objection is that I would have no objection to any showing of relevancy in terms of any activity that did go on. The only thing we have heard is a general discussion of philosophy. That's the basis for {1589} my objection. If there is any showing of any kind that there was specific activity, then there might be some probative value, but my objection goes clearly to the point there has been no showing of any kind of any specific activity.

THE COURT: As I understand the relevancy which defense counsel is

asserting is he is attempting through this witness to establish to the extent of this witness' knowledge of the purpose of this group's presence at this particular location at that time.

MR. TAIKEFF: That is correct. And it is specifically addressed to the fact that the direct examination, there was a question as to whether the witness knew what Leonard and Bob and Dino, the adults of the group, were doing there and the answer was, "No" and I'm probing that answer. I think the answer was given as it was because the witness may not have understood the import or the impact of the question.

THE COURT: Well, within those limits of relevancy I will permit you to proceed.

A Could I answer that question back there? The last one?

Q (By Mr. Taikeff) I have no objection.

A What you say that wind is going to separate them apart with the movement, the American Indian Movement is going to. I guess that answers your question. That wind has to do that.

Q What did you and the other people from tent city do about {1590} spreading that word, about bringing that information to other native American people?

A Would you say that again.

Q Yes. I'll try it a different way.

Am I correct that you wanted the native American people living on Pine Ridge to assert their rights under the 1868 Fort Laramie Treaty and live independently of the white culture?

A Yeah.

Q And that you wanted the native American people at that location and perhaps in all locations to live their life by the religious beliefs, the traditional native American religious belief?

A Right.

Q What did you do in order to bring this message to the people on the reservation?

A What did I do?

Q What did you and the people from tent city? You said people came to you from different places on the reservation.

A Yeah.

Q Was there any connection between those people coming to you and what you wanted them to learn from you?

A Trying to tell of a new direction. You know, to go the direction of, like you said, traditional government, or like I said.

{1591}

Q And did you hold religious ceremonies?

A Yeah.

Q How often?

A Lots. About, used to have in the morning and then at night and came to be we had it every day. Sweat lodge.

Q Were the native American people welcome to come and participate?

A Yeah. They did come and take in the sweat lodge with us.

Q And was that part of your program, part of your way of persuading them, of helping them see the new way which was really the old way?

A Yeah.

Q You mentioned a place called Crow Dog's paradise. Would you tell us what that place is.

A It's a place where each year that they have the sacred sun dance every year and the place where people meet, like to sun dance. That's what it is. When people from all over come together and think with the same mind and thoughts and pray for all walks of life. That land there is sacred.

Q When you speak of all walks of life, you don't mean all different kinds of people, you mean people and animals, don't you?

A Yeah. People. Black, yellow, white and red. That's what the sun dance is all about.

Q Leonard Crow Dog is a medicine man?

{1592}

A Right.

Q His father was a medicine man before him?

A Right.

Q And you consider him a holy man, do you not?

A Right.

Q You said when Mr. Hultman was questioning you that you went to the sun dance for the first time when you were 13 years old.

A Right.

Q Is there any connection between the first time you go to sun dance and becoming a man?

A No, it's not. It's not that. It's like, not like, you don't do that just because you become a man. You thank our creator, we thank him. Like if we offer him tobacco or a horse or something, it's already his.

We offer ourselves. We belong to ourselves but we're his children and these are our own bodies so we offer him all we have got, offering ourselves to him so that, you know, we can live in harmony and have a good understanding of nature.

Q From your contact with Leonard Peltier, would you say that is a spiritual man?

A Right. Everybody in the camp was spiritual. Yeah.

Q Did you think that if you had to use a gun to protect the young women that you would be giving up your spiritual nature?

A No. Because to me, you know, as to everybody in the camp, {1593} as we learn, I guess, since we were small that, you know, all life is sacred, you know.

Q Did you see all life is sacred?

A And we had to protect, you know, lives is what we done.

Q Now you traveled when you were quite young many different places in the western part of the United States, isn't that correct?

A Right.

Q Is that part of your life as a native American person, traveling from place to place and living in different places or different periods of time?

A What?

Q Did you live in different places, is that a cultural thing to live in different places at different times?

A Yeah. I guess so.

Q How long did you live on the Pine Ridge?

A About two weeks.

Q How many different times did you live on the Rose Bud Reservation?

A Last year. This would be my fourth time this year.

Q This year will be your fourth time?

A Yeah. How many different reservations have you lived at from time to time so far in your life?

A About five.

{1594}

Q Were there things that the people in tent city had that everybody used?

A Yeah, there was. What do you mean?

Q Well, for instance, sometimes you had one gun, then another time you had a different gun. Is that unusual amongst Indian people to

use things that way so that it doesn't seem to belong to just one person?

A Yeah.

Q Is that the Indian way?

A Yeah.

Q How do you describe that? Do you have a word that you can use in English to describe that?

A What do you mean like? Say the question again.

Q Yes. You shared many things.

A Yeah.

Q With your brothers and sisters, didn't you?

A Yeah.

Q You said that there were times when you saw Leonard with a certain gun.

A Right.

Q Did he sometimes have a different gun?

A He might have. I don't know.

{1595}

Q Did you always use the same gun?

A No.

Q You said that sometimes Leonard drove the red and white van?

A Yeah.

Q Did anybody else ever drive that van?

A Yeah.

Q Who else?

A Well, I drove it once and Joe and Dino drove it.

Q Did you share your food?

A Right.

Q Did you share whatever money you had?

A What money?

Q Did you share between yourselves whatever you had?

A Yeah.

Q Is that the Indian way?

A Right.

Q You refer to Joe Stuntz as your brother. I assume you meant that in the spiritual way?

A Right.

Q Jimmy Zimmermann separated from the group on June 26, 1975; isn't that correct?

A Right.

Q Was that just about the time the group was leaving and moving south?

{1596}

A Yeah. This is when we all got together and we were ready to leave. And before we left when we got together, he should give himself up because, you know, he might get hurt.

Q Why did you think he might get hurt?

A Because people were shooting at us.

Q Now, in giving your direct testimony and talking about the two men who were at the cars, the one with the long gun and the one with the handgun, you've referred to them as agents, right? You said they were agents?

A Right.

Q You now that they were agents of the FBI; isn't that correct?

A Right.

Q When the shooting was going on did you know that they were agents of the FBI?

A No.

Q You told us that you saw Leonard shooting from that place where the junked cars are and you also said you saw the agents shooting?

A Yeah.

Q Which one did you see shooting first?

A I don't know. It was just -- I don't know who shot first, but they were shooting at each other I could tell.

Q Well, when you looked, which did you look at first and see shooting?

{1597}

A Well, when I got up there I saw Leonard shooting. He's the first one I saw shooting. And he backed down and his shots were not very fast. Shots, just shots.

Q And how long after the shooting first started did you see Leonard shooting?

A I don't know. Just happened so fast. I don't know.

Q How long did it take to go from tent city over to the houses?

A About a minute and a half. Me and Joe went up to that little hill.

Q And then you went back to tent city?

A Yeah. And then we ran back all the way from there and then back

to tent city. Minute and a half, two minutes.

Q Did you ever see a person by the name of Jean Day at the Jumping Bull community?

A No.

Q Do you know whether there was a woman with Leonard Peltier, either living with him or his girl friend?

A No.

Q Did you ever see a person by the name of Myrtle Poor Bear at the Jumping Bull area?

A No.

Q Do you know who she is?

A Now I do.

Q When was the first time you met her?

{1598}

A I mean not now. I met her, but I know who she is when I read in the paper. I don't know her.

I never talked to her, just I heard of her.

Q You never saw her on the Pine Ridge Reservation?

A No.

Q Did you ever see a person by the name of Anna Mae Aquash at the Jumping Bull community?

A Yeah.

Q Did you ever see a person by the name of James Eagle at the Jumping Bull community?

A No.

Q Did you ever hear, either on June 26, 1975 or before June 26, 1975 any talk from the people who were with you on the Jumping Bull compound or community, did you ever hear any talk about killing FBI agents or killing BIA police officers?

A No.

Q I asked you a few moments ago about a James Eagle.

A Yeah.

Q Do you understand that that person may also be known as Jimmy Eagle?

A What?

Q Do you know anyone named Jimmy Eagle?

A Yeah. That's the same person.

Q Okay. You never saw that person at the Jumping Bull compound?

{1599}

A No.

Q Was there over any talk amongst the people or the Jumping Bull community about an ambush?

A No.

Q Are you sure of that?

A Yeah, I'm sure.

Q Are you a good shot with a rifle?

A I don't know.

Q Did you shoot out any of the tires on the two cars that came in after the shooting started?

A Yeah. It looked like it, yeah.

Q Were you aiming for the tires?

A Yeah.

Q Do you think if you wanted to you could have hit the center of the windshield?

A If I wanted to.

Q What was the distance that you were shooting?

A I don't know. It was pretty close.

Q You were at the white house?

A Yeah, white house.

Q And you were shooting a single shot 22 caliber rifle?

A Yeah.

Q And the cars that you are talking about stopped about here (indicating)?

A Right here where the "B" and "AB" is.

{1600}

Q Right here (indicating)?

A Somewhere around there.

MR. HULTMAN: I believe counsel used a specific yardage when I asked him this morning. And I would have no objection if you use a distance that he used. If you want to use a spot on the map, I would just request you use both characterizations that he gave.

MR. TAIKEFF: Is it your position that it's about two hundred yards?

MR. HULTMAN: It's farther than indicated on the map anyway.

Q (By Mr. Taikeff) Is it your position that it's about two hundred yards?

MR. HULTMAN: It's farther than indicated on the map anyway.

Q (By Mr. Taikeff) Okay. Would you say you were shooting a

distance of at least two hundred yards? Six hundred, seven hundred foot?

A Yeah, I guess so. I don't know.

Q Have any idea how many tires you shot out with that single shot 22 from two hundred or more yards?

A I don't know. I think two.

Q Now, when you were back up near tent city in the area marked "NB" you were supposed to keep your eye out for anyone approaching tent city because you thought that the women were {1601} up there, right?

A Right.

Q Were you watching the road, the one that runs north-south across the chart, that short little road?

A That was another one. It comes down this way. It's a dirt road down this way (indicating).

Q All right. Let me ask you an easier question, perhaps. Were you watching all the roads that lead into tent city?

A Yes.

Q Could you see the roads from where you were positioned yourself from where you -

A Just part of the road. But right where I was at there, I could see that main road going. I was watching for it.

Q How about the road that came up from the area of the houses, could you see that road?

A Just to where -- right there (indicating).

Q That's the part that runs from left to right?

A Right across from "Plateau"?

Q Yes.

A Yes.

Q Okay. That's what I was asking you about before. You could see that, right?

A Just the part that, just right there towards camp. Those two places.

Q Okay. Were you paying attention and keeping your eye open a {1602} for anybody coming?

A Yeah.

Q Were you listening to hear if anyone was coming either on the road or through the woods?

A Right.

Q Did you see any cars or trucks coming that way while you were there?

A You mean by those two roads?

Q Yes.

A No, I didn't see no cars.

Q Now, when you left that area where "N.B" is, you went directly to tent city; is that right?

A Yeah, that's right.

Q And did you find Leonard Peltier there?

A Right.

Q And he was loading something, wasn't he?

A Right.

Q And what was he loading?

A A van.

Q A red and white van?

A Yeah.

Q The one that the Government showed you pictures of; is that right?

A Yes.

Q When you and your brothers and sisters left tent city you {1603} said there was some shooting at you before you got out of the area; is that right?

A At me?

Q At your group, shots were fired at the group?

A No. I mean when Jimmy went back, heard same shots.

Q How about after you left?

A You mean when we got through the culvert?

Q Well, from the time you left tent city you went south first; isn't that correct, towards Highway 35?

A Right.

Q How far is it to Highway 35 approximately?

A About half a mile, three-fourths of a mile.

Q In that distance, in that half mile or three-quarters of a mile, anybody take any shots at you?

A No.

Q Or at anybody else in the group?

A No. Just quiet.

Q But sometime after you left, there was some shooting at you, wasn't there?

A Right.

Q Where were you then, where was the group at that time?

A Running up the hill.

Q Where was that hill? Beyond 35, Highway 35?

A Yeah, yeah.

Q Okay. When you were running up the hill and shots were {1604} fired at you was anyone -- who shot first in the group, or was someone shooting at the group?

A At the group.

Q Now, the Government showed you two pistols which you said resembled the pistols you saw in the cabin one night where the ten of you stayed.

A Right.

Q How big would you say that cabin was?

A Small cabin. It's about --

Q As big as the jury box?

A Smaller. About halfway.

Q Half the size of the jury box?

A Yeah.

A little bit wider. It was just small, just small.

Q How many of you slept in that cabin?

A Eight. But Norman and somebody went on security when we came back.

Q So eight were sleeping in the cabin and two were on guard duty?

A Yeah.

Q Now, was anybody carrying those pistols that you saw? Did you see anyone carrying the pistols? I'm talking about when they were sitting on the table.

A Yeah. Dino I saw carrying one.

Q Did you ever see Leonard carrying one of those pistols?

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

{1605}

Q Do you know who brought those pistols to that cabin?

A No.

Q Do you have any knowledge of where they came from?

A No.

Q Were you at Crow Dog's Paradise in September of that year?

A Yeah. September, right.

Q How long did you stay at Crow Dog's Paradise in September of 1975?

A You mean how long did I stay there?

Q Yes. On that visit.

A About a week there.

Q I'm sorry, I didn't hear the last part of your answer.

A When I got there, about a week before September 5th.

Q You see any FBI agents while you were there?

A Yeah. They passed by.

Q Any of them come into the camp?

A You mean before June -- I mean September 5th?

Q Or on September 5th?

A Yeah, I saw them come in.

Q How many?

A There was a lot of them. About eighty, a hundred of them. There was a lot of them there.

Q This is on the reservation, right, the Rosebud Reservation?

A Right. Crow Dog's Paradise.

Q Now, Crow Dog's Paradise is a holy place, is it not?

{1606}

A Right.

Q And that's where Leonard Crow Dog and Henry Crow Dog live?

A Right.

Q Henry Crow Dog is Leonard's father; is that right?

A Right.

MR. HULTMAN: Your Honor, I haven't objected to this point, but I'll enter an objection at this time about anything from this point on. It is irrelevant.

THE COURT: Sustained.

MR. TAIKEFF: I'd like to come to the sidebar and explain to Your Honor the relevancy.

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, I am now entering upon a portion of the cross-examination which will elicit information concerning the conduct of this witness under the influence or fear. And what I am about to elicit from him, the fact that I'm about to elicit represent part or the information concerning the fear which was motivating him when he took certain conduct on a subsequent date. That conduct concerns testimony which he has given in this case.

MR. HULTMAN: Well, I fail to see any relevancy at all, Your Honor, in what has been indicated without some showing of some kind of

that by counsel.

{1607}

MR. TAIKEFF: Well, certain threats were made to him by the FBI to put it more bluntly and succinctly, and the effectiveness of those threats is connected to what happened on that particular day in his presence, and did influence him in responding to those threats.

MR. HULTMAN: Well, now first of all I object, Your Honor, that it has nothing to do as far as the subsequent events as to what we're talking about here.

MR. TAIKEFF: Oh, it will. I will tie it together.

MR. HULTMAN: Wait a minute, Counsel, until I finish. Secondly, now if you are going to, if you are going to discuss specific 302's and so forth, then, you know, I will have an opportunity and you already have. But just to have a general discussion, you haven't shown, except on one single instance with this witness, where anything he has ever said any time, any place differs from anything he said on direct examination.

MR. TAIKEFF: That's exactly what I'm getting to.

MR. HULTMAN: That's one small --

MR. TAIKEFF: Mr. Hultman, my position on that is that it was a mistake. It was not any kind of intentional statement of fact. I am now getting to the very subject which you just described in general terms. That's the beginning of it is --

{1608}

MR. HULTMAN: You mean that his testimony on the stand here, which you are now setting up, that he has given testimony at the present time which is false?

MR. TAIKEFF: No.

MR. HULTMAN: On direct examination?

MR. TAIKEFF: No.

MR. HULTMAN: That's what I fail to see, and I would continue in my objection until there's a foundation showing of some kind of relevancy.

THE COURT: Well, if you are not going to show his testimony is false, then it's irrelevant as to why he told the truth, whatever he told the truth, because somebody told him to.

MR. TAIKEFF: Your Honor, he previously testified in connection with this case before the grand jury and he lied before the grand jury and he lied before the grand jury under the influence of the FBI, and he

will so testify.

And he lied as to a specific fact which was testified to by another witness, something which the FBI wanted very much for him to do, and he did it before the grand jury, but was not sworn with the pipe. And he has not testified that way here only because he was sworn by the pipe and could not tell anything but the truth.

THE COURT: Right. But if he --

MR. HULTMAN: He's asking -- excuse me, Your Honor.

{1609}

THE COURT: Just a minute. Just a minute.

MR. HULTMAN: Your Honor, at this point I think we should have his own counsel here because we're now talking about perjury at this particular point.

THE COURT: We've got enough lawyers up here right now.

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

MR. TAIKEFF: I thought from that Your Honor said I thought you were suggesting perhaps too many.

THE COURT: If this witness has told the truth under the oath that he took on the witness stand and that the reason he did it is because he took the oath on the pipe rather than the customary oath that is administered in federal courts, then what probative value is there in showing that he lied at a prior time because he didn't take the oath on the pipe?

MR. TAIKEFF: No. He lied on the prior occasion because he was coerced into doing it by the FBI.

THE COURT: But unless that's, unless you somehow show that his testimony here in this courtroom is coerced I fail to see the probative value.

MR. LOWE: Let me say this, Judge. We will show, and I will make an offer of proof that the witness will say the he perjured himself in front of the grand jury because of the threats of the FBI and the subject matter of the perjured {1610} testimony was that he saw Bob and Dino and Leonard down at the cars where the two agents were right at the cars.

Now, this is the very testimony that Mike Anderson gave and the purpose of adducing this is to show that Mike Anderson, to support our case, that Mike Anderson has lied when he said that because he was subjected to the same threats by his own testimony of physical violence in that case. And the relevance of showing here that this witness did

succumb to those threats on one occasion before the grand jury, even though he is now candid, is for the purpose of governmental misconduct of witnesses, subordination of perjury which was not to the credibility of other witnesses. We believe the witness is telling the truth now, but we believe they're entitled to show active subordination of perjury through threats by FBI agents on this young man in the past with regard to this investigation, because it casts the credibility of Mr. Anderson, Mr. Draper and others in doubt; and would support in a general line of testimony that we would present to the Court in that regard.

MR. HULTMAN: That is so irrelevant, Your Honor, that I won't comment any further.

MR. TAIKEFF: I don't see how it could be irrelevant.

MR. HULTMAN: They had an opportunity to attack the witness and they're now trying to attack through this witness, Your Honor, by what happened to this witness.

{1611}

If they had any basis to attack the testimony of the witness that was on the stand, they had full and ample cross-examination. And this is an attempt by irrelevancy through this witness with no inconsistency to try and show, to put the FBI or the Government on trial here.

There is no showing of any kind that this man hasn't told the truth.

MR. TAIKEFF: Your Honor, the Government does not succeed or should not succeed in concealing that earlier episode by not attempting to impeach the witness with his sworn grand jury testimony. The Government has a transcript of grand jury testimony in which he testified that he saw the three adults down by the car which is essentially the same testimony that Mike Anderson gave in this case.

When asked that question here on direct examination the witness said, "No, I did not see them down there."

THE COURT: He wasn't asked the question. He was asked if he saw anybody else down there. He wasn't asked if he specifically saw those three gentlemen down there.

MR. TAIKEFF: Well, but by being asked, and he said, "no." He is in essence disavowing that earlier testimony.

Now, it would seem to me that a proponent of a certain proposition who had a witness on the stand who had previously sworn to the fact that the Government would want to adduce before a grand jury and get a different answer on {1611} trial would surely, particularly in light of

the speech with a hostile witness, would surely attempt to introduce that into evidence, or at least impeach the witness with it. But they do not do so because their theory is that therefore we cannot inquire about it. They don't cut us off from an inquiry about very serious FBI conduct by failing to bring that out on the direct examination.

It has to do with the integrity of the entire body of evidence.

THE COURT: The only matter that is relevant in this cross-examination of this witness are matters relating to his testimony on direct examination. Now, if you, if what you allege is relevant that is a part of the defense case if you intend to present the defendant's case.

MR. TAIKEFF: Then I would like to adopt a witness at this time.

THE COURT: No. I am going to limit. I decided yesterday I am limiting the cross-examination to the relevant inquiry into the direct examination and unless you are prepared to tell me that this testimony which you seek to elicit is somehow directed towards showing that he has testified falsely on the stand yesterday afternoon or today it's --

MR. TAIKEFF: I will not make that representation to Your Honor because it isn't true.

{1613}

THE COURT: Well, then under Rule 611 the rule states specifically, I will read it, "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters if on direct examination."

MR. TAIKEFF: That's what I am asking, Your Honor.

THE COURT: I know, and you asked me to do it yesterday

MR. HULTMAN: That's what I --

THE COURT: You asked me to do it yesterday and I declined.

MR. TAIKEFF: I understand.

THE COURT: And I take the same position today.

MR. TAIKEFF: I understand. It will require that the witness be held to be a defense witness, continue to be available to the defense.

THE COURT: I don't know. You have the responsibility for presenting your defense case whichever way you feel best.

MR. TAIKEFF: I understand. I am prepared to do it that way, and I understand that Your Honor wants the Government's case to come in unaffected by evidence adduced by the defense as part of its case in

chief.

I just want to make it clear that it is our intention to call this person as a defense witness. I presume he's here {1614} pursuant to a subpoena and I ask the Court not to excuse him and advise him that he is subject to that subpoena, and he will be recalled on as many hours or days notice as he requires.

In fact, I would specifically request that he be here Tuesday of next week to testify as a defense witness.

THE COURT: Well, I will certainly grant that request.

MR. TAIKEFF: All right. Then I'll see if I have anything on cross-examination itself and announce what my position is with respect to whether there are any further questions.

THE COURT: Very well.

{1615}

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

(Counsel confer.)

(Counsel confers with Defendant.)

MR. TAIKEFF: Your Honor, the defense has no further cross examination.

THE COURT: Very well.

MR. HULTMAN: Your Honor, I believe counsel has indicated that maybe Norman wishes to speak with counsel before I would begin any redirect.

MR. MARING: Your Honor, I thought that Norman had indicated that he might want to speak with me.

THE COURT: Do you want to speak with him?

THE WITNESS: Yes.

THE COURT: You may step down and confer with Mr. Maring.

(Witness and his counsel confer.)

(Witness resumes witness stand.)

REDIRECT EXAMINATION

By MR. HULTMAN:

Q Norman, I have just a few questions that I would like to ask you.

Counsel asked you some questions about your tribe, and I believe you indicated that there are about 120,000, is that the figure?

{1616}

A 145.

Q How many, 145?

A 145.

Q About 120,000 were the traditionalists, is that what the response was?

A Yes, about.

Q Now, counsel asked you questions back and forth about traditional and AIM; and I want to make sure about members of the American Indian Movement.

You didn't in any way by your answers want the jury or anybody to conclude that those 120,000 traditional Indians in your tribe are members of the American Indian Movement, did you?

A What?

Q Counsel asked you a number of questions at the beginning about the American Indian Movement, and about your nation, do you remember those questions?

A Yes.

Q Now, what I want to make certain, that there is no question in either my mind or the mind of the jury, you weren't saying that the fraction of 120,000 or three-quarters of your nation, because that number approximately are traditionalists, traditional Indians, that those people are members of the American Indian Movement, are they?

A No.

Q About how many of them would you approximate are members {1617} of the American Indian Movement?

A Lots, I guess -- I don't know.

Q You were also asked some questions about the event at Farmington, is that right?

A Right.

Q And you indicated this was an event that -- where is that from, where is Farmington or the place where this event took place from your Reservation?

A About two hours' drive, two and a half.

Q Two hours' drive?

A Two and a half.

Q Are there many Reservations in this general area where Farmington is located?

A Around here?

Q No. I am talking about Farmington now with you, Farmington, New Mexico?

A Right.

Q All right. Are there many Indian people that live within 200 miles of Farmington?

A Yes.

Q Would you have any idea of approximately how many?

A No.

Q All right. Now, how many approximately people were at the meeting in Farmington to which you were asked questions on cross examination, as best you can estimate and recall?

{1618}

A I don't know, about -- I don't know.

Q Pardon?

A I don't know.

Q Would you give us just the best estimate that you could?

A About 800, I guess, 900.

Q And were they from all over the United States?

A Yes.

Q Including some people like yourself from your area?

A Yeah.

Q All right. Now, did you see any guns at that meeting?

A No, not at -- no.

Q Did you see any of the people that you were with with any guns at that particular time?

A No.

Q Now, as I understand it, that you went from there then to the area that we both have been discussing on direct and cross examination, is that right?

A Yes.

Q Now, you were then asked questions by counsel that had to do with a condition that you had concerning the goons. Do you remember the questions asked about that?

A Yeah.

Q Do you remember I asked you some questions about that on direct examination -- now, was there ever anything that you saw in all the time that you were at Jumping Bull's and the {1619} places that you went, why you were there, that indicated to you something that would give you fear of something in your mind called "goons"?

A Did I see them do anything bad or what?

Q Yes.

A No.

Q So that the only thing that you knew was what -- something that somebody else told you, is that right?

A Yeah.

Q Well, do you normally have any fear from something that somebody else has told you that you haven't witnessed yourself?

A Say that again.

Q Who was it that told you that there was something -- there were some people named "goons" that were bad people, who was it that told you that?

A Well, I read it in the papers, Anna Mae told me about goons, some other people from Pine Ridge, I don't know their names. They were kind of old, and Bob was telling me about goons.

Q Did anybody ever tell you at any time, any place, that any FBI Agent was a goon?

A No.

Could you say that again, I mean --

Q (Interrupting) I think you understood my question, and you responded to it, did you not, or is there something about it you didn't understand?

{1620}

A Explain it. Could you say the question over?

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

(Question here read by the reporter was as follows: "Did anybody ever tell you at any time, any place, that any FBI Agent was a goon?")

A No.

Q (By Mr. Hultman) There is no question about that, is there?

A No.

Q Now, counsel asked you about some vehicles, whether you saw any vehicles when you were down in the area that was marked "NB", where you were down in the general area, where the tents were located; and I want to ask just a question or two about that. If you remember, Mr. Taikeff asked you some questions about when you were here in this area here (indicating). "Did you see any automobiles?" Do you remember his questions of you and what your responses were at that time; you gave some answers about automobiles, that you had seen some, I believe, if I remember, coming in?

A Back there (indicating).

Q You remember that?

A Yes.

Q Now, you also talked about that you were looking for automobiles also on any roads that might be coming in, is that {1621} right, to the tent area?

A Yeah.

Q All right. Now, I want to ask you, did you see any other automobiles, either when you were here or when you went over here (indicating), other than the ones that you have talked about both on direct examination and in response to cross-examination?

A Yeah, that one up there (indicating).

Q All right. So there was another car there, but this is something you just didn't remember when I asked you the questions?

A You asked me a question like that?

Q I don't --

A (Interrupting) You didn't ask me any questions like that.

Q Now, by your response to me now, is that you are only responding specifically to what I ask you, is that right?

A Right, yeah. If you asked me that --

THE COURT: (Interrupting) Are you able to hear him?

A Would you say that again?

Q (By Mr. Hultman) Well, is what you are saying to me now that unless I or Mr. Taikeff asks you specifically about a specific item, such as when he was talking and asking you about cars -- I don't remember what the exact questions were -- but he asked you something, "Tell him about cars"?

A Yes.

Q Then unless he asked you specifically something such as, {1622} "Did you see any other car in this area right here (indicating)?" -- that you didn't feel that you needed to answer that question, is that what you are saying to me?

MR. TAIKEFF: Your Honor, I must interrupt because there is included something which was not my area of inquiry. I asked him if he saw any vehicles go by on those inner roads, not whether he saw any vehicles inside Tent City when he got back; and because of his possible limitation in understanding, it is particularly confusing that way.

THE COURT: Would you restate your question?

MR. HULTMAN: All right, yes, your Honor.

Q (By Mr. Hultman) Then is it your response that there were some other cars in the area, is that a fair response, conclusion on my part?

A I don't understand.

Q All right. When you were here (indicating) or in the tent area, or going out of the tent area, while you were in this area -- and I am making a wide circle now -- did you see any automobiles other than the two that you have specifically referred to?

A Yeah, I saw --

Q (Interrupting) As being here and some automobiles that you talked about being over here (indicating), in this general area, on a highway, did you see any other automobile?

{1623}

A Other than those two there?

Q Yes, other than those two.

A Up in there (indicating).

Q Was this a car that is represented somewhere here on Exhibit 71 now?

A Yeah.

Q All right. Would you tell the jury what that car was?

A What do you mean?

Q Well, would you describe it for us?

A Well, it had a radio and it was going.

Q Had you seen that car any time earlier in the day?

A Yeah, down there (indicating).

Q One of these cars down here -- remember which one?

A That one right there (indicating).

Q Would it be this one or this one (indicating).

A That one (indicating).

Q This one here (indicating), is that right?

A Yes.

Q All right. Now --

A (Interrupting) It was one of them cars.

Q One of the cars. You said something about the radio in response to my question. Would you explain what you meant by that?

A I could hear people talking on that radio.

Q Where were you when you could hear it?

{1624}

A Inside the camp.

Q And would you tell the jury approximately how many yards away from that vehicle were you when you heard that radio?

A About 20 yards.

Q All right. So you did see another car in the general area, is that right?

A Yeah, right.

Q All right. Do you know how that car got there?

A No.

Q Did anybody indicate to you or tell you how it got there?

A No.

Q Now, counsel asked you specifically with reference to the two men that were down at the cars; and I believe your response, as he quoted it correctly on direct examination, you used the word "agent". Is that what you said when I was asking you questions?

A Agents, yes.

Q Was there any reason why you used that term?

A Because now I know who it was.

Q All right. It wasn't because I told you or told you to use those words?

MR. TAIKEFF: Your Honor, there was no such suggestion meant. Mr. Hultman knows that with the professional respect I have for him, if anyone got that idea, I disavow it. It was not my intention in asking that question.

{1625}

THE COURT: Thank you.

MR. HULTMAN: All right.

Q (By Mr. Hultman) What was it that you remembered -- did you remember whether they were native Americans at the time or that they weren't native Americans when you saw them that day?

A Well, you could tell by the color.

Q All right. Could you tell anything by their cars?

A What do you mean?

Q Was there anything about the cars that you remember that would relate anything to you in your mind (indicating), that would draw -- then allow you to draw a conclusion of some kind that they were agents?

A No, just cars.

Q All right. Now, you didn't have anything in your mind at that particular point -- strike that.

How was it that at that time -- or let me withdraw it.

Did you have any idea at that time, Norman, that the three persons and Little Jimmy down in the tent area were in any danger?

A Yeah.

Q Well, explain to the jury, how did you come to the conclusion that two people, one with a gun of some kind at the back of a car, and the other with a pistol down here (indicating) in the area where they were, and with Leonard with the weapon that he had when you got here (indicating), and Dino with the weapon {1626} that he had and the others with the weapons that they had here, here (indicating), that you have already talked about, how did you conclude at that time that the two women and Jimmy Zimmerman were in any danger from the two men, one with the rifle and one with the pistol?

{1627}

A Well, I saw those cars. Me and Jim saw them coming around this way (indicating).

Q Well, now that's at a later time. You're down here --

A Yeah.

Q -- to this point here (indicating). I'm not talking about that, understand?

A Yeah.

Q I'm talking about when you first get here. You'd heard firing in this area, right?

A Right.

Q And that's the only firing that you heard to that time, right?

A Right.

Q Now how is it -- I want to ask you again, you hadn't seen any cars any other places coming and going at this time, right?

A Right.

Q What is it with you knowing right then and there when you see two men down here, Leonard here with the kind of weapon that he had doing the shooting that you saw him doing, Dino with the kind of weapon that he had, and was there anybody else here in this period that you saw here other than those two?

A No.

Q You knew Bob was somewhere in here?

{1628}

A Yeah.

Q And you don't know where he was and he had a weapon. There was Joe Stuntz with you up here and you and two more here, all with weapons (indicating). How is it that you conclude in your mind at that time that the women and children not only in the tent area but didn't you indicate something for them to get out of there or something before you left?

A Well, they already knew where to go.

Q They already knew where to go. To leave, is that right?

A Yeah. To leave, because what else would you do when you heard shots?

Q Now I'm asking you how is it that you then concluded with that circumstance, knowing what you say and what you observed and that the three women or girls and little Jimmy are leaving, down in the bottom of the hollow here, two men, one with a pistol and one with his long gun that they are going to endanger the girls and little Jimmy?

MR. TAIKEFF: Objection to the form of the question because the testimony was never that those two men were going to endanger the women and child and that's how the question was phrased. I think it's unfairly phrased.

THE COURT: Objection sustained.

Q (By Mr. Hultman) Just tell me what it was in your mind at that time knowing what it was that you were seeing that resulted in your statement to Counsel and restatement now by {1629} counsel that you had fear for the women and children?

A Well, they were shooting at me, they were shooting at all of us.

Q Norman, I just have one more question. Have all of your responses that you have given been on the sacred pipe?

A Right.

Q And in every instance as far as the testimony you have given here today?

A Right.

MR. HULTMAN: I have no further questions.

A Seems like I'm on trial.

THE COURT: The Court is in recess until 3:30.

(Recess taken.)

MR. TAIKEFF: May we have a word with the Court before the jury comes in, Your Honor.

THE COURT: Yes, you may.

MR. MARING: May I approach the bench?

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

MR. MARING: Your Honor, I think Mr. Brown will be through testifying for the day fairly shortly and, as I understand it, he's going to be called next week as a witness for the defense. I would ask that he be released from the subpoena to the extent that he can travel

outside the district of North Dakota for the period until he's recalled.
{1630}

THE CLERK: Mr. Taikeff.

THE COURT: It will be necessary for you to hear this request.

MR. TAIKEFF: I thought that Mr. Maring and I both wanted to speak to Your Honor about the same thing.

MR. MARING: That was the matter I was referring to. As I was saying, I think Mr. Brown will be finished with his testimony fairly soon this afternoon and it's my understanding now that he will be called back as a witness next week at some point in time and called as a defense witness.

MR. TAIKEFF: Correct.

MR. WARING: I'm requesting of the Court that he be released from the Subpoena to the extent that he can travel outside of the district of North Dakota until he is recalled to testify.

MR. TAIKEFF: I would not characterize that as being released from the subpoena.

THE COURT: I wouldn't either.

MR. TAIKEFF: But there is certainly no necessity of him staying within the jurisdiction of the district.

THE COURT: He'll remain under Subpoena but he will be permitted to travel outside of the district so long as he keeps somebody informed as to where he can be reached.

MR. TAIKEFF: I would assume the best person for that would be his counsel. We would like not to have any direct {1631} contact with them except in the presence of his counsel.

THE COURT: He will then be permitted to travel wherever he wants to so long as he keeps you informed and so that he can be reached.

MR. TAIKEFF: Instead of asking him to return on a specific day --

THE COURT: Excuse me. Keeps you informed as to where he's at and where he can be, as to where he's going and where he can be reached.

MR. TAIKEFF: I think it would be fairest if we do not specifically request that he return on next Tuesday but make the request through his counsel at least one day in advance, then he won't have to come here and wait out our need to put him on the stand, because he apparently is not especially happy about being away from home and we certainly want to accommodate him in that regard.

THE COURT: His home is in Arizona.

MR. TAIKEFF: I assume he's going back home, which raises the

question of his transportation.

MR. MARING: It's my understanding from the discussions with the government that they will provide transportation for him either to South Dakota where his wife is presently staying and if he would like to go also to Arizona for the weekend.

Now in regard to him contacting me or me being in {1632} contact with him, my only problem might be that I don't know if the place where he is going, if they have telephone facilities. I would have to check that out with him. Otherwise I perhaps would have no way of being in touch with him. But it was my understanding that Mr. Mike Ness, I believe his name is, is he an FBI agent?

MR. HULTMAN: He's a Navajo agent.

MR. MARING: That he would be accompanying him to wherever Mr. Brown does go and he would be, that we'd be able to contact through the government Mr. Brown when he is supposed to be returned and Mr. Ness to make arrangements for him to return at that time.

MR. HULTMAN: If that matter --

MR. TAIKEFF: I wonder why the FBI accompanies where he goes. They brought him here under a subpoena without an arrest warrant from a great distance and I don't quite understand the escort that he has.

MR. HULTMAN: Counsel, all I'm saying is this is the responsibility of his lawyer and he to determine, not any of the rest of us. I certainly have made no suggestions of any kind, of this kind. I think there is a concern by you that you want him back here.

MR. TAIKEFF: That's my only concern.

MR. HULTMAN: Let me say to you, I think you may well have reasons to have very grave concerns concerning whether {1633} he would be back unless there is some means of communication of some kind.

MR. TAIKEFF: I won't press the issue.

MR. HULTMAN: His counsel and the witness I think are the proper people to decide whatever that is.

MR. TAIKEFF: I understand he's indigent and I assume appropriate arrangements would be made for him to be transported or given funds for transportation and if an agent is the one who is going to be the intermediary, then we'll surely give adequate notice of our desire to put him on the stand. There's no question we will put him on the stand.

MR. LOWE: I would like to have the record reflect the fact, are you saying that an FBI agent is going to be escorting him from the time he leaves here until the time he comes back?

MR. HULTMAN: I'm saying that's the matter for he and his counsel to decide, whatever they decide to do.

What I am saying is I would make whatever it is Counsel wishes in terms of availability, what he might or might not want through his Counsel, that's all I'm saying, John, because otherwise I'm saying to you here right now, I think Elliot has indicated very clearly he wants him here. What I'm saying is that I think if they aren't allowed to at least, his Counsel and he, I think they have a right to do it {1634} any way. I think if not, you're under some very grave risks that somebody is not going to be here.

MR. LOWE: I want to make a matter of record, number one, I have no doubt this witness will come back. I'm convinced from what he said and the way he said it he's coming back here. Number two, he's going to be our witness and I think if we were to suggest that a person who is associated with the defense should be able to accompany him and escort the government witness during the time before he testifies, I think the government would go through the roof. I think to the extent that an FBI agent represents intimidation for some native Americans, and I don't mean this young man, but I want to object to the procedure that FBI agents have no business accompanying defense witnesses and that's what this young man will be when he's released from the testimony today. I want to assert, we do have a standing objection to intimidation type circumstances. I'm not saying it's going to intimidate this witness or not. I don't even know whether Mr. Maring wants this to take place. I don't know whether he'd have any options in it. I'd like to ask on the record if Mr. Maring feels he has no option in this regard or whether he has been told that an agent --

MR. HULTMAN: John, let me make it clear on the record that it is for this man, the lawyer, and his client to decide, and I'm stating it on the record and I'm not going anywhere {1635} beyond it.

MR. LOWE: Is that your understanding, Mr. Maring?

MR. MARING: No one has told me that that is the situation that must take place. All I want to make sure, this young man has the finances and will be able to make arrangements so he can travel to the point where he wants to go so he can see the family until he's called as a witness again. If those arrangements can be made where he can get the money and go on his own --

MR. LOWE: He doesn't need to have the FBI agent accompany him.

MR. MARING: We don't need to have the FBI agent.

MR. LOWE: That's a somewhat misleading atmosphere.

THE COURT: It's resolved.

(Whereupon, the following proceedings were had in the courtroom without the hearing and presence of the jury:)

THE COURT: Counsel ready to have the jury brought in?

MR. TAIKEFF Yes, Your Honor.

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

MR. TAIKEFF: Am I to presume Mr. Hultman is completed?

MR. HULTMAN: Yes.

MR. TAIKEFF May I proceed, Your Honor?

THE COURT: You may.

{1636}

REXCROSS-EXAMINATION

BY MR. TAIKEFF:

Q Norman, I think there are only two things I want to ask you questions about that were just brought up before the recess by Mr. Hultman.

None of the people at the Farmington meeting carried guns at the meeting, is that right?

A I didn't see any; no.

Q Isn't it a fact that everyone who came there had to check guns if they had them at the front gate?

A Yeah. Front security.

Q And people were assigned to security to make sure all guns, alcohol and drugs, if carried, were turned in at the front door, isn't that correct?

A Right.

Q Now the other point I want to touch base with you on is Mr. Hultman's questions about your worry about goons.

A Yeah.

Q Now he asked you whether you were worried because of what people told you.

A Yeah.

Q And I think you also indicated that you were worried because of things which you read.

A Right.

Q Now the people who told you these things about goons lived where?

{1637}

A Pine Ridge Reservation.

Q And how many different people told you things about goons?

A Four or five people.

Q And did they tell you about their own personal experiences?

A Yeah. One did.

Q What did that person tell you?

MR. HULTMAN: I object now, Your Honor. This is calling clearly for hearsay.

MR. TAIKEFF: Your Honor, I'm not offering it for the truth of the content but to show what he heard as a basis for his own concern.

THE COURT: He may answer.

A Well, told me that the reason why he got shot at was because he was an AIM supporter.

Q (By Mr. Taikeff) Now I think also in response to Mr. Hultman's question or questions you said that you were concerned about the possibility of goons interfering with you because of things which Anna Mae told you?

A Yeah.

MR. HULTMAN: I object to this, Your Honor. It's clearly going beyond the scope of recross-examination. That response was made on cross-examination by Counsel and there was no testimony elicited by me in any way in that {1638} particular, and that's clearly beyond and also, Your Honor, that it's irrelevant.

MR. TAIKEFF: Your Honor, I believe that Mr. Hultman is factually mistaken. In cross-examination I asked whether Anna Mae was ever at the Jumping Bull community and asked him nothing else on the subject. It was on redirect examination when Mr. Hultman was exploring the basis or lack of it of the witness' concern for goons that he elicited from the witness that Anna Mae told him certain things about goons which concerned him.

MR. HULTMAN: If that's correct, Counsel, I would withdraw my objection. I don't know it was not my understanding but I will assume that is correct. I take Counsel's word, Your Honor.

THE COURT: Objection being withdrawn, you may proceed.

MR. HULTMAN: For that limited purpose.

MR. TAIKEFF: Yes.

Q (By Mr. Taikeff) Would you tell us what she told you about goons.

A You mean after June 26?

Q No. Before June 26.

A Well, told me, you know, "Watch out for goons," you know, "they're dangerous." That's all. Told me to watch out for --

MR. TAIKEFF: I have no further questions.

Have you finished your answer?

{1639}

THE WITNESS: Yeah.

MR. HULTMAN: I have no questions.

{1640}

MR. TAIKEFF: I have no further questions.

Q (By Mr. Taikeff) Have you finished your answer?

A Yeah.

MR. HULTMAN: I have no questions, Norman. Thank you.

THE COURT: Mr. Brown, you may step down and you are just a minute. You are released from any further testimony today, or maybe in the next few days, but counsel have informed me that you will be called back so you do remain under subpoena. And you should confer with your lawyer who has been appointed to represent you, Mr. Maring, with reference to when you will have to come back and any limitations on your travel. You are not, you are not being limited, I mean under subpoena. You're not being limited under subpoena. You must understand that you will have to come back when you are notified. You understand that?

THE WITNESS: Yeah.

THE COURT: And Mr. Maring will explain it to you.

Very well. You may step down.

MR. HULTMAN: The plaintiff calls Dru McCullum, Your Honor.

DRU McCULLUM,

being first duly sworn, testified as follows:

DIRECT EXAMINATION

{4680}

THURSDAY MORNING SESSION

April 14, 1977

MR. TAIKEFF In the meantime, your Honor, the defense would call to the stand Norman Brown.

{4732}

THE COURT: The next witness which has been called has appeared in this trial before and when he appeared he had his own attorney present in court, and apparently desires to have his attorney present again while he testifies. And we are waiting for the arrival of that attorney.

So the Court will take a recess at this time, probably about twenty minutes, but at least twenty minutes and perhaps longer if it's necessary to wait.

(Recess taken.)

MR. CROOKS: Your Honor, there is one thing which we'd like to go into. As I understand it have both of the Oregon exhibits been offered?

MR. TAIKEFF: Well, by virtue of asking the question as to the sentence, yes, and I have not offered in the presence of the jury. But at the sidebar the marked exhibit.

MR. CROOKS: All right. Your Honor, in lieu of requiring counsel to recall Mr. Hanson for any purpose the United States will have no objection and will withdraw its objection to Hanson's report and the receipt by Hancock. I would ask if I could see that to know which one I'm talking about.

What I have before me, Your Honor, is Defense Exhibit 227, and we will withdraw our objections to that if the entire report of Agent Hanson on November 14th, not just the one paragraph referred to by

counsel as introduced, marked and {4733} introduced with it. If those two documents will be introduced together we will have no objection.

MR TAIKEFF: We don't offer the entire document, Your Honor. We offer the sentence or the two sentences that we had reference to at the sidebar and we offer the receipt. And we think that the cases which the Government cited not only do not support the position the Government takes, but specifically support our position. And I don't know whether Mr. Crooks read the cases first and misunderstood the cases or whether he read the cases, understood them and misrepresented what they meant or he merely had a citation which he thought he could rely upon without having read the case first. But those cases clearly stand for two very clear-cut propositions: When a business record contains the statement of some third person that business record foundation is not sufficient to get the third person's hearsay statement in. But the person who made the record on personal knowledge is making a recordation which in some senses and under some circumstances we call a past recollection recorded. And that, you can get that into evidence notwithstanding the hearsay rule because the custodian can certify that it's kept in the ordinary course of business and it's made by or as a result of information transmitted by a person who had knowledge.

Now, in one of the cases cited by the Government for the proposition that police reports or reports of that type {4734} are not admissible under the Business Records Act, the very case which the Government relies upon is a case in which the Government offered such a record claiming that the Business Records Act permitted them to do so. The defendant objected and was sustained by the Court because there was a third person's comment in there which could not have come in through the mouth of the person who wrote the document and hence would have been hearsay in the form of oral testimony and would have been hearsay of the same degree offered in the document.

What the business record exception to the hearsay rule does, and I'm specifically referring to 803 Subdivision 6, is it makes it the recordation of a person with certain information equivalent to that person's testimony. And the custodian of the record is authorized to

deliver up that particular information.

Now, the two sentences that we offer on the subject of the photographing of the objects found are from Hanson's report; and Hanson was the person who made the observations and wrote the report. This custodian is merely delivering that which Hanson wrote earlier.

THE COURT: Well, the ruling of the Court is that the report would be admissible to show that Hanson reported it, not to show that the truth of what he reported. In other words, the business record would simply show that Hanson made such and such a report but that, but the --

{4735}

MR. TAIKEFF: But of course, no, no record or no utterance of some person comes in for any other purpose. If the Government adduces testimony that Leonard Peltier said that I am six feet tall, that in itself doesn't prove that he's six feet tall. It only proves that he asserted that he is six feet tall. From that the jury could find that there's a high probability that it's true. But we're offering it that that was the utterance of the Oregon state officer at the time he wrote his report. That's the basis upon which we offer it and we offer the receipt to show that his comment on there was a receipt is corroborated by the existence of the report which is also kept in the ordinary course of business and assigned by the FBI agent.

MR. CROOKS: Well, Your Honor, I'm not going to get into an argument with counsel about what those cases say. The Court has the cases before it and I trust that the Court has read the cases previously and understands the principles enunciated therein. And namely that is the thrust of both cases that the report's not admissible to show the truth of the matter contained therein. And that's exactly what counsel is attempting to introduce these reports here for to show truth of certain items.

Now, counsel does not wish to agree to what I've offered, in effect that the, if the entire report will go in with the receipt then I stand on my resistance.

{4736}

THE COURT: Well, what would defense counsel's position be if the

Government offered the balance of the report?

MR. TAIKEFF: We would object to it.

THE COURT: What is the Government's position on the offering the balance of the report?

MR. CROOKS: Well, I don't think that it's proper for any of the report to go, but I'm just stating the position so that counsel will not have to then make an argument that they're entitled to get Officer Hanson back to testify to those matters to get the entire report in.

If counsel wishes to let it all in for whatever use he wishes to make of it the United States will have no objection. But certainly to offer in part of a report which would not be proper in the first instance and then exclude the rest of the report would be grossly prejudicial. If we're offering a police report it seems to me the whole thing should go in or none of it should go in.

MR. TAIKEFF: Of course, Your Honor, if there's anything else in that report which concerns the subject matter of the finding, photographing and inventorying of the items found I surely would not object to those portions coming in. But as to anything else, just because the defense finds something that is appropriate for rebuttal of Government evidence is not the springboard for the Government to get a police report that it couldn't get in under the very case it cited in support {4737} of its earlier position.

THE COURT: What is the position of the Government as far as why do you desire the entire report in?

MR. CROOKS: Well, Your Honor, as I stated before and I would stand on our earlier legal record, that I don't think any of the report is admissible as such. I've simply stated that the United States will accede to the admission of the report if it all goes in.

If counsel wishes to put in the office's report, then I think in fairness the entire report should go in, and as simple as that. I'm not conceding that my legal argument was wrong. I think the Court has seen the cases that have been cited. I just don't feel that it's fair to take excerpts out of the report and have these go to the jury in any event.

If counsel is so anxious to have the police report in it seems to

me that the entire report should go in.

THE COURT: Exhibit 227 and 228 will be received in their entirety.

MR. TAIKEFF: The entire police report?

THE COURT: Right.

MR. TAIKEFF: We're not offering the entire police report. This is not the Government's case, this is our case. They can't offer evidence at this time.

MR. HULTMAN: They can offer anything.

{4738}

MR. TAIKEFF: On Your Honor's ruling, if not under the Rules of Evidence in procedure, we couldn't offer evidence in the Government's case, they can't offer in our case, unless the rules are different for the Government than they are for the defendant.

MR. CROOKS: It seems to me that counsel introduced a whole pocketful of documents during our case.

MR. TAIKEFF: Only on examination of their witnesses.

THE COURT: 227 and 228 are received.

With reference to the next witness, his counsel desire to make a presentation to the Court.

MR. LOWE: Your Honor, is it clear on the record that the portion, other than the two sentences, is offered by the Government over objection of the defense and that you overrule our objection and introduce it.

THE COURT: The record may so show.

THE CLERK: It is marked as Plaintiff's 228.

THE COURT: Mr. Maring, you may state the problem to the Court for the record.

MR. MARING: Your Honor, on March 25 of 19 --

MR. HULTMAN: Might we approach the bench, Your Honor? I don't know what's coming, but I think --

MR. TAIKEFF: I object to approaching the bench. This a public trial and I think the public and the press have a right to know what's going on in this case. The jury is {4739} not here.

THE COURT: Counsel, you have asked many times to approach the

bench. I think it's a rather --

MR. TAIKEFF: I've asked to approach the bench only when the jury is present, Your Honor.

MR. HULTMAN: Well, I have no objection.

THE COURT: It relates to immunity.

MR. HULTMAN: Very fine. I have no objection is counsel himself wishes to in this posture. That's fine with me.

THE COURT: Mr. Maring, do you have any objection to presenting it from there?

MR. MARING: No, I do not, Your Honor.

THE COURT: Very well. You may proceed.

MR. MARING: On March 25th of 1977 my client, Norman Patrick Brown, was granted immunity to testify in these proceedings and there is a signed order of immunity. What I am asking the Court for today is a clarification of that order to determine whether or not that order extends to him given by my client as a part of the defense case.

As the Court is I'm sure aware of the sections in the United States Code 18 U.S.C. Section 6002 and 6003 refer to immunity being granted by the Court upon a proper request being made by the U.S. attorney, and there must be approval of that request coming from the appropriate office or officer {4740} in the Attorney General's office.

Now, I feel that the appropriate request was made prior to the Court granting Mr. Brown immunity prior to his testimony as a part of the prosecution's case. However, again the question I have, and the question I'd like resolved is whether or not the Court is compelling Mr. Brown to testify and granting him immunity as a part of the defense case. And that's the problem, and that is the clarification I seek from the Court before Mr. Brown testifies.

MR. HULTMAN: Would the Court like the Government to respond, Your Honor?

THE COURT: Yes.

MR. HULTMAN: Your Honor, I would on the record indicate that I have no objection here in open court, and it would be the posture of the Government at this point. I haven't researched the matter or anything else, but I think I'm in a posture that representation made

to this Court would properly bind, as far as the individual instant case. I think that the use immunity itself, as far as I am concerned, I'm not indicating I have been told this by anyone or ever been through it before, but I'm stating to the Court here that the Government has no objection and would indicate to the Court that I, as the U.S. Attorney would indicate as far as I am concerned and to the extent I could bind, and I think that would be binding as far as this Court is concerned, that use immunity {4741} which has been granted to him, I'm not saying as a proposition of law now, but I'm saying as far as the Government is concerned, I stand here before this Court in open court is that use immunity would apply to him from this point on as far as any testimony he would continue to give in this trial.

I think it would be a mockery to conclude anything else. I think for the Government to call a witness, grant him immunity and then deny the defense by a denial to go back again and seek that immunity again and Ipso Facto deny it, it seems to me would be a mockery of the trial proceedings.

So I'm saying, Your Honor, I've never been involved in it. I'm not speaking for the Attorney General of the United States at this moment because I mean personally I'm not, but I think I'm in a posture with the authority that I do have as the United States Attorney and as the special prosecutor for this case that I could bind the Department of Justice and the Government as to this issue.

But then I want to address a second issue that follows, and that is I know counsel understands this, and I'm sure counsel over here understands this, and I am also sure that by this time I would hope that the witness understands it, or if he doesn't that he be made aware clearly of it, that that immunity does not extend to an issue that possibly could result from that testimony, to-wit: a subsequent charge with reference to whatever that testimony might be. Not addressing {4742} the issue of self-incrimination as far as what he did or didn't do on the 26th of June, but what he did or didn't do under oath.

And that I would want very clear that the use immunity in the beginning, the use immunity to which I am now addressing, and I'm sure

that there is no question here on the part of counsel of either his own lawyer, the Government or the defense that there's any immunity of any kind, any place for a prospective charge of perjury. That's the statute to which I'm very clearly offering.

So I want to make that clear; and with that I think maybe I have at least responded first to the specific issue and secondly to something that could possibly or could not possibly follow.

MR. TAIKEFF: Your Honor, the defense is only indirectly involved in this matter, but I thought it was resolved in a conference between myself and the witness's counsel when I pointed out that we expected and hoped that the witness would tell the truth as to the questions we would put to him; and that the grant of immunity he had clearly did not cover any perjury which he committed. And I assume that his counsel understands that, and we understand that and hope and expect that he will tell us the truth in response to the questions we put to him.

MR. MARING: Your Honor, if I may --
{4743}

MR. HULTMAN: Excuse me, go ahead.

MR. MARING: My understanding of the law and my research of the law on this point indicates to me that what Mr. Hultman is saying is not the correct interpretation of Section 6002. This is not a transactual immunity that's granted under that section, but rather it's a use and a derivative use immunity. And so the question is not whether they can prosecute him for an event that occurred on June 26, 1975, but whether they can use or in any way indirectly use the testimony that he gives at this proceedings.

Now, I have a number of cases that support that position, but my inquiry would go further if he is granted immunity, my further inquiry would be to take a look at what that statute section says. The statute says, and your court order says, that the immunity is granted except for prosecution for perjury, giving a false statement or otherwise failing to comply with the order.

{4744}

Now again my research has indicated to me, and quite clearly so,

that those exceptions refer to future perjury, future false statements and future failure to comply with the order. In other words, if he took the stand today and testified falsely, he would be subjecting himself to a perjury prosecution. However, nothing he says today in this proceeding can be used against him for any past perjury or past false statement. That's the second item I would want cleared up before he testifies because if the government takes the position that that is not the law, then my witness would be in a different position as to whether or not he would be testifying as to certain questions that I feel will be asked by the defense and whether or not the Court would be compelling him to answer those questions and be granting him immunity for those answers, and there again is a more specific area I think needs be cleared up before Mr. Brown testifies.

MR. HULTMAN: I want no question in anybody's mind that the position postulated by Counsel just now is not the position of the government. It is 180 degrees opposite of what Counsel has just indicated and that's why I wanted it made very clear that the granting of the immunity to this witness in no way by what he says here defies the government that that testimony can be used and can be used for perjury with relationship to what has been said here under oath, and compared to what he has said at any other time, and especially at any other {4745} time under oath when the same issues were discussed and similar testimony given. I want that made unabundantly clear so there is absolutely no question.

So what's the sense in taking an oath as far as this proceeding is concerned?

THE COURT: If I understand what you have said, Mr. Hultman, you are saying that if the witness got on the stand today and made a statement under oath that would indicate that he may have perjured himself on a previous appearance in this courtroom that he would not be immune from prosecution?

MR. HULTMAN: Or any other statement that he may have made at any other time prior. That is my position, Your Honor, without any question unequivocally.

MR. TAIKEFF: Your Honor, the statement made by Mr. Hultman, as I

understand it, I think gives the defense full standing on this particular matter because the question now is whether Your Honor's ruling by way of ordering the trial in a certain sequence because the appellate courts have always recognized the trial court has the power and the duty to do, is going to impinge on our right to fully question this witness concerning all subjects of which he has knowledge. The government's position constitutes a threat to this witness, a legal threat. I don't mean an improper action. I'm saying that the government has taken a position which constitutes a threat to the future of this witness.

{4746}

The government in essence is saying if you get on the stand and you tell this jury that you lied before the grand jury in this case under the influence of the FBI, you are subjecting yourself to prosecution for perjury before the grand jury. There is no sense keeping a tablecloth over the subject matter. That's exactly what is being referred to in this particular dialogue.

Now the witness' Counsel is concerned, if I understand what witnesses Counsel has said, that if his client gets on the stand here and says, "I lied before the grand jury and I lied specifically with reference to Leonard Peltier and I did so because the FBI wanted me to do so," he's concerned that his client may be prosecuted for perjury and I understand Mr. Hultman to say that he might be. Yes. Perjury in connection with his appearance before the grand jury is what I am referring to.

Now I understand Mr. Hultman to say, yes, that's possible. Well, I believe Mr. Hultman is incorrect. That is not what Section 6002 of Title 18 provides. It provides that there may be no use of the revelations made in the course of giving the testimony under the grant of immunity in any criminal prosecution except, and the only relevant exception is for perjury in connection with the testimony being given. You cannot get a grant of immunity and also get up there and perjure yourself and say the grant of immunity applies to your perjury. {4747} But obviously if one takes an elementary look at the Fifth Amendment, obviously our constitution provides that a person may not be compelled

to get up and say something which will lead to his conviction.

Now the use of immunity is a compatible, or at least it is said to be a compatible means of getting testimony in a case so that justice may be done without interfering with the Fifth Amendment constitutional rights of the witness. That means that if the witness comes forward and asserts the Fifth Amendment, at first the witness cannot be questioned at all because if the witness were questioned, and we can only assume that when a witness is asked a question he must give a truthful response, he might say something which would reveal that in the past he has committed a crime so we let him sit on his Fifth Amendment privilege, unless Section 6002 is invoked. Then the law says, "Well, we can make you talk anyway because there isn't a constitutional prohibition against making you talk, but we cannot convict you on the basis of what you have said here if you speak the truth because to do so would violate your Fifth Amendment right that you are made to speak words and those words are a source directly or indirectly of your prosecution for something other than your perjury while you were speaking those words." So the government cannot prosecute a person who testifies under a grant of immunity and admits prior perjury.

{4748}

MR. HULTMAN: Your Honor --

MR. TAIKEFF: Unless that person is lying when that person says "I perjured myself in the past," in which case the government wouldn't prosecute him for the prior perjury.

MR. HULTMAN: Your Honor, that is an interesting postulate.

First of all, I disagree that Counsel does have a standing. It's the witness that has standing. But beyond that, that doesn't get to the threshold issue. The threshold issue is a novel argument that Counsel has assumed that what this witness is going to say now under oath is the truth. Now I think it equally can be argued, and I think the new statute makes that very clear that the burden is not on the government to prove if there had been two statements which are in effect the opposite and would constitute perjury that the government then has to decide and prove which one of the two it is that is the

truth. That's a postulate that is amazing on the part of Counsel, that we're going to assume the testimony this time under oath is going to be truthful. That was the whole thrust of Counsel's argument.

The thrust of the government's position is that in either event, either if he committed perjury in terms of a previous occasion of being under oath or if he commits perjury under oath here during this proceeding that the immunity, the statute itself does not grant in any way that that testimony not {4749} be subject to and a part of a possible, and I only use the word possible, a possible future criminal indictment for that particular crime and that's the posture that I am trying to indicate.

And thirdly, Your Honor, I want to indicate that I feel a little chagrined at Counsel after he's made a big public declaration that I wanted to proceed with these matters not personally in the presence of the witness himself for the very simple reason I feel now Counsel has clearly put me in that posture where I in no way wanted to be placed in, that posture now that Counsel has put me in, an antagonistic position with the witness very clearly in light of the demand that Counsel made. I don't think he had the right to make that demand in the first place and again I would like to place it on the record the reason why. I was trying to indicate this was a matter of side bar that ought to be handled at side bar because I had no indication with this witness other than on the witness stand since being on the witness stand in this courtroom. I have not discussed the matter here that Counsel in effect is now saying the government is in effect blackjacking or in some way is now going to keep a witness away from this witness stand. I have had no discussions of any kind with this witness and I have, other than maybe in the courtroom here, and I think Counsel would indicate, I don't think I've had any discussion with him since in the courtroom while the witness is {4750} on the stand, have I?

MR. MARING: That's correct.

MR. HULTMAN: So I'm not in a posture in any way to try to deprive this witness, defendant of this testimony in any way.

It's only now that Counsel puts me in this posture in the

presence of the witness, I have to be placed in an antagonistic position as far as this witness is concerned.

MR. TAIKEFF: I apologize to Mr. Hultman if I compelled him to state the truth in public.

However, I think his reference to the law in the last thing he said was to Section 1623 of Title 18 which is a relatively new perjury statute that deals with inconsistent statements. When a witness gets on the stand and admits under a grant of immunity prior perjury, that could not under any circumstances constitute a prior, could not fulfill the requirements of Section 1623. It's when a person testifies in one proceeding under oath and says X and then in another proceeding under oath minus X, asserting at the various times that both are true, that you have a violation of Section 1623. But when someone gets on the stand under a grant of immunity and admits a prior perjury at the behest of the federal government, that in no way could violate Section 1623, in addition to which any use of that testimony would constitute a violation of Title 18, Section 6002 because that's what use immunity means. {4751} It says we cannot use the testimony which you give as a basis for prosecuting you.

MR. HULTMAN: Except for perjury.

MR. TAIKEFF: Except for perjury. Except for perjury.

But you have to prove that the person perjured himself in the instant proceeding, not that he perjured himself at an earlier time.

And, furthermore, the question of the posture that we are in as a result of Your Honor's ruling is to how Your Honor would housekeep the order of proof. Had Your Honor permitted us to the full scope of inquiry with this witness when he was under cross-examination, then the safe grant of immunity would have applied and the question would have never come up and the defendant would not be put in the position now of the witness wondering, "Am I subject to something different because I'm now testifying for the defendant in this case than I was when I testified for the government in this case and was cross-examined by the defense."

THE COURT: Well, I think that you have misstated the situation. The immunity, if the immunity is present, was applicable when the

witness testified fully, in other words, beyond the direct and cross-examination relating to the direct at the time he previously appeared or whether he now testifies on call from the defendant. The question the Court has to resolve is, and would have been present in either case, is {4752} whether this witness having once testified under oath now should get on the stand and say that he previously testified falsely under oath.

MR. TAIKEFF: Twice under oath. If Your Honor says once there may be some confusion in Your Honor's mind. He will not get on the stand in this case, as I understand it from my interview of him in the presence of his Counsel, he will not say that anything he testified to at this trial was false. That clearly would be an admission that he perjured himself while under a grant of immunity. It is at an earlier proceeding. This will be the third time he testifies.

THE COURT: The point I am making though, and I think that's the point that the government has raised, is whether he could be subjecting himself to a charge of perjury and the determination would have to be made whether he was perjuring himself at this appearance or whether he perjured himself at an earlier appearance. That's the question that seems to me --

MR. HULTMAN: Your Honor, he was under immunity in both instances. That point I want made very clear.

THE COURT: This is a point that I am making that it isn't a question of immunity being granted at one time and taken away at another time.

MR. HULTMAN: No. No.

THE COURT: This is the question that Counsel for the witness has raised. It's a question of what does that {4753} immunity cover. What is the interpretation of this statute and that's a very serious question.

If it relates to two different, in view of the exception under 6002, may be used against the witness in any criminal case except a prosecution for perjury. If the witness were subjected to a prosecution for perjury, the question would be then did he perjure himself in the earlier appearance or did he perjure himself in this

appearance. In any event, he is perhaps exposed to prosecution for perjury if he should get on the stand and testify differently from what he had previously testified under oath. I am not prepared to rule on that question without giving it a little bit of consideration.

MR. TAIKEFF: I understand that, Your Honor.

THE COURT: Because, as I say, it's a very serious problem.

MR. HULTMAN: Your Honor, I didn't mean by my remark with reference to 6002 that I was limiting myself to that section alone. I'm also, my remarks were directed to 1623 clearly also. I want that made very clear.

THE COURT: Now, Mr. Maring, have I in any way misstated your position?

MR. MARING: No. I don't think it's been misstated, Your Honor.

The purpose for me bringing the point before the {4754} Court is that we seek a clarification and seek an order from the Court either continuing immunity and continuing it for the certain types of testimony he will be giving or may be giving or not granting that immunity and so what we are we seeking is a clarification and an interpretation of that statute section.

MR. TAIKEFF: We are specifically seeking, after Your Honor considers the matter, an instruction from Your Honor to the witness that in the event, if the witness tells the truth when he resumes the stand today he cannot be prosecuted, if in fact he tells the truth today. That's our position. If in fact he tells the truth today he cannot be prosecuted.

THE COURT: But that may be a fact that would have to be determined. That's the problem that concerns me.

MR. TAIKEFF: But, Your Honor, there is also Your Honor's interpretation which is yet to be made of what the use immunity means in terms of use and I think it's pretty clear that unless the government has extrinsic proof of the perjury on this occasion it cannot make use of the testimony via 1623 and say it's merely there because when you prosecute under Section 1623 the government is in a very comfortable position. They only have to show as a matter of fact that on occasion A there was testimony X and on occasion B there was

testimony Y and that X and Y are mutually exclusive. Not admitting to this occasion that you perjured yourself before the grand jury {4755} does not give rise as a matter of law to the possibility of saying you have mutually exclusive statements because they address themselves to two entirely different things. They cannot by law be mutually exclusive and if they could be the use immunity grant, I hope I made myself clear that I don't believe they can be, the statements here used, but if they could be they would violate the use immunity provision because they're using the testimony here to make a case against him for an event in the past.

Now if they want to prosecute him for perjury in the past they have to do it by extrinsic evidence. They can't do it under this grant of immunity because then they will be violating the use immunity privilege.

MR. HULTMAN: I have no further response, Your Honor.

THE COURT: Mr. Maring has.

MR. MARING: I have one further comment and that is that I think that the Section 6002 grants an immunity that is fully extensive with the Fifth Amendment privilege. Beyond that to help me clarify what the government's position is, and perhaps some enlightenment to the Court, I would request that Mr. Hultman again state what the immunity has been on prior occasions for Mr. Brown as I wasn't representing him at that time and it is important and of concern to me.

MR. HULTMAN: It was the same immunity -- I was not present or participating at the time of the grand jury. It did {4756} not, until April sometime, but I can state for the record in response that he had the same immunity that we're talking about now at the time of the grand jury in which he took an oath and then there were certain proceedings. That's the point I'm trying to make, that he was granted use immunity at that time and sworn to tell the truth.

{4757}

He has been granted use immunity this time, sworn to tell the truth; and I think in either instance, if he has committed perjury, that that is subject to a criminal prosecution, and that it isn't limited, or the testimony from either one of those, not limited, that

it can't be used as far as the commission of the alleged crime at either time as well as at any other time.

THE COURT: The Court -- did you have something more?

MR. MARING: No, your Honor.

THE COURT: The Court is in recess until 1:00 o'clock.

(Whereupon, at 11:45 o'clock, a.m., the trial of the within cause was adjourned until 1:00 o'clock, p.m.)

{4758}

AFTERNOON SESSION

Whereupon, the following proceedings were had and entered of record on Thursday afternoon, April 14, 1977, at 1:17 o'clock, P.M. without the jury being present and the defendant being present in person:

MR. HULTMAN: Your Honor, might I on the record before we begin make further response to a question that I'm not sure whether it came from the Court or from one of counsel, and I addressed it as best I could at that time. The question came with reference to the specific immunity that had been taken that concerned the grand jury. And I have made inquiry to the best of my ability during the noon hour. It's, and I can find no specific record showing anything other than the granting of it by counsel in the course and prior to any proceedings that were taken place. So I would not want to in any way reflect the record to show anything then other than what I can truthfully find at this moment.

It would again be my posture that without any question I would be bound and the Government would be bound totally by any, in any event by that grant, anyone representing the U.S. Attorney or assistant U.S. Attorney as far as at that time and that point forward as far as that particular transaction. So I want that to be reflected.

This morning I responded as best I could that I wasn't there and I was sure that there had been some immunity granted {4759} that I was sure of and I'm now saying that again clearly on the record, and that the Government is clearly in my judgment bound. But I am indicating to the Court that I can't find anything more than what I've indicated to

the Court. But I want it clearly on the record that my posture and my position is that that is without any question binding upon the Government in any event.

THE COURT: In considering this immunity question it is this Court's interpretation that if a witness has previously testified under oath under a grant of immunity or even without a grant of immunity and then subsequently appears in this court and testifies under oath under a grant of immunity, and if this testimony relates to the same incident and the same facts and if the testimony is so inconsistent that the testimony on one occasion is necessarily false, that the immunity does not bar a prosecution for perjury.

Statute specifically excepts prosecution for perjury.

MR. TAIKEFF: Your Honor, our position was --

THE COURT: Just a moment, I haven't finished.

MR. TAIKEFF: I'm sorry.

THE COURT: And it is not before this Court and it would not be appropriate for this Court to rule on what evidence, assuming a prosecution for perjury were subsequently brought, it would be for the Court before whom a prosecution for perjury was brought and would be an evidentiary ruling to {4760} determine what evidence is admissible on the prosecution.

MR. TAIKEFF: May I ask whether that means if the witness were called to the stand and were asked a question which in his counsel's opinion might lead to his prosecution for perjury that if he asserted his Fifth Amendment privilege Your Honor would uphold the assertion of that privilege without qualification and that no request from the Government that he be granted immunity at this time would avail?

THE COURT: Under the statute as this Court construes the statute, under the statute there is no immunity from prosecution for perjury.

MR. TAIKEFF: Then I gather that Your Honor would say in the affirmative that if the witness asserted the Fifth Amendment privilege Your Honor would uphold his right to do do and no grant of immunity under section 6002, given Your Honor's observations, should interfere with his assertion of the Fifth Amendment; am I correct, sir?

THE COURT: That is the way it appears.

MR. TAIKEFF: We are prepared to go forward, Your Honor.

MR. MARING: Your Honor, could I have just a moment or two to discuss this ruling with my client?

THE COURT: You may.

MR. MARING: And may I also ask the question to make sure I understood, that if Mr. Brown takes the Fifth Amendment that the Court will allow him to take the Fifth Amendment and {4761} will not compel him to testify?

THE COURT: Well, you are asking a hypothetical question which I am not able to answer until I know what question has been propounded to the witness. And Mr. Taikeff really was asking, was making the same kind of inquiry.

MR. TAIKEFF: Well, I made a specific inquiry. For instance, if I asked the witness "Did you lie before the grand jury" and his counsel has previously advised him or intercedes and then advises him and then advises him to take the Fifth Amendment, do I understand that Your Honor would sustain his right to do so in light of Your Honor's interpretation of 6002 and 1623? That was my question. Counsel's question was a little more general. Mine was now, or at least now is very specific.

Counsel wants to know and I want to know whether if that precise situation came up would Your Honor force him to answer, or would he be permitted to stand on his Fifth Amendment right? The reason the question of the possibility of Your Honor's forcing him to answer comes up is because he's here under a grant of immunity; and so it seems to be a rational question to put to the Court.

THE COURT: Mr. Maring?

MR. MARING: Nothing further, Your Honor. I was waiting for a response.

THE COURT: I'd ask Mr. Maring to approach the bench, {4762} please.

MR. HULTMAN: I would like to be heard ultimately to have the opportunity, Your Honor, but before --

THE COURT: Very well.

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

THE COURT: As I understand Mr. Taikeff he is saying that apparently he is taking the position that under the grant of immunity which this witness has, if the witness is put on the stand and asked if he testified falsely before the grand jury the question would be whether this Court should compel him to answer that question, or whether it would recognize his claim of the Fifth Amendment.

Now, if the question were asked and I ruled that he had to answer under the grant of immunity I'm wondering if he wouldn't still be subject to possibility of prosecution for perjury under one time or the other.

MR. MARING: Are you saying that if you do or do not compel him to testify?

THE COURT: I'm saying that if I compel him to testify, if I compel him to testify under the grant of immunity which has been given him in this case.

MR. MARING: Right.

THE COURT: Isn't he still exposed to the possibility of a prosecution for perjury?

{4763}

MR. MARING: That's correct. He is. And that's why it would be my position that it would be inconsistent for the Court to rule that immunity doesn't cover things that he says now that are inconsistent with something he said back at the grand jury. Say that his immunity doesn't cover that and then if asked a question about that very circumstance to require him to answer. That clearly in my way of thinking would violate his Fifth Amendment privilege against self-incrimination. Because under your previous order, or excuse me, under the way you have interpreted the statute, what he says now could be used against him for a perjury prosecution relating out of what he said in the grand jury. And if you compel him to testify and say that he is not immune when giving that testimony then he's supplying evidence that's going to convict him of perjury at the time of the grand jury proceedings.

THE COURT: That is a most difficult question.

MR. MARING: Yes, it is.

THE COURT: And it's an important one. I'm going to hear what the Government has to say.

MR. MARING: Before we go back, could I ask could you clarify your order further for the record that you are in fact answering question number one that was posed this morning, that is, that the immunity order of March 25, 1977 is still in effect in the general way that we've discussed that he is {4764} still being compelled to testify and that the immunity grant is still in effect? I know we're, we still have an open question as to specific questions as to the false statement or perjury, but at least I'd like the first thing clarified on the record.

THE COURT: The Government indicated that that was their position that the immunity is in effect.

MR. MARING: That's correct. I want your order.

THE COURT: Yes. Court would hold that the immunity order remains in effect.

MR. MARING: Okay.

THE COURT: But the second question is the question that's the difficult one.

MR. MARING: And for the Court's information if the question does come up I will advise my client to take the Fifth Amendment on that question in light of what you previously said. I would also, I'm not sure how this can be handled correctly, but I would like to be able to communicate with my client in some manner when we start getting into questions in this area. And I know that motioning and head shaking and that type of thing is not necessarily a good policy. But some way I'd like to be able to communicate with him as to my advice to him as his counsel whether it's in his best interest to answer or not to answer a certain question.

Would I be allowed to motion to him in some way or {4765} indicate to him, or would the Court have some other suggestion?

THE COURT: I think what you should do is just stand up instead of motioning to him, just stand up and address the Court.

MR. MARING: Okay. And ask that I may speak to him?

THE COURT: That's right. That's the only way to do it, the most appropriate way to do it.

MR. MARING: That would be fine, that would be acceptable.

THE COURT: Very well.

(Whereupon, the following proceedings were had in the courtroom without the hearing and presence of the jury:)

THE COURT: Mr. Hultman?

MR. HULTMAN: Yes. Your Honor, maybe I can resolve the matter since it's ultimately the Government that's placed in this posture. In order that all of the rights that are involved, and this is again one of those instances where the rights of a defendant, the rights of a witness and the rights of the people are all involved, and where certain constitutional protections are involved as to all three of those entities, I think at this time, Your Honor, the Government would take this posture: That I will agree on the record not to prosecute for any possible past perjury, and in specifically before the grand jury, by use of the testimony that is given here today. In other words, I think this is a postulate that maybe counsel {4766} for the defendant, if not directly, indirectly I believe, may be going to expound here this morning. But that I would want it made very clear that I am not giving up the right to prosecute for perjury that may in the future, meaning what takes place in this courtroom today, because I don't believe there's any basis for ever to make that kind.

You can never give immunity to a future act, and certainly of all acts that are perjury under oath. So that is the posture now, Your Honor, upon which I will stand and I believe in so doing I have protected any rights of any kind that the witness himself would have under any circumstance constitutional, statutory. At the same time I think I have guaranteed the defense the opportunity to have the witness appear as they wish to have the witness, at least I sense from the fact that they've called him and the reason we have an issue here.

And lastly at least give the Government that same opportunity so that a jury is not left with all kinds of things to wonder about because of the posture that would be taken differently. So I am willing to give up, I'm not conceding that that necessarily is the

point, Your Honor. But I am stating point blank I am willing to do this in this courtroom and proceed.

THE COURT: What you are saying, to be sure that I understand the position of the Government, is that the Government {4767} would not use any testimony of this witness in these proceedings to prosecute this witness for any possible perjury that may have been committed in the past; is that correct?

{4768}

MR. HULTMAN: That is correct, Your Honor.

THE COURT: Now the second point that you made then, as I understand it, is that you, to use your words which would be to make it perfectly clear --

MR. HULTMAN: I use that too often and I'm not clear at all.

THE COURT: That the government is not waiving any right that it might have to prosecute the witness for any perjury that he might commit on the stand in connection with these proceedings here today.

MR. HULTMAN: When I say the past, Your Honor, I'm referring, I'm referring so again there is no misunderstanding at all to his testimony at the grand jury. I am not referring to testimony as it has been in this trial. The total, whatever testimony has been given in this trial, is in the status that I am indicating, not just what may happen here today. I would want no misunderstanding about that.

MR. TAIKEFF: Your Honor, I understand what Mr. Hultman is saying and I have already indicated the general scope of the inquiry and I think in fairness to the prospective witness and his Counsel it might be appropriate for me to state with a greater particularity the few topics that I am going to question the witness about. Basically, to repeat what I've already said I think once, maybe twice, and so the government would be in a position to say, is that's the {4769} scope of his testimony and he's not going to attempt to change any of his direct, which in fact is not the case, then at this time we can see no reason why he should expect the prosecution.

MR. HULTMAN: I think that's fair.

MR. TAIKEFF: I don't want Mr. Hultman to tie the government's hands. On the other hand he could express his reasonable expectation

and the topics are not many and they do not go to his direct testimony. That's precisely why it was reserved for this particular moment.

Would Your Honor permit to do that to rid the record and anybody else's mind that may be concerned about it of any ambiguity that could exist at this-time.

MR. HULTMAN: Could we do that though at the bench, Counsel? I think maybe we're now getting into matters --

MR. TAIKEFF: I was going to suggest, if Your Honor said yes, that the witness step outside so he not hear the offer of proof.

MR. HULTMAN: That's what I'm getting at.

MR. TAIKEFF: I was waiting for his Honor's response.

THE COURT: You may proceed accordingly.

MR. TAIKEFF: May the witness then step outside.

MR. HULTMAN: Could we approach the bench in this in all fairness, Counsel, that I think it is a matter, I'm not trying to hide anything either.

{4770}

MR. TAIKEFF: There is nothing in here that anyone need be concerned about and it's a public trial in any event.

Your Honor, we intend to elicit primarily information about these topics from the witness: his experience with the FBI in trying to induce him to cooperate with them and to give certain testimony, and he will not as far as I know, and I say that just short of making a representation because it's not my own conduct that I have to be concerned about here but I essentially represent to the Court that he will not contradict any testimony he gave in his direct examination. This is not the case of a recanting witness.

Inquiry will be made by certain circumstances which, or events which occurred at or about the time of his being brought here to Fargo and his going to Canada and then his decision to come back which event took place just before the government subpoenaed him.

Those are the only areas we intend to go into and as far as I know he will not in any factual way contradict any fact he testified to on direct or indeed as far as I know on cross.

It is supplemental to his direct examination. Now I think on the basis of that it should be fairly evident to the government that they at this time have no reasonable expectation that were he to answer questions about those topics that there would be no basis or claim that he committed {4771} perjury in the direct testimony which he gave and the only possibility would remain that with respect to the specific events he talks about in this examination, if they could prove were not true they would be entitled absolutely to prosecute.

Now I just want to make sure that the government was not making a statement which amounted to this: "We will not prosecute him for any perjury before the grand jury but we may prosecute him for perjury on his direct testimony in this case as a result of some inconsistency between the direct testimony and the grand jury because he testified for the defense." Now clearly he's already testified on direct and cross. I assume the government has no reason at this time to prosecute him for anything he said on direct and cross so if that assumption is correct, the only question that remains is whether they will now seek to prosecute him for what he said on his direct and cross because he testified for the defense. I trust that the topics I've mentioned would not motivate the government to do that and as to the testimony he's going to give now, that of course has to be the truth. There is no question about that. Neither the witness, his Counsel or the defense suggest he is immune from telling the truth on this testimony.

MR. HULTMAN: Your Honor, might I respond by way of inquiry. I hope Counsel, that by the way you have just {4772} indicated that you are not in any way suggesting that I am not going to have the right to use in the subject areas that are matters of direct examination the minutes from the last grand jury or from 302s or anything else?

MR. TAIKEFF: I am not.

MR. HULTMAN: So there is absolutely no misunderstanding

MR. TAIKEFF: I do not mean to address myself to the possibility of any restraints on the government's right to cross-examine.

MR. CROOKS: Your Honor, might I rise to another question. Insofar as Exhibit No. 228 is concerned, Counsel indicated that he desired to have specific portions of that introduced on the record and

I would be willing, if Counsel is still of that mind, to delete all of the parts except those that I believe pertain to the finding of weapons and so forth.

THE COURT: Excuse me. You'll have to identify the exhibit.

MR. CROOKS: Exhibit 228 which is the Oregon report.

THE COURT: Very well.

MR. CROOKS: I will state for the record, and I assume Counsel will respond when they have a chance to go over it, I believe the record should include down through subjects, "Peltier, Leonard, Banks -- "

THE COURT: Just a moment. What page are you on?

MR. CROOKS: On the first page, Your Honor.

{4773}

I believe everything could then be deleted and I would agree it has no particular bearing on the matters that Counsel went into down to the words, "November 15, 1975," and that should be left in because that's the only way that it gives the dates to the following.

Then all of page 2 could be deleted down to the last paragraph and I would intend then to leave in the last paragraph and the first paragraph on page 3, both of which put in context the finding of firearms. Then deleting on page 3 down to the last paragraph which again sets the stage for the first paragraph on page 4. So on page 3 the first paragraph would be in and the last paragraph and the matters in between would be deleted.

MR. TAIKEFF: Could I --

MR. CROOKS: And the fourth page would be --

MR. TAIKEFF: I have to ask a question. When Mr. Crooks says the first paragraph there's a balance of the paragraph carried over from page 2 which ends with the word "report," then there is a Paragraph which ends with the word "wagon." I don't know which he calls the first paragraph.

MR. CROOKS: I'm referring to the first paragraph carried over from the last page, page 3.

And if Counsel wishes to have any other part that I have indicated willingness to delete, I will certainly include those as

well. I do not know if Counsel wishes to have the {4774} list of exhibits. If he does, then all of page 4 and the following pages could stay in, or if Counsel wishes to delete them I have no objection one way or the other.

MR. TAIKEFF: Your Honor, in principle we're agreed that that is a better way for both sides to proceed; namely to get into the record only those portions of this report that pertain in any way to the seizure and search of the vehicles and the findings made. However, I don't think it's possible at this time to do it carefully without wasting the time of the jury and since there is another matter that I think is very important for Counsel to bring to the court's attention, I would propose that Counsel be given a chance to confer and do it by stipulation, not necessarily written stipulation, sometime today. But I think we can agree on that matter.

THE COURT: Very well. 228 will be modified as Counsel agree and the clerk, counsel will confer with the clerk to carry out the mechanics of it.

MR. CROOKS: Right. That was my intention to put Counsel on notice of the government's willingness and we will attempt to get a satisfactory version which we will then have the clerk modify.

MR. TAIKEFF: I would assume that one thing is not in dispute and that is when the jury returns the sentence which was originally offered or the two sentences which were {4775} originally under discussion at the bench would surely be included in whatever is agreed upon and therefore may be read to the jury as part of the defense case.

MR. CROOKS: Yes. No question about that. That obviously would be in there.

MR. HULTMAN: I assume the receipt No. 227 is also in and for all purposes may be displayed to the jury?

MR. CROOKS: Yes. Yes.

THE COURT: Very well.

MR. TAIKEFF: Your Honor, I think Mr. Maring has risen.

MR. MARING: Your Honor, I'm not sure if there are other points to cover before Mr. Brown testifying. I would like an opportunity to

speak with him just briefly. Before I do that I would like again and I don't want to belabor it, but I do want to clarify something said by Mr. Hultman and repeated by you and that is, as I understand it, Mr. Hultman stated that nothing said in these proceedings, the testimony at the Leonard Peltier trial, would be used against my client for any prosecutions for perjury at a grand jury proceedings at a previous trial or any false statements made in the past am I correct, Mr. Hultman?

MR. HULTMAN Well, I'll restate again, and I'm not trying to play on words, evidently not clear in what I say. What I am saying, that I agree not to prosecute for an alleged {4776} past perjury before the grand jury by using today's testimony. In other words, the charge would not be brought concerning statements that were made at a grand jury as the basis for perjury; that at that time he committed perjury using today's testimony to affect and be a part of the testimony for that charge. On the other hand, what I am saying constructively is that I am not giving up the right to prosecute a possible perjury charge based upon what he says today in this courtroom, and then I certainly would not be bound by using any material at any past time as far as what he says here today as that being my, or whoever would make such a determination, that he in fact did commit perjury in the courtroom by what he said here, and that would be the basis that, what he has said here constitutes perjury. Now that's, I've again tried to explain it as best I can.

MR. MARING: My question, Your Honor goes to whether or not Mr. Hultman is speaking merely to not using testimony at these proceedings for a prosecution for perjury at the grand jury proceedings but whether he is also saying that testimony from these proceedings will not be used against my client for prosecution for making a false statement in the past or for use against him for testimony at a prior trial, prosecution against him for perjury at a prior trial. What I'm merely trying to determine is whether you're talking about all the things in the past or just the grand jury proceedings?

{4777}

MR. HULTMAN: Good point. Counsel, my intent was that I am

referring to all matters in the past and this thing I am excluding is what is taking place here today. This would be the possibility of the commission of a crime starting from this point forward as far as testimony is concerned. I think now you and I are in the same wave link.

THE COURT: As I understand it, government Counsel is saying that what he may have said in the past could be used in the prosecution of an alleged perjury for what he now says in this court under a grant of immunity.

MR. HULTMAN: That's what I'm saying.

MR. MARING: That brings up many other issues. The fact he testified with immunity.

THE COURT: I mention that so that there is no misunderstanding as to what he apparently has stated.

MR. MARING: That's my understanding of it. I would not agree with him on his interpretation of law whether he could use something said under immunity in the past to prosecute

MR. HULTMAN: I think that is a legal matter and I'm not here, it wouldn't be decided as the Court says but I would want to leave no misapprehension as to that particular issue. I think we are now, do fully understand each other. And by the same token I'm not here indicating that that's what I intend to do or anything else because I wouldn't necessarily be the determiner. But I want it made clear as to what I have bound {4778} the government on here today and what I have not bound the people on here today.

MR. MARING: I understand that.

And based on the representation made by the government which I would assume is in the form of a request that my client be granted immunity to the extent that we have just agreed on for the prosecution here today, I would request an order of the Court that he be compelled to give testimony as to possible perjury or false statements in the past and that he be granted immunity for such statements to the extent that we discussed.

I might be out of line because I think under the statute the government has to make that request and I would request the government

to make such a request.

MR. HULTMAN: I don't think, Your Honor, I'm under anything further to do. I think the record speaks for itself and I think I've postulated the position the government is now bound by.

MR. TAIKEFF: Your Honor since it's not appropriate to address Mr. Maring directly, I address the Court. It's primarily to suggest to Mr. Maring the United States Supreme Court decision Santebello against New York has recently analyzed and discussed in the circuit the case called Perlermo against Oswald makes it clear that action taken against a person upon assurance of a representation of a prosecutor, even if he {4779} legally does not have the power to make such a promise, is binding because otherwise it would be highly inappropriate by a citizen to be guided by government officials. I strongly suggest to Mr. Maring his client is in good posture on Mr. Hultman's good faith.

MR. MARING: That's my understanding of the law and my understanding of Mr. Hultman's good faith representation. I was looking for one further thing and that would be an order from the Court.

THE COURT: What are you looking for now?

MR. MARING: An order from the Court in line with Mr. Hultman's representations that my client is compelled to give testimony in this proceeding concerning possible perjury or false statements that he made in the past and that the grand of immunity of March 25 would be in effect as to that compelled testimony.

THE COURT: Any response?

MR. HULTMAN: Your Honor, I don't think I have the authority to do that. I have very candidly and openly stated what I feel the posture is and the government will be bound by the position I have taken but I don't think I'm in any posture to go any further than what I have placed on the record here.

{4780}

I think that now gets into a formality matter which I know procedurally I don't have the authority to go do. Somebody procedurally in Washington has such duties and responsibilities. I am

not about here to stand and knowing what the procedures are, to violate them.

That's the only reason for taking the posture that I am taking.

MR. MARING: We previously had such a letter that says you are authorized to ask for the immunity on the part of Norman Brown; and I think that letter from the Chief of the Criminal Division gives you the authority to make the request of the nature --

MR. HULTMAN: (Interrupting) Well, I don't have any further comment on that, your Honor.

THE COURT: Well, the witness, if he testifies under the present grant of immunity, would be required to testify as to the truth or falsity of any past statements that he has made.

That, however, does not protect him from any possible prosecution for any perjury that may be committed at this time relative to those past statements.

MR. MARING: That's the clarification I am seeking.

THE COURT: Very well.

MR. TAIKEFF: Your Honor, I understood that Mr. Maring wanted to confer with his client. Am I correct about that?

{4781}

MR. MARING: Yes, I would.

MR. TAIKEFF: If that's the case, I think -- he is, I think, our last witness.

However, if Mr. Maring would take the occasion to confer with his client, there is a matter which I believe is both very important and highly unusual. I would like to call a witness out of the presence of the jury during that interim.

THE COURT: You may confer with your client.

(Mr. Maring leaves the courtroom.)

THE COURT: Mr. Taikeff, you may proceed.

MR. TAIKEFF: Mr. Englestein has gone to get the witness, your Honor.

MR. HULTMAN: Was it announced to the Clerk who it is, counsel, so I might at least have some concept who it is.

MR. TAIKEFF: You will find out in a moment.

MR. HULTMAN: Thank you.

THE COURT: It is normal procedure, Mr. Taikeff, to announce who the witness is who is being called.

MR. TAIKEFF: I want to make sure the witness is available before I make the announcement. I am not sure.

THE COURT: You can still make the announcement. This is a courtroom, and you can follow the usual procedures.

MR. TAIKEFF: Yes, your Honor. The defense calls {4782} to the stand Myrtle Poor Bear.

MR. ENGLESTEIN: Bring her in?

MR. TAIKEFF: Yes.

MR. HULTMAN: Well, your Honor, the Government -- I don't know how many times we are placed in the posture of witnesses called and recalled and called again; but the Government would object on the grounds of relevancy and the fact that we have already gone into these matters as far as an offer of proof.

MR. TAIKEFF: We are not going to repeat our offer of proof, your Honor.

May she be advised that she is still under oath, your Honor?

THE COURT: The witness is still under oath.

MR. TAIKEFF: May she take the stand?

THE COURT: She may take the stand.

MYRTLE POOR BEAR,

having been previously duly sworn, was recalled and testified further as follows:

REDIRECT EXAMINATION

By MR. TAIKEFF:

Q Miss Poor Bear, did we speak with each other today during the lunch time?

A Yes, we did.

Q And for how long?

{4783}

A Not even five minutes.

Q And did we discuss whether you would be willing to come back into the courtroom and testify before the Judge?

A Yes.

Q Myrtle, are you now scared of anything?

A No, I am not.

Q Are you prepared to answer any and every question that's put to you either by the Judge, the defense or the Government?

A Yes. I will try my best.

Q Myrtle, I want to ask you whether your experience in finally telling your story publically yesterday is what made you feel by this morning that you would no longer be afraid?

A What do you mean?

Q Why are you no longer afraid, why were you afraid yesterday and you are not afraid today?

A The reason why I was afraid yesterday was because the Government had me all confused.

Q Are you confused now?

A No, I'm not.

MR. TAIKEFF: Your Honor, I submit the witness to questioning by the Court or the Government on any subject it wants to go into.

I want to note a major change in her appearance, demeanor and composure.

MR. CROOKS: Your Honor, the United States has no {4784} further questions of this witness.

THE COURT: The Court has no questions of the witness.

MR. TAIKEFF: Then, your Honor, I wish to put some questions to her.

THE COURT: Just a moment.

MR. TAIKEFF: On the subject of her present state of mind and her ability to testify now, and not on the subject matter.

THE COURT: Does this relate to the offer of proof?

MR. TAIKEFF: It relates to her capacity to testify completely, totally and truthfully; and I think your Honor can see that she is an entirely different person today than she was yesterday, and her answers are straightforward and she looks at the questioner.

If your Honor would ask her a few questions, your Honor would be satisfied in an instant that the experiences of yesterday has

transformed her; and it is obvious to anyone who would speak to her or ask her a question.

MR. CROOKS: Do you have her coached now?

MR. TAIKEFF: I do not have her coached. If the Government thinks I have her coached, they should indict me for a very serious violation of Federal law.

MR. CROOKS: We made no cross examination. Counsel finished his direct examination, and it seems to me that ends the matter.

{4785}

THE COURT: Furthermore, the jury has been advised that the evidence is going to be finished today, and I am not going to reopen this matter with this witness at this time.

MR. TAIKEFF: Your Honor, is your Honor totally disinterested in whether the representation I made to the Court is factually true? Can your Honor not see that this person has an entirely different posture and an entirely different demeanor than yesterday?

Your Honor made a very strong finding on the record this morning, and I represent to your Honor that Mr. Englestein came to me and said, "Something has happened, go see her, you won't believe it is the same person."

And during the luncheon recess I went out and spoke with her for about three minutes and assured myself that something had occurred since yesterday.

THE COURT: The next witness to testify in this court is the Witness that you have previously called, Mr. Brown. We are not reopening this other matter.

MR. TAIKEFF: Thank you, your Honor.

You may step down.

(Witness excused.)

THE COURT: You may call your witness.

MR. TAIKEFF: I just wanted to advise your Honor that there was a witness, a potential witness brought over {4786} on a writ; and in view of your Honor's ruling, I think it is now appropriate to advise the Court that a person known as Ricky Little Boy who, I believe, is in the Moorhead jail, but I am not certain of that fact, may be

returned to the institution from which he came.

I think he may even be in the Marshal's custody at this very moment here.

THE COURT: The Marshal may be advised.

MR. TAIKEFF: Your Honor, one brief procedural inquiry.

A number of offers of proof and resubmissions in light of all the evidence need be made before the defense rests in order to either persuade your Honor to supplement the body of evidence, or in the alternative to protect our record.

Mr. Lowe and I have discussed the way in which he would like to proceed in that regard. He called my attention to the fact that your Honor may prefer to do that after both sides have rested on the record, so that the jury's presence is continuous.

We would have no objection to that as long as it was understood that we will reoffer certain documents, et cetera, in light of developments from that point until the end of the trial, and there were certain offers of proof made.

{4787}

We don't want to delay and cause the Government any delay in putting in its rebuttal case; but it would be part of our case in chief to make those offers.

I mention that to your Honor so your Honor can decide how he would like to receive those offers.

THE COURT: As I understand it, you are suggesting that after you have completed your evidence and the Government has completed any rebuttal evidence that it may have, that then you would be willing for your reoffers to be considered at that time?

MR. TAIKEFF: Yes, and considered as if we had not said in open court, "We rest."

THE COURT: Yes.

MR. TAIKEFF: That's what I am suggesting.

THE COURT: That procedure will be permitted.

MR. TAIKEFF: Thank you, your Honor.

THE COURT: The jury may be brought in.

(Whereupon, at 2:07 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:)

THE COURT: Mr. Maring may approach the bench.

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

MR. MARING: Your Honor, my client has requested of me to ask the Court if he may testify holding in his hand {4788} a round object that has 12 feathers on it which he describes as something spiritual for him which he feels will help him in telling the truth and as an aid to him in his testimony.

Before he comes into the courtroom with that object, I wanted to ask your permission.

THE CLERK: Is that the item just handed to him by a spectator that left the spectator's section about five minutes ago?

MR. MARING: That could be, I am not --

THE CLERK: (Interrupting) I observed it being removed from the courtroom.

THE COURT: The answer then is "no".

MR. MARING: All right.

THE COURT: Based on the statement of the Clerk that this item was handed to him by a spectator from the audience section of the courtroom, I am not going to allow it.

THE CLERK: To further clarify that, your Honor, I did not observe him handing it to him. I observed the person who has had custody of that all day leave the courtroom with that in his possession.

MR. MARING: Was it a round object with some feathers?

THE CLERK: Some type of sagebrush in a circle with feathers on it.

{4789}

MR. MARING: That is the object,

THE COURT: The answer is he will not be permitted to bring the object with him.

MR. MARING: Your Honor, may I go and tell him that and bring him back in with me so that the procedure will be followed?

THE COURT: Yes.

THE CLERK: One more thing. The oath will not be re-administered to him, and he will come in and take the stand and be reminded he is under oath and testify.

MR. MARING: He knows that, fine.

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

{4790}

NORMAN BROWN,

having previously been sworn, testified as follows:

MR. TAIKEFF: May I inquire, Your Honor?

THE COURT: You may.

MR. TAIKEFF: May the witness be advised that that he remains under oath from his last appearance, Your Honor?

THE COURT: Mr. Brown, you are still subject to the oath that you took on your last appearance in this courtroom.

DIRECT EXAMINATION

BY MR. TAIKEFF

Q Mr. Brown, when you went to Farmington to the AIM convention how old were you?

A I just turned fifteen.

Q And did you have a mother or a father living at that time?

A Two of them. You mean in Farmington or home?

Q At home. Was your mother living?

A Yeah. Both of them, yeah.

Q Both mothers.

A No. My mother and my dad.

Q Your mother and father were both living, okay.

A Yeah.

Q When you left Farmington you went back to the Pine Ridge Reservation with Mr. Peltier; is that right?

A Right.

Q Why did you not go home? Why did you go with him?

A Well, I told him that I was in Sun Dance and I asked him if {4791} he was in Sun Dance. He said, "Yeah." And I asked him if I could catch a ride there. And he said "Yeah." And I just told him

where we were staying. Told him we were staying in Pine Ridge, that they had sweat lodges there and they had ceremonies and he said from there we can go to Crow Dog's Paradise.

Q And when was the Sun Dance scheduled to happen?

A July 29th through August 5th.

Q Now, were you outside the country recently? Outside the United States?

A Yeah.

Q Where were you?

A Canada.

Q When did you go there?

A Around October, November, around there.

Q And when did you come back from Canada?

A Last month.

Q Did you come back on your own?

A Yeah.

Q And where did you go?

A To Crow Dog's Paradise.

Q You have any kind of relationship with Leonard Crow Dog?

A Yeah.

Q What is that relationship?

A Like brothers and like a teacher to me. And, yeah, brothers, teacher.

{4792}

He tells me, you know, sacred things about nature and medicines and stuff like that.

Q He's a medicine man, isn't he?

A Yeah.

Q Do you know a place called Mission, South Dakota?

A Yeah.

Q When were you there last?

A March, I think it was the 23rd. I'm not sure.

Q How far is Mission, South Dakota from Leonard Crow Dog's place?

A About twenty-eight miles.

Q Generally speaking what were you doing at Leonard Crow Dog's place up to March 23rd from the time you got there until March 23rd?

A Well, went down there because he was gettin out and take some ceremonies with him and, you know, visit, too.

Q Did you have any family with him -- any of your family staying with him?

A No.

Q Do you have a wife?

A Yeah.

Q Where was she at that time?

A With me.

Q Had she been in Canada with you?

A Right.

{4793}

Q Now, what happened in Mission, South Dakota on March 23rd, as far as this case is concerned?

A Well, we went to this one store to look for saw blade for wood. We went to this one store.

Q Can you speak a little louder.

A We went to this one store and they didn't have one there so we were going down the street inside this T.V. repair shop. And we went by Abourezk store and there I saw two, two agents.

Q Go on.

A They were looking at us and in our pickup and we passed them and they were really looking at us. So I thought, you know, right there they recognized me. So we got out of the car and we walked in that T.V. repair shop and Al Running was looking for a radio. He was going to buy a radio. We went in there and I was looking and then I saw these two agents come around by the parking lot. And they pulled up and they were sittin' there for about five minutes.

So I was looking at them. So I, you know, I thought they probably know who I am and so I walked out there, me and my wife, Al Running and Diane Running. We walked out and, like I saw them come out of cars and came behind me and he said, "Mr. Brown," and I was getting inside the car and he goes, "Mr. Brown." He said that about three times and

the third time he said, "Mr. Brown." And so I turned around and they said, "We got a subpoena for you for Leonard Peltier's trial in Fargo." {4794} And I told Al, I said, "Do you know these agents, do you know their names, can you get their names?" So he got them and that agent gave me a subpoena and said I had to be over there.

Q Then what happened?

A Well, he just told me to get in the car.

Q Which car, your car?

A No. FBI car.

Q And then what happened?

A I got in the car. Then we went to Pierre, South Dakota and as soon as we got to Pierre we got on a small plane. Then we came here about 4:30.

Q 4:30 in the afternoon?

A Yeah. About 4:30, yeah.

Q Okay. Now, stop at that point. I want to show you a document, I'm handing a photostatic copy of it to Mr. Hultman, show you Defendant's Exhibit 229 for identification and I ask you who gave that to me, if you know?

A To me?

Q Who gave that piece of paper to me?

A A lawyer.

Q This man over here (indicating), Mr. Maring?

A Yeah, Mr. Maring.

Q Do you recognize it?

A Yeah.

Q What is it generally?

{4795}

A A subpoena.

Q Was that the subpoena you were shown or given on March 23rd in Mission, South Dakota?

A Yeah.

Q Okay. Now, you said they brought you up here in a small plane from Pierre, South Dakota; and when you got here where did you go next after you left the airport?

A You mean from here, this airport?

Q Yes. Fargo airport, right.

A There were some agents who were waiting so they walked me to one car.

Q Can you speak up a little louder, please, so everyone can hear you.

A I walked to this car and they told me "Get in one of them." So I got in there.

They took me to this hotel or motel the other side of Fargo and they gave me a room.

Q Do you remember the name of that motel?

A No.

Q Does it begin with the letter B?

A Yeah. It's the Biltmore, yeah, motel or hotel.

Q What happened there?

A Well, I got there, they gave me something to eat, then I went to my room.

Q By the way, before you left Mission did you say anything about {4796} wanting to get something?

A Yeah. I told the agent that I wanted to have a lawyer and he told me that I'd get one.

Q Did he say where you could get one?

A No. I asked him twice, that guy, to see a lawyer. And he says, "Yeah, you'll get one as soon as you get to Fargo."

Q All right. Now, I think you told us you were taken to the Biltmore in Fargo and you were fed and up to the time you were fed, but while you were in Fargo, did you say anything about a lawyer again?

A Yeah. Once, right after we ate. I asked, I said, "Am I going to get a lawyer?" And he said, "Yeah." So I was waiting all evening.

Q That night did anyone come to see you who said he was a lawyer?

A No. But Mr. Hultman came over to the room I was at.

Q And when Mr. Hultman came he tried to ask you questions, right?

A No. He just came up to me and he asked, he says, "I want you to tell me," you know, he says, "I'm not going to ask you any questions. I want you to tell me about, you know, June 26th again."

Q All right. Now, you told Mr. Hultman that you wanted a lawyer, right?

A Yeah.

{4797}

Q And when you told him that he left immediately, he honored your request, did he not?

A Right. As soon as I said that to him that, you know, he left.

Q Now, that left you with whom then?

A An agent.

Q Do you know the name of that agent?

A Mike Nez.

Q N-e-z?

A Yeah, N-e-z.

Q Where is he from?

A Gallup, New Mexico.

Q Did you make any phone calls from the motel room?

A Yeah.

Q Did a lawyer come to see you that night?

A No.

Q Then the next morning did you come to the courthouse?

A Yeah.

Q Did you testify for the Government?

A Yeah.

Q Now, you previously testified for the Government in connection with this case, did you not?

A Yeah. In Cedar Rapids.

Q At the trial last summer?

A Yeah.

{4798}

Q And did you testify before that?

A Yeah.

Q Where did you testify before that?

A Sioux Falls, South Dakota.

Q Was that at a trial or some other kind of proceedings?

A No. It was a grand jury.

Q Now, I want to ask you some questions that concern the events leading up to your grand jury testimony. Before you testified in the grand jury did you have any contact with any agents of the FBI?

A Yeah.

Q Do you know the name of the agent or the names of the agents if there was more than one?

A There was Victor Harvey. His first name is Olen. And there's another one, J. Gary Adams.

Q How many times in your life have you met J. Gary Adams before you went to the grand jury?

A How many times have I met him?

Q Yes. Before you went to the grand jury.

A I think it was twice, yeah.

I don't know, I think it was twice. Once -- I don't know, I can't remember.

Q Well, think about it and see if you can recall how many times.

A I can't remember. I think it was -- I don't know, I can't {4799} remember.

Q How much time would you say you spent with Gary Adams before you went to the grand jury?

A I don't know. A lot of hours, though, it seemed like.

Q Could you give us some estimate of how many hours is a "lot of hours"?

A I don't know. It seemed like about four and a half hours. I don't know. It seemed that long.

Q Did you ever have an interview with him when your mother was present?

A Yeah.

Q Where was that?

A Chinle, Arizona.

Q Is that where your mother has her home?

A No. It's Mini Farms about fifteen miles from there.

Q And who was present at that time?

A My mom, J. Gary Adams and Victor Harvey.

Q Would you tell the Court and jury what happened that day or evening.

A Well, I was at my sister's house in Chinle and tribal cop came and wanted to talk to me. And my mom went out there and talked for about a minute, minute and a half. She came in, she didn't say anything; and told me, you know, this, let's go to this one place. And I said, "Where?" "Let's go over there." So I said, "All right."

{4800}

So I went, got in our truck. Then we went to this trailer and he said, "Let's go inside." And we went in there.

Q Now, who was in there when you went in there?

A There was one BIA police. He's an officer. I think there was another one. I'm not sure.

Q How about the FBI agents?

A Well, I got there and I knew that they were going to question me about it. So I asked, you know, if I can go out. As I was going out the guy wouldn't let me out. He grabbed me.

Q He --

A He wouldn't let me go out of the trailer.

Q Did they tell you you were under arrest?

A No.

Q Who stopped you from going out?

A Arthur Newman. He's a BIA police officer.

Q Was Gary Adams there?

A No. He wouldn't let me out and he told me to wait there for about, for a while. And we waited there and he said, "Some agents are coming in, they're flying in." So we waited, we waited there, me and my mom and we were waiting. Some agents came and there was three of them came in. And the other guy, he's from Flagg Staff, and they came in. They showed us their names, their badges, and showed my mom their badges and their names. And I told my mom to get their names down, {4801} and she got them down.

Q Then what happened?

A Well, they said, they gave me a, my rights, or said something about my rights. I can't remember. They asked me if I understand them and I said, "Yeah." And they asked me, you know, where I was on June 26th, and I told them, you know, that I didn't know, you know.

I gave them a piece of paper and on that piece of paper it said that I wasn't suppose to talk to any law enforcement people or BIA, FBI or state patrol or any of them. That paper said that, and on that paper the guy, I went to Jack Schwartz, he's a lawyer and he typed that up for me and I gave that to them and they wouldn't let me call

--

Q I didn't hear what you said.

A They wouldn't let me call a lawyer.

Q I see. When they read your rights to you did they tell you that you had a right to consult with a lawyer?

A Yeah.

Q And then you tried to call a lawyer and they wouldn't let you?

A Yeah.

Q Go on, tell us what else happened.

A Well, started asking me questions and I kept saying that I didn't want to talk to them. First they were nice, kind of nice. Asked me if I wanted a cigarette and coffee. Told them, {4802} no, that I wanted a lawyer. So they started getting kind of mad because I wouldn't answer their questions.

{4803}

And Victor Harvey told me, he said, "We knew you were there," and he said, "If you don't answer our questions we can indict you, we can charge you with those two murders of those two FBI agents." And I was just sitting there thinking of my mom. She knew what was happening.

Q Where was she?

A Right beside me here. I don't know. She freaked out. She knew what was happening. She kind of tapped me and I looked over there and she said, "Why don't you tell them." I said, "I don't want to tell." Ask the agent what was going on and the agent told her I was involved in the shooting with the agents and he said, "I knew you done it," like that. And they said that then "I know." Still didn't say

anything.

So that guy Victor Harvey says, "We can indict you," he said, "for those two murders," and he said, "We even had a gun that you had, you know, that killed one of them." He said that to me. And my mom, she was crying. She didn't know what to think. Kept telling me to say something, talk.

So I was sitting there and I won't say anything to them. Victor Harvey got mad again and he said something else too.

Q Is it something you don't want to say in court?

A Yeah.

Q Was it a bad word?

A It wasn't a bad word, just what he said. He said, you know, {4804} "If you don't talk to us," you know, "you might never walk the earth again."

Q I see. Go ahead.

A And what I thought was, you know, put me in jail and my mom started crying. They told my mom that "You won't see your son again for a long time." "You won't see your family again." And I said something that got them mad and then he said, "We'll do everything in our power, do everything in my power that you go to jail if you don't answer our questions." And he told me that I won't see my mom for a long time. My mom told me to talk to them, to lawyers, I mean, to FBI agents.

Q Go ahead.

A She was crying and she just told me to talk.

Q Go ahead. You can continue testifying.

MR. HULTMAN: If you would ask a question he might have an opportunity to respond.

MR. TAIKEFF: The question is what happened.

A Okay.

And they said that to me, then my mom told me that she didn't want to see me in jail and told me to think of her and my brothers and sisters, my family. And I started answering their questions.

Q How did they ask their questions of you?

A They say, "We know you saw this and saw that. People tell us,

somebody told us that you saw this." I said, you know, "Who {4805} told you this," and they said they couldn't tell.

Q How did you feel while this was going on?

A Well, I wasn't going to say anything but my mom, she was crying and everything and I didn't want to do --

Q You were just past 15 years of age at this time?

A Right.

Q You knew that Gary Adams and Victor Harvey were from the FBI, did you not?

A Right.

Q Do you remember the date when this took place?

A September somewhere. September 23 and the 3rd.

Q Earlier that month you had had some kind of an encounter with the FBI, isn't that correct?

A Yeah.

Q Would you tell the Court and jury about that.

A Well, it was at Crow Dog's one night. Me and my wife were staying this one place and next we woke up there was these agents running all over the place. There was a lot of them.

Q How were they dressed?

A Dressed like Viet Nam, army fatigues and those greens, you know, they were in Viet Nam. Saw some carrying M16s. Looked like that, you know. And sawed off shotguns and bulletproof vests and could hear choppers, too.

Q A what?

A Chopper.

{4806}

Q Helicopter?

A Yes.

Q Yes.

A And, you know, all around the camp. They just came in about 5:30, around there. It was pretty early.

Q How many agents did you see that day?

A I don't know. About 80. 80 to 100. Around there.

And we heard people running by and I looked out and one of them

saw me and said "All right, come out with your hands up." I came out and they pulled back their guns and said, they cocked it, I guess, and I came out and said, "Anybody in there with you?" Said "Yeah." "Tell them to get out." So told my wife to come out and we came out and they told me, you know, "Get on the grass," so I laid down. They searched me and her. Then, you know, they had M16s and told us to get up and they pushed us with those M16s and said, "Why don't you go over where the women and kids are." They said that to us.

We started walking where all the women and kids were at and were standing there. There was a lot of FBI agents around, around where the women and kids were.

Q Go ahead.

A And, well, they were just all over. There were a lot of them. And kids were crying.

MR. HULTMAN: Your Honor, I haven't entered an objection up till now. I do object on the grounds of any relevancy of {4807} any kind.

MR. TAIKEFF: Foundation testimony concerning state of mind at the time of testifying before the grand jury, Your Honor.

MR. HULTMAN: This is an event six months before. Isn't that right, Counsel?

MR. TAIKEFF: That's correct, Your Honor.

MR. HULTMAN: I renew my objection.

MR. TAIKEFF: It's actually four months before I think.

MR. HULTMAN: I believe the dates are September 23rd and January 13th to be exact.

MR. TAIKEFF: Four months, Your Honor.

MR. HULTMAN: I object on the grounds of relevancy.

THE COURT: Sustained.

Q (By Mr. Taikeff) When you went to the grand jury in January, did the experience you just told us about have any affect upon what you did in that grand jury room? Yes or no?

A Yes.

MR. HULTMAN: Same objection, Your Honor.

MR. TAIKEFF: I don't know whether I should ask the next question, Your Honor.

THE COURT: I know you do not. I was considering the objection.

MR. TAIKEFF: I didn't mean to interrupt Your Honor's consideration. I wasn't sure whether I should go forward.

{4808}

THE COURT: Overruled.

Q (By Mr. Taikeff) Tell the Court and jury what was the nature of the effect of that experience that you just told us about had upon you when you went into the grand jury and what you did inside that grand jury room?

A You know, there weren't, you know they meant --

Q They what?

A They meant what they did and, you know, they were for real. They meant what their word was. You know, I mean like I don't know just --

Q Explain what you meant by the statement "they were for real."

A Like, they were serious, you know. They meant it. You know they were serious, you know. They didn't, I don't know. They were serious what -- they, you know, I thought they weren't messing around. They meant what they were doing.

Q Did you consider the things they said to you when they spoke with you and your mother?

A Yeah.

Q In the grand jury you testified that you saw Leonard and Dino and Bob down by the cars, isn't that a fact?

A Right.

MR. HULTMAN: I object to any further leading questions of this kind.

MR. TAIKEFF: That's a foundation question.

{4809}

MR. HULTMAN: I understand. When they get all done it will still be foundation.

THE COURT: Objection sustained.

Q (By Mr. Taikeff) Did you ever see Leonard and Dino and Bob down by the cars on June 26th, 1975?

A No.

Q Why did you tell that to the grand jury?

A Well, they were, you know, back there when they first came, when I was telling about, they said, "We know you saw this and saw that."

Q Specifically. Be specific. They said that they claimed --

MR. HULTMAN: Just a minute, Your Honor. I object. We're about now to clearly get a leading question.

MR. TAIKEFF: I was not going to ask a leading question. I was going to put it in terms of him telling us what they said they knew he knew.

THE COURT: You may ask the question without suggesting the answer.

MR. TAIKEFF: All right. Thank you.

Q (By Mr. Taikeff) You just told us. Tell us specifically what did they say to you they had heard or knew that you knew?

MR. HULTMAN: That assumes that that was the case, Your Honor, and that's the very reason I objected to the leading.

MR. TAIKEFF: That was his very testimony before. Testified that they told him that someone told them certain {4810} things and then they repeated those things and I want him to say what those things were.

THE COURT: He may answer. You may answer that.

A They told me, they said, "We know you saw those guys down there." Said, "Who?" They said, "I don't know." They said, "We know you know." They said, "Somebody told us that you saw Bob, Dino and Leonard down there," and I didn't know what to think after, you know, my mom, I just told them I saw them down there.

Q Did the FBI ever mention to you the names of the people that they thought killed the agents when they were interviewing you the first time they interviewed you?

MR. HULTMAN: Object on the grounds of being leading.

THE COURT: Overruled.

A I don't understand your question.

MR. HULTMAN: And further on the grounds that the question has been asked and answered.

MR. TAIKEFF: It's been answered? Could I have the answer read back, Your Honor, please. I didn't seem to hear it.

MR. HULTMAN: The testimony just previously to the last question.

MR. TAIKEFF: I'd like to have the answer read back then because I apparently missed it. I must have been looking at my notes and I --

MR. HULTMAN: I have no objection to the question, Your {4811} Honor, as long as it's not leading.

THE COURT: Proceed.

Q (By Mr. Taikeff) When the agents first interviewed you, did they tell you who the murderers were?

MR. HULTMAN: Same objection.

A No. They just told us that "We know you saw those guys down there."

A I'm holding in my hands Government Exhibit 34AA in evidence. As you sit there now do you know what kind of a weapon this is?

A You mean right now?

Q Do you know now?

A Yeah. Now I know.

Q What is it?

A It's an AR15.

Q In September of 1975 did you know the name of that weapon?

A No.

Q Did you ever have any discussion with the FBI about the name of weapons?

A Yeah. I told them "That that gun there," I said --

Q I'm sorry. I didn't hear the beginning of your answer.

A "That gun."

Q Yes. What did you tell them or did they tell you. That's what I'm trying to find out.

{4812}

A They asked me, you know, "What kind of guns," you know, they had and they asked me about Leonard. Says, "It looks like an M16," and kept saying "was it M16"? I said, "I don't know." I said, "Looks like one." Kept saying, "It was one, wasn't it?" I said, "I don't know. Looks like one." Kept saying that and making me, I don't know, so many

questions.

Q When you testified before the grand jury that you saw Leonard and Bob and Dino down by the agents' cars, where did you get that information from?

A FBI.

Q Did you ever see that on June 26th, 1975?

A No.

MR. TAIKEFF: Your Honor, at this time I offer Defendant's Exhibit 229 both on the testimony of this witness and because it is a copy of an official court paper in this case.

MR. HULTMAN: Well, I object, Your Honor, that it has no materiality of any kind. The same as any other subpoena in this trial.

MR. TAIKEFF: I believe it does, if Your Honor will look at it I think Your Honor will perceive it was served on the 23rd when he was illegally taken into custody.

MR. HULTMAN: If it please the Court, if we're going to discuss matters let's not discuss them before the jury. I request we approach the bench.

{4813}

THE COURT: You may.

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

MR. HULTMAN: About illegal matters.

MR. MARING: May I be allowed to approach the bench also?

THE COURT: You may.

MR. HULTMAN: On your record, Your Honor, I'm getting sick, very sick about illegal acts on the part of the government.

MR. TAIKEFF: Is it proper to serve somebody on the 23rd with a subpoena returnable on the 14th and take him into custody against his will? Is that not an illegal act?

MR. HULTMAN: Counsel, I'm referring to your conduct before this jury. That's the issue I'm talking about. I want it made clear on the record if you've got matters to take up out of the presence of the jury you do it. Don't do it and prejudice the jury any longer.

MR. TAIKEFF: What do you think you're doing right now by yelling? You can be heard six blocks away.

MR. SIKMA: So can you, Mr. Taikeff.

THE COURT: What's the issue before the Court?

MR. HULTMAN: I'm objecting, Your Honor, first of all, to his conduct in front of the jury. That's the first thing.

Secondly, I'm objecting and have a right to object and {4814} I did object to the entrance of this exhibit on materiality and then without a speech on the part of Counsel in front of the jury about the conduct of the government.

MR. TAIKEFF: You've got to fight fire with fire, Mr. Hultman.

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

THE COURT: What is the materiality of this exhibit?

MR. TAIKEFF: This witness was intimidated by illegally being taken into custody upon the authority of a subpoena which it was not even valid because it was served on the 23rd of March, returnable on March 14th and even if it were returnable after the 23rd -- just a moment.

I'm looking for the 23rd of March.

MR. TAIKEFF: Your Honor, he testified that it was served upon him on the 23rd and I think the government will concede that his memory is correct. It's this date which is important, although it doesn't matter what date was there, you cannot take a person into custody on a subpoena. A subpoena is not a warrant of arrest.

MR. SIKMA: That's not proof.

THE COURT: Again we're getting into collateral issues whether or not he was taken into custody and I'm not going to permit that.

MR. TAIKEFF: This witness testified to the prosecution.

THE COURT: You have been permitted to bring out {4815} from him the facts as to what happened. We're not going to get into a legal determination as to whether or not he was taken into custody.

MR. TAIKEFF: He's already testified he was taken into custody.

THE COURT: Testified he accompanied the agents. Now whether that was being taken into custody or not is something this Court doesn't have to determine at this time. It's irrelevant to these proceedings.

MR. TAIKEFF: Doesn't it reflect upon his state of mind when he testified on direct examination for the government?

MR. HULTMAN: You already postulated, Counsel, he told the truth. You've said that 16 times in the courtroom at least this afternoon.

THE COURT: Objection to 229 is sustained.

MR. HULTMAN: Your Honor, could I have an instruction as to the remarks that Counsel made in front of this jury just a moment ago? I think that's highly prejudicial.

MR. TAIKEFF: When you stop signaling witnesses I won't say anything like that.

THE COURT: Counsel may proceed.

{4816}

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

Q (By Mr. Taikeff) On March 23 when you were brought here via Pierre, South Dakota, did you want to leave Mission, South Dakota?

A No.

Q Where was your wife then?

A She was with me.

Q Is she pregnant?

A Yeah.

Q Was she pregnant then?

A When? You mean --

Q (Interrupting) On March 23rd.

A Yeah.

Q When is the baby expected?

A July 22nd.

Q Why did you go with the agents?

A Because I always think about my wife and my boy.

Q Did they tell you that you had to go with them?

A Well, they just told me to go, and I thought, you know, I had no choice.

Q Did they show you any arrest warrant?

A No. I asked them if I was arrested.

Q What did they say?

A They said "no".

{4817}

Q Did you look at the piece of paper that you had?

A Yeah, and I asked them to read me my rights and they said I wasn't arrested.

Q He said you weren't arrested so he wouldn't read you your rights?

A Yes.

MR. TAIKEFF: I have no further questions.

REXCROSS EXAMINATION

By MR. HULTMAN:

Q Norman, let us start with something that is maybe fresher in your mind than some other things.

Do you recall counsel asking you some question about you and I meeting on the night that you came here that he has just talked to you about, do you remember that night?

A Yeah.

Q Now, I am being correct and I am being honest and I am being fair, that when I met you, that without discussing anything about what took place, I asked you whether or not you had any questions that you wanted to ask me, is that a fair and truthful --

A (Interrupting) Say that again.

Q Isn't the first thing that I said to you and continually asked you when I met with you on the night that counsel is talking about, "Do you have any things that you would like to ask me?"

{4818}

A Yeah.

Q And didn't we spend the time that you and I were together, me answering the questions that you had to ask of me?

A Yeah.

Q Including when you asked whether or not you could have a lawyer?

A Right.

Q Now, did I at any time during that evening discuss with you any of the facts or what might be your testimony that you gave the next day here in the courtroom?

A I don't understand.

Q All right. Did you and I at any time that evening talk about any of the specific events that did or did not take place on the 26th of June, 1975?

A No.

Q There isn't any question in your mind about that at all, is there?

A No. You didn't ask me no questions about it, the June 26th.

Q All right. Now, did you tell me at that time that you had any idea but the fact that you were a witness that was called and would be a witness called to testify in this trial, you understood that you were to be a witness at that time in this trial, did you not?

A Yeah.

{4819}

Q And then you were a witness the next day, were you not?

A Yeah, but --

Q (Interrupting) Now, did you the next day testify to things that you saw and you observed truthfully and honestly before this jury?

A Yeah.

Q And anything that happened the night before or the day before concerning the FBI with a subpoena or whatever counsel asked you about, it didn't have any impact on what your testimony was that day here before this jury, did it?

A What do you mean?

Q You told the truth, did you not?

A Yeah.

Q And there isn't any question in your mind that as to what you said that day before this jury, that what you told them is true, is there any question at all about that?

A Yeah.

Q Did you say the things that day to the jury because the FBI had forced you at some time to say it?

A They didn't force me, but they just gave me a lot of questions.

Q I am asking you about the testimony that you gave here before

this jury. Let's just talk about that for a moment, o.k.?

A You are asking me if they forced me to testify?

{4820}

Q I am asking you if there was anyone who forced you in any way to give and say what it was you said here in this courtroom before these people here when you were previously here, did anybody force you to say anything that day?

A No.

Q You did this because it was the truth, is that right?

A Yeah.

Q And there isn't any question in your mind, sitting here now, that what you told them that day is the truth, is it?

A That day I was here?

Q Yes.

A Yes.

Q All right. Now, let us go back in the beginning, all of these things counsel has asked you about, you indicated that you were at Crow Dog's Paradise, and you talked about some events that took place there.

Which of the people that were in Tent City or at Jumping Bull's on the 26th were there at Crow Dog's with you?

MR. TAIKEFF: Objection, beyond the scope of the direct and irrelevant as well.

MR. HULTMAN: Well, counsel went into the various reasons, your Honor, as to why certain events followed; and I think this is within the scope of that examination.

THE COURT: He may answer the question.

A Would you ask that again?

{4821}

Q (By Mr. Hultman) Who were the people that were at Crow Dog's with you that were with you on the 26th of June when you were at Jumping Bull's, 1975?

A Everybody that was there except Wish.

Q Was Leonard there?

A Yeah.

Q Now, let us go to the first time that anyone asked you from law enforcement about what happened or what you knew about the 26th of June, 1975; and is that the day that you talked about that happened down in Arizona?

A You mean when the FBI came?

Q Yes, that's the first time, is it not, that anybody from law enforcement --

A (Interrupting) Yeah.

Q (Continuing) -- talked to you about anything that may or may not have happened on the 26th of June?

A Yeah.

Q Now, isn't it a fact that during all the time that you told or answered questions about what took place on that day, that your mother was seated right beside you?

A You mean when they asked me questions, my ma was beside me?

Q There isn't any question about that, is there?

A No.

Q You were 15 at the time, were you not?

{4822}

A Right.

Q In fact, it was your mother that brought you there, was it not?

A Yeah.

Q You didn't come on your own?

A Well, I knew I was going.

Q You didn't want to come, in fact, did you?

A No.

Q In fact, I believe you indicated even to your mother to get those names of the FBI's, isn't that what you said on direct examination?

A Yeah.

Q Now, your mother didn't have any qualms about bringing you, did she?

A She didn't know what was happening there. She didn't know why they were there.

Q Now, isn't it a fact that after there was discussion about your rights in the presence of your mother, she had some questions to ask about it, did she not?

A What do you mean?

Q Well, didn't she ask some questions of the FBI and the BIA agent who was there at that particular time concerning rights?

A I don't know.

Q Do you remember her asking about the fact that your age {4823} was 15 and that she felt that she should be there because she was your mother and you were 15?

A Yes.

Q And do you remember the FBI asking and answering specific questions that she asked concerning what your rights were?

A Can you say that again?

Q Well, isn't it a fact that your mother asked about what rights you had at that time?

A Yeah, I guess so. I don't know.

Q And didn't the FBI explain all of the things that you know very well at this particular time it has to do with rights?

A Yeah. They told me about my rights, yeah.

Q And they told your mother too, did they not?

A Yeah, they told my mom.

Q Now, isn't it a fact, Norman, that both you and your mother, knowing that you had a right to have an attorney present and after being explained, and that you didn't have to talk to the agents in any way, and if you wanted an attorney they would get one, that you indicated that you were willing to go ahead and tell whatever it is you knew, to tell the truth?

MR. TAIKEFF: I have to object to the form of that question because it includes some consideration of his mother's state of mind on the subjects of a lawyer. He is not competent to answer.

MR. HULTMAN: I will only deal first with the witness.

{4824}

THE COURT: The objection to the form of the question is sustained. You may rephrase your question.

MR. HULTMAN: Yes.

Q (By Mr. Hultman) Isn't it a fact that after you were explained all of those things and were asked whether or not you were willing to go ahead and tell the truth about whatever it is that you knew, that you replied "yes", that you were willing?

A No. My lawyer first -- I gave them that piece of paper.

Q And where did this piece of paper come from -- you were 15 years old, were you not?

A Yeah. Right after June 5th at Crow Dog's, I went to Rapid City.

Q Wasn't it a form letter sent out by Mr. Ellison who just -- wasn't his name on it -- that just walked out of the door, it was a form letter, was it not?

A What do you mean?

Q It was a letter which is produced in many numbers?

A No.

MR. TAIKEFF: Your Honor, I object to that as being totally irrelevant. The letter apparently is not in dispute. It existed. Who prepared it is irrelevant.

THE COURT: Sustained. Produce the letter.

Q (By Mr. Hultman) Well, wasn't it just --

A (Interrupting) It was in the letter. They gave it to me. I asked them if there was any way they could help me, and {4825} they typed it out, Jack Schwartz.

Q Well, why did you -- when and where was it that you asked for somebody to help you?

MR. TAIKEFF: Objection, irrelevant. His consultations with counsel are irrelevant to the issue on this matter. In any event, he has the right not to answer that question under the attorney-client privilege.

THE COURT: That is a right for the witness to decide.

MR. TAIKEFF: I have a right to object if he is not being fully advised of his rights at this particular time.

THE COURT: I am not sure that counsel was involved.

MR. TAIKEFF: He said Jack Schwartz as his attorney. He consulted

with him. I believe he said that on direct examination.

THE COURT: I did not hear that. The objection is sustained.

Q (By Mr. Hultman) Do you remember the request that your mother made, not what was in her mind, but the specific request that your mother made after the discussion concerning what your rights were, do you remember her requesting that a certain person come, do you remember that; do you remember asking that Mr. Arthur Newmann come and join and be present?

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

{4826}

Q You wouldn't dispute that?

A What do you mean?

Q You are not saying it is not the case, you don't remember?

MR. TAIKEFF: Objection on the grounds of competence. If he doesn't remember, he couldn't dispute it or agree to it.

THE COURT: Sustained.

Q (By Mr. Hultman) Now, let me ask you just one simple question, Norman: Wasn't it in fact your mother all through this interview who urged you to tell the truth, and that was the reason for the statements, the answers, the story that you told at that time?

{4827}

A What do you mean? I mean, could you restate that so I can understand the question?

Q Wasn't it your mother's urging for you to tell the truth during this time that we are talking about is the reason you said the things that you did say?

A What do you mean? I mean, I don't understand your question.

Q I'm going to ask you one more time.

Isn't it the truth, Norman, that the reason that you said the things that you said that day was because for the first time somebody was asking you to tell what you knew happened on the 26th of June?

A Yeah. She told me that. But they weren't true.

Q What you said that day wasn't true?

A You mean that first, the first time they came?

Q That's what we're talking about, the first time.

A Yeah. Right.

Q So what you said that day you are saying wasn't the truth?

A Right. This is what I thought they wanted to hear because they asked me those questions. Victor Harvey.

Q You didn't think it was important for you on that day with your mother present and her urging you to tell the truth just to tell whatever the truth was; is that right?

MR. MARING: Your Honor, may I talk to the witness?

THE COURT: Yes.

MR. MARING: Should I come up there or can he come {4828} down here?

THE COURT: Witness may step down to confer with counsel.

(Mr. Maring conferred with the witness.)

Q (By Mr. Hultman) Now, I want you to think very carefully in response to the next question that I'm going to ask you. How is it that you explain that it was the FBI on that day that mentioned there was an AR-15 in the hands of Leonard Peltier rather than you, when in fact the FBI agents were there didn't even know that such a weapon existed or was in anybody's hands?

MR. TAIKEFF: Objection, Your Honor. That assumes a fact not in evidence.

MR. HULTMAN: That assumes a fact that is in the record.

MR. TAIKEFF: May we note, may we know the basis of that statement, Your Honor?

MR. HULTMAN: The basis for that statement is the fact that there is no knowledge of any kind of an AR-15 even being in existence at that particular time.

MR. TAIKEFF: Are we talking about September 22, or October 10th?

MR. HULTMAN: I'm talking about September 22nd.

MR. TAIKEFF: Does the Government mean to say, Your Honor, that they did not find the .223 cartridge in the trunk {4829} by that time? Is that what Mr. Hultman is saying in this courtroom?

MR. HULTMAN: I am saying an AR-15. That is what I am referring to.

MR. TAIKEFF: Doesn't that cartridge get fired from an AR-15 that

you found in the trunk?

MR. HULTMAN: At a later time according to the report it was so determined, Counsel.

MR. TAIKEFF: Well, what did it look like, a Pepsi-Cola bottle when it was found in the trunk?

THE COURT: Just a moment. The jury will disregard any comments by counsel which are obviously meant for the jury's attention. And I'm referring specifically to the dialogue that just took place between counsel. That was obviously designed simply to have the jury hear the argument.

It is irrelevant at this point in the trial with reference to this question pending before this witness.

MR. HULTMAN: May I continue, Your Honor?

THE COURT: You may proceed.

Q (By Mr. Hultman) Norman, it was in fact you that stated that day that Leonard Peltier had an AR-15, was it not, because you had seen him with an AR-15?

A What do you mean. I said it was, looked like an M-16. I didn't say it was an AR-15.

Q All right. It was, you then said that it was an M-16 or {4830} looked like an M-16; isn't that right?

A Well, that was after they told me that I knew who were down there. They asked me what kind of guns they were carrying and I -- they asked me about Leonard and I told them that he had one that looked like an M-16.

Q Now, didn't you indicate the same thing at a subsequent time when you -- did you at a time not too much later sign a statement which indicated the same things that were the statements that you made at the time we're talking about now. Did you later sign an actual statement that told about the things that you had said on the occasion that we're just now discussing?

A Would you say that again?

Q Did you in fact sign a statement a little bit later concerning the matters and the things that we have just now been testifying about?

A Yeah. It was --

Q And I'm going to show you now what has been marked a similar copy as Defendant's Exhibit 110 and I am going to show you the original document itself and ask you whether or not you recognize the signature that is thereon?

A Yeah.

Q And whose signature is that?

A Mine.

Q And do you remember the time and the occasion when you signed that particular signature?

{4831}

A Yeah.

Q And was that on Chinle on the 10th of October in 1975?

A Might have been. I mean, the date, I don't know, I don't remember the date.

Q Well, if you were to look at the document itself would that help you in any way?

A What do you mean?

Q If you were to look at it would it give you an, or refresh your memory as to approximately what time it was?

A Yeah. The date's up there and the time.

Q And do you recall in having looked at it that that was approximately when it was, both date and time?

A No. Just remember that second time. I don't remember the date, though.

Q All right. Do you remember that it was sometime around 12:05 P.M., around noon sometime?

A Yeah. Around noon.

Q All right. And were the persons present who are indicated on there in addition to yourself?

A What do you mean?

Q Well, were the people that were there with you the same people as you have testified to earlier and that appear on this particular document, the agents?

A Are these the people that were there?

Q That's what I asking you.

{4832}

A Yeah.

Q All right. And did you likewise initial all of the various pages that are on that particular document?

A Yeah. They told me to.

Q And did you in fact use your initials at some places where some corrections of one kind or another were made?

A What do you mean?

Q Do you remember counsel asking you at an earlier time about possibly some corrections and your initials appearing on a similar document to this? A copy that he showed you. For example, do you remember making these initials right here (indicating)?

A I don't remember.

Q All right. Now, did you then at a later time appear before a grand jury?

A Yup.

Q And outside of the two times I have discussed with you now were there any other times that agents had talked to you about the events on the 26th of June, 1975?

A What do you mean?

Q Well, counsel asked you how many times, or words to this effect, that the agents had seen you and talked to you; and I don't remember exactly what you said, but I'm wondering whether or not, and that's why I'm asking you the question, were there any times other than these two occasions up to now we're going {4833} to talk about the grand jury?

A No.

Q It was those two occasions; isn't that right?

A Yeah.

Q And those were the only times?

A Yeah.

Q All right. Did your mother go with you to the grand jury?

A Yup.

Q And was she with you outside of the time that you were in the

grand jury itself to talk to you and visit with you and discuss anything with you that you wanted?

A Yeah.

Q Now, were there any FBI agents in the grand jury at the time you told the things that you told them in the grand jury?

A I don't think so.

Q Just a group of people, was it not?

A Yeah.

Q And somebody asking you some questions?

A Yeah.

Q Now, I'm going to ask you, Norman, whether or not you remember being asked this question at the grand jury. Do you remember being asked the question: "Did you see anyone other than the two agents go down towards the cars at that time?"

Do you remember being asked that question?

A Yeah, I think so.

{4834}

Q All right. And then your answer: "What?"

And then the question: "Did you see anyone go down, walk down toward the cars," and do you remember what your answer then was?

A You mean to that question?

Q Yes.

A Yeah. That I saw Bob, Dino and Leonard down there.

Q All right. Your answer was "Yes" and the question was: "Would you tell the grand jury as closely as you can what you recall about what happened and who the individuals were that went down there?"

Do you remember that was the next question then?

A Might have been. I don't remember the questions.

Q All right. And do you recall an answer, your answer then which was substantially what you just said a second ago and in a little greater detail, "Well, I was sitting by the propane tanks. Then I got up, I was looking on both sides of the houses. That house then I saw two people go down. I think one was Peltier and the other was Butler this way."

That was what you said to the grand jury in response to that

general question. "Would you tell the grand jury as closely as you can what you recall about what happened and who the individuals were that went down there?"

Isn't that a fair conclusion? That is what you said at that time?
{4835}

A Yeah. I guess so, yeah.

Q There weren't any FBI men in there at that time, were there?

A I don't know.

Q Your mother was there outside, was she not?

A Who?

Q Your mother?

A Yeah.

Q You also -- do you remember being asked this question: "What happened at the time you saw three people down at the bottom of the hill by the agents?"

Do you remember giving any answer of any kind to a question of that kind?

A No, I don't remember.

Q This is after you had gone ahead and in response to that I do show the record fairly, that you indicated in response to a question that you said then: "I looked around again and the hood was up and then I saw three of them down there. And I don't know who the other one was."

"Question: Did you at one time indicate who you thought it was or who it might have looked like?"

And your answer: "Yes." And then the question to you: "Who was it?"

Do you remember what your answer was to the grand jury?

A No.

{4836}

Q Would you argue with me at all if I said the answer was: "I think it was Robideau."

Do you remember saying that?

A Yes.

Q All right. Now, then I get to the question I just asked so

that I wasn't misleading anyone. The question was: "What happened at that time that you saw three people down at the bottom of the hill by the agents?"

Do you remember what your response was to that question?

A No.

Q Would you argue with me if I indicated the answer, the record was: "I heard some shots, I think it was three, or was it? Two or three shots, it was three shots."

Do you remember giving an answer of that kind?

A Yeah, I remember.

Q Do you remember the only time that I talked to you other than the brief moments on the night we've already discussed in Cedar Rapids, do you remember that occasion?

A You mean that night before we left?

Q Yes.

A Yeah.

Q Do you remember where it was that I met you and who was with you?

A No.

Q Wasn't it with your mother?

{4837}

A Might have been. I don't -- I can't remember.

Q You wouldn't say it wasn't your mother if I indicated to you that it was?

A I don't know.

Q She came with you, did she not?

A Cedar Rapids?

Q Yes.

A Yeah.

Q And at that time when I discussed some matters with you did your mother at any time indicate anything about the FBI at any time mistreating you when she was in your presence? Do you remember ever saying anything of that kind?

A What?

Q Do you remember when you and your mother and I were together

her indicating anything in any way that anybody had mistreated you at any time?

A I don't understand your question.

Q Did your mother on that occasion, if you recall, make any complaints of any kind concerning any agents of the FBI?

A No. What she thought was after this, you know, she thought I wouldn't have to go to jail, you know, after this. This won't bug me no more is what she thought.

Q Norman, do you think that it's important that we tell the things that we saw and we observed?

A Are you trying to tell me that I saw them down there?
{4838}

Q No, no.

A That's what you're trying to say. I didn't see them down there. I'm saying that because the agents said that they said we know you saw this, we know you saw that.

Q My only question to you is just this if I might restate it to you.

A Yeah.

Q It's important that we honestly tell the things we saw and observed, isn't that a fair --

A Yeah. I did, too. I told the truth.

Q Would you now just please respond to my question. I'm just speaking in general terms. It is, and you feel strongly about that, do you not?

A Yes. It seems like, like you're calling me a liar. It seems that way to me. And I swore on that pipe there, sacred pipe.

Q No, my question, Norman, is this: Why is it then that even on the first occasion when somebody wanted to ask you truthfully what happened there that you asked your mother to take the names of the FBI agents?

A Yeah. That I told her to get the names of the agents.

MR. HULTMAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. TAIKEFF

Q I think in response to a question from Mr. Hultman you said that Leonard Peltier was at Crow Dog's. Did you say that?
{4839}

A Yeah.

Q What date did you think you were being asked about?

A Could you say that again?

Q You were talking about a raid on Crow Dog's. Do you know the date that that occurred?

A September 5th.

Q Was Leonard Peltier there on September 5th?

A No.

Q How long ago had he left there?

A About a week, two weeks before that. I'm not sure. I think it was a week.

Q When Leonard was at Crow Dog's that summer do you know what he was doing there?

{4840}

A Yeah.

Q What was he doing there?

MR. HULTMAN: I object, Your Honor. This is beyond the scope of redirect.

MR. TAIKEFF: Your Honor, I'm trying to ascertain the date through this inquiry of his departure.

THE COURT: Very well. You may answer the question.

Q (By Mr. Taikeff) What was Leonard Peltier doing at Crow Dog's on the Rosebud Reservation that summer when you were there?

A Sun dance together. Sun dance.

Q What dates did you say were the dates of the sun dance that summer?

A July 29th through August 5th.

Q And do you recall, did he stay throughout the full sun dance?

A Yeah.

Q And do you recall how long after the sun dance was over he left the Rosebud?

A Would you say that again.

Q Yes. The sun dance ended on August 5th. How long did he stay after the sun dance?

A About, don't know, about two weeks.

Q Now Mr. Hultman pointed out the fact which is not in dispute that your mother was at your side.

A Uh-huh.

{4841}

Q When you were being interviewed by Agent Adams, Nez and Doyle. What was your mother doing during that interview?

A She was crying.

Q Now Mr. Hultman asked you a number of questions that were put to you on the grand jury and he also said to you, "Did you give certain answers," and he read your answers and you said basically "Yes, I was asked those questions and I gave those answers." Was that testimony true?

A No.

Q Were you afraid of the FBI when you were before the grand jury?

A Yeah.

Q When you came out of the FBI, I'm sorry, when you came out of the grand jury --

MR. TAIKEFF: Your Honor, I believe I have to correct myself. I may have misstated a question and put a fact in that should not be in.

Q (By Mr. Taikeff) What were the names of the agents who were there when you were interviewed and your mother was with you?

A J. Gary Adams and Victor Harvey.

Q It wasn't Doyle and Nez, is that right?

A No.

Q I was wrong about that?

A Yeah. You were wrong.

{4842}

Q When you got finished testifying in the grand jury and you came out, did you see any of the lawyers sitting at the government table?

A Yeah. It was that guy (indicating).

Q Which one is that?

A Sikma.

Q Mr. Sikma?

A Yeah.

Q Did he say anything to you?

A Yeah.

MR. HULTMAN: Your Honor, I object again. This is irrelevant, immaterial to any issue here and it calls clearly for hearsay.

MR. TAIKEFF: I'm asking him what was said, not to prove the truth of the statement.

MR. HULTMAN: And further --

MR. TAIKEFF: Prove the statement was made.

MR. HULTMAN: And further it's beyond the scope.

THE COURT: Counsel approach the bench.

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

THE COURT: What do you expect the answer to be?

MR. TAIKEFF: I expect the answer will be Mr. Sikma said quote "You did good. We could have put you away for a long time."
{4843}

MR. HULTMAN: I object to that.

MR. SIKMA: That's a lie. That's an absolute lie.

MR. HULTMAN: Absolutely irrelevant and beyond the scope of direct and highly prejudicial.

THE COURT: In view of the denial, the question will not be allowed.

MR. LOWE: Mr. Sikma's denial?

THE COURT: That is right.

MR. TAIKEFF: We accept your ruling, Your Honor.

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

Q (By Mr. Taikeff) Finally, Mr. Brown, Mr. Hultman asked you about whether you believed that it was important for every witness who comes here to tell the truth and I think you said, I don't mean to quote you, "Of course I believe that, I swore on the sacred pipe." When you testified before the grand jury, did you swear on the sacred

pipe?

A No.

MR. TAIKEFF: I have no further questions.

THE COURT: Mr. Taikeff and Counsel approach the bench.

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

MR. HULTMAN: Your Honor, again --

THE COURT: Just a minute.

{4844}

MR. HULTMAN: I was going to --

THE COURT: I previously in these proceedings, Mr. Taikeff, called to your attention the rule which I thought had been violated.

MR. ENGELSTEIN: Rule 610 I believe on the oath.

THE COURT: Yes.

MR. ENGELSTEIN: 610 I believe.

THE COURT: 610?

MR. ENGELSTEIN: Yes.

THE COURT: Rule 610 which provides "evidence of beliefs or opinions of a witness on matters of religion are not admissible for purpose of showing by reason of their nature the credibility is impaired or enhanced."

I'm warning Counsel because of two occasions which Mr. Lowe mentioned that I did not think it was proper and I would like your explanation as to why you asked the witness questions?

MR. TAIKEFF: Your Honor said Counsel would not be permitted to argue to the jury one form of an oath or another was to be considered superior, that different categories of witnesses should not be considered more credible because they swear in a particular kind of way. However, Mr. Hultman opened the door on that inquiry because of the nature of his inquiry concerning this witness' beliefs in the necessity of telling the truth after pointing out that he gave testimony under oath {4845} in the other proceeding and then proceeded to ask him whether he believed it was appropriate to tell the truth when you come to testify and there was for this witness a specific personal difference. It may not be recognized by the law as between two different people but to this particular witness that issue was

raised by Mr. Hultman's inquiry on cross-examination as to whether he believed it was appropriate for him to tell the truth.

MR. HULTMAN: I think, Your Honor, that the record will show my last question concerning the truth had to do with speaking with reference to law enforcement officers and coming forward I believe the record will show is my inquiry.

THE COURT: Just a moment. Just a moment.

MR. TAIKEFF: Immediately after reading --

THE COURT: I'm not going to pursue it any further. The record may show I consider it to have been an improper question, particularly in view of the previous ruling of this court.

MR. TAIKEFF: Okay.

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

MR. HULTMAN: No further questions. Thank you, Norman.

THE COURT: The Court is in recess until 3:55.

(Recess taken.)

{4846}

MR. LOWE: Your Honor, before the jury is brought back in, may I be sure the record is clear about the matters that we want procedurally to have straight by categories and it will only take me a moment so Your Honor knows what we are talking about. We have, first of all, Your Honor has reserved decision on laboratory reports and Defendant's Exhibit 177 and the rulings on those would be something that might affect something that would take place before the end of the defense case.

We have 302s that we are going to resubmit and we have additional supporting argument on those. I have specific numbers on them.

We have several offers of proof which possibly could convince Your Honor to hear witnesses which you have previously ruled would not hear, although I frankly doubt it. But I would normally want to make those prior to the resting of our defense case.

Now what we are agreeable to doing, as I understand Your Honor has somewhat adopted, is to go ahead and finish up with the witnesses and take whatever government rebuttal witnesses there are so we can

get the jury finished and consider these matters. In other words, we will rest subject to the record, if you will, and then if it becomes necessary to do something with regard to the jury, you can always do that later. I frankly do not anticipate that it would.

{4847}

THE COURT: Very well.

MR. LOWE: But I wanted to be sure we were clear as to all the matters we were going to raise.

MR. HULTMAN: Your Honor, we're going to be placed in the posture we certainly want the defense to rest before we are in a posture of deciding who is going to be on rebuttal. I'm not going to bring on rebuttal without defense having rested.

MR. LOWE: In order to put Mr. Hultman's mind to ease, I'm not speaking of raising any new matters. They are reoffers of things he's aware of. Obviously, if Your Honor's made some ruling that would let something in that he felt he needed to rebutt, I would be the first to say he would be permitted to do it other things in rebuttal. I'm not trying to mousetrap the government on this. Our expectation would be, it would not require more witnesses from either defense or prosecution.

MR. HULTMAN: Now I do resist, Your Honor. I do not want to be placed in the posture that the defense at the last minute is reading to the jury because that is not the proper procedure and that is why I'm insisting what I am insisting.

THE COURT: Very well.

Would the clerk of court advise me of the number of that exhibit commonly referred to as the green sheet.

MR. LOWE: 177.

THE CLERK: Your Honor, that's Plaintiff's 177.

{4848}

MR. LOWE: Is it plaintiff's? I thought it was defendant's.

THE COURT: I think it was marked Plaintiff's 177 and I think the defense offered it.

MR. LOWE: Yes.

THE COURT: That exhibit is received.

MR. LOWE: Thank you, Your Honor.

THE COURT: Will the clerk state the numbers of the so-called laboratory reports.

THE CLERK: Your Honor, they are exhibits, Defendant's Exhibit's 134, 135, 187, 188, 189, 190, 191, 192 and 222.

THE COURT: Those exhibits are received on the basis that I previously stated, that the dates will not be argued. They are received for the material that is listed in it.

MR. LOWE: Your Honor, may I just inquire. You said as you previously described. When you did describe them previously you said you were going to excise the portions that were bracketed in red and I'm not clear --

THE COURT: The entire exhibit will be received.

MR. LOWE: May I work something out with the clerk to either camouflage or remove the red bracketing so the jury does not think they have some significance.

THE COURT: It should be removed.

MR. LOWE: Maybe we can get clean copies between Government and Defense to substitute for those.

{4849}

THE COURT: Very well.

MR. LOWE: We would obviously accept your ruling that we cannot refer to the dates, Your Honor, but I understand your ruling.

THE COURT: Now there are some other exhibits which rulings have been reserved. One is the ski mask.

MR. HULTMAN: Your Honor, I would on behalf of this --

I'm sorry, Your Honor.

THE COURT: At the time that exhibit was offered, would you state the number of it? Will the clerk state the number of that exhibit.

THE CLERK: Your Honor, that's 21A.

MR. HULTMAN: Your Honor, I would at this time withdraw the offer of that particular exhibit.

THE COURT: Very well.

The other exhibit in which the Court, another exhibit which the Court reserved ruling on was the radio equipment found in the Jumping

Bull residence. Would the clerk identify that by number.

THE CLERK: Your Honor, those are Exhibits 50A and 50B.

THE COURT: Very well. 50A and 50B, the objection to those exhibits is sustained.

Now are there any other exhibits on which the Court {4850} has not ruled?

MR. SIKMA: At this point Counsel for the, Mr. Taikeff and Mr. Crooks are discussing a defendant's exhibit regarding the Oregon matter and they should have that completed momentarily as to what should and should not be excised from that report. I think they probably have that now.

MR. TAIKEFF: Your Honor, Mr. Crooks and I have resolved the matter with respect to Exhibit 228.

THE COURT: Very well.

MR. TAIKEFF: And I think that if Your Honor wishes we can just show the clerk and he can amend the exhibit he has.

THE COURT: That procedure will be permitted.

MR. TAIKEFF: We'll take on moment, Your Honor.

THE COURT: Very well.

The Court will state for the record that the reason for the ruling on the use of the dates on the exhibits which I generally will refer to as the laboratory exhibits is that it appears the dates would be extrinsic of prior inconsistent statements of the witness. On checking the transcript of the proceedings, I note that on two occasions I suggested to defense counsel, Mr. Lowe, that matter, not that specific matter, but the witness be interrogated on whatever matters he felt were important in those exhibits and he declined to do so.

MR. LOWE: I think, Your Honor, that's a slight misstatement.
{4851}

THE COURT: The record will show.

MR. LOWE: Yes, sir. I mean you said any additional matters. I had already elicited the testimony I felt was important, that is, he affirmed they were accurate and true to the best he could do them when he made them which is all I think I need to do. Past recollection

recorded. If it is an inconsistent statement, under the Rule of inconsistent statement which is Rule 613, if I'm remembering my number correctly, the only requirement, "That extrinsic evidence of a prior inconsistency is not applicable unless the witness is afforded an opportunity to explain or deny the same." He did affirm all of those report dates. Government Counsel, and he's a government witness, Government Counsel could have asked him anything they wanted to that he was offered an opportunity, that he had the documents and also that the opposite party afforded the opportunity to interrogate him there and they had a full opportunity to do that so that simply, even if we're offering it under Rule 613, and we were not, that would still be permissible under the Federal Rules of Evidence.

I might add, in addition, Mr. Sikma did bring out certain date information with regard to some of them and I think that at least the door was open in that respect.

THE COURT: Are there any other exhibits on which the Court has not acted?

{4852}

Mr. Lowe, are there some other matters?

MR. LOWE: Yes, sir, there are.

If your Honor wants, I will go into them now. I don't know if it will take a long time.

First of all, there were certain exhibits prepared by the Clerk pursuant to admissions made by the Court. I don't have the numbers. The Clerk has the ones I am referring to. This is where you admitted a specific paragraph of a 302 or an affidavit, and the Clerk has extracted by Xeroxography the particular portion which you did admit according to the Clerk's understanding.

However, in each instance the only thing that is on the piece of paper which is now marked as being the exhibit is the actual paragraph itself; and obviously, that is completely meaningless to the jury unless they have the heading of the document.

For example, in the case of an affidavit, they would simply have the portion of the affidavit which says at the top of the page, as an example in Exhibit 145, the State of -- the United States, State of

Oregon, in the matter of Extradition and the matter of Leonard Peltier.

Affidavit, William P. Zeller, first being duly sworn, upon his oath deposes and says -- and then it should skip down to Paragraph 10, I think in this case that's what it was.

{4853}

So the jury understands what it is the particular paragraph refers to, what the document is, it is a part of, it should have a subscription and signature block. In other words, the objection that was sustained was to the content of the affidavit, not the fact that it was an affidavit or who executed it.

To give the jury only that little squib that says "Paragraph 10", without anything explaining what it is, with date or name, would be hopelessly confusing and would not really carry out the substance of what your Honor has admitted into evidence.

I would request that each of these exhibits in question -- and maybe I better read them into the record to make sure the record contains the numbers I am referring to.

First, Defendant's Exhibit 145, 147 and 191, and 194 -- and those are the four of them -- that the Clerk be instructed to get with counsel and we can take the caption off of it, and the signature and subscription portions off of it, and delete the portions of the substance which your Honor has found inadmissible.

I think that would be a matter that I would ask your Honor to rule on, since the Clerk has called it to my attention and asked for our guidance.

THE COURT: What is the position of the Government {4854} on that matter?

MR. CROOKS: Well, we have no objection. I think Mr. Lowe is right, that this Paragraph 10 doesn't mean too much unless there is some indication of what document it came from, and we have no objection to that.

THE COURT: Defendant's 145, 147, 193 and 194 will be modified accordingly.

MR. LOWE: Thank you, your Honor.

The next item, your Honor: Your Honor ruled it was either yesterday or today -- time is slipping in here -- on the Oregon exhibit, over defense objection initially, that the entire Oregon exhibit would be received on the Government's motion.

Now, that has since then been modified somewhat. The Government withdrew its application and limited it to certain portions.

Your Honor did make the ruling -- I presume your Honor made the ruling because your Honor felt there was legal basis for admitting it under the Federal Rules of Evidence.

We can see no distinction between that document and a number of documents which the defense earlier had offered. It occurs to us that some of the things that have taken place in the trial since we have offered those documents may have either called your attention to some {4855} authorities you have had a chance to refer to, or perhaps the context of the case has suggested that they should be admitted; and I would like by speaking specifically to one document that comes to mind immediately, and to mention others generically by the numbers.

First of all, a document which we consider to be extremely important is the 302 which was prepared by Agent O'Clock which referred to the information he received in interview from Miss Johnson, a stenographer. I believe that's Defendant's Exhibit 75 for identification; and in particular the information there was offered only to show the proof of utterance or of occurrence, that is, she actually heard radio transmissions which she testified she accurately wrote down to the best of her ability.

We did not offer it for the proof of the information contained in the radio transmissions themselves. We believed at the time, and we have argued since then, that that was not only not hearsay because it was only shown for proof of the utterance, but was also admissible under the various Rules.

Now, your Honor has ruled on the Oregon matter; and we believe that the authorities which the Government suggested, the Tompkins case and the other case -- the name escapes me, but it is 414 Federal Second 461, which your Honor, I believe, had an opportunity -- we all did -- {4856} to read during this morning at a recess concerning the

Oregon matter -- that those two cases are clear cases standing for the authority that business records of police agencies can be admitted for the proof of the utterance, that is, the proof of the occurrence as long as it is not offered for the proof of third party declarations; and we specifically offer those, not for the proof of third party declarations -- and if necessary, would ask your Honor simply to instruct the jury that they are only offered for proof of utterance and not for the proof of the third party declarations then. That is to say, in view of the transmissions, in view of the Tompkins case and the other case, and your Honor's ruling on the Oregon matter, we believe that should be reoffered at this time.

In addition, as a part of the defense case in chief, not just on cross examination, your Honor may have drawn some distinction on that basis. We feel at this point we ought to be able to admit it.

I point out the first four pages are already in evidence, as I understand it; and we ask for the entire document for whatever legitimate purpose can be made by counsel. I would like to mention the others. Because the argument is the same, then your Honor can make a ruling on any or all. We would resubmit the other 302's {4857} we proffered on the same basis, Agent Adams and Agent Coward and some others.

I am giving the numbers. They are Exhibits 83, 87, 88, 91, 105, 106, 142, 144, 156, 166 and 178; and again we offer these for the proof of utterance or recordation and not for the proof of third party statements contained therein and would ask that the Court, if it is necessary, instruct the jury of that limited purpose.

We believe that these are properly admitted at this time as part of our case in chief even if they were not earlier offered.

Now, as to some of the exhibits also, your Honor, we offered specifically the whole exhibit and over objection, your Honor only allowed us to put in a paragraph or a line or several portions of the document; and we would reoffer the entire document in each of those cases pursuant to the same authority your Honor obviously had in mind when we offered only two sentences of the Oregon report and your Honor immediately received in evidence the entire report. Whatever the

authority was your Honor had in mind at that moment is the authority I rely on for admitting all those 302's. I yield to your Honor on insight even though I don't have the specific authority.

THE COURT: The specific authority on that exhibit is {4858} I did not feel it was admissible; but I decided in the interests of justice to admit it, and then permit the counsel for the Government to have the balance of it admitted.

MR. LOWE: Your Honor, in the interests of justice, I adopt that as a very sound basis for admitting documents in this trial. I ask these 302's be admitted.

MR. TAIKEFF: I hope I might add, since your Honor is smiling, it sounded like to me it was in the interests of the Department of Justice.

MR. LOWE: These are the 302's that I will reoffer on that basis, and all of the previously enumerated bases at this time.

THE COURT: For the record, I would also indicate that I had in mind Rule 106 on that Oregon exhibit. That states the point.

MR. SIKMA: Your Honor, the Government retains its objections as to these matters inasmuch as they are narrative in nature; and for example, the radio logs, if they are only to show that radio transmissions were made and not to show the truth of the matter asserted, they seem to be totally irrelevant because it would be irrelevant if certain radio transmissions were made if they didn't have any meaning; and I think that an instruction in this regard with that much would be totally {4859} meaningless.

THE COURT: I will re-examine those exhibits before I rule on them.

MR. LOWE: Thank you, your Honor.

Finally, your Honor, there are a number of offers of proof -- excuse me. One last thing I had stuck in the wrong place.

Defendant's Exhibit 87 which was the 302 of Mr. Ecoffey, I believe was offered on one basis on the record that I heard; and I do not know whether it was also offered on the basis of proving the utterance and the various bases which I just enumerated for these other 302's; and your Honor did reject it and I just want to be sure

that the offer was also made on that basis as well; and if your Honor would also just re-examine 87 in that group, I would appreciate it.

THE COURT: Very well.

MR. LOWE: Finally, we have offers of proof as to information which your Honor has rejected; and what would want to do here, many times on an appellate record if you simply say there are isolated instances of violence -- and you, I understand, have ruled we could not show them -- that's a little bit bare in black and white, does not tell the Appellate Court where it was prejudicial to exclude them, if there might have been any probative {4860} value as to state of mind.

At some point -- I don't claim it should be now -- on some of these witnesses, on Bambi Sanchez, William Rossmore, which was an isolated incident --

THE COURT: (Interrupting) Excuse me. Give me the first name.

MR. LOWE: Bambi Sanchez actually testified. Your Honor prohibited a certain line of inquiry.

I would want to make an offer of proof at some point as to what the questions were and what the expected answers would be.

William Rossmore was a witness we had called as to an isolated incident of violence which was --

THE COURT: (Interrupting) What was the name?

MR. LOWE: Rossmore -- (spelling) R-o-s-s-m-o-o-r-e. He was subpoenaed and called off after your Honor made a ruling we would not --

THE COURT: (Interrupting) R-o-s-s-m-o-o-r-e?

MR. LOWE: (Spelling) m-o-o-r-e. I believe that is the way in which it is spelled. He is an attorney from Connecticut.

In addition a witness named Jack Steele was involved in another incident in which he was beaten up. We understand your Honor's ruling covers those two.

It is not for the purpose of having to change the {4861} ruling, but merely to be sure the record reflects what the expected testimony was.

THE COURT: Jack who?

MR. LOWE: (Spelling) S-t-e-e-l-e -- so I would just want at some

point to make a record on that.

With regard to Myrtle Poor Bear, in light of your Honor's ruling, there were witnesses, family members and others whose testimony would have been relevant to show that the state of mind and her fear was not something that had just occurred recently but extended over a period of time.

I understand in view of your Honor's ruling, that there was no purpose in calling those witnesses since obviously you had already ruled that her testimony would not be heard in chief. We would want -- and also that they were here on the 26th of June.

We would want to make a record of that. It might make a difference to an Appellate Court in the event of an appeal.

I believe your Honor did not allow any information or testimony as to the significance of the Poor Bear affidavits in the extradition proceedings in Canada although we felt that it indicated that as late as February of 1977 the United States Government was still basing very serious legal consequences on those affidavits; {4862} and I understand the Court's rulings, and it is not for the purpose of challenging that here but to make a proper record as to what we would have shown.

I believe that these are not matters which would call for rebuttal unless the Government wants to make an offer of proof as a type of rebuttal, so I don't think it's necessary to delay the return of the jury for those purposes; but perhaps sometime, even when the jury is out deliberating, if we could have some opportunity to put those on the record, I would like to reserve that opportunity, so that is simply to advise your Honor on that and ask for any guidance you would give us on that.

{4863}

MR. LOWE: Your Honor has before him a matter you have not ruled on. That is the warning or the cautionary instruction to the jury about Exhibit 29-1 and 34-1, and I call your attention that we have had no ruling on that yet and what you will do on it.

That's the last, so if Your Honor would give -- if you'd just sanction what I have explained I would suggest as an offer of proof we

can do that at a later time and not delay the jury returning.

THE COURT: As I understand it you did not bring forward William Rossmore, Jack Steele, either. William Rossmore or Jack Steele?

MR. LOWE: They were subpoenaed and their subpoenas were cancelled after Your Honor ruled that it would not be admissible rather than bringing them here all that way for that purpose. And I might add if Your Honor changes his ruling I think we could obtain them. But I don't understand that Your Honor would entertain a change of that ruling.

THE COURT: Well, the offer of proof as to those two is denied.

MR. LOWE: I'm not clear I understand why, Your Honor. You mean you refuse to reconsider or you will not even let us make an offer of proof? I just want to state it, Your Honor. I don't mean to call these people here and put them under oath and have them testify.

{4864}

THE COURT: Denied as being untimely.

MR. LOWE: Well, we haven't closed our case yet, Your Honor. I'll still call those witnesses if Your Honor wants, but I understand we could not call them and put them on the witness stand. This is why I want to do this before we rest.

THE COURT: The point is I have never specifically ruled on those. Those two witnesses have never been presented to me to my knowledge.

MR. LOWE: Can I just have a moment?

(Defense counsel conferred.)

MR. LOWE: Your Honor, I'm at a little disadvantage because it was on one of the dates that I was called home by an illness in my family. But I understand that Your Honor made a ruling that we would not be permitted to show specific acts of violence and that that was a ruling of the Court. And on the basis of that general ruling we cancelled a number of witnesses whose purpose solely would have been to give witness to specific acts of violence.

THE COURT: We can go on this at a later time, but I'm not going to take the time.

MR. LOWE: I make the offer of proof now and I make the offer

available if Your Honor will not. Unless I misunderstood. Do I understand what Your Honor's ruling was that I was not here for. Am I correctly stating it?

{4865}

THE COURT: We will go into those later.

MR. LOWE: All right. Your Honor, I make the offer to produce them or an offer of proof if Your Honor would allow.

THE COURT: You may make whatever record you wish at that time.

MR. LOWE: Thank you, Your Honor.

THE COURT: Does that cover all the matters?

MR. LOWE: That's all I have, Your Honor.

MR. TAIKEFF: Yes, Your Honor.

THE COURT: Are you now ready to proceed?

MR. TAIKEFF: Yes, Your Honor. We have one thing that remains and then we will be prepared to rest.

THE COURT: And what is that?

MR. TAIKEFF: That's to read from exhibits recently admitted into evidence which the jury has not heard about yet.

THE COURT: Very well.

Jury may be brought in.

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

MR. TAIKEFF: May I proceed, Your Honor?

THE COURT: You may proceed.

MR. TAIKEFF: Your Honor, there is now in evidence a document which is numbered 228, an Oregon state police report, and in addition an exhibit numbered 227 which is {4866} entitled "Information Report" which is from the Department of State Police in Oregon. I would like to read appropriate portions from these two exhibits to the jury if I may.

THE COURT: You may.

MR. TAIKEFF: Thank you. From Exhibit 228. I'm at page 4. The paragraph from which I am reading begins with the words "On November 17, 1975". The person who signed this report was Edward E. Hanson an Oregon state trooper. And it says as follows: "Writer, W-r-i-t-e-r

inventoried the items seized from the motorhome and then researched the Plymouth station wagon. And at 3:45 P.M. turned the station wagon over to the FBI for their search. Most of the items seized by Writer during the search of the vehicles have been photographed and turned over to Special Agent Steven Hancock.

A list of these items is contained on an information report and receipted to Agent Hancock."

Exhibit 227 is an information report on the state police and the preamble sentence after the identifying information at the top says: "On November 18, 1975 the following property was released to FBI agents as requested by Malheur, M-a-l-h-e-u-r, county deputy district attorney by Ron Chatfield." And there follows a list. The seven items on that list is a Colt AR-15 caliber .223. On the last page of that exhibit is the signature which reads "Steven L. Hancock," and beneath the signature line it's typed, "Steven L. {4867} Hancock, comma Special Agent FBI".

Upon that, Your Honor, the defense rests subject to the record.

THE COURT: Does the Government have any rebuttal evidence?

MR. SIKMA: The Government does, Your Honor.

THE COURT: You may proceed.

MR. CROOKS: Your Honor, before our first rebuttal witness is called the United States at this time would reoffer Exhibit 38-H which has been previously identified as a document in the recreational vehicle in Oregon in September following the September 14th matter. Previous foundation has been laid that this was a document found by Special Agent Milam and it was a document identified by Mr. Mulholland as having had the fingerprint of Leonard Peltier. And we offer it at this time in rebuttal of evidence offered by the defense as to the character of the defendant.

MR. TAIKEFF: May we come to the sidebar on that, Your Honor?

THE COURT: You may.

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

MR. TAIKEFF: Your Honor, there is no proof that that was either authored or adapted by him. Merely happened to be in a place where he and other people were; and the mere {4868} fact that he touched it

does not necessarily mean that he either adopted it or authored it or even read it in fact. There were at least five or six people in that motorhome traveling together.

THE COURT: Do you have any response to counsel's --

MR. CROOKS: Well, Your Honor, we have already stated it. The United States offers this to rebut the testimony offered that Mr. Peltier was a man of good character, quiet, peaceable type of individual and this is a document which he had in his possession which contained his fingerprints and which were found on the recreational vehicle from which he escaped on November 14, 1975. And we feel that it certainly has a direct bearing on the issue of his reputation and character and I think all the foundation has been laid through the fingerprint expert.

I had him testify without actually introducing the exhibit that Leonard Peltier's fingerprints were found on it and Special Agent Milam testified that it was found in the recreational vehicle, which among other things it had been found with Leonard Peltier's fingerprints on it.

THE COURT: I'm going to reserve ruling on that.

MR. TAIKEFF: Could I say something further in connection with it?

THE COURT: You may.

MR. TAIKEFF: I don't see how the fact that a person {4869} in a country that has a first amendment to the United States Constitution can be said to be of a given character because he touched or even touched and read a piece of political literature unless there is some proof that he generated it, distributed it, adopted it or assumed what it had to say as his principle. Doesn't go to his character at all. It would assume that if someone read a newspaper story about a burglary and left his fingerprints on the article it would be proof of the fact that he is a potential burglar.

MR. CROOKS: Well, Your Honor, I believe that this does, this does correspond with the testimony of the agents and photographs in evidence which correspond with, for instance, explosive devices. There are photographs of these in the Oregon photographs and I don't think

there's any question that it's a direct connection between that and the vehicle and the condition of the vehicle. And I agree with the Court that when it was initially offered it would not have been relevant because counsel had not yet raised the character of Mr. Peltier and certainly they've now done so. And I think we're entitled to introduce it based upon the foundation that was previously laid; and as I said, for instances the watches tie in directly with testimony and document and photographic exhibit of watches which are being used for the making of the bomb.

MR. TAIKEFF: By the way, I don't know that there was {4870} a character witness who testified on the subject of his character or behavior --

MR. CROOKS: Mrs. Bennett, I assume that's what you put her on for.

MR. TAIKEFF: You misperceive what she said, totally misperceive what she said. We have shown and not denied that he was a person who was armed and lived in an armed encampment. You are not rebutting anything that has been conceded or proven by you and conceded by us in your case, or trying to put that in for your prejudicial basis because it's of extreme political value for someone. I don't know what organization put that out, but that's the only reason you are putting it out. And if it were relevant as rebuttal it should clearly be kept out because of the availing prejudice that it would generate.

MR. CROOKS: Well, perhaps I misunderstood, but I understood that about four or five of counsel's witnesses had testified to Leonard Peltier's character of being a man of nonviolence and so forth and this goes directly to that

MR. TAIKEFF: I haven't heard anybody testify that way in this case. No such witness has been called.

MR. LOWE: In any event, Judge, Mr. Crooks has a fingerprint present on that and I would not assume that he adopts it because his fingerprint is on that. I would violently oppose that in showing bad faith on the part of Mr. Crooks. I {4871} just wanted you to know that I'm a first amendment believer.

THE COURT: Court will reserve ruling.

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

MR. SIKMA: Plaintiff calls Bruce Dalton.

MR. TAIKEFF: We're happy to stipulate to the document if the Government wants to proceed without wasting any time.

MR. SIKMA: We'll be calling the witness, Your Honor. But we will accept the stipulation as to the admissibility of the document, Your Honor.

MR. TAIKEFF: We're not going to contest it, but we don't want Mr. Dalton to have wasted his trip to Fargo.

BRUCE DALTON,
being first duly sworn, testified as follows:

DIRECT EXAMINATION