

Ladies and gentlemen, if you bring in a guilty verdict in this case, you will deliver terrible retribution. Thank you.

THE COURT: The Court will recess until 5:10.

(Recess taken.)

THE COURT: The jury may be brought in.

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

THE COURT: You may proceed.

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MR. HULTMAN: Mr. Taikeff, Counsel for Defendant, Your Honor, members of the jury.

There is a saying with which I know you are all familiar that the first shall be last and the last shall be first, and as to the lawyers I am now that person and I am sure that you're pleased that that is the case and welcome it.

But because trials are participated in by lawyers and because trials of necessity concern words, words of lawyers, but more importantly, and as far as only the considerations you are to make, and I know you understand that, the words of witnesses, that we not loose sight of the significance or the importance or the difference between the two, the words lawyers and the words of witnesses.

I think it's been apparent to you from the beginning of this case, and it hasn't been it certainly has been in the last hour and a half to two hours, that there is some question as to who is on trial here, and thus so that we're now dealing with lawyers' words but with the words of those who truly make that determination, that of witnesses I want to refer back because the last may still be first in your minds to what Mr. Taikeff said within the last few minutes. Now you recall at the end of the last few moments of the first half of his remarks, I was one of those who joined, and he specifically referred to me, of being, I don't remember the exact words he used, slight of hand, as I recall it. I say {5126} without any proof, without any evidence he made that accusation for which he then a few moments after the break later apologized to you. That's important because that's

significant.

But the accusation he made in the first place was the kind of accusations he's made in the last hour and a half, and I'm not going to deal with all of them, I will only deal with a few of them illustratively because I can't possibly in an hour's time deal with three hours.

There are the pictures that I showed to the witness. You've seen them. They are in a pack called the autopsy report. But those are the pictures of the agents as they were found, the condition they were in. Not if there is something slight of hand, if there is something dishonest, if there is something about this government in doing that that's not proper and appropriate, then I stand fully guilty because that's what we're concerned with here in this courtroom, not slight of hand, not remarks of lawyers, not fancy questions, not complicated questions, yes or no, but a search for truth, justice, a search for the truth.

Now the truth doesn't come in a package where everything is perfect because if it does I'm sure you would be the very first one to conclude very quickly there probably isn't very much truth in whatever that statement, that witness, that piece of testimony is, because I ask you, but in a simple {5127} illustration, and I think I asked you this, possibly some of you in the voir dire, if seven people, seven of you were at Jumping Bull's on that day and the events that did happen there, whatever they were, would it be fair for me to conclude that if you were one of the seven participants around the Jumping Bull area with which we are primarily concerned doing the things that those seven people did, that you would all sit down, under oath and say exactly the same thing. If you did, I'm sure you would come to a very ready conclusion to use the phrase, or something equivalent, of Counsel, there is something smelling here or there is something rotten somewhere because things just don't happen that way.

Each of you would have seen and observed and reported the participant events that you made and if at one moment you're on the hill you can see what's going on at the cars and if three minutes

later you're back in the tent city to pick up another weapon, then you're just not going to see at that moment what somebody else is, or one of the six of the rest of you on the hill at that moment is observing what's happening on the cars. Does that mean that we then conclude that somebody's a liar, somebody's come here and misstated? Oh, no. It means that unless it doesn't square in some way, very significant, important, that that is in fact the way things really happened honestly and fairly. But you can take a lot of reports and you can take a lot of pieces here or {5128} there like one single word out of a sentence or one sentence out of a paragraph or one sentence out of a report and you can prove something that may look right on the surface to be you know, loud and clear that that's exactly it and there is no question. But like a chameleon, when you put it in its environment and put the rest of the facts with it, the rest of the words in the sentence, the rest of the paragraphs in the report, the rest of the testimony that's involved in the evidence, you can then see the true color of what that chameleon is because it reflects all of that surrounding and the things that impact on it.

Now let me show you just one illustration, it was the last one that counsel vociferously said in effect that **Waring is a liar or Brown's a liar,** and that astounded me because I believe he has said time and time again that if there is anybody here that **that you can believe it's a 15 year old teenager at that time named Brown.** But at the same time he's saying to you, **he didn't mention Brown at that moment, he talked about Waring,** the big bad FBI, that how could Leonard Peltier possibly be at that corner and doing the firing. Conclusion that he was asking you to make, am I fair, that's a lie, couldn't happen, he had to get in a tree.

I want you to just look at one simple photograph and you will find out very quickly whether anybody's lying, whether the FBI had to get in a tree and then falsify that {5129} they could see. You look at that photo right there **and if you can't see where Leonard Peltier was and where that car is,** then I'll admit to you that everybody that's had anything to do with this case as far as the government has been a

lie.

Now that's what evidence is, not what lawyers get up and conclude for you. It's what the facts with your eyes and your minds as reasonable people can conclude from the evidence in this case, and I will ask anyone of you by looking at those two photographs if there is any question in your mind and that I might get up close enough that you might see that you can stand at those autos or stand at that corner or stand anywhere and shoot point-blank as Leonard Peltier this defendant did as the truthful witness, the only one evidently, **Mr. Brown said he was doing.** You don't have to get in a tree to make that kind of a decision or you don't have to get fancy words accusing the FBI that you couldn't see there so you had to get in a tree.

If that isn't good enough, when you walk by the next time that mockup over there, you take a look at the same two spots and see if you have any more questions in your mind.

Well, let's talk about another one that a great deal of time was spent on with a lot of charts and a lot of views and view graphs and reports, Q numbers, et cetera. And it's significant, it's very significant and that's why I've selected it as the second one because it has to do not with the last hour {5130} and a half, when I only heard maybe in five minutes what we're really here concerned about and that is whether or not Leonard Peltier is guilty or not guilty of the crime of murder and that has to do with evidence.

Earlier a lot of discussion was told about a number of rounds that had to do with the capability and a relationship to some specific kinds of weapons, one kind here in particular, an AR15, because it has some very important significance as far as this trial is concerned which I don't think there's any doubt in your mind by now. You remember back each day with each witness when they talked about an AR15 **and who the only person was on the 26th of June, 1975 that had such a weapon.** Not two, not three but one, one person.

Now they said there are a lot of rounds that have to do with a certain company, and you'll remember the testimony here, and about that particular kind of ammunition and where you can get it. Here

again I indicate to you that my remembrance of what the record stated, and don't accept what I'm saying here now unless it squares with what you remember or if it doesn't square it's the word of lawyers again, only when the words of lawyers square with what the words of the witnesses were and the exhibits, ought you to even consider them in any light.

Now I want you to go, when you go to the jury, I want you to look in Government's Exhibit 34C which is the exact {5131} exhibit concerning the rounds they were talking about and look at each one of them in this package, the 20 or whatever the number was that was up there on the chart, specific reference to it that's in the report that was referred to, and you'll find out what kind of shells they are. I will venture a guess for you but you don't have to take my word. You're going to look and see what the exhibit says because that's the thing and the only thing that counts and I think you're going to find that they are not Lake City. I'm not going to spend any more time on that particular part except to draw a conclusion and that is that the rounds that came from this weapon are the rounds of significance and importance and the rest of the rounds that can come from a weapon of that kind are these rounds here that were very carefully pointed out to you on the view graph and so forth. But there are also three or four more and that will include then all of them and we'll draw some conclusions from them.

Now I'm not going to attempt in any way to go back from the beginning and challenge the things that Mr. Taikeff in great detail has enumerated because I don't have the same recollection in many instances of what he allegedly said was what the witnesses said but I'll pick off one or two more. I don't remember any testimony about a BIA agent saying "It was the guy in the white t-shirt that I saw" or words to that effect. Now if you did, that's the conclusion you should draw. {5132} But I go further and say what's it got to do with anything? What does it have to do with anything? What does the last hour, all the questions that he asked about phantoms really have to do with anything. When you compare the phantom questions with what the

evidence here specifically shows and that is what I'm going to address with you, not whether or not I may have been there possibly on the 26th or one of you, that's possible. There isn't any question about it. That's possible. But the things we're concerned about here are not what the possibilities are, we're concerned here with what those things that are first provable beyond some given standard and it is that comparison for just a moment that I wish to make with you and I wish to do it with simply this one weapon and a round or two in the process.

Now there are some things about which there is not just something of evidence that's been proved beyond a reasonable doubt but there are some things that have been proved here beyond any doubt and that's a burden that the government doesn't even have. For example, there isn't any question that the government has proved as far as this weapon, not beyond a reasonable doubt, but beyond any doubt that certain rounds were fired from it. Do you remember the testimony of the expert? He just didn't say beyond a reasonable doubt, he said certain rounds unequivocally, scientifically beyond any doubt have been fired from this weapon.

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Just by way of illustration, now there are some other things that are proven beyond a reasonable doubt by the fact that when you take all of the facts and circumstances of the given time together you then have a right as a juror, as the Court I think will instruct you as I'm sure you conclude anyway, that you can draw a reasonable conclusion.

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Now, that doesn't mean that conclusion is beyond any doubt, like in the case of certain rounds, but reasonably, and that's why it is reasonable for you to conclude with reference to the bullet; and I say to you, is there something mysterious or did the Government in some way try and pull a fraud on you when right from the beginning we indicated that there was a classification here different from down here (indicating). This is beyond any doubt, but here is a factual circumstance, something short of beyond any doubt, and why?

Like with so many things in human life, you can go so far down the road in terms of indicia, and that's all there is. There ain't no more as the saying goes, just as with these items here (indicating).

Now, so long as you go down that road, and you swear in your own mind and draw a reasonable conclusion, then that's beyond a reasonable doubt. Now, if down the road there is something that clearly "Xes" out that the bullet had to come from another weapon, like up here, then there is no doubt at all. You can "X" that out, and there's no, not even a reasonable doubt that it didn't come, it is absolutely certain it didn't come. Therein lies just a simple illustration of the quantum and the types of proof that are involved here; and I would like you to consider and keep in mind, as we talk for a few moments, {5135} about some specific items of proof.

That is why scientific evidence, although it is circumstantial, in some instances is the very best evidence that's humanly possible because like that thumbprint, there was only one. In a thousand persons with two eyes, 2,000 eyes might look at the same individual and say, "Yes, even at 750 yards on the 26th, I think it was somebody," and be wrong and be mistaken, honestly mistaken; and that might just be a reason why Jimmy Eagle has not been prosecuted for the crime, but there are some things beyond probable, beyond any doubt; and I am not even sure I want to respond, but I think I must because it is significantly important, that when you don't find five and a total handprint and everything else on a brown bag (indicating) that's got one of the weapons that the agents had with them the last time they were alive, the conclusion to draw there is circumstantial, but I think a reasonable conclusion to draw just from that one fact alone.

Is it just possible maybe the individual who without any question, beyond any doubt, and it doesn't take five, it doesn't take a handprint, it only takes one, the experts told you that, you don't need to be told that. When counsel says there is something mysterious, there is only one round here, that you might just conclude that the persons whose {5136} fingerprint on the bag in which there is a weapon that was in the possession of an agent at the time he is murdered and

who has just run from the vehicle, in the seat where it was located, and has fired a shot as he is in the vicinity of a fence, you might reasonably conclude that that person may possibly have had something to do with the murder of that individual. I think that might be a reasonable conclusion to draw, not beyond any doubt, but even that alone may be beyond a reasonable doubt.

Now, let us go back just for a moment, you with me, and let me visit for a moment about something that I don't think really there is any doubt about and maybe some things about which there is some difference as far as what somebody may have said at one time or another; and the only reason I am doing this is not again because if what I say, when I refer to somebody's testimony, is not what you heard; and I mean what you heard here -- and don't think anybody has got any basis to conclude here that there has been any people lying up there. I think what you have heard under oath you can reasonably conclude has been honest and fair unless you have seen something that says to you, "Oh, no, that's dishonest, there is something about that."

Let's start with why it is that two agents are doing something on that day. Now, were two agents out doing {5137} something that day that had something to do with a hundred year ago history, or what the relationship was between Leonard Peltier -- and this is the only time I am going to mention it because I don't think it has anything really to do with anything as far as the murder of two agents that day -- the American Indian Movement.

Let me ask you one question: What did Coler or Williams on the 25th, when they are looking, trying to do their job, for somebody who has been charged with a criminal act, Jimmy Eagle, have anything to do with this Defendant and the American Indian Movement?

Now, if you can put something together there as reasonable men and women and draw a conclusion from it, then that's got something to do with this trial. You draw it, and you should draw it, but all I can figure out from everything I have heard is that there were two FBI Agents going about their job, as they have to go about their job every

day, doing the things, yes, doing the things that a lot of testimony here said they ought to be doing -- if there is that much concern and if there is that much going on on the Pine Ridge Reservation, they better be doing it - and they were doing it.

Now, simply they were searching for the apprehension of a person by the name of Jimmy Eagle; and some things then flow from that that are kind of reasonable for you, {5138} and as reasonable men and women for conclusions then draw, and maybe just why Jimmy Eagle's name, and when somebody said they thought they saw him at some place along the line, along with some other things, somebody may have logically concluded, "Well, maybe there ought to be some consideration made about it," but that's not the end of the road. That's not the end of the testimony, that's not the end of the facts. That's the one word in the one line of the one page of the whole book. There are a lot more pages to be gone into and to be checked out and to be cross-checked before you draw that ultimate, final conclusion.

So what happened? The agents were charged with other responsibilities too, other warrants. They were charged if they saw or learned, or of an act committed in their presence of a crime, that's what everyone, I would hope, would pray they would do on the 25th of June, 1975, and would do this afternoon, if we are going to do something about assisting and helping to meet the challenges of law enforcement on that Reservation.

Now, I don't see what about that job and that responsibility and those acts have anything to do in any way other than a constructive way of what now, within a few hours, is going to happen.

Now, that night in seeking to find their duty, they {5139} ran into three young men on Highway 18. Now, counsel then accused the Government -- and you remember in his argument awhile ago, that there is something devious about that -- the Government bringing that in.

Well, I say to you there is something very significant and important, and I hope and pray that you will consider this along with everything else, that there was some conduct on the part of the FBI that night which is a part of this big challenge. These are the people

that are on trial here, what did they do? They thought maybe one of these three young men, teen-ages, were Jimmy Eagle which is kind of a logical thing to conclude if you have heard he is in that very neck of the woods, to use the phrase, and not knowing, they took the three of them downtown. They took them into Pine Ridge to somebody who really knew or they thought could possibly know, somebody who lives there. Why? Because these are two agents that are kind of new in the territory. One of them has only been there on a 60 day assignment. It is not like downtown Fargo. As comparisons here have been made, it is thousands and thousands and thousands and thousands of acres as well as some communities.

So what do they do when they find out it isn't Jimmy Eagle? They ask that somebody escort them back to wherever it is they were going.

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Now, if that's conduct that's other than expectable within the line of duty and the responsibilities of members that we charge with such responsibilities, then I hope there is a lot more of it, and especially on Pine Ridge with the problems that have been indicated here as far as the testimony of a number of witnesses, seeking to solve a crime and protect citizens against such individuals; but that isn't the end of the story. That isn't why it is really significant because as far as the Government is concerned, that's the sideshow. That's the other trial that they would like to have you in from the beginning of this case to the end, not the Government, but the defense.

Something happened after that that had to do with that Defendant. This Defendant that's here in this courtroom in this trial. You remember what it was. When those three young lads went back, who did they check into? You heard the testimony. I won't draw the conclusion for you, and I will leave it to you, whether it has anything to do with this trial and whether the Government is trying to pull a fast one or double-shuffle or something or other; and I will ask you to remember what the remark that was made by some individual there from testimony to one of the three that was on the stand here, and that has

something to do with why we are here. {5141} That individual, if you will remember, responded to that young man and the other two concerning where they had just been and what they had done with whom? With the Federal Bureau of Investigation.

Now, that had something to do with what happened on the road, Highway 18, the night before, with why we are here; but it had a little to do with some other things a little later on too. It just happens that two of those three young men later the next day see some automobiles again, and they see some people again; and it just happens to be the same two agents in the same two cars.

Now, you conclude whether that has something to do with why we are here and then what follows; and if there is something devious about it, then the Government certainly admits to whatever that conclusion is.

What then did happen the next morning? The next morning the agents, back on the job, doing the same things they have to do day after day, nothing unique, nothing unusual. In fact, it was so usual that all they had with them in their presence, when they had to respond, were their handguns (indicating).

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Now, where was this big massive bad FBI, and what were they doing, the rest of them? Well, a couple of them were taking a prisoner who likewise had committed an alleged criminal act against another Native American. They were on their way getting ready to go take that prisoner to a jail. The limited other few that were around were in other places, other jobs, other responsibilities. Waring, back at Pine Ridge. But what about the big bad BIA? What were they doing? Well, I think you can remember very clearly that their S.W.A.T. team which they had organized, and I guess there's something bad about S.W.A.T. teams, and I think again we may need a few more on Pine Ridge from what I've heard about here. I think, and I guess maybe that's what they decided at that very time and place because they had organized one in order to carry out the law enforcement responsibilities which they had. And what were they doing? They were out with dummy

ammunition that very morning at the time some things are now about to happen.

Now, I don't know what's so bad and, you know, about that. They're just again kind of doing their duty, learning some new responsibilities that they might be better prepared to meet whatever those responsibilities are. Yeah. They testified without any question that they had a weapon similar in nature, but the type that they used which anyone just looking at it who really technically doesn't know the difference {5143} that there's a small slide here that makes it automatic or semiautomatic. I don't know what that's got to do with anything. As everybody has indicated and maybe one of you who may have served in the military knows the only difference between automatic and semiautomatic is in the case of semiautomatic it goes as fast as you pull the trigger. One round just as fast as you pull the trigger each time. Has something to do with accuracy, too, compared to automatic when they all go.

But what then happened? The agents still looking for Jimmy Eagle, one of the assignments they have, they go to the places they had been the night before because they had some information, sometimes not good, sometimes totally wrong, sometimes correct. And they went back to the area to look for Jimmy Eagle. And what happened ultimately? I don't think there's any question about what happened ultimately. They came back to where they had been because they had been told that the person they were looking for had been here; and I don't think there's any question in your mind that sometime he had been there. And when they got here unfortunately for them there was somebody else there, the defendant in this action.

Now, I ask you in your mind as reasonable men and women if you were someone who had been charged with attempted murder about which there is no doubt beyond any doubt, a cold {5144} fact, not beyond a reasonable doubt but beyond any doubt and if the night before you had said something in response to three men, three teenagers who had reported to their leader that they had just had an experience with the FBI and he gave the response that he gave, you might just as a

reasonable man, let alone as a reasonable woman come to the conclusion that they may be looking for me. That's what their job is as members of the Federal Bureau of Investigation, especially if you are wanted for the crime of attempted murder.

Now what happened? Very simply he made a run for it. He got in the vehicle which somehow now becomes a phantom, and, oh, we had phantom vehicles in this trial from the first day to the end; and there again I'll get back to words of counsel in his argument a second ago to you in which he specifically referred to me and my examination of a witness, and I don't know what the conclusion quite was that he was leaving with you, you draw that one, I drew my own, that I had attempted or in some way had put words in the witness's mouth. Now, you were here, you heard the testimony, you listened to me and when we ended up at the end what was it that the young man said with reference to the car, whether it was orange, whether it was red, whether it was some shade in between, whether it's a pickup, whether it's a vehicle, whatever it is? He said it is the red and white van, or whatever you want to call it by colors names, anything else, {5145} that everybody knows was right there (indicating), and is the one he had seen on numerous occasions before as many, many other people including Angie Long Visitor who knew he had repaired it and put it together.

Is there any doubt in anybody's mind as to what vehicle Leonard Peltier got in with two people at that house and took off when the two agents came in the road from Jumping Bulls'? There ain't no phantoms. It isn't an International Scout sitting down there in the junkers. Counsel concluded something to you, but I think maybe you had some doubts that might have had some significance about that one somewhere along the line. Now, maybe that's not reasonable for me to conclude, but that phantom kind of went out the window when Angie Long Visitor said that vehicle had been sittin' there for weeks. So now you get another phantom. Do you remember the phantom automobile we next come up with? We now come up with a phantom vehicle, and also now a phantom somebody who allegedly now is the person who ought to really be here in this courtroom for you. Somebody by the name of Casados.

Well, the orange van, and do you remember the cross-examination about that particular vehicle was with certain witnesses? Counsel got into some pretty, you know, pretty sharp discussion about colors and so forth. I don't know what the reason for all the problems about the colors were. There {5146} were all kinds of reports by all kinds of people who had been witnesses here about certain vehicles; and I swear to you and I submit to you that honestly and truthfully if you'll remember the same people talking about the same vehicle that is the one Leonard Peltier was in and went to the corner in which we've shown photographs, both from the defense and from the Government and about which everybody understands is one and the same and the very car. But which has been described by many times in many ways by different people that somehow we're to conclude that there's a phantom vehicle in there of some kind that has taken the murderer out. And so that's very simply why we brought in to show to you that the van that we had -- that the International Scout that we had a lot of discussion about concerning Mr. Casados from examination by counsel for the defense wasn't even in existence on the 26th of June. So that phantom vehicle then disappeared.

But what is the evidence as far as what then did happen? Now counsel likes to take again a piece out here, but not put it all together at that time. And let's talk now about one of those illustrations again. Something very critical and very important, and I'm sure that's why he used only one particular broadcast, or what one individual heard. It's only when we put it all together and listened to what everybody said that we can draw an honest and a fair conclusion.

Now, is there any question in your minds from all of {5147} the testimony that was here concerning what Agent Williams said as to what it was reasonable men and women came down to? The words might have been a little different, and under those kind of circumstances I'll leave it to you that the thirteen of you probably listening to the one and the same exact broadcast. Let's assume that it was one and the same, which is not the case here because there were a number of them

in a sequence about which again there is no question. But I'm sure that there kind of been a little variation in how you reported it, what your conclusion was especially in an emergency when you start thinking about other things. And I submit to you that the sum total, when you put all of the broadcasts together, what did they say? I think honestly and fairly they said exactly what happened here (indicating) and isn't that what one of the witnesses likewise said? And so it isn't Agent Coler and Williams again that only speak to you from the standpoint of what happened to tell them, and how it happened to that extent that a medical examiner, an expert can tell you. But they even spoke to you the last words of their lives. One of them in particular. And what did he say? I'm not absolutely certain, but I can recall what each of these people collectively said, and I don't find anything in it that doesn't really swear or all fall together or fit together. What happens? I don't know whether it was red and white, I don't know whether it was a Scout, I don't {5148} know whether it was a van, all of them, a number of them said something different. But then they question it was one car, it was the car that Leonard Peltier got back in with the two people and took off down the road that is here and of which all of you are familiar.

There's isn't any question about that. There isn't any question about the guy making the response. Says in effect "We're going after them, we got them on the gas, or we're following them," or whatever it is. It all comes out the same. Then what's the broadcast? "They're stopped, they're getting out of their car," and what is it? "They're getting out of their car," and I'm just using cars as a word to cover any possibilities of what any of these people said that were hearing a broadcast or a little part of it, they're getting out of their car." With what? With weapons.

Now, ain't that the same thing that Anderson said, too? Now somebody's lying. The agent was lying at the time he made the radio broadcast? Now, as reasonable men and women I think it's fair to conclude that that's exactly what happened. And what was the next broadcast or words? "They're firing at us." Now, if that's an

aggressive act on the part of the two FBI agents that day, as reasonable men and women you draw that conclusion. If that's self-defense on the part of Leonard Peltier at that moment you draw that conclusion because you're the ones charged with that responsibility.

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But I got another name for it. That's murder. Those two agents had a job and a responsibility at that very moment, and they were about it and doing it as a job. And they lost their lives in the next few minutes just for that reason.

Now, what then squares as far as further this defendant? Is there any doubt in your mind that Leonard Peltier, this defendant, was anything other than a person there at Wanda Sears' residence and got in his vehicle, drove it to take off, got out of it along with two others in that cross in the road. Well, you just don't have to take the radio broadcasts, you just don't have to take the physical evidence, but take now about four or five or six more witnesses and they aren't Government agents, because unfortunately the only people who can be called are literally, with one exception, somebody who participated. And they're not exactly the kind of witnesses that step forward, and you've learned that if nothing else from the testimony here, and say, "I'd like to tell you what it is I saw or observed as a witness, honestly, fairly and truthfully on the 26th of June," that the truth might be decided and determined.

Angie Long Visitor, now I don't know if the Government blackjacked her someplace or not, FBI tied her to a chair or something, I guess I don't think there was any evidence to that effect. Where did she say Leonard's car was? Where did {5150} Anderson say it was? Where did Brown say it was? Where did everybody say it was? But more importantly who is with the car, and I think that's a logical conclusion to draw, that maybe if you fixed it up and you drive it and it's your car that you just might be with it. That's reasonable to conclude. You get out of it with an AR-15 and you start blazing away at the yardage that's involved here.

Two agents in the middle of an open field down in a valley. You put it there and you take a look and I don't need to tell you it's ducks on the pond. Especially when they get out of their car and the only thing they've got to defend themselves with at that moment is something that just doesn't quite reach people with weapons of these kinds and those kinds who are now about to put hundreds of rounds into your cars and into you personally if one of them strikes you.

Now, is there any question in anybody's mind as to who was seen observed firing his AR-15 at that time? If there is then you got to disbelieve everybody that came here and said that they saw him. Now, I think it's interesting at this point that then we've compared just for a moment who the people are. They're adults, the leader, this defendant, and the man named Butler and a man named Robideau and I said men, and Joe Stuntz, and then some teenagers, fifteen, sixteen. Well, even Little Jimmy, eleven. He isn't even a teenager. {5151} And what happens? Sure, anybody who wasn't one of the three, the other two were Leonard who got out of the car with their weapons and started blazing, you heard the reports about that, too. There wasn't any question about those reports, that they're firing on us, they could even hear the rounds, and then if you don't get here soon we're going to be dead men or whatever the words were. And then I'm hit. Now, we don't have to prove anything farther than what that is right there for you to conclude under the law and the facts of this case that this defendant is guilty of murder in the first degree. {5152} You don't think he was at least an aider and abettor at that particular time, you draw whatever conclusion you draw without us ever going from that point on.

Now who is it through all of the testimony, not just of the government but of the defendant, that on the 26th of June, 1975, in the Jumping Bull area that has an AR15 or what somebody else would say looks like an M16, and I think that's kind of a fairly logical conclusion to draw for one who might have been looking at TV or something else when it's been stated the only difference is a little selector, who is the only single person by all of the witnesses? Now

if you don't want to believe those that the government has called, and the defendant can call anybody that they choose at any time if they think the government is misleading, or what about the phantoms and all that discussion. If you're really concerned about that as the attorney representing, then why don't you call that person? Now you have no responsibility to, and the Court will instruct you that this defendant stands here so innocent until proven guilty beyond a reasonable doubt. But isn't it fair for me to conclude as a reasonable person, if you know there is some witness out there or some phantoms that are really people who saw things or did things or are guilty of things, there is a subpoena and there is a right to call those on the part of the Counsel that's been talking to you before I'm {5153} talking to you.

They did in fact call a number of people, if you remember. They called one of their defendant's former women he had been living with and what did she tell you? That wasn't the government's witness. She hadn't been blackjacked by the FBI. She told you he was carrying one of these, she had seen him with one of them.

Now, but, oh, wait a minute. Here's the one. Here's the one and the big bad government, oh, they played tricks on you again. They didn't introduce the weapon. Now there is some responsibility I believe as reasonable men and women that if you're going to put something in evidence there is kind of a responsibility for you in deciding the issue, but more importantly even for me, if I'm going to voice it upon you, as Counsel has indicated somehow or somewhere I did or didn't do for some reason, that I have got to connect for you something between this gun right here and what happened there. I ask you, is there anyplace in this record anywhere that there is anything that ties that gun there by way of a bullet, by way of a round, by way of anything anymore than if I have one and I own one, and I don't own one and I don't think any of you probably do either, would be material for me to introduce here other than the fact that was something that was in the same van. Not with a fingerprint on it but in the same van with a lot of other people. You remember there {5154} were a lot of people in that van and there were a lot of weapons in that particular

van.

Now maybe it's just reasonable to conclude that the government didn't introduce it here because there is nothing in this testimony, including the defendant, that in any way ties that weapon to Leonard Peltier on that day and I submit to you that is a fact beyond any doubt. But there is one weapon that is tied to Leonard Peltier on that day, the one weapon, the one weapon that was seen only with one person. Now we're going to talk about circumstantial evidence and conclusions as reasonable men and women by taking it all, not just one word, not just one line, not just one page out of the whole book but all of it. He was the only one with one there that day. All the testimony shows that so I think you can conclude reasonably that he had an AR15 that day.

Secondly, he's the only one with an AR15 that day so I think as reasonable men and women we can conclude that anything that has to do with an AR15 that can be tied to that one just might possibly have something to do with Leonard Peltier.

Now let's look at those rounds for a second that are tied to that given weapon. There is one there, it's 34E. Now there is something again big and bad about the government giving you these illustrations and so forth, but I say to you that it's the only way I can put the whole book together {5155} and draw a sum, honest and fair conclusion in a logical way, and with those that do tie and not by putting 2,000 more up here that don't tie to anything or a gun or a lot more guns like that one that can't be tied to anything either. I think that might confuse me and possibly confuse you.

So what we have tried to do is put those things that do tie and have something specifically to do with 34E found at the log house. Who lives at the log house? Who was seen at the log house with an AR15? And that 34E beyond any doubt ties to that particular weapon. The phantom.

34G -- I beg your pardon -- 34D is a shell casing again from an expended round. Where is it found? Is it found in some phantom's red and white van. Beyond any doubt it's the same red and white van that

was there (indicating). It's the same red and white van that was there (indicating) and it is the same red and white van Angie Long Visitor said belongs to Leonard Peltier. He picked it up, everybody is in agreement, whatever color combination you want to call it. Now, and beyond any doubt, not a believable doubt, the weapon was that particular one.

Now there is another, 34F, and where is it found? It is found at the '67 Ford in tent city, and I don't need to remind you of something to do with the '67 Ford. Another phantom. And I ask you about another one, another one that is found in the trunk of the vehicle that was here at the only {5156} time as reasonable men and women it could get into the trunk, and not by a phantom but by one of those who was here with an AR15 firing it at that time on that day. I ask you as reasonable men and women to conclude just possibly who that phantom was. There is only one individual with an AR15 that day at this time and that is Leonard. He had it before, he had it that day, he had it when they got back down here. You remember the testimony about that. No question. Two or three people. He carried it out with him. And where did they go? Well, they ended up ultimately at a place named Running's as well as Crow Dog. And what happened to the rest of the weapons down here? There isn't any question. That's the last place four weapons that belonged to the agents were. One of them was a revolver of an agent and that ends up in an RV with Leonard Peltier in Oregon with his fingerprints on the paper bag. Only one, but that's good enough as far as the experts to be 100 percent. You don't have to have five of them.

But there are seven others that the defense, you remember, spent a lot of time with. Six and one. They went through all that, but you remember Hughes, he reported on his. It was night. Getting dark. Remember all about the things, the number of items, et cetera. He made a mistake and he said, "Either I made a mistake or the lab made a mistake," and that's a conclusion I thought honestly and fairly all of {5157} us here can conclude. One of the others did because there were seven. There isn't any question about it. Now where were those seven?

Where were they found? Remember where he said they found them, up by the green house. Now they don't match with that AR15. And there is a place the defense, Counsel and I wholly, heartily, unanimously agree. But I say to you as reasonable men and women, what's that really got to do with anything? Who is the phantom at that particular moment? That's why so much time was and why I did mention the kinds of ammunition that you take a look at there because that kind of ammunition that was there as well as found down here in the van which makes up then the total rounds here (indicating). Not the ones down here but the seven, the six and one that come from the kind of ammunition that FBI people get and get from certain arsenals. And if you'll remember the testimony, there were some agents late in the day who came up here and they certainly had weapons of this kind that shot those kind of rounds and they made an assault and you'll remember that there was testimony that before they got there to that point there was some rapid fire. If you have any doubts about it, you'll remember the bullet holes, at least some of them possibly that were in the houses up there at the end of the day. And when people take a look at it with photographs and in a movie that you saw as Government's Exhibit 10, there is no question where those rounds came from. {5158} They didn't come from the person who committed the murder down here, they came from the FBI. No question, when they went across here (indicating). The kind of ammunition that the FBI used. They're not the kind of ammunition that was found in the trunk, they're not the kind of ammunition that was found here, they're not the kind of ammunition that was found down here, that's the kind that you can get on the commercial market that the FBI doesn't use.

But if there was any doubt at all in any of our minds, let us just for one moment in conclusion deal with what continues to happen. I don't think there is any question in your mind as to who took out what guns from there that day. Robideau took out a shotgun and the other long weapon of the FBI agent. No question. Do you remember what one of the witnesses said? "Green sticker, FBI." Never had seen them before until they were taking them out, and that just might be the

reason why he left the Commando down at tent city, because it's pretty tough to carry three they have had and through testimony had been firing.

Dino Butler, he carried out the long gun, the big gun, the M1. No question about that, where he was, and that's why he put the specific items up there. Where he was, where the testimony says he was is where the rounds from the big gun are, and the same with all the rest of the basic weapons.

But some other interesting items. There were two {5159} revolvers. Remember. And they had never been seen before. A long one and a short one. But who loads up then part of the gear that's involved in the take out? Some of the same participants. And what happens with the same kind of massive guns and everything else that goes with the guns? There is so many of them that it blows up on the turnpike.

Now I don't know what these weapons are but they aren't at Pine Ridge. You aren't defending the women and children on the highway in Wichita with these weapons and with these kind of weapons. You buy a vehicle and do you use your name, Leonard Peltier? You use a name Martinez, and I think if you look at the defendant since the time you have been here you might conclude that might be a pretty good name to kind of reflect maybe what some people conclude your name might be or your heritage. And you move on out, and what kind of artillery, to use a phrase, do you have to protect the women and children in Oregon, not on Pine Ridge. The same kind of weapons. Now maybe you can buy all of those military weapons, the ones that are military weapons at the corner gun shop. I don't know. But I just ask you as reasonable men and women, how many times have you seen that many in the presence of one man without drawing a reasonable conclusion from it. What difference does it make whether he had Coler's pistol in the car in Denver? The government isn't contending anything about it being significant or important or even a {5160} conclusion that the pistol was in Denver. The significant, important point is that it is in the vehicle of this defendant where he is seated with his fingerprint on

it in Oregon and it's the same one that was in the possession of one of the two FBI agents when they were executed.

{5161}

But let's visit just lastly about some of the things that may show a state of mind or a frame of mind, that might or might not exist as far as what this Defendant's actions were. Beyond all the guns, beyond the fact that he was wanted at the time the two agents appear on the scene, what was the reaction to the next group of officers that he had a meeting with? The same thing exactly, go out blazing.

Now, defense can argue all they want to about again that some type of thinking or reasoning or something else about a conclusion that, "Well, it couldn't have been this fellow because he was not the driver that drove the van down on -- down the highway."

Now, you might be able to convince yourself of that, but I know there is an officer who sat on that stand that's not going to be convinced of that because he was there. You heard his testimony, you heard where he said the shot came from. It came from somebody who left the van and took off and did it blazing at about the point he is going over the fence. Maybe possibly circumstantially we might conclude then when he shot a round in return and it was buckshot, that maybe, just possibly the injuries that were sustained by this Defendant that were known at a little later time, just might as reasonable men and women happen at that time and on that occasion.

{5162}

Now, doesn't that kind of sound like the same kind of an encounter? An officer just trying to do his job, as you expect him to do, not Pine Ridge but on Interstate 80, Interstate 80 out there.

Now, what about the next, the next time there is an encounter? Once again with arms, loaded, you heard the testimony, even rounds in the chamber; and what does he say on that occasion, as well as what the physical evidence shows? The same attitude and frame of mind for which he is wanted, for which two agents paid their life for, the matter of this trial, law enforcement officers, not FBI, highway patrol, whatever they were, in Oregon, and the same thing up in

Canada; and "I would have blown you," whatever the phrase was, I don't remember what it was, but I think as reasonable men and women you concluded something.

Now, where there is self defense for the protection of women and children involved in what that evidence concludes as reasonable men and women, I say to you, there is not one scintilla, that when you put all the pieces together as a puzzle, or when you put all the words, lines, paragraphs, pages into the whole book together as reasonable men and women now, at this point, at this time in the trial you can come but to one reasonable conclusion.

{5163}

Maybe Leonard Peltier didn't beyond any doubt pull the trigger with his AR-15 down at the scene; but I think as reasonable men and women you could conclude that honestly and fairly -- but I don't think there is any doubt in anybody's mind that he didn't aid and abet and participate in the killing, mercilessly of two FBI agents that day, because if you only would take the testimony of what may be, might be called or referred to as the **Defendant's witness, Brown**, and what he said and what he observed, and with what else you know, I think as reasonable men and women you would have to conclude that he at least, when he got out of that vehicle with his gun blazing -- and you remember what **Brown** said, **he was down when he saw him and he was up, and he was down and he was firing** -- what way, what way could you claim that two agents with pistols at the beginning, that that is self defense, that that's not aiding and abetting in cold murder. Then you draw whatever conclusion you have.

Lastly, I believe that our view of this total situation speaks loudly and clear to you as to the part that Leonard Peltier plays. There was another person who died that day, and he had a right to live too just as much as two agents except for his actions that day. What was he doing? I submit to you he was doing exactly {5164} what his leader, Leonard Peltier -- the testimony doesn't say it, it says -- that Leonard said it to Joe, but he said it to the young teen-agers that were there, "That if you don't stand and if you don't do certain

things, then there are certain consequences."

And I submit to you, Joe Stuntz unfortunately carried out those very kind of orders that day, and not at the time that two agents were killed but in carrying out those orders at a later, subsequent time in blazing away when people came out of the woods and said, "Throw down your arms," not the word, "please", or "pretty please", but almost words to that effect. "Throw your guns down and come out," but they came out once again just as the Defendant came out of his vehicle at the "Y" in the road, with his guns blazing; but the difference was at that time, instead of two agents with just pistols and then trying to get at two weapons in a trunk, one of which is a shotgun which literally again was of no value or help to him, that there were people with other weapons of the same type and nature at that time, and there was return fire.

THE COURT: Mr. Hultman --

MR. HULTMAN: (Interrupting) Could I just conclude with one sentence, your Honor?

THE COURT: Very well.

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MR. HULTMAN: In conclusion, you, not the lawyers, are the first and the last in this search for truth. I believe justice today in this courtroom is just as precise and is to be tested in this time as in those times that counsel referred to, when a very wise man said, "Justice is the virtue of the soul, distributing that which each person deserves."

The Government in this case is asking nothing more, but justice demands nothing less.

THE COURT: We have kept you later today than we normally do, but we will start later tomorrow, so the jury is now excused until 11:00 o'clock tomorrow morning. The Court has a few more things to take care of. The Court will remain in session. The jury may leave.

(Whereupon, at 6:33 o'clock, p.m., the jury left the courtroom; and the following further proceedings were had out of the presence and hearing of the jury:)

THE COURT: Mr. Lowe, I believe you wanted to make a statement on an offer of proof?

MR. LOWE: Your Honor, I would be happy to do it now, but in view of the hour would your Honor prefer to convene a little bit before 11:00 o'clock? I think we are all pretty well dragged out today.

It may take a little while to read some of these things. I was, frankly, not anticipating your Honor would {5166} ask for that now. I had anticipated it would be after the charge, after the Jury was sent out to deliberate.

I don't even have my notes with me on that.

THE COURT: Very well.

What we will do then is reconvene at 10:30 tomorrow morning.

MR. LOWE: Fine. I do have one matter I would like to take up. I would like to make an objection on the record to Mr. Hultman using the evidence of the events in Oregon to show the propensity or character of Mr. Peltier rather than merely to argue a motivation for flight. I believe the essence of your Honor's ruling, if anything, was it was relevant to show reason for flight.

Whether that was specifically stated or not, it would be clearly the only tolerable purpose which would be proper for that evidence. Mr. Hultman went far beyond that.

We believe it is objectionable and move for a mistrial on that ground.

THE COURT: The motion for a mistrial is denied. The jury will be appropriately instructed on that matter, on the matter of what that evidence can be used for.

MR. LOWE: Of course, the problem is Mr. Hultman already argued on an impermissible basis, so nothing the {5167} Court can say now can possibly change that.

THE COURT: That is true. If it was on an impermissible basis, there has been other argument also that was on an impermissible basis; but I think that frequently happens, and I am speaking -- well, I am just speaking to comments that Mr. Taikeff made which I construed to be in violation of the previous rule that I had laid down, but I do

not intend to do anything about either one of them. I think the jury is capable of sorting this matter out and following the instructions of the Court.

MR. TAIKEFF: Would your Honor inform me what rule your Honor thinks I violated?

THE COURT: Yes. You quoted two different times direct quotes from the transcript, and I had laid down the rule that there was to be no direct quotes.

MR. TAIKEFF: I wasn't reading from the transcript, but notes which I had made.

THE COURT: They were directly taken from the transcript.

MR. TAIKEFF: From my understanding, we were not to reveal to the jury we were reading from the transcript so that they would not be impressed with the fact that we had a better source or a better recollection than they, and at no time did I have any page from the transcript with me. I had only handwritten notes.

{5168}

MR. HULTMAN: I did want to object on the record --

THE COURT: (Interrupting) As I say, I am ignoring it all.

MR. HULTMAN: I have one comment. I think it was very unfair -- I did not respond because I think it would have put it in a worse light -- when counsel referred specifically to the trial in Cedar Rapids, and I do object to that on the record.

THE COURT: The Court will then stand in recess until 10:30 tomorrow morning.

(Whereupon, at 6:37 o'clock, p.m., the trial of the within cause was adjourned until 10:30, on Saturday, April 16, 1977.)