

THE COURT: The Court will take under consideration the suggestions made by defense counsel relative to the instructions.

Are Counsel now ready to proceed?

MR. CROOKS: The United States is ready, Your Honor.

MR. TAIKEFF: Defense is ready, Your Honor.

THE COURT: Very well.

The jury may be brought in.

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

THE COURT: Members of the jury, we have now reached a point in the trial where the lawyers have the opportunity to make their summation. We sometimes refer to it as an argument.

{4964}

I remind you of the instructions I gave you at the beginning of the trial and that is that a lawyer's summation or arguments serve a definite purpose. It gives the lawyer an opportunity to assist the jury in drawing together and pointing what they consider to be the strength of their case and the weaknesses of the adverse case.

{4965}

But you must bear in mind that what the lawyers say is not evidence, and it is your recollection which controls as to what the testimony in the case has been; and if the lawyers in their arguments should misstate an item of evidence, you must depend on your recollection.

I think I can assure you that if they do misstate it, it would undoubtedly be unintentional.

In any criminal case, and in any civil case for that matter, the side that has the burden of proof under the Rules of Procedure of the Court has an opportunity to make an opening argument or summation, and then a rebuttal argument or summation; and as I say, that is only because that side has the burden of proof.

In this case, as you have already been advised, the Government has the burden of proof. Therefore, the United States will make, or the attorneys representing the Government will make the opening summation; and then the defense will make the Defendant's summation, and then the attorney representing the Government will make the rebuttal summation; and after that I will instruct you on the law, and when that has been done one of you will be dismissed because one of you, as you know, is an alternate; and the remaining 12 will then take the case under deliberation and will be asked to reach a verdict.

Mr. Crooks.

{4966}

MR. CROOKS: May I proceed, your Honor?

THE COURT: You may proceed.

MR. CROOKS: If it please the Court and counsel, ladies and gentlemen of the jury, I would like to just at the very outset reiterate what the Court has said, that I am an advocate for the United States as are the other attorneys that you have seen and heard here in this courtroom.

What I say is not evidence, it is merely my argument as an advocate, and that's important to keep in mind because, as you have seen throughout this trial, there have been flare-ups between counsel, there have been statements made by counsel on both sides. These are not evidence, they are merely our way of expressing our anger or frustration, or whatever; and we all -- and I think the defense counsel will agree -- we all ask you to forgive us for our weaknesses because we all feel very strongly about our clients and our cases; but this is not a game where we are trying to determine which side has the best lawyers. That is not the purpose of this trial, and I think you all understand that.

It is a very important, serious case, and it is something that should not be decided on whether our side or their side are the most eloquent in their presentation. As I said earlier, or a moment ago, the lawyers are not {4967} the parties.

The parties are Leonard Peltier, the Defendant, and the United States, the people of the United States who have brought the charges against him.

In this case, as you have seen, there are basically three actors. I have just discussed the lawyers.

The second actor obviously is the Court. The Court's function, as you have seen throughout this case, is very important because he is to preside and keep order to the proceedings, to make sure that only legal, competent, relevant evidence comes in before you. The Court at the close of the case will instruct you on the law.

Now, in my argument, I will, for instance, mention points of law which I think the Court will instruct you on; but you are not to take that as the law. You will hear the law from one place, from the bench; and I ask you and caution you, as the Court has previously, not to make up your mind as to what the law is in this case until you hear it from the Court altogether in one series at one time.

That brings us to the third actor **who are very passive actors in many ways**, and that is the jury, you 12 people, or the 12 that will ultimately sit in this case.

The jury system is one of the best and most important {4968} parts of our criminal justice system. These cases are not judged simply on what lawyers think, what lawyers reason. They are judged on what 12 average, ordinary citizens think and feel after hearing the facts; and that is important, it is very important to the fair justice system that we have established in this country.

The purpose of having 12 jurors is obvious. No one juror can remember everything that has gone on in this six week trial. Your job obviously will be to apply your collective knowledge, your collective judgment, your collective recollection of these facts, because none of you will remember everything.

I don't. I have worked on this case longer than any of you have, and I don't remember everything and none of the other attorneys do; and that's why we have 12, so that we have a broad,

collective knowledge upon which to draw a collective judgment as to the facts.

In reaching this judgment obviously you must use common sense, and that's why we have ordinary -- and I don't mean that in a demeaning sense -- we have ordinary people sitting as jurors. We have people that have no special interests one way or another, people that are fair and unbiased, and people that are willing to use their common sense that they have gotten from their jobs, their prior lives, and are willing to adapt it to {4969} the facts in this case; and that is very important especially in a case such as this where there is no one picture but a vast series of evidence which fit together forcing a picture. You have to apply common sense. If you do not, then our system has failed.

Ladies and gentlemen, the Court will read you again the instructions, I anticipate, or the charge which has been made against this individual.

Basically he is charged with two counts of first degree murder, the premeditated murder of two individuals, two human beings.

Now, I emphasize at the start that we are talking here about the first degree murder of two human beings, we are not talking about two Government agents as such. That's important only to the jurisdiction. We are talking about human beings, living, breathing human beings that had feelings, loves, hatreds, just like all of you and myself and everyone else in this courtroom. These two individuals were young men who chose as their calling (indicating) the Federal Bureau of Investigation, Ron Williams and Jack Coler, two young, relatively handsome young men who chose as their life's work, I would assume, or at least part of their life's work, law enforcement, and two young men who were killed in the performance of their duties; but more importantly, they were killed as {4970} human beings, not as FBI Agents, not as Government employees, not as anything other than human beings.

It is easy for us to sit here in this trial, who have never known Jack Coler and Ron Williams, to forget what I have just said, that we are talking about people that a year and a half ago could have been standing in my place or standing in your place. It is easiest for us to forget that we're talking about death, not talking about theft, we are not talking about forgery of Government checks. We are talking about deaths, the irrevocable act which will never be undone. What we perhaps forget, who have not known these two individuals -- I haven't any more than any of you have -- is that we are talking about the destruction of human lives, not replaceable Government property. We are talking about the destruction of human lives which are unique in God's creation and are never going to be replaced and never going to be duplicated.

In this case I think the Court will instruct you that, as set out in the indictment, the charge is first degree murder. I believe the Court will define first degree murder, and I am not

quoting exactly; but I think in substance that first degree murder is the premeditated, unlawful killing of another human being with malice aforethought, that is, the cold, calculated, intentional {4971} killing of another without legal excuse or justification.

I believe the Court will instruct you substantially that premeditation or malice aforethought or -- and malice aforethought simply means that it is not a spur of the moment killing but a planned killing of some sort, not necessarily planned for a week, a month, a day or even a few minutes; but at some time before the killing, these murderers or this murderer decided to commit murder and planned it at least long enough to form the positive, real, articulable attempt to take a human life. I believe that in essence is what the Court will instruct you.

Really, when I talk about the definition of first degree murder, I suspect that this is a crime that need not be even defined to jurors. All of us know what murder is. We don't need legal definitions to tell murder from an accidental killing, murder from self defense, murder from a number of different types of killings, murder stands alone as the most horrible crime of the human race. It is a crime in every society that has ever lived on this earth, and it is a horrible crime. No matter how it happens, it is a horrible, horrible crime; and I don't think you really have to have a legal definition to know what the difference between that and an innocent killing is.

To establish the Defendant's guilt, now we are getting {4972} to a specific individual. We have charged Leonard Peltier with these murders. To establish his guilt we must show beyond a reasonable doubt, first of all, obviously that Ron Williams and Jack Coler were murdered; and secondly and most importantly, that Leonard Peltier was responsible for those murders, that is, that he acted as the principal, he was the moving force behind those murders, and must assume the responsibility for them.

Now, you will note that I didn't say that we have to prove Leonard Peltier pulled the trigger on either of the deaths because the law does not require that. All we have to show is that he was responsible, whether it was by pulling the triggers or by some other method or means.

I believe the Court will further instruct you that to establish the proof of guilt, we need not show that the Defendant did every act that arose into this, on June 26, and happened that day, and obviously he didn't.

You have heard testimony for several weeks about numerous people that were doing acts which resulted in those killings, those two cold-blooded cowardly murders. It is obvious that he didn't do everything involved in those deaths.

I believe the Court will say something to the effect {4973} that anyone who commits an offense against the United States, who aids, abets, counsels, commands, induces or procures its commission, is punishable. In other words, anyone who willfully participates in the commission of a crime, as Leonard Peltier has here is guilty and responsible.

I emphasize this point at the outset and with some, length because I think it's obvious to all of you that we have not been able to produce an eyewitness to the actual final killing. We have gotten down to everything except an eyewitness to the actual shooting.

We have got all sorts of circumstances, however, which fill in that hole; but I think it is also obvious that our two best witnesses, Jack Williams -- or Jack Coler and Ron Williams are dead. They are not available to come into this courtroom. We have to rely instead upon some of the participants themselves to fill in the holes in the final length to Leonard Peltier.

{4974}

I submit that we have, as I said earlier, or a few moments ago, we have submitted strong circumstantial evidence which indicates that Leonard Peltier did in fact fire the fatal shots; but you need not believe that he did. I think that he did, and I think the evidence shows he did. But we did not prove that.

You need not believe beyond a reasonable doubt as I've just indicated to find him guilty beyond a reasonable doubt. We have proven beyond any doubt, not just a reasonable doubt, beyond any doubt that this man is responsible for two dead human beings. There's nothing new or unusual about what I've said about responsibility, about aiding and abetting. I think all of you can reason for yourselves that if I hire someone to kill one of your jurors I pay a man to do a killing for me. There's no problem with anybody deciding that I'm guilty of murder. That's pretty basic.

If I hold one of you jurors while someone else stabbed them to death would any of you have the slightest hesitation to say that I'm guilty of murder? I don't think you would.

If I and five companions, for instance the men sitting behind me, if we all attacked you or one of you jurors with firearms, rifles, guns blazing in unison, would you have any hesitation to convict me of first degree murder even though it wasn't my bullet that killed you? That's what we have here.

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Along this same line, and as I've mentioned just a moment ago, it is obvious that both of our two most important witnesses, Norman Brown and Mike Anderson, would have been defendants in this case along with Leonard Peltier and perhaps should have been. I think it's also obvious why they were not. As I said our best two eyewitnesses are dead, Jack Coler and Ron Williams. They can never testify. Everyone else, as you've heard from this witness stand, everyone else that was on June 26th at the Jumping Bull Compound was involved in these killings in one way or another, with one possible exception, and that obviously is Angie Long Visitor.

But as you've heard her testimony she states that she left before the killings and that was corroborated by at least two people that saw her leave. So we are left then with the only witnesses available being involved in the killings As strong as the evidence is, the physical evidence which we've got in the

record now, as strong as that evidence is I think it's obvious that witnesses are still needed to expand and fit that evidence into place so that it says, so that it means what it says.

In short, we needed witnesses. There's no question about it. The evidence for instance does not indicate that Mike Anderson or Norman **Brown** initiated these killings, or that they fired the fatal shots. The evidence on the other hand indicates that Leonard Peltier was not only the leader of {4976} this group, he started the fight, he started the shootings and that he executed these two human beings at point blank range.

Our alternative of course, as distasteful as it is, is to **let these two young men off** so that we can get the one individual who is most responsible for these deaths. Out of all the individuals who were involved there was **one individual who was most responsible**, and I think the evidence without any question proves and establishes beyond any doubt that that was the man seated over there (indicating) in the blue shirt and the vest, Leonard Peltier.

The defendants, or the defendant and the other people who were here were strangers to this area. Every witness testified that they came in for some purpose, whether it was a hired guns or whether it was helpers, they came in sometime in the early part of the month. I don't think, or as I recall the evidence, none of them were even natives of the reservation. They came from other reservations and I believe the evidence further indicated that most of them weren't even Sioux Indians. Most of them were Chippewa or Navajo or from Washington, some reservation or some other tribe of Indians. They had been in tent city for several weeks doing many things. The defense testimony was that they were helping with various things, but apparently while they were there they were also doing a little burglary. Mr. Rooks house was burglarized in the early part of the month. His {4977} .303 rifle was stolen along with numerous other rifles and numerous other personal property.

Where does this .303 rifle wind up? At tent city, and at the crime scene in the hands of Norman Charles one of the residents. There's no question, and I think counsel, defense counsel has really conceded this, there's no question that Leonard Peltier was there. Even his own witnesses place him there, his fingerprints are all over tent city, car's there, fingerprints on the vehicles. No question he was there.

What makes you wonder why they spent as much time as they did **cross-examining Mr. Coward**? Because they in effect concede he was there. That's never really been a substantial dispute in this trial.

I don't think there's any question, either, that he was the leader of this group. He was **the oldest member, he ran the camp**. Testimony was that he even chewed out the younger men when they didn't do something right. He led the escape out of the area and again even his own witnesses indicated this leadership.

Do you recall the defense witnesses having testified? **Jean Ann Day**, for instance, that yeah, he was the leader, he was the

boss. These were the defense own witnesses. No question he was the leader.

Jack Coler and Ron Williams were likewise new to the area. They had been assigned to Rapid City. I believe {4978} Mr. Williams had been assigned in 1975, was assigned to the reservation a short time later, I believe in the early, or excuse me, around in '73 to the Pine Ridge -- or to the Rapid City. But he was assigned to Pine Ridge in early '75, or perhaps late '74 if my memory serves.

Special Agent Coler is perhaps an even more tragic case. He was on a sixty-day temporary assignment which was just about completed. Do you recall his conversation with his friend Special Agent Bunch? They were talking about going fishing as soon as he finished his assignment. Ron Williams, the young man on this photograph (indicating) was **twenty-seven years old**. He had three years in the Federal Bureau of Investigation. Jack Coler, **twenty-eight years old**, he had four years in the bureau. They're not necessarily old hands, but certainly experienced FBI agents.

On June 25th and 26th they were on the Pine Ridge Reservation doing their jobs. Their job was to enforce the federal laws which was their life work as law enforcement officers. Part of their job was to apprehend federal fugitives. Federal law not only authorized them to arrest Jimmy Eagle, it was their duty to do so. It wasn't a matter of them deciding, let's go down and find **Jimmy Eagle**. They had an arrest warrant for him and it was their duty to go find him.

One of Jimmy Eagle's co-defendants had been found, and I believe Mr. Hughes had taken him in that morning. But they {4979} had not yet succeeded in finding Jimmy Eagle.

I don't think that there's even **a shadow of doubt as to what Ron Williams and Jack Coler were doing on the Jumping Bull Compound on the 26th**. They went there to apprehend Jimmy Eagle. They had a warrant, or **at least were aware of it**, and knew it was outstanding and it was their assignment to catch him.

The night before they had been to the Jumping Bull Hall, I believe to the Sears' house, the tan and red house. They had been looking for him and they were in the company of two BIA officers, **Ecoffey** and **Little Bird**. That evening they stopped three young men who were from the camp, **Norman Charles, Mike Anderson and Wish Draper** thinking that one of them might be Eagle. Also the question of the .303 clip which was taken from Norman Charles, they were taken in for, I'm not sure exactly the purpose, whether it was identification or concerning the clip. There was no question these three individuals were taken in that night as part of looking for Jimmy Eagle.

The next morning, on the 26th, the day of their deaths. Special Agent Gerard Waring visited with Ron Williams and he offered to accompany him to look for Jimmy Eagle. Jack Coler however indicated that he would just as soon go because he had been with him the night before. This leads to the terrible irony that the handsome young man by the name of {4980} **Gerard Waring** who testified here could have been in these photographs in place

of Jack Coler. That's how senseless this murder was.

Special Agent Bunch, as I mentioned earlier, had talked to Jack Coler. He was a friend of his, a companion, his car mate or whatever. That morning they talked for about forty-five minutes about fishing, about family, friends whatever cases they were working on and he described to him the cases he was working on. He was looking for Jimmy Eagle.

That morning, an hour before their deaths, the agents were still looking for Jimmy Eagle. They went and talked to Mr. White Eyes. Mr. White Eyes identified the photographs, these were the two agents looking for Jimmy Eagle which was their job.

I believe Special Agent Hughes also testified that he had seen Williams in the morning and they had discussed what they were each going to do that day. Mr. Hughes said he was taking his defendants in and he was going to come back and then help find Jimmy Eagle. **We come now down to the facts of this incident**, the direct facts. I think it is clear, as you've seen from the testimony that we really have two incidents here, not one, but two. The first incident is the killing of the two agents. That stands all by itself.

The second incident is the attempt to rescue these agents by their co-workers and fellow law enforcement officers {4981} and that stands by itself. They should not be intermixed because the evidence does not intermix them. What we have is two young men coming into an area to make an arrest being attacked and murdered. The closest fellow law enforcement officer is fifteen miles away. The next closest FBI agent, if I recall, was Mr. Waring thirty miles away. BIA officers are of course in Pine Ridge which is again twelve miles away. Nobody even gets there until they're either at the very point of being shot or they're already dead. From then on the officers don't even know if their agents are dead until 4:00 o'clock in the afternoon.

They're trying to figure out if they're hostages or what the situation is. We have people even coming into the area and letting them go in to try to find out where the agents are. That's ultimately how they found out. But there's two separate distinct incidents. There's shooting after the deaths but has nothing to do with the deaths. The shooting after these deaths is completely separate. As a time of the death we have two against seven. That's the evidence, two against seven.

The law enforcement force builds up after that but unfortunately the agents are already dead. Shortly before noon Special Agent Williams spoke by radio to Mr. Coler. He spoke concerning a red and white vehicle that he was going to chase or was moving next to. He had been told the night before {4982} that Jimmy Eagle had been seen in a red vehicle leaving the Wallace Little house which is just down the road and he gave chase.

This conversation was overheard by several agents. It was also a transmission a few minutes later where they indicated that the red and white vehicle had stopped and it looked like they were going to fire at them. **This again was overheard by several agents: Waring, Hughes, Adams, some of the others. And this is**

what brought them into the area. This is why they stopped their cars and raced back a hundred miles an hour. These two transmissions corroborate Mike Anderson's testimony that Leonard Peltier's red and white van entered the area first. It was followed immediately by the agents. The agents gave a short chase, the van stopped up at the fork in the road where the P is written. The agents stopped at the bottom of the hill. Mike Anderson testified Peltier and his two companions, Charles and Stuntz, got out and appeared to fire at the agents. The agents apparently fired back. And I don't recall if he went into whether there were shots by the agents at that time or not, but at least he set the stage. Peltier was at the fork, he stopped the van. The three individuals got out and they appeared to be firing, or getting ready to fire at the agents.

Now, the defense has implied through their cross-examination that the shooters, and including all the shooters, may not have {4983} known that these guys were FBI agents. Well, that of course is rather absurd in view of Angie Long Visitor's testimony that she recognized FBI agents immediately. Anybody could see that, and she even went in and told her husband that that was her testimony.

I think it's all corroborated, her testimony is corroborated by Jean Ann Day, Della Starr. They had no problems in spotting FBI cars. Everybody knew what they looked like. But that really is immaterial in this case because Leonard Peltier knew they were FBI agents.

Norman Charles who was in the van with him, he knew they were FBI agents because he had been in that car that night before, Special Agent Williams' green rambler. He had been taken into Pine Ridge in that same car and he was in the van with Leonard Peltier and he knew what those colors were, he knew which agents were in there chasing.

Mike Anderson had no problem recognizing them for the same reason. He was in the car the night before, too. Now, Leonard Peltier at that time had an outstanding attempted murder warrant against him. Undoubtedly believed as he told the Mounties in Canada, undoubtedly believed that these agents were after them. That's what he told the Mounties, that was his explanation. The agents came to arrest him for an attempted murder warrant that was outstanding.

The tragic and ironic part is that there's no evidence {4984} that the agents even knew he was there. Even if they had, they would have been entitled to arrest him. It was a federal warrant. There's no indication they even knew who their killers were.

Earlier I've said that the dead agents are no longer available to tell what happened. This is only partly true. It is true that Ron Williams and Jack Coler are no longer living, they can't come into this courtroom, they can't tell you their stories, they can't point their fingers at that man seated over there with the blue shirt. {4985} But they are not completely silent. They do have a story to tell. Eyewitnesses in any case

may not be available to tell what happened. When you refuse to speak and forget, you may exaggerate. But the things that Ron Williams and Jack Coler do have to tell you are stated with undisputable clarity. They speak directly to the intent of their murder without any question whatsoever. They speak through Dr. Noguchi and through the photographs we introduced concerning the autopsy.

You recall defense counsel, Mr. Lowe, in cross-examining Dr. Noguchi saying again and again, "We agree with you, Dr. Noguchi. You're in accord with our judgment. This is right. This is the way it happened. We agree with that," because it is undisputable.

These are the photographs, as horrible as they are, of Jack Coler's testimony. He testifies that as he was standing behind the car with his arm outstretched, probably holding his .303 rifle, a bullet came through the trunk of the car, was deformed by hitting the trunk and almost ripped his arm off, obviously, from the photograph. He collapsed against the back of the car and he bled on the back of the car, crawled over to the side and became unconscious, motionless on the ground bleeding severely, so severely a tourniquet had to be applied to his arm. As he lay on the ground unconscious and helpless, someone walked up to him at close range, three to four feet, pointed a high powered rifle at his forehead, {4986} pulled the trigger. Apparently not believing they had killed him, he aimed again, fired, literally blew his face apart. That's the story that Jack Coler tells.

In another series of photographs we see the results of one of the shots. This is blood and brain that are splattered against the side of the car, apparently before the second shot which silences him forever.

What story does Ron Williams tell? He tells that he was standing somewhere with his arm extended, apparently working the microphone, firing a weapon, whatever. A bullet went through his arm, came out and went into his side and came out down by his waistline which indicated, as Dr. Noguchi said, that he was in a crouched over position like that (indicating).

They further testify that as he was kneeling, I believe Dr. Noguchi indicated, he was shot in the foot. Severe pain. Bleeding. Agony. Bones shattered. But more tragically they tell, as he sat helpless, essentially helpless, not as helpless as Jack Coler, but helpless nevertheless, an individual approached him, recalling Mr. Noguchi's illustration, approached him apparently on his knees because his foot had been shot, he can't stand very well, there is mud on his knees, this arm is disabled, he can't use this arm. He puts his right hand in front of his face to ward off a shell. He turns his face and he dies. That's the story that's told by {4987} these photographs with undisputable clarity.

The story told by these photographs contained in these exhibits can be summarized in three words: first degree murder. Without any question, without any other evidence, without any other testimony, they speak of three words: first degree murder.

They also speak with equal clarity to the depravity, the outright depravity of the individual who did this.

We have other witnesses to testify who was responsible for this dastardly, cowardly, brutal act. Mike Anderson testified for the government that immediately after Mr. Peltier was up by the "P," by the fork, the agent was down at the bottom, he then ran back to the tent area.

Norman Brown testified that Bob Robideau and Dino Butler and, I believe, a couple others were in the tent area. When the shooting started they grabbed their rifles, they went to see what was going on. I believe that Norman's testimony was that he went to the hill first, came back for a rifle, then went to see what was going on with rifles.

Angie Long Visitor then looked out of her house. She heard a firecracker noise first. I would assume what she's talking about is the repeated firecracker sound. She looked out of her house immediately and what did she see? She saw Norman Charles and Joe Stuntz both at the hill lying down in front of her house beside the wood pile, lying {4988} just where Mike Anderson said they would have been, first on the scene. She heard, she went into her house, I believe her testimony was, told her husband the agents were out there, came out a second time to flee. She heard one shot by the agents and I believe she indicated without any question that she was fleeing because she did not want to be a part of that she knew was going to happen.

On the second occasion she saw Robert Robideau who now arrived and he was standing beside the abandoned car with a large gun. An interestingly enough there was something else about Robert Robideau, a hot sunny day in June he had on a ski mask. Our theory might be why does one wear a ski mask on a hot sunny day in June? Is it to protect women and children or is it to protect your identity?

When she came out she saw Leonard Peltier's van again just as Mike Anderson said it was at the fork in the road. Norman Brown further testified that he also saw the van in the area. I don't think he was specific but he said it was up there when he came. There is no question it's Leonard Peltier's van that she saw. You recall her testimony, she testified that this van had been owned by a cousin of hers, Samuel Loud Hawk, but Leonard Peltier fixed it up and it was his van. Mr. Hultman had to go to the grand jury testimony before she would give further details, but she did. She testified that the red and white van was the one she saw {4989} parked right at the "P" where Mr. Hultman indicated and that this was the same van that she knew and understood as being Leonard Peltier's van. That was her testimony.

Counsel throughout this trial has been talking constantly about a red and white vehicle. Ladies and gentlemen, there is only one red and white vehicle in it, there is only one vehicle of any kind in this area other than the agents' cars and that is a red and white van.

Defense Counsel originally apparently was prepared to make

an argument that the junker found in the tree line was somehow involved. Apparently their argument then being that this corresponded with a radio transmission that had been overheard by someone, never substantiated by anyone, but a radio transmission. Unfortunately for them, **Angie Long Visitor** had a good recollection of that vehicle. It had been there forever. It had been junked out and was sitting there for several weeks.

Then defense Counsel jumped on another red vehicle. The second ghost vehicle. That was Mr. Casados' vehicle where, Special Agent Williams' gun was found. The only problem with that ghost, it hadn't even been bought a month after June 26th. You recall our rebuttal testimony. Now defense counsel is left without any ghosts at all, just Leonard Peltier's van parked in the fork of the road where everybody said it was parked.
{4990}

Angie Long **Visitor** was seen to leave about this time. I believe both Anderson and **Brown** testified to that. When they arrived Anderson had gone back to the tent, gotten a rifle. When they arrived back up, both agents were still alive and were still firing. At about this time Special Agent Williams was still attempting to direct the agents into the area. He indicated they were being fired on from the rise which would have been the time we're talking about, Stuntz and Charles fired on from the rise, and he asked the other agents to get to the rise. "The only way you're going to save our lives." He also stated very ironically that if the agents did not arrive soon they would be dead men. Truer words could never have been spoken.

Other agents overheard these transmissions, Adams, Waring, Hughes. These transmissions were made, gunfire was heard in the background. Ron Williams' last transmission was that he had been hit. Dr. Noguchi, if you recall, testified this would have been consistent with him having even been working the radio at the time.

Apparently within seconds Jack Coler was sitting or standing behind the Bureau car with the trunk up. Apparently had gone to get his .303 because obviously they weren't going to hit anybody with their shortnose pistols. Gone to get the .308 and he was hit. We have already described those wounds.

{4991}

Brown and Anderson I think both testified that the agents were behind the car with the trunk up, and I don't recall if **Angie Long Visitor** said that or if she described that specific part. She also saw the agents there when she left. The wound which hit Jack Coler, as I've already said, had hit the trunk of the car.

We have some other photographs that tell another interesting story. These are the photographs of the crime scene. The two dead agents lying beside the cars. Dr. Noguchi testified that this large hole was the one that he would have attributed to the wound in the arm and match it up with the blood which is found in the back of the trunk.

There is another photograph which is even more interesting,

however. Line up the blood, the bullet hole on that photograph. Where do they come from? They come from the corner where Leonard Peltier and Dino Butler were firing. You can examine the photographs, if you will, in the jury room and you will find that on the side of the car where Peltier and Butler were firing there are numerous bullet holes, some of which are small and some of which are large and which corresponds to the two guns they were firing, the M1 and the AR15.

You will recall Mr. Brown's testimony. He said Mr. Peltier was standing over at the point which is circled right next to the "P" and he observed the action of Mr. Peltier getting {4992} up and firing, getting down, getting up and firing again numerous times. No question he was firing that weapon over there. Which weapon was he firing? He was firing this weapon, a weapon which before it was destroyed by dynamite and blasting powder, or whatever was contained in that vehicle in Oregon, or Wichita, looked just like this one, looked like an AR15 or 16. The gun that was designed for battle in Viet Nam with a little bitty shell that makes a great big hole.

I think that the evidence would also indicate that Special Agent Williams probably had gotten the shotgun out of the car. There was one cartridge found that had been fired by that. But we do know without any question that the agents were under heavy fire through all of this period of time. We have 125 bullet holes in those two Bureau cars. Fortunately that is replaceable personal property of the government. 125 bullet holes. But that's just what has been shown for sure. That doesn't account for the glass damage or the misses.

Dr. Bloemendaal and Dr. Noguchi testified that without any question Special Agent Coler's wound would have been disabling or potentially fatal, massive bleeding, entire arm is almost torn off, nerves are shattered, bones shattered, arm is completely useless, bleeding through a major artery. Again appears from the photograph, and I won't {4993} show them to you again, that Ron Williams took his shirt off and helped his dying friend, applied it as a tourniquet. But the interesting thing is when he took his shirt off he had already been shot because the bullet holes which are in the shirt match up with the holes in his own arm. Special Agent Coler was totally incapacitated. It would appear at this point, and I think it's a fair assumption for you to draw, using your common sense and judgment, in all likelihood Special Agent Williams surrendered.

{4994}

No question that's an assumption because we don't have any direct evidence of it; but the physical evidence does indicate that. Examine, if you would, Special Agent Williams autopsy photos. What was found on his body, his belt loop, shell case, and a pocketful of ammunition.

Special Agent Coler was out of commission, but Special Agent Williams wasn't completely. He still had his pistol. He still had lots of ammo, ammo in the front seat of the car, several boxes of it. The defense themselves brought that out. He

had plenty of ammo. He has got three, four firearms, got one good arm, the arm that Leonard Peltier destroyed at the time of the killing. He still had one good arm, could have fired at least the pistol.

What other explanation is there as to how these people got up on this man who was trained in firearms and killed him at point blank range unless he surrendered? There is none. It is in an open area. You have seen the mock-up . You have seen the diagram. Nobody could have gotten close to him. Perhaps he was completely distracted, that's possible, but I think it is more likely to assume that at that point, with his friend dying, seriously disabled himself, he can't run, he simply surrendered. There is no indication that anybody was shot as they came down the hill to finish the deed. Leonard {4995} Peltier, Dino Butler and Bob Robideau, the three oldest members of this group, approached the agents. Peltier was firing the AR-15, as I said earlier, really no question at all about that. Every witness, every witness has put the AR-15 in his hand, even his own witness, Jean Ann Day. This is Leonard's gun, a gun like that (indicating), the big black gun. It is the one Leonard liked. All of our witnesses have put the gun in his hand. There is only one AR-15 in the group. There is no testimony concerning any other AR-15 at Tent city or at the crime scene or anywhere else in the area, only one AR-15, and who had it? Leonard Peltier. He had it at every point he was seen. He had it at the point that he was firing, from the tree line, and he had it at the cars when he was seen by Mike Anderson down there. There isn't even any other AR-15 or .223 shells found, accounted for just about every shell found in the crime scene area with the exception of seven cartridges which are Government, Lake City Government cartridges which are normal issue for the Federal Bureau of Investigation.

There is no evidence whatsoever of any other weapon of that make or caliber in that area until after the murder.

Then there were lots of them. There were 25, 26 -- whatever the count was -- agents; but we are talking about {4996} a different incident. We are still talking here about the murder, and until that murder there was never by any witness any hint of anybody else with a rifle even remotely resembling this one (indicating) .

As I said earlier, it appears that as these three men came down, they committed the murders. Apparently Special Agent Williams was killed first. He was struck in the face and hand by the bullet, as I have demonstrated, probably begging for his life, and he was shot. The back of his head was blown off by a high-powered rifle.

Leonard Peltier then turned, as the evidence indicates, to Jack Coler lying on the ground helpless. He shoots him in the top of the head. Apparently feeling that he hadn't done a good enough job, he shoots him again through the jaw and his face explodes. No shell even comes out, but explodes. The whole bottom of his chin is blown out by the force of the concussion, He dies. Blood splattered against the side of the car.

At this point we find some physical evidence that says he did it. One shell casing is ejected into the trunk of the agents car which was open, one shell casing, perhaps the most important piece of evidence in this case. This little, small cartridge is ejected by the killers into the trunk of the car; and it is later found by Mr. Lodge. The ejection chart was introduced simply to show, {4997} the possibility. We don't contend that it shows any definite pattern, but it shows it could have happened. It rebuts an argument that the thing would have gone then straight into the ground or something like that. That's all that chart is for. No question it is possible, no question it did happen. There is no evidence that any more than three shots were ever fired at the murder, no evidence whatsoever.

Further, there is no evidence that anybody else of the shooters ever went down to those cars, no evidence whatsoever; and there is a good reason why nobody else ever went down to those cars. By that time the entire northern area was crawling with agents. BIA Agents started to arrive, FBI agents started to arrive. There wasn't anybody going to go down to those cars again after the agents were all over the area. They would have been sitting ducks just like Coler and Williams were. There was one trip to that car by three men, and they killed these three young men in cold blood.

We also have another significant piece of evidence. I think, which was found at the scene. That's 34-H. That's the shell that was found under the bodies, a round by Montgomery, the agent. Ballistics said without any question it is an AR-15 bullet. or at least a .223 bullet, a caliber fired in this weapon; and I think we {4998} know where that bullet came from. That was the bullet that creased Special Agent Colers' forehead.

The other two murder bullets are still in the bodies in fragments, too small to even identify. The one tn Special Agent Williams' head just explodes, blew the back of his head off, and whatever came out would have been fragments so small that no trace could be found. Shell fragments were found by Dr. Bloemendaal.

The other shell going through the jaw again shatters, completely gone, all that are found are bits and pieces throughout his brain.

We have one shell that falls into a different category, 34-H. You can see by looking at the photograph, that that was a glancing show across the top of his head and it went into the ground because he was lying on the ground, and the shot came from above and downward; and I think it is a fair assumption that that's the bullet. We know, as I said, that this was a .223 bullet; and we know that it could have been fired from this gun. We don't have enough markings to say for sure, but it could have been fired from this gun, and most importantly, it couldn't have been fired by any other gun which was present that day, any other gun which was present that day at the time of the killings.

At about this time, as I said just a moment ago, {4999} Special Agent Adams arrived, a good friend of Ron Williams. I

think that was obvious from his testimony. You will recall that he was very emotional, and I think understandably so, especially from looking at his involvement in this case. He came under fire immediately. He drove into the area, he got to the area which is marked B and A. He drew fire from Norman Brown and Mike Anderson. They both testified they shot at him.

The tragic part, or perhaps the fortunate part, if he had gone a little farther, he probably would have seen Leonard Peltier standing over the bodies because it was apparently at just about this time, from all the time sequences as vague as they are from the recollection of the witnesses, obviously, it would appear that he arrived either just before or just after the killings at a hundred mile an hour. I say, the fortunate thing is that had he gone any farther, we would have probably had three dead agents instead of two. Special Agent Williams -- or Special Agent Adams would not have been here to tell his story either. His story would have been told from similar photographs. Everyone that came near this area was shot at including, I believe, there is testimony of an ambulance team coming in. Everyone drew fire. Passerbys on the highway drew fire from this blood-crazed bunch. Anyone who ever got close to the area was shot at {5000} by these quiet, non-violent people.

What happened when Adams arrived, something very obvious. Realizing that help was arriving, Leonard Peltier and his companions picked up that evidence they could, stole the agents' weapons and fled in one of their automobiles, Special Agent Williams automobile is at that point moved from where it came to rest up to the tent area where it was found. If there is anything certain in this case, one thing is certain. We know Ron Williams didn't drive that car up to the area. We know that without any question because he was lying on the ground dead with the back of his head blown off.

THE COURT: Mr. Crooks, I am going to interrupt you at this point, and the Court will stand in recess until 11:00 o'clock.

(Recess taken.)

{5001}

THE COURT: The jury may be brought in.

MR. LOWE: Your Honor, may I address the Court before the jury is brought in?

THE COURT: Just a moment.

MR. LOWE: Counsel have agreed that objections would not be raised during argument in order to try to have it uninterrupted instead of possibly popping up and going back and forth before the Court. This is the first opportunity for me to make the objection to what we consider to be seven grievous mistakes of argument and to move for a mistrial. And I'd like to start on the record with the specific instances very briefly.

Mr. Crooks tried to show Leonard Peltier as shooting, a fight started. There's absolutely not a shred of evidence. It is speculation and not fair inference as to who started the shooting. He said that they came in the early part of the month to the Jumping Bull's. That is absolutely contrary to the only

evidence on that issue which was Jean Day's. She said they came in early April or in May. Mr. Crooks said Stuntz got out of the vehicle and fired at the agents. There is absolutely shred of such evidence. The evidence was that he heard some shots and ran around the perimeter and that is a complete misstatement of the evidence and it is not just arguing what it means, but he said that **Anderson** specifically testified to that. He said that **Angie Long Visitor testified {5002}** that she heard a series of firecrackers. **That is absolutely false.** She specifically said she only heard one shot or one sound that sounded like a shot before she came out of the house. And that is simply not the evidence, and it is not even close to the evidence.

Mr. Crooks argues that the jury can assume that Williams surrendered. That is asking the jury to speculate. It is improper argument. There is not one shred of evidence of any kind of surrender or anything like that. He says that no one could have gotten close, so we must assume that. mere were two vehicles on either side of the agents which caused a great blind zone that anybody could approach and have gotten within ten feet very easily.

Now, the most misstatement, and I would think Mr. Crooks would blush on being pointed this out, he said that evidence 34-H was clear that it was only a .223 round. Special Agent Lodge gave clear and unambiguous testimony, and in fact is written right in the laboratory reports which he referred to and which are in evidence that the weapon only was, that it was a .22 caliber weapon and it was a .223, .222, a .221, a .22-250 or any other weapon of .22 which had that number of riflings. That's a gross misstatement of what the record shows and it was not argument. He said that it was testimony that only could be a .223 or an AR-15.

Finally, perhaps the most outrageous misstatement that {5003} I've heard in the trial, **Mr. Crooks** said that the people Leonard Peltier, and the people he was with did a little burglary and referred to the Rooks' rifle. Now, first of all that would be highly improper because it refers to an alleged other crime. Secondly, there is absolutely not one shred of evidence as to who took the Rooks rifle. Mr. Rooks testified that they had been taken, but the only thing we know is that sometime later they turned up in tent city.

There are three hundred and thirty-six fingerprints which have yet to be identified to anybody in tent city. There are obvious of many different weapons. There is no evidence, and I ask the Court specifically on that item, it is not only unsupported by evidence but it is a reference to another crime which is alleged to have been committed by Mr. Peltier or his associates.

Now, if **Mr. Crooks** were a less experienced prosecutor, I think he has something like six or seven years experience, but I think this misstatement of the evidence is deliberately to show Horn evidence into the theory and scenario of the Government's case and into the timetable which the Government is stuck with because of the various events that have been testified to. We

think that these are not only objectionable but they are so objectionable that they warrant a mistrial being declared at this time.

THE COURT: Motion is denied.

{5004}

MR. LOWE: We would ask at least that the Court give severe cautionary instructions and admonish to the jury and admonish the Government in their evidence not to misstate the evidence.

THE COURT: The Court has already advised the jury before counsel started that if there's any misstatement that they should disregard it and rely on their own recollection.

Jury may be brought in.

MR. LOWE: You are denying my request then for a cautionary instruction at this time and admonition to counsel?

THE COURT: Yes, at this time I am.

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

THE COURT: You may proceed.

MR. CROOKS: Ladies and Gentlemen, immediately before the break I believe I had been discussing the, a rifle of Special Agent Adams. I think I've gone into that in some detail. And I believe I was also discussing the fact that at that point Special Agent Williams' car is moved from the bottom up to tent city.

Further evidence I think as to who moved the vehicle is in the fingerprint which was found in the inside, not the outside, but the inside of the door latch of that vehicle. This is the print of Robert Robideau, one of the individuals who was down at the bodies with Leonard Peltier. At this {5005} point, or during the trial I should say, there was a question to Mike Anderson something to the effect of how did the agents beat you back, or the culprits beat you back to tent city. I think this is the obvious explanation. They drove the vehicle. There's another vehicle in the area as I said earlier and this was the red and white van still parked at the point marked "P" on the map, exhibit 71. That vehicle also arrived back in tent city.

The question then is how did that vehicle get back. I think it's quite obvious that at the time they moved Special Agent Williams' vehicle they stopped, somebody drove the red van back at the same time.

Now, is that sheer speculation? No. What do we find in the area of the "P"? Special Agent Williams' checkbook and a red light, one of the red lights, I believe the testimony was, that you put on top of the car which had fallen out of the vehicle when they stopped, got out, changed vehicles, or one person at least changed vehicles and proceeded on to tent city.

So now we have all the vehicles back in tent city. What further evidence do we have of the hurry that they were in? That evidence is quite simple. If you recall the testimony given by Special Agent Lodge, the fingerprint expert, he examined both vehicles. One vehicle was intact. Other than the numerous bulletholes it was intact. Personal possessions {5006} were there including a wallet, cash in the wallet, shells for the guns,

numerous items of a personal nature. And you recall there's even a list of those, Special Agent Lodge's list. By contrast what do we find with Special Agent Williams' vehicle? That vehicle is stripped of everything of value. There is nothing left in that vehicle of value that wasn't tied down. I believe the radio was still there, they apparently hadn't been taken out. But everything else is gone, including the spare tires.

But again it illustrates the speed in which they had to exit the scene upon the arrival of Special Agent Adams. Now, I've talked at considerable length about the tragedy of this day. But the tragic events of this day were not yet over. The agents are now dead, the sniveling coward that shot them has fled, but the tragic events are not over, We have yet another death that day, young Indian boy with Leonard Peltier in this group there to help replace ruts or whatever the explanation. But later in the afternoon he dies.

Surely he was involved, had responsibility for what had happened to the agents. But here's a young Indian boy that has also died. It's as a direct result of Mr. Peltier's leadership because he followed this man into a path which no human being should take and he's just as dead as the agents, and he'll never come back either.

Mr. Peltier left the cars, he left in a hurry. He left {5007} the one crucial most important piece of evidence, that's the shell casing, 34-B, little piece of brass. That little piece of brass was fired from this weapon (indicating). That's not speculation, that's not suggestion, that's fact. Ballistics expert testified that it was a fact from the markings on this thing. There's no other gun that could have extracted that bullet or that shell, and that evidence stands completely unimpeached by any evidence in this case.

Do we think for one minute that if some other expert would have said that wasn't a fact he would not have been here to testify? You've heard no such evidence. What we did have was a question raised about the finding of that exhibit. Mr. Lodge apparently in his -- or Mr. Hodge -- or excuse me, Mr. Cunningham apparently in his, by an oversight, included that in his affidavit. No question that was wrong. And a great deal of testimony was taken concerning this affidavit. But the strange part is that when Special Agent Lodge got on the stand he had some notes, some old tattered notes taken a year and a half ago where he had made a list of the things he found. And the last page, what do we have? Exhibit 34-B, one .223 caliber Remington-Peters. A Remington cartridge case, R.P. and suddenly we didn't hear any more about Special Agent Cunninghams' mistake because that was found by Special Agent Lodge a couple days after when he searched for {5008} fingerprints and there's no question about that.

There's only one way that that shell casing got into that trunk. It got into that trunk when a murder shot was fired. There are other shell casings, I won't go through them or enumerate them, that were likewise found that were extracted from this gun

(indicating) found in tent city, I believe one on the hood of the Ford, one in the red and white van if I recall. Apparently a whole bag of them found inside of the Ford. All of them were extracted from this gun (indicating). Not some other gun, not this gun (indicating) as we introduced as a sample, or demonstrative exhibit, but from that gun (indicating). That gun which was in the hands of Leonard Peltier on June 26, 1975.

As he left the area I believe the testimony was, if I recall correctly from Mr. Draper, that Mr. Butler carried out one of the agents handguns. Mr. Robideau carried out the two long guns and somebody else carried out the other pistol. I believe Mr. Draper could not recall who that was.

As they left to the south, numerous testimony -- or witnesses and testimony they went through the culvert. Their trail was marked by at least two exhibits, a .44 cartridge casing which I believe Anderson said that he fired and by a canteen. We have other physical evidence which is in this case and I won't go through it all because I don't think it's necessary which I can point to specifically that corroborates {5009} the stories of all the eyewitnesses again and again. I won't go through them in a great deal of detail, but I think on the map I should make some explanation as Mr. Sikma did earlier.

These numbers correspond with various guns as is shown in 34-I. 34 series, a shell in the trunk of this car, one found up here (indicating), several up in the tent city area.

With regard to the other guns that we found put in people's hands and traced to the tent city area, or the Jumping Bull area, we have an M-1 rifle. Casings were found here (indicating), found up by the green house, Shell casings were also found, or shells themselves found in both cars. Butler had that rifle that was the testimony. He was firing that rifle from in this location (indicating). Mr. Robideau testimony was, and I'm not sure how definite it was, but at least the indication was that he had the .45 automatic. The shell casing were found by the green house, that also bullets in his cars, I believe it was Williams' car. Mr. Williams, as I said earlier, he had Mr. Rooks' rifle, the .303 British. Shell casings were found by the log house over here (indicating). Also shell casings, if I recall, by the white house. And I believe there was also one cartridge found down here in this area below the wrecked cars. {5010} Mr. **Brown testified that he fired the .22. One of his shell casings was found up by the log house.**

Mr. Stuntz apparently was firing two weapons. Testimony of Mr. Anderson was, if I recall correctly, that Mr. Stuntz started out with the .44, a little carbine, then he switched to the 30-30 which was found near his body when he died because the .44 got too hot. And Mr. Anderson testified, if you recall correctly, that he carried the .44 out and he fired it on the way out.

Then we come to Mr. Peltier. What weapons was he firing? He was firing the AR15, 34A. The list of where the shell casings were found positively identified with that weapon. We have two bullets, one of which I previously discussed, the other one which

was found in the car could have been fired from that gun, could not have been fired by any gun, which is known to have been present that day. Could have been another gun of the .22 caliber if it had the same rifling. But there is no evidence of any other gun of that caliber or that make capable of firing those two shells on that day.

Perhaps a question should be raised why didn't we find three shell casings rather than one down by the agents' bodies? Well, the argument there is quite obvious. There is nothing unusual about someone who just committed first degree murder picking up some of the evidence and taking it away {5011} with them. They weren't involved in a fire fight right then. The only people that were shooting at them were dead. They're down stripping the bodies of their firearms, other personal things. Apparently the checkbook is taken, or was just in the car.

But then someone arrived. Special Agent Adams. And they fled. They didn't have a chance to search long enough to find the third shell casings. That's why we found that one. The other two were picked up. We know Ron Williams and Jack Coler didn't pick them up. They were lying on the ground dead.

Let's look for a second at the agents' guns. Special Agent Coler's pistol fired one shot which is found in his car. For all we know that shell could have been shot at a gopher or jackrabbit or something. Simply in the car. But there was one shell casing found from Special Agent Coler's gun.

Special Agent Williams' pistol, I think it's fair to assume, came out of his gun that day because they were in Coler's car. Not his car but Coler's car. Apparently he ejected a couple shell casings. Why he would eject one instead of all six, nobody will know. We have three shell casings 1 associated with their pistols.

Then we have Coler's shotgun. One shell casing. What he was shooting at we'll never know. We have one shell {5012} casing.

Special Agent Coler's .308, we found one shell casing. Five shell casings found that were attributable to any guns that the agents had with them and had fired that day. I think it's probably fair to assume, and perhaps you can assume and want to assume, that the agents' guns were also empty at the time they were stolen, that they had shot all six rounds in each gun. There is 12 more. We come up with a grand total of possibly 17 shots fired by those agents. 17 shots. What have we had fired by the defendants prior to the death of the agents? We don't have to go count shell casings. We don't have to speculate about somebody picking up shell casings. We know how many shots were fired at those agents. There were 125 bullet holes in those cars, either bullet holes or ricocheted bullets, entry marks on those cars. 125, and that doesn't even count the shells that went through the glass. If you look at the cars, all the windows are shot out of the things. Special Agent Williams' car doesn't even have windows in it when it gets back to tent city. How many more shots went through the glass? Who knows. How many more shots missed that never hit the cars or windows or anything? But we know there was

150 because that's there and that's countable. Here we have 125 shots as against 17 shots and that in itself tells a very, very sad story. These agents never had a chance. They never had a ghost of a chance. {5013} Pistols against rifles. They never had a chance.

The evidence is clear without any question that at Al Running's the group split up, apparently each of the main individuals, Robideau and Butler and Peltier, taking his trophy with him.

September 5 Special Agent Williams' revolver was found at the Al Running residence where Butler was staying in a room where Butler was arrested, or staying, with shells from both agents' cars, or both agents' guns. Perhaps these were the six empties that were taken out of each gun by the murderers when they got back to a safe location. But there were six shell casings, and I won't go through them specifically, you recall the testimony, from each gun found with Mr. Butler.

The pistol was found in Mr. Casados' red Jeep or Scout, whatever you call it, right outside of the cabin.

September 10th the station wagon blew up in Wichita, if I recall the date correctly. An AR15, 34A, Special Agent Coler's .308 were found and who was in that vehicle? Mr. Robideau, Mr. Charles and Mr. Anderson, several girls and I believe maybe one other person. Robideau, Charles and Anderson. And where have we seen those individuals before? On June 26th.

September 9th Mr. Peltier purchased a Plymouth station wagon in Denver, Colorado. Englewood, Colorado I believe to {5014} state it correctly right outside of Denver. Had Special Agent Coler's revolver with him. November 14 this was found, Special Agent Coler's service revolver. He had fired one shot out that we know for sure. We don't even know that for sure. Maybe that was a jackrabbit he shot at. This service revolver was found in Ontario, Oregon. How do we know Mr. Peltier was there? I think we know. It was found in this bag, little brown bag, shopping bag, with Mr. Peltier's fingerprints on it. Where was the bag found? It was found under the front seat of the recreational vehicle that Mr. Peltier was in. And strangely enough it was found right under the front seat where he would have gotten out of the vehicle when he got out and confronted Officer Griffith. Right front passenger seat. No question that this is the same bag, same gun. It is unimpeached on that.

The individual that got out was identified tentatively by Trooper Griffith. Couldn't make a positive identification that this is absolutely the guy but he thinks it was. That individual jumped the fence, made his getaway. And what did he do when he jumped the fence? Fired back at Officer Griffith.

An individual matching Peltier's general description was seen about an hour later attempting to hitch a ride in that same area.

Peltier's fingerprints were found on the Barker ranch {5015} on the refrigerator. Blood was found in the refrigerator and was also found on the fence that he jumped back by the scene.

Prints were also found on Mr. Barker's Rancho which was found 100 miles or so from Ontario. 30-30 rifle stolen at Barker's was also found in Canada, or found in Canada, and that again has Mr. Peltier's prints on it.

Further, Mr. Peltier gave the Mounties two different versions of having been shot at in Oregon. I believe one version was to Mr. Parlane, if my memory serves me, he was taken back to the office and shot in the back and the other one was he was shot on the highway. I believe that was Mitchell, if I recall the names correctly.

There was only one person shot at in Oregon, a Mr. Griffith. The individual fleeing over the fence that had just fired at him. The only person shot at.

We come then to the question of what has the defense established in this case. They have established a couple things I would concede. They have established without any question, without any doubt, unequivocally that FBI agents are human beings and they bleed and die. They've established that they feel very badly when somebody shoots one of their friends. I suspect they have about the same emotions that you and I would have if one of our close friends was shot down in such a brutal, cowardly way.
{5016}

The defense established that massive investigation was conducted to bring these culprits to justice, and again I concede, so what. Does defense counsel really expect the FBI to have sat around in their offices and waited for these men to turn themselves in? Is that how defense counsel would have solved this crime, brought these men to justice? I don't think we'd have had a trial if they would have done that.

One other thing I think I should touch on very briefly because it is part of the charge and it's part of every murder charge is the matter of self-defense. In any murder case the government obviously has the burden of establishing that there was no justification and the principle justification being self-defense for a murder. This point needs little argument. The agents here were not the aggressors. The agents here were doing their job, were attempting to apprehend the fugitive. I believe the Court's instructions, and I won't go into them in any detail, will simply be that the aggressor cannot claim self-defense except under very unusual circumstances.

And further, the facts of this case as I've gone through them I think speak without any question to the fact that self-defense just by the physical facts is not applicable to this case. Once you have been disabled, let's assume for a second that somehow or other the agents started this fight, {5017} not for the purpose of making an arrest but simply to kill somebody. They decided that morning that they wanted to kill somebody so they started the fight and all this stuff had happened. They had been completely disabled. Even if you're not the aggressor, you can't kill the man after he has been completely put out of commission. That's first degree murder under any stretch of the imagination or law. I think the Court will instruct you appropriately on that

matter. But clearly that didn't happen here. You can't even get to that argument because it didn't happen.

The question here that these men were in the performance of their duty, they were doing their job. They were attempting to make a lawful arrest. I believe the Court will instruct you that you cannot interfere with a law enforcement in the performance of his duty. You can't interfere with his arrest. If you did we wouldn't have anybody arrested, all we'd have is dead police officers. Officers even have the right to use deadly force to affect an arrest if that's necessary. You can't interfere with that. You can't claim self-defense when an officer comes to arrest you for a felony charge. That's just what Leonard Peltier did, committed first degree murder.

A suggestion has been made during the cross-examination, I believe principally of several government witnesses, that perhaps these people were just defending women and children. {5018} I believe Mr. Brown was asked something about "be a man." Mr. Stuntz told him to be a man, go back and protect the women and children. Even if by some warped logic you could say that's applicable to the people at tent city, it certainly doesn't apply to Leonard Peltier. He knew who these agents were. He was there when it started. The women and children up there in this area weren't being shot at or threatened in any way by these officers. Where were all the women and children he was supposed to be protecting?

We come back again to the matter of self-defense. It's a very simple fact we have got two against seven, rifles against pistols. What are they defending other than Leonard Peltier from being taken back as a wanted fugitive. I think perhaps that additional comment should be made that Leonard Peltier had displayed his concern for women and children when he fired at Officer Griffiths, fired right back over the heads of the women and children to shoot down the police officer who was attempting to apprehend him. We also have his statement to the old Indian elder in Canada overheard by Corporal Dahl which again shows his concern for women and children. "What would you have done had you known these people were coming?" "I'd have blown them out of my boots," or "out of their boots". "Would you have done that even with my grandchildren here?," What was his concerned response? "My life."

Ladies and gentlemen, I think I've talked long enough for my part of this.

{5019}

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

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

fight, fired at the agents again and again from the tree line.

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

THE COURT: Will counsel approach the bench, please?

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

THE COURT: Would you like to go into your argument at this time, or would you prefer that we break for lunch?

MR. TAIKEFF: I believe that we can break for lunch {5020} because I have to reply in a single summation.

THE COURT: Very well. We will do that.

MR. TAIKEFF: Thank you, your Honor.

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

THE COURT: In order that defense counsel will not have his summation interrupted by the noon recess, I am going to declare the noon recess at this time; and we will reconvene then at 1:00 o'clock.

The counsel have just indicated they want to take something up with me after the recess, so the jury is excused now until 1:00 o'clock.

Just a moment. My court reporter just reminded me of something. I have an arraignment on another matter set at 1:15. This was set, of course, some weeks ago, and we had no way of knowing; and the attorney, as I recall it, defense counsel in that case is from out of town, so we will have to recess until 1:30.

(Whereupon, at 11:43 o'clock, a.m. the jury left the courtroom; and the following further proceedings were had out of the presence and hearing of the jury:)

MR. ENGELSTEIN: Your Honor, may I be heard?

THE COURT: You may.

MR. ENGELSTEIN: I wonder whether your Honor would reconsider and hear argument again after the summation {5021} on the issue of charging the jury with murder two in light of the summation given by the Government?

I don't want to make the argument now, but when the summations are concluded.

THE COURT: The Court considered very carefully what the instruction should be in that respect. The defense requested an instruction only on first degree. The Government requested an instruction on first degree, second degree and manslaughter; and the Court feels that, based on the evidence in the case, the instructions as composed are proper, and I think I understand what you are referring to insofar as counsel's argument is concerned, it still is circumstantial evidence. It is still evidence which the jury must consider, and the answer is, "No, I will not hear it."

MR. ENGELSTEIN: Your Honor is, of course, aware that the defense will take exactly the same position as the Government with respect to that question before the jury, on the question of murder one?

THE COURT: I am aware of that, but I still think it is a matter for the jury.

MR. ENGELSTEIN: Thank you.

THE COURT: Unless there is agreement by counsel on both sides that only first degree should be submitted.

MR. SIKMA: There is not, your Honor. We think that {5022} the instruction on second degree murder is appropriate.

THE COURT: Very well.

MR. TAIKEFF: One question. Normally we vacate the courtroom during the recess; but because we have all of our papers and transcript here, may counsel be privileged to stay in the courtroom during the recess? If the Marshall wants to lock the jury out, we have no objection to be locked in.

THE COURT: Does the Marshall have any problem with that?

THE DEPUTY MARSHAL: There is always somebody outside, some personnel.

THE COURT: That request is granted.

MR. LOWE: You have a 1:15 arraignment in here?

THE COURT: 1:15, we will have an arraignment.

MR. TAIKEFF: We will vacate before then if the Marshal unlocks the door.

THE COURT: Mr. Taikeff?

MR. TAIKEFF: Yes, sir.

THE COURT: The Clerk just suggested that perhaps can hold that arraignment in the small courtroom down on the next floor, and I think that that probably is a good suggestion. Then you won't have to move.

MR. TAIKEFF: Your Honor, I believe there is a possibility we will finish with what we have to do before {5023} then. We will notify Mr. Hanson if we vacate before 1:15.

THE COURT: All right.

MR. TAIKEFF: Thank you, sir.

THE COURT: The Court is in recess.

(Whereupon, at 11:46 o'clock, a.m., the trial of the within cause was adjourned until 1:30 o'clock, p.m.)

{5024}