

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) SS.
COUNTY OF PENNINGTON) SEVENTH JUDICIAL DISTRICT

FILE NO. CRI 09-3953

THE STATE OF SOUTH DAKOTA)
)
)
Plaintiff,)
)
VS.)
)
JOHN GRAHAM,)
)
)
Defendant.)

TRANSCRIPT OF
JURY TRIAL

VOLUME 4 OF 10

* * * * *

BEFORE: THE HONORABLE JOHN J. DELANEY,
Circuit Court Judge
Pennington County Courthouse
Rapid City, South Dakota
DECEMBER 2, 2010

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * A P P E A R A N C E S * *

MR. MARTY JACKLEY
Attorney General
MR. ROD OSWALD
Assistant Attorney General
MR. ROBERT MANDEL
Assistant U.S. Attorney
Representing the State of South Dakota

MR. JOHN MURPHY
Attorney at Law
Representing John Graham

* * I N D E X * *

WITNESS (ES) :	DIRECT	CROSS	REDIRECT	RECROSS
GARRY PETERSON	4	10	21	22
GARRY PETERSON	41	53	66	
ANGIE BEGAY JANIS	68	75	101	103
TROY LYNN YELLOW WOOD	105	138	187,195	192,195
EVAN HODGE	197			
ROBERT RITER	203	214	227	228
GEORGE PALFY	230	248	262	

1	EXHIBITS:	OFFERED/ADMITTED
2	9 - Peterson Vitae	
3	10 - Peterson Report	
4	11 - Brown Report	
5	11A- Orchid Cellmark Report	
6	11B- FBI Report	
7	12 - Photo	51/52
8	13 - X-ray	48/48
9	14 - X-ray	48/48
10	15 - Hodge Ballistics Report	201/201
11	18 - Photo	137/137
12	22 - Photo	131/131
13	48 - Letter	208/208
14	103- December Weather Chart	
15	104- January Weather Chart	
16	105- February Weather Chart	105/106
17	107- Chart	105/106
18		
19		
20		
21		
22		
23		
24		
25		

* * P R O C E E D I N G S * *

(Whereupon, the following proceedings were then had in open court and out of the presence of the jury.)

THE COURT: We ready?

THE COURT REPORTER:

Mr. Jackley?

THE COURT: Wait a minute.

GARRY PETERSON,

called as a witness herein, having been duly sworn, under oath testified as follows:

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. JACKLEY:

Q. Could you please state your name for the record?

A. Garry, G-A-R-R-Y, Peterson, P-E-T-E-R-S-O-N.

Q. Dr. Peterson, what is your profession?

A. I'm a retired physician, but I'm a physician.

Q. Could you take just a moment and discuss with me your educational background?

A. I attended college at Hamline University in St. Paul and at the University of Minnesota. And then went to medical school at the University of Minnesota Medical School in Minneapolis.

1 Following that I had a year of rotating
2 internship at St. Paul Ramsey Hospital which was the
3 city/county hospital in St. Paul. And then undertook
4 a five-year training period in pathology. The first
5 three years were in clinical pathology and anatomic
6 pathology at St. Paul Ramsey Hospital in St. Paul. My
7 fourth year was in forensic pathology at the Hennepin
8 County Medical Examiner's Office. And my last year
9 was in clinical pathology and anatomic pathology at
10 Hennepin Medical Center in Minneapolis.

11 **THE COURT:** Mr. Jackley, I am not -- for the
12 purposes of this pretrial hearing I am not disputing
13 qualifications so if you want to get right to the
14 substance.

15 **MR. JACKLEY:** Including the sexual assault
16 review?

17 **THE COURT:** If you want to lay foundation
18 specific to that, but we don't need to go through the
19 whole educational background.

20 **Q. (BY MR. JACKLEY)** Okay.

21 Doctor, did you conduct the autopsy of an
22 Annie Mae Aquash March 11, 1976?

23 **A.** I conducted a second autopsy.

24 **Q.** Okay.

25 There had been a previous autopsy done by

1 Dr. Brown?

2 **A.** Yes.

3 **Q.** Have you had an opportunity to review

4 Dr. Brown's autopsy report?

5 **A.** I have. I haven't memorized it, but I have
6 looked at it.

7 **Q.** I am going to place in front of you to review
8 for purposes of this questioning what will be State's
9 Proposed Exhibit 11, which is Dr. Brown's report.

10 Please refer to it if you need to, Doctor.

11 **A.** Yes.

12 **Q.** On the last page of the report there is a
13 reference to acid phosphatase.

14 What is acid phosphatase?

15 **A.** Acid phosphatase is an enzyme that is found
16 in very high concentration in male secretions and male
17 seminal fluid. Seminal fluid being the fluid in which
18 the sperm cells, the reproductive cells, are
19 suspended.

20 And acid phosphatase at the time this testing
21 was done was used extensively --

22 **THE COURT:** Let's go question by question.

23 The question there was, what is it.

24 **THE WITNESS:** I'm sorry.

25 **Q. (BY MR. JACKLEY)** Back in 1975, in March of

1 1975, February/March of 1975, what was acid
2 phosphatase used to indicate?

3 A. Was it 1976?

4 Q. 1976.

5 A. It was a marker for seminal fluid, for male
6 secretions. It's produced in the prostate gland and
7 was used as a marker for recent sexual intercourse.

8 Q. With respect to Dr. Brown's reference to acid
9 phosphatase, the vaginal contents were strongly
10 positive for acid phosphatase.

11 During your examination, did you find
12 anything inconsistent with Dr. Brown's finding?

13 A. No.

14 Q. Doctor, I am going to ask you a yes or no
15 question.

16 Do you have an opinion to a reasonable degree
17 of medical certainty regarding Dr. Brown's acid
18 phosphatase finding?

19 A. Well, I guess I have an opinion, yes.

20 **THE COURT:** I don't understand the question.
21 You are asking him to give an opinion as to whether
22 the finding is well made or properly made or not made?

23 **MR. JACKLEY:** Let me -- I tried to short cut
24 it and I shouldn't have.

25 Let me go deeper.

1 **Q.** **(BY MR. JACKLEY)** Doctor, on the last
2 paragraph of Dr. Brown's report, Dr. Brown indicates
3 the strong acid phosphatase of the vaginal contents
4 would indicate recent sexual intercourse.

5 Do you see that?

6 **A.** I do.

7 **Q.** For purposes of this question I want you to
8 consider that to be Dr. Brown's finding.

9 Based on that finding with a yes or no
10 question, do you have an opinion to a reasonable
11 degree of medical certainty regarding Dr. Brown's acid
12 phosphatase finding?

13 **A.** I have an opinion.

14 **Q.** What is that opinion?

15 **A.** I disagree with it.

16 **Q.** Why do you disagree with it?

17 **A.** The way he's worded it, it indicates that it
18 indeed is indicative. I think it could be but it's
19 ambiguous. It may or may not be indicative of recent
20 sexual intercourse.

21 **Q.** Would it be consistent with intercourse?

22 **A.** It could be, yes.

23 **Q.** Would it be consistent, but not conclusive?

24 **A.** Yes.

25 **Q.** Doctor, have you had an opportunity to review

1 a report dated September 26, 2008, to attorney John
2 Murphy?

3 **A.** I have. I saw it for the first time this
4 morning.

5 **Q.** I will represent to you in the report there
6 is an indication, quote, presumptive testing for semen
7 was positive on the panties.

8 Do you see that?

9 **A.** Yes.

10 **Q.** Would that similarly be consistent with
11 intercourse?

12 **A.** Yes, it would.

13 **MR. JACKLEY:** No further questions.

14 **MR. MURPHY:** May I?

15 **THE COURT:** Yes.

16 **MR. MURPHY:** First, looking at the Orchid
17 Cellmark report that's before you, we haven't
18 identified that.

19 Do you have a proposed exhibit number? We
20 left off at 11.

21 **MR. JACKLEY:** I am going to get in trouble
22 with Tina.

23 **MR. MURPHY:** That's fine.

24 **MR. JACKLEY:** John, give me just a second.
25 Could we call it 11A since Brown is 11 just to keep

1 track of it.

2 MR. MURPHY: That's fine.

3 CROSS-EXAMINATION

4 BY MR. MURPHY:

5 Q. Looking at proposed Exhibit 11A, you were
6 just asked about the presumptive finding of semen.

7 Would you mind reading the line directly
8 below that?

9 A. Spermatozoa were not identified on the
10 panties.

11 Q. So they made a presumptive finding of semen
12 and then tested for the actual presence of spermatozoa
13 and could not find any; is that correct?

14 A. That's correct.

15 Q. So that would indicate that there was an
16 absence of sperm upon further testing?

17 A. That's what I would interpret, yes.

18 Q. Okay.

19 So whatever conclusion you might have drawn
20 from the sentence that Mr. Jackley pointed to you --
21 pointed out to you, the next sentence negates that,
22 correct?

23 A. It doesn't. It just further --

24 Q. It's a further finding?

25 A. It's a further finding.

1 Q. And in fact a finding of a negative?

2 A. The two are two independent things so not
3 finding one doesn't negate the other.

4 Q. Okay.

5 So -- all right. Let's talk about acid
6 phosphatase. Acid phosphatase is an enzyme that is
7 not unique to the prostate, correct?

8 A. That's correct.

9 Q. It is found in all living cells?

10 A. I am not sure of that, but it's found in many
11 of the body tissues. I'm not sure if it's absolutely
12 universal but it's found in many places.

13 Q. And it's found in greater concentrations as
14 cells start decomposing?

15 A. Yes, it is.

16 Q. And it is a -- an enzyme that is present in
17 vaginal fluids, correct?

18 A. It can be after decomposition has begun,
19 particularly. There can be traces of it in the
20 vagina, but the level will rise after death as
21 decomposition and deterioration and cell breakdown
22 take place.

23 Q. So in this case you have examined the body
24 connect?

25 A. I did, yes.

1 **Q.** You found it in an advanced stage of
2 decomposition?

3 **A.** Yes.

4 **Q.** So it would be natural for there to be
5 elevated levels of acid phosphatase in the vagina,
6 correct?

7 **A.** Yes.

8 **Q.** Would you agree or disagree with this
9 statement. It, acid phosphatase, is not unique to the
10 prostate and can be found in other biological fluids
11 including vaginal secretions?

12 **A.** I would agree with that.

13 **Q.** Agree or disagree with this sentence. It is
14 therefore considered a presumptive chemical test for
15 the presence of semen, and semen must be confirmed by
16 other means such as sperm detection or PSA?

17 **A.** I guess -- yeah, I'd agree with that.

18 **Q.** Agree or disagree with this. The use of acid
19 phosphatase as a marker for semen is compromised
20 because the vagina is also a source of vaginal acid
21 phosphatase?

22 **A.** I'd like to clarify whether it's in a living
23 patient or in a postmortem situation.

24 **Q.** Postmortem.

25 **A.** Then I would agree with the statement.

1 **Q.** You would agree with that?

2 **A.** Yes.

3 **Q.** Agree or disagree with this. Since seminal
4 and acid phosphatase cannot discriminate, the only
5 approach to differentiating semen in vaginal
6 secretions is by quantitative analysis such as PSA or
7 the microscopic inspection for sperm?

8 **MR. JACKLEY:** Objection. Compound and
9 confusing question.

10 **MR. MURPHY:** I would ask if the doctor found
11 that confusing.

12 **THE COURT:** Overruled.

13 **A.** I don't think those are the only exclusive
14 ways of confirming it, but I would agree basically
15 with that statement that they can be proven that way.

16 **Q. (BY MR. MURPHY)** You'd agree that before you
17 can render a conclusion to a reasonable degree of
18 medical certainty, you would need some type of
19 quantitative analysis or other microscopic
20 examination, correct?

21 **A.** Yes. I would -- finding sperm cells, for
22 instance, would settle the question.

23 **Q.** And in regard to Dr. Brown's autopsy, he
24 makes no quantification -- he does not render any
25 result as to how much acid phosphatase was found,

1 correct?

2 **A.** That's right. He just gives no numerical --

3 **Q.** He doesn't even state what methodology he
4 used to test it?

5 **A.** No.

6 **Q.** It doesn't give you an idea of what
7 laboratory instruments he used, whether they were
8 calibrated or any other information that would give us
9 an issue as to whether he performed the test
10 correctly?

11 **A.** If I can go a little further, there were a
12 number of different methodologies. Some had more
13 specificity. I don't know what method he used.

14 **Q.** Because he doesn't tell us?

15 **A.** Because he doesn't tell us.

16 **Q.** So we don't know if he used one of the more
17 accurate tests or the less accurate tests?

18 **A.** Specific -- specific for what was thought to
19 be male secretions. But again, that's a complicated
20 question, too, but we don't know what his methodology
21 was.

22 **Q.** So you have no way of going back and saying I
23 think his methodology at least was proper?

24 **A.** Well, I don't disagree that he did a test and
25 got that result, but I don't know what the test method

1 was.

2 Q. How do you know he did a test and got a
3 result other than what he said in here?

4 A. I don't.

5 Q. On prior occasions you've testified that you
6 were shocked at the fact that this pathologist missed
7 a bullet in Ms. Aquash's head, correct?

8 A. That's right.

9 Q. And that certainly gives you cause for
10 concern in the level of professionalism in his
11 autopsy, correct?

12 A. Yes.

13 Q. And you found that he had claimed to have
14 removed and weighed certain organs but you found that
15 not to be accurate when you did your autopsy?

16 A. Yes.

17 Q. So he essentially lied or misstated facts in
18 his autopsy report?

19 A. He did.

20 Q. So it's hard for you to sit here and say,
21 well, he missed a bullet, he misstated facts about
22 weighing organs, but I think he probably did a bang-up
23 job on that acid phosphatase test?

24 A. I am not saying that.

25 Q. Okay.

1 You can't say to a reasonable degree of
2 medical certainty that he did the test the right way
3 or that the test resulted -- or produced the results
4 he claims they did?

5 **A.** No.

6 **Q.** You can't say that?

7 **A.** No.

8 **Q.** Because you don't have any information?

9 **A.** Yes.

10 **Q.** And in regard to your own autopsy, you didn't
11 test for acid phosphatase?

12 **A.** I don't remember if I did or not.

13 **Q.** And it would --

14 **A.** Well, I sent all my reports to others and I
15 can't find original copies, and there may have been
16 supplementary material that I just don't have
17 available and I just don't remember if I did or not.

18 **Q.** Would it be fair to say that if you had done
19 acid phosphatase testing and it produced a result that
20 was significant, indicating recent sexual activity or
21 something like that that you would have put it in your
22 report?

23 **A.** Well, I don't know if I have the full report
24 and I think even when I did the report, I knew about
25 the ambiguity of the result in -- after decomposition

1 had taken place, so I might not have.

2 Q. You might not have even done the test?

3 A. No.

4 Q. At least we have no information today and the
5 jury is not going to be presented with information
6 from you that you did an acid phosphatase test and it
7 resulted in --

8 A. Right.

9 And I don't remember it.

10 Q. Okay.

11 So the jury is not going to hear that?

12 A. No.

13 Q. What did you find was the --

14 Ms. Aquash's vagina genitalia were normal?

15 A. Yes.

16 Q. And that is consistent with Dr. Brown's
17 finding that there wasn't any trauma or evidence of
18 injury to the vagina?

19 A. It is, yes.

20 Q. Okay.

21 MR. MURPHY: Marty, I am going to reach
22 across you. If you wouldn't mind handing this to
23 Dr. Peterson.

24 Q. (BY MR. MURPHY) I am going to show you
25 what's -- what I will refer to as 11B. It's an FBI

1 report.

2 Have you ever seen that before?

3 A. I don't know if I have or not. I don't
4 remember it.

5 Q. Okay.

6 If you wouldn't mind just briefly looking
7 through that.

8 Have you had enough time?

9 A. Yes.

10 Q. That's -- would you mind stating the date of
11 that report?

12 A. April 16, 1976.

13 Q. And it's a test from the FBI laboratory?

14 A. Yes.

15 Q. And there were eight items of clothing, Q1
16 through Q8, sent for semen testing?

17 A. Yes.

18 Q. Including the underwear?

19 A. Yes.

20 Q. And no semen was detected?

21 A. Yes. None was.

22 Q. None was detected?

23 A. None was detected.

24 Q. Okay.

25 So at this juncture you've got an FBI report

1 within close proximity by date to when the incident
2 occurred and you have no independent testing on acid
3 phosphatase of your own to testify to?

4 **A.** Right.

5 **Q.** And all we've got is W.O. Brown's statement
6 that there was strong acid phosphatase but no
7 quantification, no methodology, or any other
8 indications of how he arrived at that result.

9 You can't go before this jury and say to a
10 reasonable degree of medical certainty that you can
11 conclude that sexual activity occurred, can you?

12 **A.** No.

13 I think my earlier statement was it was
14 consistent with, but I can't say that it is
15 conclusive, that's correct.

16 **Q.** Consistent with, but, in fact, the lions
17 share of the evidence would seem to mitigate against
18 that finding?

19 **A.** It's just -- it's ambiguous. It doesn't
20 answer the question. The information doesn't answer
21 the question.

22 **Q.** The information doesn't answer the question.

23 **MR. MURPHY:** That's all I have.

24 Thank you.

25 We'll have to mark these exhibits and get

1 them --

2 **MR. JACKLEY:** Do you want to call it 11B?

3 **MR. MURPHY:** Let's do that one as 11B.

4 I don't know if it was announced, Your Honor,
5 we're outside the presence of the jury but we have the
6 press in the room.

7 Did you go through that at the beginning?

8 **THE COURT:** As to what?

9 **MR. MURPHY:** That we're outside the presence
10 of the jury.

11 **THE COURT:** I didn't but we clearly are
12 outside the presence of the jury and we're here to
13 resolve a question as to whether or not I'm going to
14 allow certain evidence and opinions related to that
15 evidence -- to that evidence to be presented to the
16 jury. That is a standard, ordinary, every day
17 procedural decision as to many items made in the
18 course of a trial.

19 Fundamentally, my decision has to be based on
20 whether evidence makes an event more or less likely to
21 have occurred. If it does neither, then it is not
22 relevant to the case because we are trying to decide
23 contested issues and only evidence that says, yay,
24 it's more likely or less likely to be, would be
25 relevant to the decision. An opinion that says could

1 be, could not be, is not relevant. And that's the
2 decision I have to make here.

3 Counsel agreed with that?

4 **MR. MURPHY:** That's a fair statement.

5 **MR. JACKLEY:** Yes.

6 **THE COURT:** That statement is offered for the
7 explanation of the press as to why we are here and
8 what I am doing, and I have to make a decision to that
9 end.

10 Mr. Jackley?

11 **MR. JACKLEY:** Thank you, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. JACKLEY:**

14 **Q.** Doctor, is acid phosphatase used as a
15 presumptive test for sexual intercourse?

16 **A.** Yes.

17 **Q.** From your review of Dr. Brown's report, did
18 he make a finding with respect to the existence of
19 phosphatase?

20 **A.** He did.

21 **Q.** What was his finding?

22 **A.** He said that it was strongly positive for
23 acid phosphatase.

24 **Q.** Mr. Murphy asked you regarding the finding of
25 semen. And he provided you two documents -- or you

1 were provided two documents. One is 11A, which is the
2 report of Orchid Cellmark lab, dated September 26,
3 2008, along with an FBI report, 11B, which is April of
4 1976.

5 With respect to your review of the defense's
6 expert report, did presumptive testing demonstrate the
7 existence of semen?

8 **A.** Yes, it did.

9 **Q.** And I'll ask you a general question. Between
10 April of 1976 and September 26 of 2008, did technology
11 and testing improve with respect to semen -- detection
12 of semen?

13 **A.** I believe it did, yes.

14 **Q.** Just so that I have it -- understand it
15 correctly, is it your opinion today to a reasonable
16 degree of medical certainty that the existence of
17 strong acid phosphatase is consistent with
18 intercourse, but not conclusive?

19 **A.** Yes.

20 **MR. JACKLEY:** No further questions, Your
21 Honor.

22 **REXCROSS-EXAMINATION**

23 **BY MR. MURPHY:**

24 **Q.** Dr. Peterson, when we talk of a presumptive
25 test, that's a test that if the results are positive,

1 give us reason to conduct further testing; would that
2 be a fair statement?

3 A. Yes.

4 Q. And so in each of the cases since -- for
5 instance, the Orchid Cellmark test, they did a
6 presumptive test, correct?

7 A. Yes.

8 Q. And then they looked specifically for
9 spermatozoa, correct?

10 A. They did.

11 Q. And they found none?

12 A. They did.

13 Q. Similarly, with acid phosphatase, from
14 Dr. Brown's report, the indication that there is acid
15 phosphatase is a presumptive test, correct?

16 A. Yes.

17 Q. And it warrants further inquiry before you
18 can reach a conclusion, correct?

19 A. Or some hedging of your conclusion if you
20 can't do valid further testing.

21 Q. For instance, you would seek quantification
22 or microscopic examination?

23 A. Microscopic.

24 Q. Right.

25 So the fact that there may be a near

1 presumptive indication really just gets us to the
2 point of saying, well, now we're going to do further
3 testing or more detailed testing before we're going to
4 reach a conclusion?

5 **A.** Gets us there and it allows us to say that
6 it's consistent with, but not necessarily conclusive
7 of. It allows us to do that.

8 **Q.** Right.

9 And if we had more conclusive testing you
10 would be able to say to a reasonable degree of medical
11 certainty one way or the other?

12 **A.** With respect to recent sexual -- not really.
13 You can have penetration without any deposition of
14 male secretion so there is always ambiguity about it.
15 Positive testing at -- further levels of testing would
16 have settled the question better than what we have
17 here.

18 **Q.** Right.

19 It would, for instance, tell us whether the
20 levels of acid phosphatase were so high as to indicate
21 sexual activity as opposed to the kind of acid
22 phosphatase levels that might be found in decomposing
23 issue, correct?

24 **A.** In my experience, I don't think you can even
25 differentiate them if you have numerical values. If

1 they are very high -- the question -- there is still
2 ambiguity.

3 Q. So you would want microscopic testing?

4 A. Yes.

5 Q. To find out whether sperm were present?

6 A. Or even more sophisticated testing that
7 wasn't available that the time.

8 Q. So really at this point we got presumptive
9 testing?

10 A. Yes.

11 Q. All right.

12 And you can't render a conclusion one way or
13 another based on that?

14 A. Well, depends on the question asked. The
15 question I was asked is, is it consistent with and I
16 can answer that.

17 Q. You can answer that it's consistent with but
18 also could be inconsistent with?

19 A. Well, not inconsistent. It's consistent with
20 intercourse having taken place and it's consistent
21 with decomposition providing that positive test.

22 Q. Okay.

23 That's the best you can say?

24 A. Yes.

25 Q. And you can't say anything about the

1 reliability of Dr. Brown's tests?

2 **A.** No.

3 **MR. MURPHY:** Nothing further, Your Honor.

4 **THE COURT:** Well, everybody is ducking the
5 dollar question and I am not sure why.

6 Can you state within a reasonable degree of
7 medical certainty that sexual intercourse did take
8 place?

9 **THE WITNESS:** No.

10 **THE COURT:** So the finding is consistent with
11 it having taken place, but it's -- that could be true
12 at any time?

13 **THE WITNESS:** Yes.

14 **THE COURT:** And you are faced here with
15 decomposition which could account for other than
16 normal levels of acid phosphatase?

17 **THE WITNESS:** Yes.

18 **THE COURT:** So within the reasonable degree
19 of probability, you are unable, based upon the
20 relatively vague statements of Dr. Brown's autopsy, to
21 state that sexual intercourse was more likely than
22 not?

23 **THE WITNESS:** I can't answer the question yes
24 or no.

25 **THE COURT:** That seems to answer the

1 question. The finding, I suspect, goes in, but the
2 statement that that would indicate or could indicate
3 is consistent with, will not be made which means I
4 think the finding of acid phosphatase becomes
5 meaningless in terms of establishing whether or not
6 there was sexual intercourse. If it made it more
7 likely that there was, it would be admissible
8 evidence.

9 But where we stand here -- to enter it into
10 evidence is going to create or is very likely to
11 create an image in the minds of a jury that sexual
12 intercourse did occur and that the doctor thinks it
13 did occur, and the examination back and forth in front
14 of the jury will not be helpful in resolving that
15 issue.

16 So it is the decision of this court that any
17 comment or reference to the acid phosphatase being
18 indicative or establishing a probability or likelihood
19 of sexual intercourse will not be made nor will the
20 question be asked as to whether it is consistent with.

21 As that -- while it is understood in a legal
22 sense very clearly to say it does not mean anything
23 one way or the other, that might be misleading to the
24 jury and I am not going to let it go there.

25 **MR. JACKLEY:** Your Honor, based upon your

1 ruling, may I make a motion in limine that based upon
2 counsel's statements in opening statement, that he
3 cannot go in that direction, then. In other words,
4 it's not fair to the prosecution to have him comment
5 that we have no evidence regarding the acid
6 phosphatase or evidence regarding certain intercourse
7 when we, in fact, have got this ruling and our hands
8 are tied. I mean, it's not fair for him to --

9 **THE COURT:** Well --

10 **MR. MURPHY:** I can answer, which might help
11 you. Because this isn't going in, and I would ask
12 that Dr. Brown's autopsy not go in or it can be
13 discussed by Dr. Peterson -- unless we redact those
14 portions.

15 But I would not then on my examination of
16 Dr. Peterson be talking about the FBI lab reports or
17 anything else because it's no longer a topic.

18 I would merely comment at the end of the case
19 about the issues of Mr. Looking Cloud's credibility
20 or that particular issue, but I made clear in my
21 opening, I was talking about DNA and semen testing.
22 And that there wasn't that --

23 **MR. JACKLEY:** Well, there was, John. You got
24 a report.

25 **MR. MURPHY:** Well, there is no spermatozoa

1 found.

2 **MR. JACKLEY:** Well, can I go into this based
3 on opening statements? He said --

4 **THE COURT:** Well, I don't think Dr. Peterson
5 can go into it.

6 And I'm not -- presumptive testing to me
7 raises more questions than it answers. We don't let
8 breathalyzer results in. We do use them for a basis
9 for further blood tests and things of that nature.
10 They are presumptive indicators of too much alcohol in
11 the system and they establish a basis to look further.
12 But they -- I have never had one come into evidence
13 other than after a plea of guilty and a question asked
14 of the defendant, you were drinking and do you have an
15 objection to the breathalyzer results or the -- mostly
16 it's the blood test results being used for a factual
17 basis.

18 My real concern is, however -- at this stage
19 is somewhat consistent with yours. I am assuming that
20 the argument would be as to the unreliability of Arlo
21 Looking Cloud's recollections or statements. Somebody
22 has to convince me that a presumptive test for semen
23 made in 2008 is an indicator that -- I don't know what
24 it indicates. And that's a problem for me at this
25 stage when there is no further looking for PSA,

1 spermatozoa --

2 **MR. MURPHY:** And if I may add -- the
3 relevance of that was that it wouldn't match to my
4 client anyways. What I said during opening very
5 clearly is there was no DNA testing linking my client
6 to the rape or sexual assault of Anna Mae Aquash. So
7 even further than that when they attempted to find
8 some DNA that could link somebody to that, they were
9 unable to do so.

10 So it's you know, we got a presumptive
11 finding. We have then an inquiry into whether
12 spermatozoa were located. There was none. Then there
13 was an inquiry as to whether any DNA testing could be
14 obtained and there were none.

15 And so my opening was very narrow to that
16 issue. I'm obviously going to not open the door here
17 again on this ruling or anything else regarding that.
18 But I think -- we are where we're at on the testimony.

19 **MR. JACKLEY:** May I make a request with
20 respect to that?

21 **THE COURT:** Yeah.

22 **MR. JACKLEY:** This wouldn't be a very popular
23 request.

24 May I have a copy of the transcript of the
25 opening statement by Monday?

1 The reason I am asking for that is to revisit
2 this issue once Arlo Looking Cloud testifies and is
3 cross-examined because I believe what was said in
4 opening statement, combined with the cross-examination
5 of Arlo Looking Cloud, will further open the door to
6 the relevancy of this evidence for the prosecution to
7 get it in.

8 **THE COURT:** A, what would you intend or be
9 able to put in at that time, with the absence of
10 Dr. Peterson?

11 **MR. JACKLEY:** Through Dr. Habbe, who has been
12 noticed. It would be the intent to introduce
13 defense's report that indicates, quote, presumptive
14 testing for semen was positive on the panties, end
15 quote.

16 **THE COURT:** My problem is I still don't have
17 a clue what that means.

18 **MR. MURPHY:** Well, we could have hearing with
19 Dr. Habbe on this issue because we will go through the
20 next line and what the test found and the FBI stuff --

21 **THE COURT:** We get back to the same question.
22 I have to get back to where somebody will tell me that
23 there is evidence here that makes sexual intercourse
24 more likely than not. I think --

25 **MR. JACKLEY:** I think you've heard evidence

1 to a reasonable --

2 **MR. MURPHY:** Mr. Jackley, Mr. Mandel is
3 talking to the witness while we're in the middle of a
4 hearing.

5 **THE COURT:** Hold on. We got a witness here
6 that's sworn. And we're going to go from there and if
7 people want to ask further questions of him, that's
8 fine.

9 I want to kind of get headed back to the
10 trial.

11 **THE WITNESS:** Your Honor, could I just
12 clarify something that doesn't go to the issue you're
13 dealing with but it's a terminology issue, and that is
14 that semen is a two-part substance.

15 **THE COURT:** Seminal fluid --

16 **THE WITNESS:** It's -- seminal fluid is the
17 substance in which the sperm cells are suspended. The
18 sperm cells are the reproductive cells. I hear the
19 term semen being used. The two components together
20 make semen. The two are separate and distinct things.

21 **THE COURT:** I understand that.

22 I still don't know what a presumptive test
23 for semen means. That's my problem.

24 **MR. JACKLEY:** Isn't it just like a DUI, when
25 you have a blood test, there is a presumption when we

1 introduce the blood test in a DUI --

2 **THE COURT:** I don't think that the blood
3 test -- as to having -- you got a .2 and the question
4 is, is it a greater than .80. I don't think there is
5 anything presumptive about it.

6 **MR. MURPHY:** And it's a legal presumption.
7 That's a statutory legal presumption that says not
8 anything about the validity of the test or anything.
9 It says you are presumed to be intoxicated if you are
10 above a .08. This -- that's an apples and orange
11 issue. It has not doing do with the kind of
12 ambiguities that the doctor has indicated exist in
13 this case.

14 **MR. JACKLEY:** No, but it's very consistent
15 with I would not be able to Dr. Looyenga on the stand
16 as a prosecutor and say, do you have an opinion based
17 upon your blood test to a reasonable degree of medical
18 certainty that that defendant was drunk. That's an
19 inappropriate question. I mean, that's the
20 question --

21 **THE COURT:** I'm not going to go there.
22 That's also a misstatement of the question that would
23 go to Dr. Looyenga. And he would go through a whole
24 series of extractions and the likelihood of increases
25 and decreases of the blood alcohol content. And there

1 is two questions. One, are you impaired regardless of
2 how little you've had to drink. And number two, do
3 you have more than .08 in your system regardless of
4 whether you are impaired. Either of those will
5 constitute a DUI.

6 And if you have more than .08, you are not
7 only presumptively, you are flat out guilty of DUI.
8 And the only way you can combat that as I can see with
9 a .2 something blood alcohol test is show that the
10 test ain't worth -- that's it.

11 So I don't think that's a fair analogy of
12 what we have here. We have findings ten years
13 apart -- actually 25, 30 years apart. And I have a
14 presumptive test for semen. And that doesn't sound to
15 me like a positive test for semen. It says there is
16 indications of a possibility of semen, and I don't
17 know anything further than that.

18 If that's an accurate statement of what
19 presumptive means, it does not change my opinion. If
20 it says we need to look further to establish if semen
21 is in fact there, and we can't find evidence to
22 establish it's there, then I presume presumptive is
23 not an indication that sexual intercourse did or not
24 occur.

25 Doctor, answer that question. Is a

1 presumptive test -- and we don't know what the test
2 was I take it?

3 But is the indication that a test was done
4 for semen -- a presumptive test was positive for
5 semen -- does that in and of itself tell us that semen
6 was more likely there than not?

7 **THE WITNESS:** I would put it in the context
8 of this case and I'd say no.

9 **THE COURT:** Say again.

10 **THE WITNESS:** In the context of this case,
11 because of the decomposition, I would say no. Living
12 patients seen in an emergency room, the answer would
13 be different. But in this instance, I would say no.

14 **THE COURT:** That's where I am, folks.

15 **MR. JACKLEY:** Your Honor, before I go, I have
16 two requests. One is a request of a copy of the
17 transcript of the opening statement.

18 **THE COURT:** If it can be done. I don't have
19 a problem with it. You best look at her and either
20 she has to do it or someone else has to do it, and
21 we've got Friday, and I've got a pretty full schedule
22 Friday afternoon in addition to this, which requires
23 her to work on the weekend.

24 **MR. JACKLEY:** I will talk nice to her later
25 today.

1 **THE COURT:** I would, too.

2 **MR. JACKLEY:** And then the second request is
3 Mr. Murphy indicated a request to do redactions within
4 the Brown report. And I strenuously object to that
5 for the following reasons. Number one, the report is
6 the report.

7 Number two, based upon his opening
8 statements, but also based upon the fact he's already
9 used that report in the examination of witnesses.

10 **THE COURT:** He has not used that portion of
11 the report. And that portion of the report, including
12 his opinion, without any foundation that it could --
13 his is would -- indicate sexual activity, and the only
14 evidence of a valid medical opinion so far presented
15 to me is that it could indicate, but there is no way
16 to tell yes or no. That's my problem with it.

17 And so I don't have a problem with the
18 statement that there is an indication of -- because
19 that's consistent with decomposition as well. There
20 is a strong presence, whatever that means, of acid
21 phosphatase; but the statement of sexual intercourse
22 will not go to the jury.

23 **MR. JACKLEY:** So you want me to essentially
24 take out the last paragraph?

25 **THE COURT:** I didn't say that.

1 **MR. MURPHY:** It doesn't have to go before the
2 jury.

3 **THE COURT:** I didn't say that. I said I
4 wanted you to take out the last -- well, yeah, the
5 last thing in its entirety.

6 **MR. MURPHY:** For the record, we're looking at
7 page 19 of Dr. Brown's report. Graham document 4,450.

8 **MR. JACKLEY:** Well, I'm looking at 00307.

9 **MR. MURPHY:** Yeah, it's been renumbered.

10 **THE COURT:** Page 19. Yeah, the last sentence
11 comes out.

12 **MR. MURPHY:** Can I make a report on that,
13 Your Honor?

14 **THE COURT:** Yeah.

15 **MR. MURPHY:** Because we're not going to have
16 testimony about acid phosphatase, the mere indication
17 of acid phosphatase -- the report reads acid
18 phosphatase -- the vaginal contents, were strongly
19 positive for acid phosphatase. That would be without
20 foundation and would be misleading to the jury.
21 The last --

22 **THE COURT:** I don't think that's true. I
23 think that's consistent with -- I mean, we have no
24 reason to quibble with the fact that it was there
25 other than there are errors in the report.

1 But I don't see any reason to take that out
2 of the report.

3 **MR. MURPHY:** Okay.

4 So the last --

5 **THE COURT:** Just -- the last paragraph which
6 draws conclusions without scientific basis being set
7 forth in the report; and Dr. Peterson's testimony that
8 says from that report I cannot render an opinion
9 whether it is more likely that sexual intercourse
10 occurred than not.

11 **MR. MURPHY:** So we're going to be clear here,
12 there is not going to be any testimony through
13 Dr. Peterson about acid phosphatase?

14 **THE COURT:** That's true, and there is not
15 going to be any discussion about sexual intercourse.

16 **MR. JACKLEY:** Unless he opens the door.

17 **THE COURT:** Well, if he crosses -- you know,
18 if he does that --

19 **MR. JACKLEY:** I am just -- it's not going to
20 happen here, but it's going to happen at Arlo Looking
21 Cloud's examination is what I mean.

22 Can we revisit that after that?

23 **THE COURT:** We will deal with that. I
24 understand my ruling. I don't know if anybody else
25 does.

1 **MR. JACKLEY:** I do. I am not going there.

2 **THE COURT:** Nobody is going to go there.
3 Nobody is going to go there. Period.

4 **MR. JACKLEY:** Based upon redactions, can I
5 make a request, then?

6 **THE COURT:** Yes.

7 **MR. JACKLEY:** I would request that on page 17
8 of the Brown autopsy -- excuse me. It's page 16
9 marked C dash 17.

10 **THE COURT:** I understand the page.

11 **MR. JACKLEY:** I am requesting the redaction
12 of quote, a Kotex pad was in the crotch of the
13 panties, end quote.

14 The reason for that is there is no evidence
15 of Kotex pad. And I think similarly, then, to the
16 reference to the acid phosphatase, it should be
17 removed.

18 **MR. MURPHY:** No.

19 **THE COURT:** It has no relevance. I mean --
20 but -- there is no reason to remove it because it
21 doesn't say anything any way or the other. And I am
22 not going to --

23 **MR. JACKLEY:** Okay.

24 **THE COURT:** -- I am not going to do that with
25 a report that has ambiguities in it, but I suspect

1 even if he's wrong about weights and measurements,
2 it's pretty hard to be wrong about a Kotex pad in the
3 panties from my limited experience.

4 **MR. MURPHY:** Yeah.

5 **THE COURT:** So I see no reason to take that
6 out. I don't see that it has any indication to sexual
7 intercourse plus or minus. I don't think it means
8 anything beyond the jury would assume that she was
9 menstruating.

10 **MR. MURPHY:** Do you --

11 Do you need time to get the redaction.

12 **MR. JACKLEY:** Yeah. I want you to see it so
13 you are okay with it.

14 **THE COURT:** Okay.

15 (Whereupon, the following proceedings were
16 then had in open court in the presence of the jury.)

17 **THE COURT:** Satisfied this is the jury,
18 Mr. Jackley?

19 **MR. JACKLEY:** I am, Your Honor.

20 **THE COURT:** Mr. Murphy?

21 **MR. MURPHY:** Yes, Your Honor.

22 **THE COURT:** I think you are still batting,
23 Mr. Jackley.

24 **MR. JACKLEY:** The state would call Dr. Garry
25 Peterson, Your Honor.

1 **THE COURT:** Please come forward, Doctor.

2 GARRY PETERSON,

3 called as a witness herein, having been duly sworn,

4 under oath testified as follows:

5 **THE COURT:** Please take a seat.

6 **DIRECT EXAMINATION**

7 **BY MR. JACKLEY:**

8 **Q.** Could you please introduce yourself to the
9 jury, including where you live.

10 **A.** My name is Garry Peterson,
11 G-A-R-R-Y-P-E-T-E-R-S-O-N. I live in Minneapolis,
12 Minnesota.

13 **Q.** Dr. Peterson, what is your occupation?

14 **A.** I'm a physician. I'm a retired physician.
15 Doctor of medicine.

16 **Q.** Can you briefly describe your education and
17 work background for the jury?

18 **A.** It's fairly long, but I attended college in
19 the twin cities. I went to Hamline University and
20 then transferred to the University of Minnesota and
21 graduated in 1964. I worked for a year and then
22 attended medical school at the University of Minnesota
23 Medical School from 1965 through 1969.

24 Following that I had a one-year rotating
25 internship at St. Paul Ramsey Hospital which is the

1 city/county hospital in St. Paul.

2 And then undertook a five-year training
3 period in specialities of pathology, clinical
4 pathology, anatomic pathology, and forensic pathology.
5 The first three years were in clinical pathology and
6 anatomic pathology at St. Paul Ramsey Hospital in St.
7 Paul.

8 The fourth year was in forensic pathology at
9 the Hennepin County Medical Examiner's Office.

10 And the fifth year was in clinical pathology
11 and anatomic at the Hennepin County Medical Center
12 which is the city/county hospital in Minneapolis.

13 Q. Doctor, I am handing you what has previously
14 been marked State's Exhibit No. 9.

15 Do you generally recognize this document?

16 A. Yes, I do.

17 Q. What is that document?

18 A. It's titled my curriculum vitae. I am not
19 sure exactly how far it goes. I think it's correct.
20 I retired in 2004, but it shows my background.

21 MR. JACKLEY: Your Honor, I would offer
22 State's Exhibit No. 9.

23 MR. MURPHY: No objection.

24 THE COURT: Will be received.

25 A. Your question I think also asked for my work

1 experience.

2 Q. (BY MR. JACKLEY) Yes.

3 A. Following that completion of my residency
4 training I went into the practice of pathology in
5 St. Paul. And worked at St. Paul Ramsey Hospital as a
6 pathologist.

7 And while I was doing that, began law school
8 at William Mitchell College of Law in St. Paul, and I
9 attended there from 1975 to 1979 and finished law
10 school.

11 In 1976, I became the lead pathologist at
12 Fountain's Park Hospital. That was a private hospital
13 in St. Paul. And worked there until 1979 when I went
14 back to the Hennepin County Medical Center and was on
15 the pathology staff there and became an assistant
16 medical examiner in the Hennepin Medical Examiner's
17 Office.

18 I had been -- since the time of my training
19 at the Hennepin County Medical Examiner's Office, been
20 a deputy medical examiner and worked part-time in the
21 office. So there was continual work in the office.

22 And then went back on a full-time basis with
23 my position spanning those two positions at Hennepin
24 County Medical Center.

25 I became the Chief Medical Examiner of

1 Hennepin County. That's the county that Minneapolis
2 and the surrounding suburbs occupy. And held the
3 position of Chief Medical Examiner until 2004 when I
4 retired.

5 Q. Doctor, tell the jury what a forensic
6 pathologist does.

7 A. Forensic pathology is a subspecialty area of
8 general pathology. I mentioned those other two areas
9 and if you ask a question about that, I will answer
10 that separately.

11 Forensic pathologists generally work in a
12 coroner's or medical examiner's office. But the term
13 is broader than that. The term comes from the Latin
14 word forum which is in a courtroom. And so it's
15 applied because forensic pathologists are often asked
16 to address scientific questions in a legal setting.

17 But as I said, most forensic pathologists
18 will work in a medical examiner's or coroner's office
19 investigating sudden, unexpected death and unnatural
20 death. And that's what I devoted most of my career
21 to.

22 Q. Is one of your duties or responsibilities
23 conducting autopsies or supervising autopsies?

24 A. Yes.

25 Q. I want to take you back to 1976. Were you

1 involved in the autopsy of Annie Mae Aquash?

2 **A.** I was involved in a second autopsy.

3 **Q.** Do you remember where that occurred?

4 **A.** It took place at the Pine Ridge Public Health
5 Hospital.

6 **Q.** Doctor, after the completion of the autopsy,
7 did you issue an autopsy report identifying certain
8 findings?

9 **A.** I did.

10 **Q.** I am handing you what has previously been
11 marked State's Exhibit 10.

12 Can you take just a moment to familiarize
13 yourself with that exhibit. It's a copy of that
14 report.

15 **MR. JACKLEY:** Your Honor, I would offer
16 State's Exhibit 10.

17 **MR. MURPHY:** If I may just have a minute,
18 Your Honor?

19 No objection, Your Honor.

20 **THE COURT:** Will be received.

21 **Q. (BY MR. JACKLEY)** So Doctor, on or about
22 March 11, 1976, at Pine Ridge, South Dakota, you
23 conducted an autopsy?

24 **A.** Yes, I did.

25 **Q.** When you first walked into the autopsy room,

1 describe to the jury the general condition of the
2 body?

3 **A.** The body had recently been exhumed from a
4 nearby cemetery. It was in relatively poor condition.
5 There was a great deal of decomposition that had taken
6 place. There was preservative powder and fluid
7 associated with the body. So it was in relatively
8 poor condition.

9 **Q.** Would it have been consistent with being
10 outdoors for an extended period of time?

11 **A.** Yes.

12 **Q.** Upon your initial examination of the body,
13 tell the jury what you did and what you found.

14 **A.** If I could have a copy of the exhibit to
15 refer -- it's many, many years ago.

16 **Q.** Sure.

17 **A.** Thank you.

18 I examined the external aspects of the body.
19 I then opened the body to look at the internal organs
20 that were there. In the process -- and I'm not sure
21 exactly when it was -- I requested the x-rays be taken
22 so x-rays were taken, as well.

23 **Q.** Before you had ordered or requested the
24 x-rays, did you feel any irregularities?

25 **A.** In examining the head, I had -- it's my

1 recollection that I had begun the examination having
2 requested the x-rays. And by that time I had done an
3 external examination of the head. And in feeling the
4 head with my gloved fingers I could feel that there
5 had been removal of the top of the skull for autopsy
6 purposes, but I did feel a firmness in the left temple
7 area. I reserved judgment on that and then made a
8 final determination after the x-ray and after the
9 internal examination.

10 Q. Before I talk to you about the x-rays that
11 you had done, you had indicated that you had conducted
12 the second autopsy; is that fair?

13 A. Yes.

14 Q. Were you provided or were you aware of
15 whether any x-rays had been taken in the first
16 autopsy?

17 A. I was not provided any x-rays from that
18 autopsy.

19 Q. Doctor, I am handing you what has been marked
20 State's Exhibits 13 and 14.

21 Do you generally recognize those two
22 documents?

23 A. I do.

24 Q. What are they?

25 A. They are the x-rays of the head of Anna Mae

1 Aquash.

2 Q. The x-rays that you had requested be taken?

3 A. Yes.

4 MR. JACKLEY: Your Honor, I would offer
5 State's Exhibits 13 and 14.

6 MR. MURPHY: No objection.

7 THE COURT: They will be received.

8 Q. (BY MR. JACKLEY) Doctor, I am going to
9 display for you up on the screen Exhibit 13, the
10 autopsy -- or the x-ray.

11 Doctor, you made a reference to you had felt
12 something in the left temple area.

13 Upon examination of the x-ray, were you able
14 to identify an object?

15 A. Yes, I was.

16 Q. I am putting my finger on the x-ray.

17 Is that the object in the left temple area?

18 A. Yes, it is.

19 Q. What did that mean to you when you saw that?

20 A. It meant to me that there was a projectile, a
21 gunshot projectile, in the head.

22 Q. I am going to put up on the screen for you,
23 Doctor, Exhibit 14, which is a side photo --

24 Let me ask you, what does that appear to be
25 an x-ray of?

1 **A.** That's a side-view of the head.

2 **Q.** And again, were you able to identify a
3 projectile where my finger is pointed?

4 **A.** Yes, that's the projectile.

5 **Q.** Doctor, in examining the head area, were you
6 able to identify an entrance wound?

7 **A.** Yes, I was.

8 **Q.** Please describe that to the jury.

9 **A.** I'd like to refer to my notes because it is a
10 very long time ago.

11 It was in the posterior neck area. The back
12 of the neck. And it was a little over an inch and a
13 half above where the bottom of the skull meets the
14 neck. And it was about two inches to the right of the
15 center line. So I will turn and I will indicate as
16 best I can without a ruler on myself. It was in this
17 area of the head back here behind what would be my
18 right ear.

19 It was a perforation that was 4 millimeters
20 in size. Something in the range of about
21 three-sixteenth of an inch. And it had an abraded rim
22 around the edge and then surrounding it was an area of
23 blackish discoloration that was something in the range
24 of -- I will do a little calculating here.
25 Five-eighths of an inch by approximately

1 seven-eighths of an inch, a little less than an inch,
2 very, very black discoloration on the skin.

3 Q. What did that show you or tell you?

4 A. It indicated to me it was gunshot residue
5 surrounding that.

6 Q. Doctor, did you ultimately remove the
7 projectile from Ms. Aquash?

8 A. Yes, I did.

9 Q. Doctor, I am handing you what's previously
10 been introduced and admitted as State's Exhibit No. 8.

11 Do you generally recognize that exhibit?

12 A. I do, yes.

13 Q. What is that exhibit?

14 A. It comprises two things. One is a small
15 cardboard box with some evidence-type tape on it. It
16 has my writing on it. And then the projectile is
17 here. And after all these years, I don't know that I
18 can specifically identify this, but it's consistent
19 with what I remember the bullet looking like.

20 Q. And your writing does appear on the box?

21 A. That's my handwriting.

22 **MR. JACKLEY:** Your Honor, may I show this to
23 the jury?

24 **THE COURT:** Yes.

25 Q. **(BY MR. JACKLEY)** Would you take a minute and

1 describe to the jury how you removed the bullet. What
2 steps you took.

3 **A.** Well, I located it with my fingers. It was
4 in close to bone, but there was also soft muscle
5 tissue around it. And I was able to remove it just
6 using my fingers. I could work it out and get it to
7 come out. Kind of the way it had gone in so I was
8 able to take it out without having to use instruments
9 on it.

10 **Q.** Why did you use your fingers rather than
11 using instruments?

12 **A.** It's the preferred way to remove something
13 like that. Otherwise you may damage identifying
14 information that's on the bullet. So we're taught --
15 and when I was teaching the subject -- taught that if
16 at all possible you should use only fingers to remove
17 something without damaging it.

18 **Q.** Doctor, I am handing you what has been
19 previously marked as State's Exhibit 12.

20 Do you generally recognize that photograph?

21 **A.** Yes, I do.

22 **Q.** Did you take that photograph?

23 **A.** I believe I did, yes.

24 **MR. JACKLEY:** Your Honor, I would offer
25 State's Exhibit 12.

1 **MR. MURPHY:** No objection.

2 **THE COURT:** Will be received.

3 **Q. (BY MR. JACKLEY)** And Doctor, that was the
4 general condition of the bullet as it exists today and
5 as it existed when you removed it with your fingers
6 from the body?

7 **A.** I think today it looks a little darker. The
8 years have darkened it, but the same general
9 condition, yes.

10 **Q.** Doctor, we talked today about the entrance
11 wound, the powder by the entrance wound, the bullet
12 that was removed.

13 My question to you, would that information be
14 consistent with death by hit-and-run by a motor
15 vehicle?

16 **A.** It would not.

17 **Q.** Doctor, what was your finding as to the cause
18 of death of Annie Mae Aquash?

19 **A.** It was my opinion that she died as a result
20 of a gunshot wound to the head.

21 **Q.** Would that have been to the back of the head?

22 **A.** Yes.

23 **MR. JACKLEY:** No further questions, Your
24 Honor.

25 **THE COURT:** Mr. Murphy?

CROSS-EXAMINATION

1
2 **BY MR. MURPHY:**

3 Q. My name is John Murphy.

4 We just met a few minutes ago.

5 A. That's right.

6 Q. I'm going to ask you a series of questions.
7 Don't hesitate to let me know if my questions aren't
8 clean, okay?

9 A. All right.

10 Q. I talk a little too quickly sometime for Tina
11 so I am going to try to.

12 A. I think I do too so if you hear me, slow me
13 down, too.

14 Q. Either that or she will yell at both of us.
15 What I want to talk to you first about is how
16 you came to be doing this second autopsy.

17 You were contacted by a gentleman named Ken
18 Tilson?

19 A. That's right.

20 Q. And he was an attorney out in the twin cities
21 area?

22 A. He was, yes.

23 Q. And he was affiliated with representing
24 people in the American Indian Movement?

25 A. He had done that. He was known for that,

1 yes.

2 Q. Okay.

3 When you came out to South Dakota, you then
4 became in contact with an attorney called Bruce
5 Ellison?

6 A. I met him that day or that evening.

7 Q. In fact, Mr. Ellison had obtained the permit
8 for the autopsy?

9 A. I don't remember, but that seems correct.

10 Q. Do you still have your autopsy report if
11 front of you?

12 A. Yes.

13 Q. If you look under the first section, history
14 on page 1 --

15 A. It is mentioned there, yes. Thank you for
16 refreshing my recollection.

17 Q. All right.

18 So it was Mr. Tilson who contacted you
19 initially, and then Mr. Ellison is who arranged for
20 the autopsy to be done by you?

21 A. Well, I don't know what his role was in the
22 arrangement. He was the one that met me at the flight
23 I took out to Rapid City. And then I road with him
24 down to the Pine Ridge Hospital.

25 Q. Okay.

1 And at the time that this occurred, February
2 of 1976, you were not the Chief Medical Examiner for
3 Hennepin County?

4 **A.** No. I was a Deputy Medical Examiner.

5 **Q.** When did you become chief?

6 **A.** 1984.

7 **Q.** Okay.

8 So several -- a decade later or about eight
9 years later?

10 **A.** Eight years, yeah.

11 **Q.** At the time you did -- or you came to South
12 Dakota, you weren't anticipating doing an autopsy?

13 **A.** No, that is not what I had been requested to
14 do.

15 **Q.** In fact, you were told you were just going to
16 come out an as observer?

17 **A.** Yes.

18 **Q.** And you were surprised when you found out it
19 was you who was going to do the autopsy?

20 **A.** Yes.

21 **Q.** The FBI didn't have a pathologist lined up to
22 do the matter?

23 **A.** That's how it turned out.

24 **Q.** In fact, did you even have your tools with
25 you?

1 **A.** No.

2 **Q.** And at this point you had just finished your
3 training as a pathologist, had you not?

4 **A.** Yes.

5 **Q.** And you thought that perhaps this would be an
6 opportunity for you to learn by watching somebody else
7 do the autopsy?

8 **A.** I thought it would be a good experience and
9 would be professionally worth while for me to do, yes.

10 **Q.** Because you had just finished your training?

11 **A.** Yes.

12 **Q.** Now, I want to talk to you about your
13 statement that the body's condition was consistent
14 with the body being exposed or being out in the
15 elements for a substantial period of time.

16 Do you recall that question?

17 **A.** Yes.

18 **Q.** Have you identified a probable date of death?

19 **A.** No.

20 **Q.** Would it be fair to say that you cannot
21 establish a probable date of death?

22 **A.** Yes. A specific date, no, I could not.

23 **Q.** Okay.

24 And the best you can say, I mean for sure in
25 your field is that the person died some time between

1 when they were last seen alive and when the body was
2 found?

3 **A.** Yes.

4 **Q.** And the warmer the temperature, the more
5 rapidly a body would decompose?

6 **A.** That's generally true, but again, there can
7 be many factors. Sometimes individual to a particular
8 person.

9 **Q.** Sure.

10 Which further complicates establishing time
11 of death?

12 **A.** Yes.

13 **Q.** But as a general principle, the warmer the
14 temperature, the more rapidly the body would
15 decompose?

16 **A.** Yes.

17 **Q.** I want to discuss with you a couple letters
18 you were provided by the government. I am going to
19 show you a letter dated August 25, 1994.

20 Do you recall that letter?

21 Take your time in reviewing it.

22 **A.** Yes.

23 **Q.** And essentially that's a letter from
24 Mr. Ecoffey asking you to look at various pieces of
25 information?

1 **A.** Yes.

2 **Q.** One of the pieces of information he asked you
3 to look at were average weather or temperature
4 readings?

5 **A.** Yes.

6 **Q.** At the time in question?

7 **A.** Yes.

8 **Q.** And I'm going to show you another letter.

9 This letter dated March 21, 2003.

10 Could you review that for a moment.

11 **A.** Yes.

12 **Q.** Do you recognize that?

13 **A.** Yes.

14 **Q.** And that's a second letter from Mr. Ecoffey
15 to you?

16 **A.** Yes.

17 **Q.** And again he discussed temperature readings?

18 **A.** Yes.

19 **Q.** Provided you with some weather charts?

20 **A.** Yes.

21 **Q.** All right.

22 I am going to provide you now with three
23 documents previously marked as Defendant's Exhibits
24 103, 104 and 105.

25 Take a moment if you would like and review

1 those.

2 A. Yes.

3 Q. Are they familiar to you?

4 A. I have seen them, yes.

5 Q. All right.

6 Those are the weather charts Mr. Ecoffey gave
7 to you?

8 A. I believe they are, yes.

9 Q. All right.

10 Going back to the letter dated March 21,
11 2003, Mr. Ecoffey gave you some average temperatures
12 for December, January, and February, correct?

13 A. Yes.

14 Q. And for February of 1976, he told you the
15 average high temperature was 50.9 degrees?

16 A. Yes.

17 Q. And the average low temperature was
18 25.1 degrees.

19 A. Yes.

20 Q. Would you mind flipping to the last exhibit.
21 Does that appear to be the weather chart for
22 February of 1976?

23 A. Yes.

24 Q. All right.

25 It is, by all accounts, a horrible

1 reproduction. That's the best we have. So I have
2 actually brought a microscope or a magnifying glass
3 for your benefit. These documents were photocopied 35
4 years ago.

5 What I am going to ask you to do -- let's use
6 this as a ruler. We're going to go down to the
7 reading for Interior, South Dakota.

8 And if you can, can you determine whether
9 that reading, the average at the end, corresponds with
10 the average that Mr. Ecoffey gave you, 50.9 and 25.1?

11 **A.** Within the limits of a Xerox copy, I think
12 that's correct.

13 **Q.** Okay.

14 So it appears that he was using the numbers
15 from Interior, South Dakota?

16 **A.** Yes.

17 **Q.** If you wouldn't mind keeping that just like
18 that because we're going to talk more about this.

19 I am going to show you what's been marked as
20 Defendant's Exhibit 107. What I want you to do, if
21 you can, starting at February 24, check to make sure
22 that my numbers are right for the average high and
23 low.

24 **A.** Yeah, I have done that.

25 **Q.** Take your time. This is a poor copy.

1 Do you see the high being 63 and the low
2 being 41?

3 A. It's either a 63 or 53. I am not sure. I
4 got my finger on it. It's either a 63 or 53. I am
5 not sure.

6 Q. Let's go to the next day, February 23, which
7 would be going back one.

8 Does that appear to be a 65 high, 43 low?
9 Going back the other way.

10 A. I am sorry.

11 Q. That's all right?

12 A. I think so.

13 Q. You think so.

14 The next date, high of 59, low of 22?

15 A. Yes.

16 Q. The next date, which would be February 21,
17 high of 44, low of 12?

18 A. Yes.

19 Q. February 20, high of 42, low of 21?

20 A. They are hard to read. I think that's
21 correct.

22 Q. Could be a 21, could be a 31.

23 A. I have more trouble with the four.

24 Q. All right.

25 A. And then the two is not very good either.

1 Q. The next date, high of 46, low of 21?

2 A. That is clear. That's correct.

3 Q. And the next day is the high of 46 but there
4 is no reading for the low?

5 A. No. That's correct. What you say is
6 correct.

7 Q. High of 52, no data for a low?

8 A. Yes.

9 Q. February 16 there is no date at all, correct?

10 A. That's right.

11 Q. Going to February 15, high of 64, low of 34?

12 A. Yes.

13 Q. February 14, high of 64, low of 62?

14 A. There is no low.

15 Q. No low on February 14. Okay. I am sorry.

16 That was my mistake.

17 February 13, high of 56, low of 28?

18 A. What was the day again?

19 Q. February 13.

20 A. I think I see a 54 and maybe a 25 or 26.

21 Q. Okay.

22 February 12, 61 and 40?

23 A. Yes.

24 Q. Okay.

25 The date before that, February 11, 53 high,

1 36 low?

2 A. I think it's a 35.

3 Q. All right.

4 February 10, high of 54, low of 39?

5 A. Yes.

6 Q. And February 9, high of 59, low of 46?

7 A. Yes.

8 Q. All right. That's as far as I want to cover
9 with you.

10 I have made the corrections that you
11 indicated.

12 Now, looking at Exhibit 107, you can keep
13 that before you. I am going to grab my copy of it.

14 What that would indicate -- looking at that
15 chart, let's start with February 9, 10, and 11,
16 that's -- actually 9, 10, 11, and 12. That's four
17 consecutive days where the low never goes below
18 freezing?

19 A. Yes.

20 Q. We go to February 14 and February 15, we
21 don't have a low for February 14, but we know the
22 day -- or the day after February 15 the entire 24-hour
23 cycle is above freezing?

24 A. Yes.

25 Q. And on the previous day, February 14, we get

1 to a high of 64, correct?

2 **A.** Yes.

3 **Q.** Going down to February 24 and February 23,
4 there again we have a 48-hour period where the
5 temperature stays above freezing the entire duration,
6 correct?

7 **A.** Yes.

8 **Q.** Out of the 15 days listed here, not counting
9 the one day that there is no data at all, February 16,
10 every single day in that 15-day period preceding the
11 body being found on February 24, the temperature is
12 above freezing?

13 **A.** Yes.

14 **Q.** In fact, five of those days are above 60,
15 correct?

16 **A.** Well, I have to count again. Yes, five.

17 **Q.** Unseasonably warm February temperatures,
18 would you agree?

19 **A.** Well, I am from Minneapolis. I am not from
20 Rapid City or from the Interior, South Dakota area.

21 **Q.** In any regard, as we indicated or discussed
22 before, the warmer the temperature, the faster the
23 body would decompose other things being equal?

24 **A.** Yes. It can vary from person to person and
25 there is a great deal of variation possible but

1 generally that's true.

2 Q. So when you are presented with temperatures
3 this warm in the 15-day period before the body was
4 found, does that cause you to conclude that her body
5 could have decomposed rapidly, or at least it would
6 have speeded up the process of decompensation as
7 opposed to if the temperatures would have been below
8 freezing the entire time?

9 A. Yes.

10 And I think it was my conclusion that a great
11 degree of the decomposition had occurred in this time
12 period.

13 Q. Okay.

14 That was your conclusion at the time?

15 A. Yes.

16 MR. MURPHY: Okay. No further questions.

17 Actually, I should -- at this point, Your
18 Honor, I would move to admit Defendant's Exhibit 107
19 and 105.

20 MR. JACKLEY: Can I see them so I got them
21 straight?

22 MR. MURPHY: And for the record they are
23 Graham documents 4,406 --

24 MR. JACKLEY: Yeah.

25 MR. MURPHY: Any objection?

1 **MR. JACKLEY:** No objection, Your Honor.

2 **THE COURT:** They will be received.

3 I do think the change, though, reflects the
4 difference in the average than that reflected on the
5 exhibit.

6 **MR. MURPHY:** So noted, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. JACKLEY:**

9 Q. Doctor, I just have a couple of brief areas
10 of inquiry.

11 My understanding of your discussion with
12 Mr. Murphy is that essentially you can't give a
13 specific date of death based on viewing the body; is
14 that fair?

15 A. That's correct.

16 Q. Explain to this jury why not.

17 A. It's one of the biggest, if not the biggest
18 problem, in forensic pathology. In detective fiction
19 they always have things cinched within a very small
20 type period. But it's very difficult because there is
21 so many factors. And the longer the interval between
22 the time of death and the time that a body is observed
23 becomes even in difficult. And so pinpointing a time
24 of death is a very difficult thing to do and we're
25 generally taught that it's not advisable to try to

1 give a specific date unless there is something that
2 very specifically would indicate that.

3 Q. Doctor, and kind of what you and I talked
4 about earlier, when you first saw that body, did it
5 appear to you to have been out in the elements for
6 quite some time?

7 A. It did, yes.

8 Q. Doctor, anything about what you and
9 Mr. Murphy talked about change your opinion as to the
10 cause of death?

11 A. No.

12 Q. And again, what was the cause of death?

13 A. It was a gunshot wound to the head.

14 Q. Was it a death by a motor vehicle?

15 A. No.

16 MR. JACKLEY: No further questions, Your
17 Honor.

18 MR. MURPHY: Nothing further, Your Honor.

19 THE COURT: Thank you, Doctor.

20 You may be excused.

21 (Witness excused.)

22 MR. JACKLEY: Judge, do you want me to call
23 my next witness or do you want to take a break.

24 THE COURT: I assume we had enough of a break
25 and we'll go for a while.

1 **MR. JACKLEY:** The state would call Angie
2 Begay, Your Honor.

3 **THE COURT:** Please raise your right hand.

4 ANGIE JANIS,
5 called as a witness herein, having been duly sworn,
6 under oath testified as follows:

7 **THE COURT:** Please take a seat.

8 **DIRECT EXAMINATION**

9 **BY MR. JACKLEY:**

10 **Q.** Angie, please introduce yourself to the jury
11 and let them know where you live.

12 **A.** My name is Angie Janis and I live in Pine
13 Ridge, South Dakota.

14 **Q.** Angie, did you go by a different name in
15 1975?

16 **A.** Yes, I did.

17 **Q.** What was that name?

18 **A.** Angie Begay.

19 **Q.** I want to take you back, Angie, to 1975.
20 Where did you work at?

21 **A.** Native American Rights Fund.

22 **Q.** And in what state would that have been?

23 **A.** Boulder, Colorado.

24 **Q.** Did you know John Graham?

25 **A.** Yes, I did.

1 Q. How did you know John Graham?

2 A. He was my boyfriend.

3 Q. Did you live together?

4 A. Yes.

5 Q. Were you generally a supporter of the
6 American Indian Movement?

7 A. Yes.

8 Q. Did you know Troy Lynn Yellow Wood?

9 A. Yes.

10 Q. How did you know Troy Lynn?

11 A. Just an acquaintance.

12 Q. Was it through some of the American Indian
13 Movement activities?

14 A. Yes.

15 Q. Have you ever been to her house?

16 A. Yes.

17 Q. Where was her house at back in 1975?

18 A. On Pecos.

19 Q. Did you know an individual by the name of
20 Thelma Rios?

21 A. Yes.

22 Q. How did you know Thelma?

23 A. Just an acquaintance.

24 Q. Did you know Thelma well enough where you
25 would recognize her voice?

1 **A.** Yes.

2 **Q.** Did you know Theda Clarke?

3 **A.** Yes.

4 **Q.** How do you know Theda Clarke?

5 **A.** Just an acquaintance.

6 **Q.** I want to take you back to the fall of 1975.

7 Do you remember having a phone conversation
8 regarding able?

9 **A.** Yes.

10 **Q.** Who did you talk to?

11 **A.** Thelma Rios.

12 **Q.** Did you recognize her voice?

13 **A.** Yes.

14 **Q.** What did Thelma and you discuss?

15 **A.** Something to the effect that Annie Mae needed
16 to be brought back to Rapid City. She was an
17 informant. I believe that's what it was.

18 **Q.** Okay.

19 Who do you recall passing this informant
20 information on to?

21 Who did you tell?

22 **A.** I think -- I don't recall.

23 **Q.** Okay.

24 Do you recall passing it on?

25 **A.** Yes.

1 **Q.** How long after the call did you pass it on?
2 Was this a deal where you passed it on fairly
3 immediately?

4 **A.** The same day.

5 **Q.** Okay.

6 At the time that you took that phone call in
7 the fall of 1975, do you know where Annie Mae Aquash
8 was staying?

9 **A.** No.

10 **Q.** The night of the phone call that you took and
11 after you relayed the information did you go to Troy
12 Lynn's?

13 **A.** Yes.

14 **Q.** Who was at Troy Lynn's that evening?

15 Who do you recall being at that house there
16 in Denver?

17 **A.** Troy Lynn, Theda, John Boy, Arlo.

18 **Q.** Was Annie Mae there?

19 **A.** Yes.

20 **Q.** Were there some individuals from the Crusade
21 for Justice there?

22 **A.** Yes.

23 **Q.** Do you remember was Corky Gonzalez there?

24 **MR. MURPHY:** Objection. Leading.

25 **THE COURT:** Overruled.

1 **A.** I don't remember.

2 **Q.** **(BY MR. JACKLEY)** Was there a meeting held at
3 Troy Lynn's that evening?

4 **A.** Yes.

5 **Q.** Generally, what of the meeting about?

6 **A.** I don't recall.

7 **Q.** Did it have to do with Annie Mae Aquash?

8 **MR. MURPHY:** Again, objection. Leading.

9 **THE COURT:** Overruled.

10 **A.** Yes.

11 **Q.** **(BY MR. JACKLEY)** Do you recall, when the
12 meeting was going on about Annie Mae, where Annie Mae
13 was at?

14 **A.** In the basement.

15 **Q.** Was there a discussion that you were involved
16 in or that you were privy to about her being an
17 informant?

18 **A.** I don't recall.

19 **Q.** Okay.

20 Did there come a time that somebody took
21 Annie Mae or that Annie Mae left Troy Lynn's that
22 evening?

23 **A.** Yes.

24 **Q.** Can you describe that generally to the jury,
25 please.

1 **A.** Just that the -- Arlo and John Boy and Theda
2 took her out the door.

3 **Q.** When you say John Boy, are you referring to
4 John Graham?

5 **A.** Yes.

6 **Q.** Was her movement in any way restricted when
7 she was taken out of the house?

8 Was she tied up?

9 **A.** Her hands were tied.

10 **Q.** Do you -- were you able to hear Annie Mae say
11 anything to you or to anybody?

12 **A.** No.

13 **Q.** When you say they took her, you indicated she
14 was tied up.

15 What did you see when you said they took her?

16 Where did they take her to?

17 **A.** Out the door.

18 **Q.** Okay.

19 Did you know where they were going?

20 **A.** I assumed where they were going.

21 **Q.** Did you assume that from the conversation,
22 the phone call, that you had had with Thelma Rios?

23 **A.** Yes.

24 **Q.** And was that the phone call where she was to
25 be brought back to Rapid City?

1 **A.** Yes.

2 **Q.** And just so that I have it straight, the
3 individuals in the vehicle when they left were Annie
4 Mae, John Boy, Arlo, and Theda?

5 **A.** Yes.

6 **Q.** And at that time you were living with John
7 Graham; is that correct?

8 **A.** Yes.

9 **Q.** Did John Graham come home that night that
10 they left?

11 **A.** No.

12 **Q.** When John Boy came back, was Annie Mae with
13 him?

14 **A.** No.

15 **Q.** When you were at Troy Lynn's, at any time
16 that evening that the meeting was held about Annie Mae
17 and she left, did you see a gun?

18 **A.** No.

19 **Q.** Did you ever see Annie Mae Aquash again after
20 that evening that John Boy took her from the house?

21 **A.** No.

22 **Q.** Angie, do you see John Graham in the
23 courtroom today?

24 **A.** Yes.

25 **Q.** Could you please point to him.

1 **A.** Right there.

2 **MR. JACKLEY:** Your Honor, may the record
3 please reflect that John Graham has been positively
4 identified?

5 **THE COURT:** Yes.

6 **MR. JACKLEY:** No further questions, Your
7 Honor.

8 **THE COURT:** Mr. Murphy?

9 **MR. MURPHY:** Your Honor, my cross might take
10 a while.

11 Could we take a break at this time?

12 **THE COURT:** Certainly.

13 We'll be in recess till 10:30.

14 (Off the record.)

15 **THE COURT:** We satisfied this is the jury,
16 gentlemen?

17 **MR. JACKLEY:** Yes, Your Honor.

18 **MR. MURPHY:** Yes, Your Honor.

19 **THE COURT:** I believe you are about to cross,
20 Mr. Murphy.

21 **MR. MURPHY:** Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. MURPHY:**

24 **Q.** Ms. Janis, my name is John Murphy.

25 We have never met, have we?

1 **A.** No.

2 **Q.** I am going to ask you some questions and I
3 want to you stop me any time you don't understand my
4 question?

5 **A.** Okay.

6 **Q.** I am going to start with a discussion about
7 your ability to recall events.

8 Would it be fair to say that statements you
9 might have made 10 or 15 years ago about these events
10 would have been fresher then than they are now?

11 **A.** Yes.

12 **Q.** Okay.

13 Your memory hasn't improved with age or date?

14 **A.** No.

15 **Q.** Okay.

16 And you would also agree with me that if you
17 experienced an event and remembered something clearly,
18 that would stay consistent over time, correct?

19 **A.** Yes.

20 **Q.** If it was something big or important, right?

21 **A.** Yes.

22 **Q.** Okay.

23 **A.** I believe so.

24 **Q.** I want to start by taking you back to 1993.
25 October 18, 1993.

1 Do you recall about, approximately that time,
2 giving an interview to Mr. Robert Ecoffey?

3 **A.** No.

4 **Q.** Do you recall talking to Bob Ecoffey a long
5 time ago about that case?

6 **A.** Yes.

7 **Q.** All right.

8 And Mr. Ecoffey is presently your boss; is
9 that true?

10 **A.** He's the superintendent.

11 **Q.** Of --

12 **A.** Of the BIA.

13 **Q.** How long has he been in that position?

14 **A.** About three years maybe.

15 **Q.** Okay.

16 And you're related to Mr. Ecoffey through
17 marriage?

18 **A.** Yes.

19 **Q.** Are you also related to him through blood?

20 **A.** No.

21 **Q.** Okay.

22 And you also have got some other connections
23 to this case and to some of the instances.

24 You had a child with Dennis Banks, correct?

25 **A.** Yes.

1 **Q.** And that was -- that child was back -- born
2 back in 1974 or 75?

3 **A.** Seventy-four.

4 **Q.** So it would have been conceived either early
5 74 or 73?

6 **A.** Yeah, 73.

7 **Q.** Okay.

8 And that was at a time period when Mr. Banks
9 was one of the leaders of the AIM?

10 **A.** Yes.

11 **Q.** It was before your relationship with John
12 Graham?

13 **A.** Yes.

14 **Q.** And it was at the same time though that he
15 was married at least common law to Kamook his wife?

16 **A.** Yes.

17 **Q.** And they had children together, too?

18 **A.** Yes.

19 **Q.** Discussing your relationship with my client,
20 Mr. Graham, John, that started in 1975; is that
21 accurate?

22 **A.** I don't recall.

23 **Q.** Do you recall when it ended?

24 **A.** No, I don't recall.

25 **Q.** Would it be fair to say it ended some time in

1 1976?

2 A. Yes.

3 Q. Okay.

4 And you guys were together for what,
5 approximately, a year?

6 A. Or less.

7 Q. Or less.

8 Nine months to a year?

9 A. Around that.

10 Q. Okay. Fair enough.

11 Let's start talking about your earlier
12 statements, and I want to go back to that interview on
13 October 18, 1993, with Mr. Ecoffey.

14 Were you working in the -- on Pine Ridge at
15 that time?

16 A. Yes.

17 Q. And what were you doing?

18 A. I worked at the BIA.

19 Q. Okay.

20 And you were -- and Mr. Ecoffey at that point
21 also worked at the BIA?

22 A. I don't recall if he did or not.

23 Q. He was a law enforcement officer?

24 A. I don't recall.

25 Q. Okay.

1 He came to speak to you about this case?

2 A. Yes.

3 Q. And he asked you to tell him what you knew
4 about the case, correct?

5 A. Yes.

6 Q. And at that point, you never told him
7 anything about Anna Mae Aquash being tied up, did you?

8 A. I don't recall.

9 Q. Would it help you to look at the interview
10 summary?

11 A. Yes, I can look.

12 Q. Take all the time you need.

13 You finished reading that?

14 A. Yes.

15 Q. Now, that you reviewed that, you realize or
16 you remember now that you never mentioned anything
17 about Anna Mae Aquash being tied up?

18 A. Yes.

19 Q. And in fact, at that point, you state that
20 someone went with Ms. Aquash to the car but you don't
21 know who, correct?

22 A. I don't recall.

23 Q. Okay.

24 Would you like to -- I will provide you the
25 document again. You can reread the whole document,

1 but I am going to point you to a particular section.

2 A. That Theda and John Boy left in Theda's
3 vehicle.

4 Q. Who took --

5 A. Angela stated someone had taken Anna Mae.

6 Q. Someone. You didn't have specifics then as
7 to who took Ms. Aquash out of the car -- or out to the
8 car, do you?

9 A. Huh-uh.

10 Q. In fact, in this entire interview you don't
11 mention Arlo Looking Cloud being present at all, do
12 you?

13 A. No.

14 Q. Okay.

15 You mentioned other people like George Palfy,
16 but not Arlo Looking Cloud?

17 A. Yes.

18 Q. Now I want to take you up to your next
19 interview. And this was June 27, 1994.

20 Do you recall that Mr. Ecoffey spoke to you
21 on a number of occasions?

22 A. A number, yes.

23 Q. Yeah.

24 And he spoke to you on this occasion, too, in
25 Pine Ridge at your office?

1 Do you recall that?

2 A. No.

3 Q. Okay.

4 In any regard, do you recall in your second
5 interview that this is the first time that you add
6 that Arlo Looking Cloud was present?

7 Do you recall that?

8 A. No, I don't.

9 Q. Would it help you to look at the
10 investigative report?

11 A. Yes.

12 Q. Okay.

13 Have you had time to read the document?

14 A. Yes.

15 Q. Would it be fair to say that this document or
16 this interview, I guess about nine months after the
17 first one, you now recalled that Arlo Looking Cloud
18 was present, correct?

19 A. Yes.

20 Q. And you also added -- one additional detail
21 was that you believed Ms. Aquash had been tied up at
22 that occasion?

23 A. Uh-huh.

24 Q. Is that correct?

25 A. Yes.

1 Q. Okay.

2 But you didn't recall whether it was in the
3 front or the back, correct?

4 A. Yes.

5 Q. You were supposedly in the house right there
6 on Pecos Street, correct?

7 A. Yes.

8 Q. It's not a huge house by any means, was it?

9 A. No.

10 Q. It was part of an apartment complex?

11 A. Yes.

12 Q. Was like one of three apartments joined
13 together?

14 A. Yes.

15 Q. All right.

16 I want to bring you up now to July 20, 1994.
17 This time you are interviewed by Mr. Ecoffey, who is
18 now the U.S. Marshal, and Mitch Pourier.

19 Do you recall talking to them together?

20 A. Yes.

21 Q. Okay.

22 This is the time -- during this interview
23 this is the first time that you indicated Thelma Rios
24 called you; is that fair?

25 A. Yes.

1 **Q.** You've talked to the -- Mr. Ecoffey twice
2 before, you never mentioned a phone call in either of
3 those interviews, did you?

4 **A.** No.

5 **Q.** So now we're into July of 94. You add that
6 there was a call from Thelma, but are you not sure who
7 you told about the call?

8 **A.** Yes.

9 **Q.** Okay.

10 And here on this occasion, as the time is
11 getting farther away from the event, you are clear in
12 your mind that Anna Mae Aquash was tied with her hands
13 behind her back.

14 Is that your recollection of what you told
15 them?

16 **A.** That her hands were tied.

17 **Q.** Would it help you to look at the interview
18 statement to see what you told them back then?

19 **MR. JACKLEY:** Objection. Asked and answered,
20 Your Honor.

21 **THE COURT:** No, it's not.

22 **Q.** **(BY MR. MURPHY)** Would it help you, ma'am, to
23 refresh your recollection with the report?

24 **A.** Yes.

25 **Q.** I am going to direct you here. You are more

1 than welcome to read the entire report.

2 **A.** Hands were tied behind her back.

3 **Q.** That's what you told them on the third
4 interview now; is that correct?

5 **A.** Yes.

6 **Q.** Okay.

7 You didn't mention anything about her being
8 tied to a board, did you?

9 **A.** No.

10 **Q.** And you didn't mention anything about her
11 being carried out by anybody, did you?

12 **A.** No.

13 **Q.** I want to bring your attention up to
14 September 7, 2001.

15 You were, again, interviewed by Mr. Ecoffey
16 in 2001, correct?

17 **A.** Yes.

18 **Q.** And at this time Mr. Ecoffey tells you that
19 Troy Lynn Yellow Wood accused you of trying to prevent
20 her from calling law enforcement on the night that
21 Anna Mae Aquash was down in Denver.

22 Do you recall that?

23 **A.** Yes.

24 **Q.** He told you that Ms. Yellow Wood prevented
25 you from making a call to the police; that you took

1 the phone out of her hand and you hung it up, correct?

2 **A.** Yes.

3 **Q.** You denied that?

4 **A.** Yes.

5 **Q.** You deny that today?

6 **A.** Yes.

7 **Q.** If that were true, you could have been
8 prosecuted in this case, correct?

9 **MR. JACKLEY:** Objection, Your Honor. Calls
10 for a legal conclusion.

11 **THE COURT:** I agree.

12 Sustained.

13 **Q. (BY MR. MURPHY)** Were you concerned that if
14 that accusation was believed you might be charged with
15 criminal activity?

16 **A.** No.

17 **Q.** You -- because you didn't have any reason to
18 believe Mr. Ecoffey was going to take any action?

19 **A.** No.

20 **Q.** You weren't worried about it?

21 **A.** No.

22 **Q.** Now, I am going to bring you up to your first
23 sworn statement, October 27, 1994.

24 Do you remember appearing before the Grand
25 Jury?

1 **A.** Yes.

2 **Q.** Do you remember being sworn under oath just
3 like I were today?

4 **A.** Yes.

5 **Q.** Do you recall telling the jury that Anna Mae
6 Aquash was down in Denver at Troy Lynn's house but she
7 was on her way to another house, another place?

8 **A.** No, I don't recall that.

9 **Q.** Do you recall that you told them that she
10 wasn't hiding, but she was on her way to somewhere
11 else at that time?

12 **A.** No, I don't recall that.

13 **Q.** Would it help if I showed you the transcript
14 where you told the Grand Jury that?

15 **A.** Yeah.

16 **Q.** Were you asked the question, why was she
17 staying there? Was she hiding from somebody? And was
18 your answer, she was. I don't know where. She was on
19 her way to somewhere. No, I don't remember why she
20 was staying there. I think just a place to stay.

21 Do you recall that?

22 **A.** No.

23 **Q.** You don't?

24 **A.** No.

25 **Q.** Okay.

1 Let me ask you this. Do you recall that when
2 you were asked questions about whether or not you saw
3 Anna Mae Aquash being put into a car you told them you
4 didn't see that?

5 **A.** Yeah.

6 **Q.** Because you didn't go outside, correct?

7 **A.** No.

8 **Q.** And you don't recall any discussion during
9 this alleged meeting about Anna Mae Aquash?

10 Do you remember telling the Grand Jury that?

11 **A.** No.

12 **Q.** Okay.

13 I am going to show you -- were you asked the
14 question, was there an argument or were people just
15 generally discussing what was to be done with the
16 informant. And your answer was, I don't remember. I
17 mean, that's what I told you was all I remember. I
18 don't know.

19 Was that your answer back then?

20 **A.** Yes.

21 **Q.** Under oath.

22 And you were also asked, under oath, and how
23 was she tied? And your answer was, I don't know. I
24 don't remember. And all I remember was tied up.

25 **A.** Because she was tied up.

1 **Q.** Yeah.

2 And at that time, you were asked whether it
3 was in front or back. This is back in 1994. You
4 didn't have any recollection of how she was tied up,
5 correct?

6 **A.** Yes.

7 **Q.** You also said that you didn't see them -- see
8 much of what happened on the night in question,
9 correct?

10 **A.** I don't recall.

11 **Q.** Okay.

12 Do you recall telling them there was no
13 discussions about Anna in your presence?

14 **A.** No, I don't recall.

15 **Q.** Okay.

16 Do you recall now any discussions about Anna
17 in your presence on that night?

18 **A.** No.

19 **Q.** Okay..

20 You also indicated that by 1994 you had heard
21 a lot of rumors about the case, correct?

22 **A.** Yes.

23 **Q.** In fact, by 1994, rumors were widespread
24 about who did what and what happened, correct?

25 **A.** Yes.

1 Q. This was a subject of great concern within
2 the Indian community and the community of former AIM
3 activists?

4 A. Yes.

5 Q. I need to take just one second.

6 The next time you gave a statement, you were
7 also under oath. That was at the trial of Arlo
8 Looking Cloud's case.

9 Do you remember that?

10 A. Yes.

11 Q. You testified on February 3, 2004?

12 A. Uh-huh.

13 Q. And that happened was a big base case, wasn't
14 it?

15 A. Yes.

16 Q. It was over in the federal building?

17 A. Yes.

18 Q. Lots of people from the media there?

19 A. Yes.

20 Q. And there were a lot of people in the
21 audience that were affiliated with various causes in
22 the Indian community?

23 **MR. JACKLEY:** Objection. Relevance, Your
24 Honor.

25 **MR. MURPHY:** I'll tie it up.

1 **THE COURT:** Please do.

2 **Q. (BY MR. MURPHY)** Do you recall there was a lot
3 of people in the audience, faces you recognized?

4 **A.** There was a lot of people.

5 **Q.** Okay.

6 And you testified under oath, correct?

7 **A.** Yes.

8 **Q.** And that was the first time you had been
9 involved in an event where there was real intense
10 coverage of the matter, correct?

11 **A.** Yes.

12 **Q.** Everything else had been private, correct?

13 **A.** Yes.

14 **Q.** Now, on that occasion, you told the jury that
15 Anna Mae Aquash was tied to a board and carried out of
16 Troy Lynn's apartment, correct?

17 **A.** I don't recall.

18 **Q.** Would you like to see your previous
19 testimony?

20 **A.** Yes.

21 **Q.** You were asked the question, how was she tied
22 up and was your answer, I think her wrists were tied
23 and they had her on like a board or something. Her
24 hands were tied to the board. Question, do you
25 recall? Your answer, they carried her out. Question,

1 they carried her out? Answer, yes.

2 Correct?

3 **A.** Yes.

4 **Q.** That's what you said in 2003?

5 **A.** Yes.

6 **Q.** Now you would agree that differs completely
7 from what you told -- what you told Mr. Ecoffey and
8 the Grand Jury on previous occasions, correct?

9 **A.** Uh-huh.

10 **Q.** And it's different from what you told the
11 jury today, correct?

12 **A.** Uh-huh.

13 **Q.** You also said on that occasion that you never
14 saw John or Arlo or Theda leave.

15 Do you remember that?

16 **A.** No.

17 **Q.** Okay.

18 I am going to show you, again, a transcript
19 of your testimony. If you would read lines 7 to 12 to
20 yourself or 7 to 11 to yourself.

21 Let me know when you are done.

22 **A.** Okay.

23 **Q.** On that occasion you say you didn't see them
24 leave, correct?

25 **A.** Uh-huh.

1 Q. You didn't see who went to the car?

2 A. Yes.

3 Q. And you said you could only guess -- you
4 thought maybe it was John and Arlo, correct?

5 A. Yes.

6 Q. You also told the jury on that occasion that
7 no one attempted to call law enforcement about this
8 situation, correct?

9 A. Yes.

10 Q. And that's because you didn't think anything
11 bad was going to happen to Ms. Aquash, correct?

12 A. No.

13 Q. I will bring you to your next statement which
14 is May 27, 2008.

15 Do you recall that was just two years ago,
16 Mr. Ecoffey coming to your office at the
17 superintendent's office?

18 A. Yes.

19 Q. That was your office and his office, correct?

20 A. I don't know which office it was at.

21 Q. Okay.

22 Would it help if I showed you?

23 A. Yeah.

24 Q. Does that refresh your recollection that it
25 happened at your office, the superintendent's office?

1 **A.** No. I don't remember where it happened.

2 **Q.** In any event, Mr. Ecoffey came to you and
3 essentially ask you, are you going to change your
4 story again, and you said, no; is that fair to say?

5 **A.** Yes.

6 **Q.** You then testified September 9, 2009, about a
7 year ago before a Grand Jury?

8 **A.** Yes.

9 **Q.** And again you were told about the oath and to
10 give the facts to the Grand Jury?

11 **A.** Yes.

12 **Q.** And you were asked whether or not you ever
13 told my client, Mr. Graham, about the phone call from
14 Thelma Rios.

15 Do you recall that?

16 **A.** No.

17 **Q.** Okay.

18 Well, sitting here today you are not sure you
19 ever told him about that call from Thelma Rios, are
20 you?

21 **A.** No, I don't recall.

22 **Q.** Okay.

23 You can't say that you ever relayed any
24 information from Thelma Rios to my client?

25 **A.** No, I don't recall.

1 Q. Okay.

2 And on that occasion, a couple years after
3 the trial in Arlo Looking Cloud's case, you told the
4 jury that Anna Mae Aquash walked out of Troy Lynn's
5 house on her own, correct?

6 A. I don't recall.

7 Q. Okay.

8 I will show you -- I am going to show you a
9 question asked to you. Okay. Very good. Was she
10 walking on her own power? Your answer, yes.

11 Is that what you told the Grand Jury at that
12 occasion?

13 A. Yes.

14 Q. All right.

15 And so she was no longer tied to a board and
16 carried out, now she's walking out voluntarily?

17 A. Yes.

18 Q. Yes?

19 A. Yes.

20 Q. All right.

21 And in fact, you told the Grand Jury at that
22 occasion you didn't see anybody push her, shove her,
23 or force her out of the house?

24 A. Yes.

25 Q. And the group of people that left the house,

1 just walked out together; is that correct?

2 A. I don't recall.

3 Q. Okay.

4 Well, what do you recall now?

5 A. I know she was tied up.

6 Q. Okay.

7 So now you know was tied up. But at least
8 back in 2009, you said on that occasion whether she
9 was tied up or not she walked out of the house on her
10 own, correct?

11 A. Uh-huh.

12 Q. Okay.

13 And then just about six months ago, you gave
14 testimony in the trial of Dick Marshall's case,
15 correct?

16 A. Yes.

17 Q. And during that period of time, you were
18 asked whether my client, John Graham, was a supporter
19 of the American Indian Movement, correct?

20 A. Yes.

21 Q. And you told them you weren't sure that he
22 even was really a supporter of AIM, correct?

23 A. Yes.

24 Q. Okay.

25 I mean, yes, in that you weren't even sure

1 whether my client was an AIM supporter, were you?

2 **A.** Uh-huh. Yes.

3 **Q.** Okay.

4 And you again reiterated that you are not
5 sure whether Thelma Rios -- that information from
6 Thelma Rios ever got to my client, correct?

7 **A.** Yes.

8 **Q.** You don't know if he knew anything about that
9 information, correct?

10 **A.** Yes.

11 **Q.** You told the jury on that occasion that you
12 weren't even sure that after leaving the house whether
13 anybody from this group got into a car?

14 Do you recall that?

15 **A.** No, I don't recall that.

16 **Q.** Okay.

17 Were you asked, did you see what they did
18 with Anna Mae Aquash when they got outside the house?
19 Your answer, no. Did you see what kind of automobile
20 they got into? No.

21 Do you recall those answers?

22 **A.** Yes.

23 **Q.** Okay.

24 So you weren't even looking outside so you
25 don't know what happened outside, do you?

1 **A.** No.

2 **Q.** And on the night in question, you were asked
3 by Mr. Jackley if there was a gun involved.

4 You didn't see my client ever with a gun, did
5 you?

6 **A.** No.

7 **Q.** Troy Lynn's house, that was kind of a hang
8 out for people from the American Indian Movement?

9 **A.** A lot of people hung out there.

10 **Q.** Okay.

11 A lot of people who had an interest in the
12 American Indian Movement?

13 **A.** That I don't know.

14 **Q.** Okay.

15 Well, did you tell the jury that about six
16 months ago?

17 Question, it was a place where a lot of
18 people who had an interest with or were involved in
19 the American Indian Movement would come to hang out
20 and be with each other, correct? Your answer, yes.

21 **A.** Yes.

22 **Q.** Okay.

23 And since we originally talked about this
24 case gaining a lot of interest in 1994 and the rumors
25 you heard then, since 94 to today, there has been a

1 tremendous amount of information circulated about this
2 case, correct?

3 A. Yes.

4 Q. And you've read and heard things about the
5 case over time, correct?

6 A. Yes.

7 Q. You heard what some people think did happen
8 and what other people think did happen, correct?

9 A. Yes.

10 Q. During the time period in question that you
11 were with my client, he was a quiet young man?

12 A. Yes.

13 Q. Twenty years old?

14 A. Yes.

15 Q. Interested in making chokers and other
16 objects, correct?

17 A. Yes.

18 Q. Sold them to people, correct?

19 A. Yes.

20 Q. Went to Pow Wows and sun dances and stuff
21 like that?

22 A. Yes.

23 Q. I want to ask you about when this event
24 allegedly happened.

25 Do you recall here sitting today when this

1 call happened?

2 **A.** In the latter part of the year.

3 **Q.** Do you recall telling the jury in the Arlo
4 Looking Cloud case that it was in November and that it
5 was not in December?

6 **A.** No, I don't recall that.

7 **Q.** Let me show you. Were you asked, and I don't
8 know if I asked you, but do you recall about what date
9 this all happened? Your answer, no. I think it was
10 November, but I don't know the date. And the
11 question, of 1975? Answer, yes. Question, is it
12 possible it was even into December? Your answer, no,
13 I don't think so.

14 **A.** Okay.

15 **Q.** Was that your testimony on that occasion?

16 **A.** Yes.

17 **Q.** And previously when you were asked by
18 Mr. Ecoffey back on July 20, 1994, he told you that he
19 thought Troy -- Anna Mae had been at Troy Lynn's a
20 full two weeks.

21 Do you remember that?

22 **A.** No.

23 **Q.** Do you remember telling him that you disputed
24 the time frame and that you think that this happened
25 around Thanksgiving?

1 Do you recall that now?

2 **A.** Yes.

3 **Q.** Okay.

4 **MR. MURPHY:** That's all.

5 Thank you very much, Ms. Janis.

6 **THE COURT:** Mr. Jackley?

7 **REDIRECT EXAMINATION**

8 **BY MR. JACKLEY:**

9 **Q.** Ms. Janis, you've had several meetings or
10 interviews with law enforcement officers regarding
11 what you can recall from the events that night at Troy
12 Lynn's; is that fair?

13 **A.** Yes.

14 **Q.** Is it a setting where investigators would
15 come to you and ask you some questions and then come
16 back and ask you some specific questions based on
17 information they wanted?

18 **A.** Yes.

19 **Q.** When you met with those investigators on
20 those repeated occasions did you try to be truthful to
21 the best you could?

22 **A.** Yes.

23 **Q.** And that hasn't been an easy process reliving
24 what happened at Troy Lynn's that evening and all
25 those meetings with law enforcement, has it?

1 **A.** No.

2 **Q.** Has it been an easy process testifying before
3 Grand Jurors and juries about what happened that
4 evening at Troy Lynn's?

5 **A.** No.

6 **Q.** Are you receiving any benefit from coming
7 here today and talking to this jury about what you can
8 best recall happened that evening?

9 **A.** No.

10 **Q.** Do you recall having a discussion with
11 Mr. Murphy how Annie Mae was tied up?

12 Do you recall that?

13 **A.** No.

14 **Q.** Do you recall having the discussion with
15 Mr. Murphy about how she was tied up, not that you
16 knew how she was tied up, but having that discussion?

17 **A.** Yes.

18 **Q.** Did you tie Annie Mae up?

19 **A.** No.

20 **Q.** But was she tied up that evening?

21 **A.** Yes.

22 **Q.** And you told that to investigators; is that
23 fair?

24 **A.** Yes.

25 **Q.** And you told that to juries; is that fair?

1 **A.** Yes.

2 **MR. JACKLEY:** No further questions, Your
3 Honor.

4 **MR. MURPHY:** Just briefly.

5 **RE-CROSS-EXAMINATION**

6 **BY MR. MURPHY:**

7 **Q.** When you were approached by Mr. Ecoffey, he
8 asked you to give him any information you had about
9 the case, correct?

10 **A.** I don't recall what he said.

11 **Q.** If I could approach you and show you the very
12 first of his interviews --

13 **A.** Yes.

14 **Q.** Wasn't that --

15 **A.** Yes.

16 **Q.** And consistently he asked you to provide any
17 information that you had, correct?

18 **A.** Yes.

19 **Q.** And though you were asked just a moment ago
20 by Mr. Jackley about saying that Annie Mae Aquash had
21 been tied up, you haven't always said that to law
22 enforcement, have you?

23 **A.** No.

24 **Q.** Sometimes she's tied up, sometimes she isn't,
25 correct?

1 **A.** Correct.

2 **Q.** Sometimes in front, sometimes in back,
3 sometimes to a board, correct?

4 **A.** Yes.

5 **Q.** Okay.

6 **MR. MURPHY:** Nothing further.

7 **MR. JACKLEY:** Nothing further, Your Honor.

8 **THE COURT:** Thank you, ma'am.

9 You are excused.

10 Released from her subpoena?

11 **MR. JACKLEY:** She can leave, but we don't
12 want to release her from her subpoena.

13 **THE COURT:** What that means is you can leave
14 now but you are still under subpoena to possibly be
15 called back.

16 Do you understand that?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Thank you.

19 (Witness excused.)

20 **MR. OSWALD:** The state calls Troy Lynn Yellow
21 Wood.

22 **THE COURT:** Please stop here, ma'am.

23 Please raise your right hand.

24

25

1 TROY LYNN YELLOW WOOD,
2 called as a witness herein, having been duly sworn,
3 under oath testified as follows:

4 THE COURT: Please take a seat.

5 DIRECT EXAMINATION

6 BY MR. OSWALD:

7 Q. Would you introduce yourself, please.

8 A. My name is Troy Lynn Star Yellow Wood.

9 Q. Troy Lynn, do you live in Denver?

10 A. I do.

11 Q. During -- well, a little bit about yourself.

12 Mother? Grandmother?

13 A. I'm a great grandmother.

14 Q. Okay.

15 Are you currently employed?

16 A. I am. I work for Access Housing. It's a
17 homeless shelter and a place that provides subsidy
18 housing for people who are homeless.

19 Q. Okay.

20 Have you worked there very long?

21 A. Several years.

22 Q. Okay.

23 Troy Lynn, who is Theda Clarke?

24 A. Theda, she's my mother's oldest sister.

25 She's my aunt. But in the Lakota tradition she is my

1 mother as well.

2 Q. Did you have a lot of interaction with Theda
3 Clarke when you were younger?

4 A. I did.

5 Q. Was she instrumental in, I guess, raising
6 you?

7 A. She was around much of my upbringing.

8 Q. Do you know Arlo Looking Cloud?

9 A. I do.

10 Q. How do you know Arlo?

11 A. Arlo is a really good friend of mine, but my
12 mother took him as a son. So he became my Hookah
13 (phonetic) brother.

14 Q. Is that in the Lakota tradition?

15 A. It's a tradition amongst our people that
16 somebody who is well thought of can be adopted by your
17 family.

18 Q. Do you know John Graham?

19 A. I did.

20 Q. Do you see Mr. Graham here in the courtroom
21 today?

22 A. I believe it is this man right here.

23 Q. How long has it been since you've seen him?

24 A. I don't know. More than -- maybe 35 years or
25 30 plus. I don't know.

1 Q. Do you know Annie Mae Aquash?

2 A. I did.

3 Q. All right. I want to take you back to 1975.

4 Did you know Anna Mae Aquash back then?

5 A. I did.

6 Q. Did you see her in Denver at that time

7 period?

8 A. Yes. Theda brought her to my home and asked
9 that I keep her there and not let a lot of people know
10 that she was there.

11 Q. Can you just tell us if you remember the
12 address of that house?

13 A. It was 4494 Pecos, apartment one.

14 Q. Just as a side line, was your house kind of a
15 meeting place for supporters of the American Indian
16 Movement back then?

17 A. It was a gathering place, yeah. There were a
18 lot of AIM people in and out.

19 Q. Okay.

20 Did you have room to keep Anna Mae and let
21 her stay with you?

22 A. I did.

23 Q. When she came, did she have any clothing with
24 her?

25 A. She didn't have anything.

1 Q. And did you provide anything for her?

2 A. I gave her clothing, yes, a shirt, sweaters,
3 whatever.

4 Q. Did you provide any toiletries and hygiene
5 items, anything like that?

6 A. Whatever she needed.

7 Q. Did -- can you tell us a little bit about
8 Anna Mae as far as how she kept herself, things that
9 struck you?

10 A. She was very neat. Very industrious. Also
11 working or helping do something. She kept herself
12 busy. She was very neat in her appearance. Very --
13 just clean and neat. Always.

14 Q. Now, when Theda brought Anna Mae over and she
15 said those things to keep her, did she explain why?

16 A. Not really, no. There wasn't a big
17 explanation.

18 Q. Had you known Annie Mae before this?

19 A. I knew who she was. I had seen her at
20 various gatherings, but we were not close friends.

21 Q. Did you become closer?

22 A. After she stayed at my house I became very
23 close to her.

24 Q. Now, we're talking 1975.

25 Can you give me the best estimate or

1 reference point, like to holidays or something, that
2 you can when this happened?

3 **A.** It was in November. I don't know the exact
4 dates or anything. It was around Thanksgiving.
5 And --

6 **Q.** How do you know it was around Thanksgiving?

7 **A.** Because we went to Thanksgiving dinner at my
8 mother and father's home, and my mother puts a big
9 Thanksgiving dinner on and all of our family -- every
10 member of our family comes and attends. It's a big
11 formal sit-down dinner and Anna Mae attended with me.

12 **Q.** And you remember that?

13 **A.** Uh-huh.

14 **Q.** I am stopping to give you a chance to cough.

15 **A.** I am sorry.

16 **Q.** Troy Lynn, just if we can, about how long did
17 Anna Mae stay with you then?

18 **A.** I don't know. I don't really know the exact
19 time. I think it was possibly at least -- it was
20 longer than a week. I know that because I was going
21 to school at University of Colorado and it was right
22 before -- around -- it was getting close to the
23 semester break and I was working on some paperwork and
24 some papers that I was working on that I needed for my
25 class, and she helped me do the research for it.

1 **Q.** During the time Anna Mae was with you, did --
2 did she care for your children?

3 **A.** She did.

4 **Q.** Did you have any conversations with her about
5 her personal life?

6 **A.** Many. Many conversations.

7 **Q.** What did she care about?

8 **A.** Her daughters, her sister, her nieces, her
9 family.

10 **Q.** Did she express to you any fears that she had
11 at this time?

12 **A.** She did. She -- it was kind of a difficult
13 time to really understand, but there was a lot of
14 accusations and a lot of paranoia amongst, you know,
15 just people in general. And she was -- she felt that
16 people were accusing her of being an informant and
17 that they were pointing the finger at her and blaming
18 her for different arrests that had happened that she
19 was at and was released on a PR bond or however. I
20 don't really know exactly how, but she was released
21 and the others were incarcerated.

22 And she -- she was nervous about it. She was
23 a little apprehensive about it. And when I asked her
24 about -- I told her, why did they let you go? What's
25 that about. And she said, I don't know. I don't

1 really know, but I think they think that I will lead
2 them back to Dennis and the others. But --

3 Q. Okay.

4 But Troy Lynn, did she ever talk to you about
5 an incident at Farmington?

6 A. She did.

7 Q. Did that involve who?

8 A. She said that people were -- it seems like
9 there was some kind of -- a little -- a meeting of
10 certain people that were accusing her of being an
11 informant. And that -- and she had to defend herself.
12 And she told me that -- that Leonard Peltier was there
13 and that he said, you know, I want to hear it from the
14 horse's mouth, Anna Mae. I want to know if you are
15 doing what they are saying that you are doing. Are
16 you giving us up? Are you doing this?

17 And she said that she just -- she said she
18 was really afraid because he had a gun and she said he
19 held the gun to her head and she told him if you
20 believe that about me, then pull the trigger. But
21 either you defend me or you kill me because I am tired
22 of everybody doing this to me. I am tired of being
23 the target of your -- all this nonsense. I am not
24 guilty.

25 And then she said he just kind of laughed and

1 he -- he just said, I never believed what everybody
2 else said anyway. And he just laughed it off. And
3 she said but it was really frightful. It was really
4 frightening to her and it was frightful.

5 Q. Did Annie Mae call from your house at all?

6 A. She -- I had a phone but she never made any
7 phone calls from my home. She would go to -- across
8 the street to the 7-Eleven at the end of the block and
9 she would make phone calls all the time. I don't know
10 exactly who she was trying to reach. But she said she
11 was trying to call an attorney and she was trying to
12 reach John Trudell and Dino Butler.

13 Q. They were her friends?

14 A. She said they were the only people she could
15 trust. They were her Hookah brothers. She had
16 adopted them and she believed that they would -- if
17 she could get ahold of them, they would come and they
18 would help her.

19 Q. Now, when you heard these conversations from
20 Annie Mae, did you inquire as to Theda, your aunt,
21 about any of this stuff?

22 A. No.

23 Q. Now, back then, were you and Angie Begay
24 friends?

25 A. We were very good friends.

1 Q. And was Angie Begay involved in a
2 relationship with someone back then?

3 A. Yes. She lived with John Boy.

4 Q. They were cohabitating the whole time?

5 A. Well, they lived together.

6 Q. And did they -- did you see them together a
7 lot?

8 A. Uh-huh.

9 Q. Was there a time, Troy Lynn, that some people
10 showed up at your house regarding Anna Mae?

11 A. There was.

12 Q. Who was there?

13 A. I am not exactly certain of everybody, but
14 all of a sudden people just started showing up, and
15 you know, I didn't really know who they were showing
16 up for. But I assumed that -- I thought maybe Aunt
17 Theda called them. But they all went into the living
18 room and sat down. And I went in the kitchen and made
19 coffee for them.

20 Q. Did you ask what they were doing there?

21 A. No.

22 Q. Did you try and stay out of the business?

23 A. I wasn't asked to be or included in the
24 business that was going on.

25 Q. So they were in your --

1 **A.** But they were in my living room, and I was
2 part of the time in the kitchen and back and forth
3 between the back -- the bedrooms in the back of the
4 house.

5 **Q.** Do you know any people from the Crusade for
6 Justice back then?

7 **A.** Yes.

8 **Q.** Did they come to your house?

9 **A.** Yes.

10 **Q.** Do you know a couple of their names, if you
11 recall?

12 **A.** Corky Gonzalez was there and he was
13 accompanied buyer Ernesto Vigil. I don't know if
14 there were others, but those two, I knew, and I
15 remember them being there.

16 **Q.** And Vigil is spelled V-I-G-I-L?

17 **A.** Yes.

18 **Q.** Did Aunt Theda show up?

19 **A.** Yes. I don't know what the order of -- who
20 showed up, but I think she was there first and then
21 the others started coming.

22 **Q.** Did John Boy show up?

23 **A.** Yes.

24 **Q.** Do you know if -- did Arlo show up with any
25 of them?

1 **A.** No.

2 **Q.** Were they there before Arlo?

3 **A.** Yes.

4 **Q.** Was Anna Mae at your house at this time?

5 **A.** She was in the back bedroom, yes.

6 **Q.** Did you have any idea what was being
7 discussed in the living room in your house?

8 **A.** No, but I did go back to the book bedroom and
9 she could see out the window who had come in. And
10 I -- I don't know if she knew --

11 **MR. MURPHY:** Objection. Nonresponsive.

12 **A.** -- them or not.

13 **THE COURT:** Overruled. It is, but ask
14 another question, Mr. Oswald.

15 **MR. OSWALD:** Thank you.

16 **Q.** **(BY MR. OSWALD)** So you went back to the
17 bedroom and you talked to Annie Mae?

18 **A.** Uh-huh.

19 **Q.** What happened then?

20 **A.** She was really nervous and scared and
21 agitated just like really extremely nervous. Scared.
22 Frightened.

23 **Q.** Did you -- at some point when you were
24 providing coffee, did you see anything in that front
25 room?

1 **A.** I walked in, and the living room was situated
2 so there were three couches in the living room. And I
3 walked in there and there was a coffee table in the
4 middle and I took the coffee on a tray and set it on
5 the coffee table. And then I went back into the
6 kitchen.

7 But when I was going into the living room,
8 Ernesto Vigil was sitting closest to the door and I
9 saw him -- I don't know what the conversation was, but
10 he said, I don't know what you guys do about snitches,
11 but this is how we handle it, and he drew his finger
12 across his throat.

13 **Q.** You actually saw that?

14 **A.** Uh-huh. He did.

15 **Q.** Did you go tell Annie Mae that?

16 **A.** No.

17 **Q.** Was she still in that back bedroom?

18 **A.** She was.

19 **Q.** What happened next?

20 **A.** I don't know -- there was a progression of
21 things that happened. I don't remember exactly, but
22 at some point Aunt Theda went back and told her to
23 come out. That she was going with her. And so -- and
24 some time around that time, she began crying and she
25 told me, if they take me from here, you will never see

1 me alive again. And you know --

2 Q. What did you think about that?

3 A. I just thought she was really, you know, just
4 scared and paranoid. But because I knew -- I knew all
5 of these people and I had nothing to fear from any of
6 them.

7 Q. Did this goings on -- let's see -- affect you
8 emotionally at the time?

9 A. It did. I was really uncertain about things.
10 But I -- it felt wrong what was going on. It felt
11 like it was wrong. That nobody should be made to --
12 or be subjected to somebody else's demand or command
13 or whatever you want to say to go somewhere they
14 didn't want to go.

15 And I tried to intervene with Aunt Theda but
16 she just basically cursed me and told me to get out of
17 the way. That I was F'ing stupid and I didn't know
18 what was going on. And --

19 Q. About how old were you then?

20 A. I was in my 20s. Probably middle or early --
21 middle 20s, probably. I don't know exactly.

22 Q. And just -- just a quick side line. Was Aunt
23 Theda pretty strong willed?

24 A. There wasn't very many people that would have
25 went up against her, if any.

1 **Q.** So when you heard all of this going on, and
2 you saw Anna Mae crying, did you make any phone calls
3 to people?

4 **A.** I did.

5 **Q.** What for?

6 **A.** I tried to get -- find somebody that could
7 help. I didn't know what to do. For myself there was
8 nothing to fear, but for Anna Mae I could sense the --
9 I knew she was just frightened to death, you know.
10 And I just didn't think that she should have to go if
11 she didn't want to go.

12 And so I called the AIM house and whoever
13 answered the phone and I just told them something is
14 going on here and I need somebody to come. I need
15 somebody to come over here. I called several other
16 numbers. I think I called my mother, as well. I
17 don't remember exactly. I called several people. I
18 didn't have any luck finding anybody that I thought
19 could intervene or help with the situation. But --

20 **Q.** Do you know George Palfy?

21 **A.** I do.

22 **Q.** Did you try calling him?

23 **A.** I think he answered the phone. He was at the
24 AIM house and he answered the phone there.

25 **Q.** Did he come by?

1 **A.** He did.

2 **Q.** What about Arlo Looking Cloud?

3 Did he show up at some point?

4 **A.** He did. I can't really say again. But I --
5 I don't know exactly when, but I know he was there.

6 **Q.** Could you tell us the circumstances on how
7 Arlo showed up?

8 **A.** It wasn't unusual for him to show up at any
9 time. He came and went, you know, on a regular basis.
10 And I believe he came there looking for Joe Morgan who
11 was another friend of ours to drink with. And Joe
12 Morgan's sister lived just a couple blocks from me so
13 he came to my house first on the way to --

14 **MR. MURPHY:** Objection. Lack of personal
15 knowledge.

16 **THE COURT:** Overruled.

17 **Q.** **(BY MR. OSWALD)** Okay.

18 So did you let Arlo in your house?

19 **A.** I wouldn't have to let Arlo in. He would
20 just come in if he was there.

21 **Q.** Do you know when Arlo showed up where Anna
22 Mae was being kept?

23 **A.** She was in the bedroom until at some point
24 when Theda said for her to come, that they were going
25 to take her, or she was going to go with them or

1 whatever or however it was said. I don't know
2 exactly.

3 Q. Was there a time period when Annie Mae could
4 have gone to the basement?

5 A. I don't know. I don't remember that, but I
6 was in the bedroom making phone calls some of the
7 time. So I don't -- she could have.

8 Q. Did you make any phone calls for help other
9 than to friends?

10 A. I called the police. Back then they didn't
11 have 911. It was a just a zero. You just hit zero
12 and the operator would come on and ask what was the
13 call concerning or whatever. And I called the police
14 and somebody answered on the other end.

15 Q. What happened while you were calling the
16 police?

17 A. Angie came in and she pushed the phone down
18 on the hook and she said, don't do that. You are
19 going to bring a lot of trouble down on yourself.
20 Don't do that.

21 Q. Did you respond?

22 A. I did.

23 Q. What did you say?

24 A. I asked her -- I pleaded with her. I told
25 her, help me. You know, help me, Angie. Don't let

1 this happen. And Angie said, no, I am not going to.

2 Q. At some point did you see Annie Mae with
3 Theda and John Boy after this phone call?

4 A. I don't know what -- when it was. I just
5 know -- I don't know -- I don't know what exactly
6 happened at what time, but I just saw them -- they
7 flanked her down the hallway. And in the hallway.
8 And then out -- you have to go through the kitchen and
9 through the back door. That's what I can recollect.
10 I don't know -- I don't -- I don't know exactly when
11 or what.

12 Q. Was Arlo part of this flanking that you know
13 of?

14 A. No.

15 Q. You don't know or he wasn't?

16 A. He wasn't.

17 Q. Where was he?

18 A. I don't know where he was. I don't know -- I
19 don't remember seeing him again until they were
20 getting in the car.

21 Q. Well, so when they were flanking -- and you
22 said John Boy and Theda -- what -- what happened?
23 Where were they flanking her at and where were they
24 going?

25 A. They just walked her down the hallway and

1 through the house and --

2 Q. Where did they go from there?

3 A. I thought outside, but I am not exactly
4 certain about it.

5 Q. At some point did you see them leave your
6 house?

7 A. I did.

8 Q. And describe what you saw as best as you can
9 remember from 35 years ago.

10 A. Aunt Theda had a little red hatchback car and
11 I saw Anna Mae in the back of the hatch. She was
12 small and she could fit in the back of the hatchback
13 and she had knees pulled back and she had her head
14 down on her knees. And I think her arms were around
15 her knees and she was just -- she just had this
16 defeated look.

17 And I don't know -- I don't know where
18 exactly they were all positioned, but Aunt Theda, John
19 Boy, and Arlo were in the front part of the car.

20 Q. Before they left, did you protest again about
21 them taking Anna Mae?

22 A. At some point I asked Aunt Theda, why did you
23 bring her here if you were going to do this? Why did
24 you do this to us? You know, why did you bring her
25 here if you were going to -- you know -- because

1 she -- when she brought her, she was -- it was under
2 the guise of protection. She was protecting her. And
3 then everything changed somehow or somewhere and it
4 wasn't -- she wasn't doing that. You know, I knew
5 that.

6 Q. Did you see Anna Mae crying any more?

7 A. No. At one point when I -- when Aunt Theda
8 was cursing me and telling me to get out of the F'ing
9 way and whatever, then all of -- all of a sudden Anna
10 Mae just straightened up, she put her shoulders back,
11 and she shook off the tears, and just said, it's okay.
12 I'll go with them because I'm tired of this. I
13 just -- I want to get it straightened out. I am tired
14 of everybody believing this about me. I just want to
15 get it straightened out and I will go. You know, it's
16 all right.

17 But I still knew she didn't want to go.

18 MR. MURPHY: Objection. Narrative.

19 MR. OSWALD: Okay.

20 THE COURT: Overruled.

21 Q. (BY MR. OSWALD) Go ahead.

22 What did you say?

23 A. I knew she didn't want to go, but she said
24 she would go.

25 Q. Did you find it strange that they put her in

1 the hatchback?

2 **A.** I did. I thought that there was probably a
3 fourth person, but I don't know or I couldn't see who
4 it was. I thought there were probably four people in
5 there, but I didn't know. I didn't why they did that.

6 **Q.** As you sit here today, you have no idea if
7 there was a fourth person?

8 **A.** No. I can't remember.

9 **Q.** You do know specifically the four people in
10 that car that you remembered is what you already
11 testified to?

12 **A.** Yes.

13 **Q.** How did Arlo get going in this thing?

14 **MR. MURPHY:** Objection. Calls for
15 speculation.

16 **THE COURT:** I think your question needs
17 either more clarification or withdrawn.

18 **MR. OSWALD:** Okay.

19 **Q. (BY MR. OSWALD)** How is it that Arlo went
20 along in the Pinto?

21 **MR. MURPHY:** Same objection.

22 **THE COURT:** Sustained.

23 **Q. (BY MR. OSWALD)** Did you hear any
24 conversations of them talking to Arlo?

25 **A.** I didn't.

1 Q. Pardon me?

2 A. I didn't.

3 Q. Okay.

4 Do you know who drove?

5 A. I think it was -- I think it was one of the
6 men, but I don't know. I really can't say. I
7 don't -- I'm not certain. I can't remember.

8 Q. Did you ever see Anna Mae again?

9 A. No.

10 Q. Did you see Arlo again?

11 A. After some -- some time I did.

12 Q. Did you see John Graham again?

13 A. I did.

14 Q. Back in Denver?

15 A. Yes.

16 Q. Did you ask any of them what happened?

17 A. No.

18 Q. Why wouldn't you?

19 A. Because I just assumed that they took her
20 over there and left her over there. It was a really
21 short length of time, you know, that all of this
22 happened. It wasn't very long.

23 Q. Did you know Arlo then and kept in contact
24 with him throughout the years after this?

25 A. Yes. He was frequently around my home and my

1 family.

2 Q. Would he start talking about this incident?

3 A. He never talked about it.

4 Q. At some point did you take him anywhere to
5 talk about this incident?

6 A. What happened was Trudell came to Denver and
7 he said he was going to be the opening act at the
8 Paramount Theater. And he said that he would leave
9 some tickets for me at the window. And he was the
10 opening act for Midnight Oil and so he told me to go
11 ahead and come and bring whoever I wanted. But it was
12 short notice and so Arlo just happened to show up and
13 so he and I went there.

14 And prior to this, I had -- I had ran across
15 Trudell in California, in San Francisco, and he -- he
16 asked me about what I knew about whatever happened and
17 then he expressed an interest in wanting to know what
18 happened.

19 And so when Arlo went with me to the
20 performance, I told him, well, Arlo was one of the
21 people that was there. And I really -- I didn't
22 really know -- I didn't -- I didn't expect anything
23 except for, you know, what I thought had happened
24 until Arlo told Trudell everything that had really
25 taken place.

1 **Q.** And as far as a year, was this several years
2 later like late 80s?

3 **A.** I don't know how many years, but it was a
4 number of years later.

5 **Q.** Did you hear -- just yes or no -- did you
6 hear Arlo Looking Cloud telling Mr. Trudell what
7 happened to Annie Mae?

8 **A.** I did.

9 **Q.** Were you surprised?

10 **A.** I was shocked.

11 **Q.** Over the years, did you ever hear Arlo, then,
12 after this, speak of this incident to you?

13 **A.** He didn't really speak about it, but
14 sometimes when he would -- was drunk, he would, you
15 know, allude to different -- allude to that. But he
16 never really -- he never spoke, you know, like about
17 the details of whatever happened or anything like
18 that. He would just -- he was wounded over it. He
19 was hurt over it. Over everything. And when he was
20 drunk he would, you know, just allude to it. He never
21 would speak directly to it. He never really did that.

22 **Q.** Did you ever pump him for information?

23 **A.** No.

24 **Q.** Now, you know you were asked to testify at
25 Grand Juries in the federal system.

1 Do you remember that?

2 **A.** Yes.

3 **Q.** Did you try and minimize --

4 **MR. MURPHY:** Objection. Bolstering.

5 **THE COURT:** The question was, did you try --

6 **Q.** (BY MR. OSWALD) How --

7 **THE COURT:** I want to make sure that I am
8 reading the question.

9 **MR. OSWALD:** That is correct. I will
10 withdraw the question and start over.

11 **THE COURT:** That's fine.

12 **Q.** (BY MR. OSWALD) How would you characterize
13 your testimony prior to this?

14 **MR. MURPHY:** Objection. Vague.

15 **THE COURT:** Overruled.

16 **Q.** (BY MR. OSWALD) You may answer.

17 **A.** I gave as little information as I possibly
18 could.

19 **Q.** Why?

20 **A.** Because of Arlo -- because of my relationship
21 with Arlo and my friendship with Arlo.

22 **Q.** Was Theda still around you and in your life
23 also?

24 **A.** She was.

25 **Q.** Do you remember talking with Kamook Banks,

1 Kamook Ecoffey, now?

2 A. I do.

3 Q. Do you remember where?

4 A. She came to my house and she said that she
5 wanted to talk with Arlo, but she didn't think Arlo
6 would talk with her alone so she came and she --

7 MR. MURPHY: Objection, Your Honor.

8 Nonresponsive to the question.

9 THE COURT: Overruled.

10 Q. (BY MR. OSWALD) You may proceed.

11 A. She said that she needed to know the
12 answers --

13 MR. MURPHY: Objection. Hearsay.

14 THE COURT: Overruled.

15 Q. (BY MR. OSWALD) Okay.

16 Now, did you know at that time that she was
17 working with the FBI?

18 A. I didn't.

19 Q. She talked to you on two different occasions;
20 is that right?

21 A. Yes.

22 She came one night and she said that Arlo was
23 in jail in Denver and that he was being released the
24 following morning at, I don't know, eleven o'clock or
25 something. I don't remember the exact time, but it

1 was still morning. He was going to be released from
2 the Denver jail and would I go with her -- would I go
3 with her so that she could talk to Arlo.

4 **Q.** And did that happen?

5 **A.** It did.

6 **Q.** Was this a lengthy conversation between you,
7 Kamook, and Arlo?

8 **A.** I don't know what the length was, but at
9 first Arlo wouldn't say anything. He just wouldn't --

10 **MR. MURPHY:** Occurred. Nonresponsive.

11 **THE COURT:** I think the nonresponsive
12 objection generally belongs to the asker of the
13 question.

14 I am going to overrule that unless there
15 is some thing --

16 **MR. MURPHY:** Narrative.

17 **THE COURT:** -- objectionable in the question.

18 **MR. MURPHY:** Then I object as to narrative.

19 **THE COURT:** That's the same objection here
20 and I think it's not particularly narrative.

21 Overruled.

22 Nonetheless, the question is over so I guess
23 you will ask another one.

24 **MR. OSWALD:** Yes.

25 Thank you.

1 **Q.** **(BY MR. OSWALD)** I'd like to show you State's
2 Exhibit 22.

3 Do you recognize that?

4 **A.** It's the apartment on 4494 Pecos. It's a --
5 it was a triplex. There were three apartments and
6 mine was number one.

7 **Q.** Okay.

8 **A.** And that's the porch to the back -- the
9 kitchen.

10 **Q.** Is this a true and accurate picture of what
11 it looked like?

12 **A.** Uh-huh.

13 **MR. OSWALD:** I would offer Exhibit 22.

14 **MR. MURPHY:** No objection.

15 **THE COURT:** Can I see it, please?

16 Thank you.

17 **MR. OSWALD:** May I show and publish, Judge?

18 **THE COURT:** Yes.

19 **MR. OSWALD:** It's pretty dark. I am going to
20 pass it around, if I may, Judge?

21 **THE COURT:** Certainly.

22 **MR. OSWALD:** Judge, may I just have a couple
23 seconds?

24 **THE COURT:** You may.

25 **Q.** **(BY MR. OSWALD)** Troy Lynn, after you saw them

1 taking Anna Mae, did you have any interactions with
2 John Boy Graham and Angie after that?

3 **A.** That day?

4 **Q.** Not -- yeah, after that date. Through the
5 spring, summer.

6 **A.** I did.

7 **Q.** Can you describe that type -- the interaction
8 that you recall?

9 **A.** I really -- I -- what I can remember is that
10 Angie was working at NARF, Native American Rights Fund
11 in Boulder. And that initially my Aunt Faney took
12 care of Arrow Woman and then Angie got an apartment
13 and I believe John Boy took care of Arrow Woman after
14 that.

15 And I was going to school and so I wasn't --
16 I was -- I wasn't gone all the time. Occasionally we
17 were all around each other.

18 **Q.** Do you -- can you tell the jury what a sun
19 dance is?

20 **A.** It's a prayer and purification ceremony that
21 takes place during the summer months. It's a four-day
22 prayer offering -- self-offering that our people do
23 for health and help.

24 **Q.** Did you partake of a sun dance the summer
25 after you last saw Anna Mae?

1 **A.** We traveled all together to Cherry Creek and
2 I say we, it was Angie, John Boy, myself, and Trudell.
3 We traveled to Cherry Creek, South Dakota, where they
4 went up on the hill. They -- I am speaking of some of
5 them, I mean, went up on the hill. And we stayed down
6 below. Kept a fire going the four days. And we fed
7 the people that were around there.

8 **Q.** I want to talk to you just a little bit now
9 before I close up here about what clothing items did
10 you give Annie Mae while she was staying with you
11 after Thanksgiving?

12 **A.** I gave her an orange -- it was an orange
13 turtleneck neck sweater that was the Bronco orange.
14 At that time it was orange crush. It's what they
15 called the Bronco defense team. And the shirts -- or
16 the sweater was one of those Bronco sweaters. It was
17 a turtleneck long sleeved ribbed wool sweater.

18 **Q.** Did you -- do you recall what she was
19 wearing, then, when you saw her in the back hatchback
20 of that Pinto?

21 **A.** She had that sweater on. She had on a brown
22 maybe suede or -- a brown jacket and she had on jeans.

23 **Q.** Was the suede jacket yours also?

24 **A.** No. It was hers. She came with it.

25 **Q.** How about her pants?

1 Were those yours?

2 **A.** She had at various times worn my pants but my
3 pants were too big for her. So she would wear mine
4 and wash hers and she had her own on.

5 **Q.** So she -- if we're talking Thanksgiving then,
6 she had enough time to do laundry and you didn't
7 object to that?

8 **A.** No.

9 **Q.** Okay.

10 And you know she did laundry throughout the
11 days that she stayed with you?

12 **A.** Yes.

13 **Q.** Did you see any of her writings?

14 **A.** I didn't, like, see them to read them, but I
15 saw her -- she would sit at the table in the kitchen
16 and write. I asked her who she was writing to and she
17 said her sister. And her -- she was letting her
18 family know where she was or whatever. But she was
19 trying to be in contact with her daughters through her
20 sister or something of that nature.

21 **Q.** Just to be fair, Troy Lynn, do you know if
22 Annie Mae was hiding from the FBI at that point?

23 **A.** Initially I didn't, but towards the end I
24 did.

25 **Q.** When the police talked to you -- let me

1 rephrase this.

2 Did the police come to talk to you over the
3 years?

4 A. The FBI did.

5 Q. Would you cooperate with them at that time?

6 A. No, I didn't.

7 Q. Did you mail any of those letters for Anna
8 Mae?

9 A. She mailed them. There was a mailbox at the
10 end of our block and she would walk there and mail the
11 letters.

12 Q. By the way, when they took Anna Mae out of
13 your house, was there any luggage or baggage that Anna
14 Mae had with her?

15 A. No.

16 Q. Did you ever see any personal identification,
17 wallet, purse, anything like that that she may have
18 had?

19 A. I don't think she had any. I didn't see it.
20 Could she have had it in her pocket, I don't -- not
21 that I know of, though.

22 Q. If you can recall, did she have a lot of
23 jewelry on?

24 A. She wore a silver bracelet. I think it
25 had -- it may have had turquoise on it and she wore

1 rings. I can't be specific about what they looked
2 like but she had very beautiful slender hands and she
3 had well-cared-for nails and she had the rings and the
4 bracelet.

5 Q. You said, Troy Lynn, that you didn't think
6 she had anything with her.

7 Did she have postage available to her for
8 mailing the letters?

9 A. I don't remember. I don't think that it was
10 very much for letters. But I know she didn't have
11 very much cash. You know, I do remember we didn't
12 have coffee. We were out of coffee and she was a
13 coffee drinker. Big time coffee drinker. And a
14 friend of ours -- a male friend of ours came and he --
15 she told him we don't have any coffee or we would make
16 you some coffee. So he said, well, I can fix that and
17 he went to the 7-Eleven across the street and he
18 bought her a big can of coffee.

19 Q. I am going to show you what's marked as
20 State's Exhibit 18.

21 Do you see that?

22 A. Yes.

23 Q. Who is that?

24 A. It's Anna Mae.

25 Q. Okay.

1 **MR. OSWALD:** I would offer Exhibit 18.

2 **MR. MURPHY:** No objection.

3 **THE COURT:** Will be received.

4 **A.** Can I say, when she came, her hair wasn't
5 long.

6 **Q.** (BY MR. OSWALD) Okay.

7 Let me ask this. Was her hair a different
8 length?

9 **A.** It was.

10 **Q.** Okay.

11 **THE COURT:** May I see it, please.

12 **MR. OSWALD:** Yes. I am sorry, Judge. I
13 didn't mean to exclude you.

14 **THE COURT:** Okay.

15 Thank you.

16 **MR. OSWALD:** Can I pass this around to the
17 jury also, Judge?

18 **THE COURT:** Pretty close to 12:00 o'clock,
19 Mr. Oswald.

20 **MR. OSWALD:** Yes.

21 I have no further questions.

22 **THE COURT:** Okay.

23 We'll look at the photograph for a couple
24 minutes and then we will break for lunch, folks.

25 Please remember during the break you are not

1 to discuss the case with anyone or amongst yourselves
2 and you are not to form any opinions on this matter
3 until you have heard all of the evidence and you are
4 released for your deliberations.

5 Thank you.

6 (Off the record.)

7 **THE COURT:** Okay.

8 Satisfied this is the jury, gentlemen?

9 **MR. JACKLEY:** I am, Your Honor.

10 **THE COURT:** Mr. Murphy?

11 **MR. MURPHY:** I am, Your Honor.

12 **THE COURT:** I believe, Mr. Murphy, you are up
13 for cross-examination.

14 **MR. MURPHY:** Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. MURPHY:**

17 Q. Would you like to be referred to as
18 Ms. Yellow Wood?

19 A. That's fine.

20 Q. Or Star Yellow Wood?

21 A. That's fine.

22 Q. I want to start by clarifying some of the
23 phrases you used during your direct examination. You
24 mentioned twice somebody named Arrow Woman.

25 Arrow Woman is whom?

1 **A.** Arrow Woman is Angie Begay's daughter.

2 **Q.** Okay.

3 And you indicated that during a time or
4 during the time in question you recall my client being
5 Arrow Woman's caretaker?

6 **A.** Yes.

7 **Q.** Okay.

8 And you also were asked just a few questions
9 about sun dances. And during that discussion of the
10 sun dance you also discussed men going up on a hill.

11 Do you remember that?

12 **A.** Yes.

13 **Q.** Now, the sun dance itself is a traditional
14 ceremony, correct?

15 **A.** Yes.

16 **Q.** And involves both men and women?

17 **A.** Yes.

18 **Q.** And there is difference roles, for instance,
19 men pierce where as women typically do not?

20 **A.** That's right.

21 **Q.** Although women will offer flesh offerings?

22 **A.** Yes.

23 **Q.** The issue about going up on a hill, that's
24 actually a different ceremony from a sun dance?

25 **A.** It is.

1 Q. Sometimes referred to as a vision quest?

2 A. Himlache (phonetic).

3 Q. I just wanted to clarify those points.

4 I want to go into something Mr. Oswald asked
5 you about. He asked you if during previous contacts
6 with law enforcement you were willing to give full
7 information.

8 Do you remember that topic?

9 A. I do.

10 Q. And you indicated that when you had talked to
11 law enforcement on previous occasions you were
12 hesitant to give them all the information?

13 A. I was.

14 Q. And when you were asked about information you
15 had given over the course of this information for 23
16 years now that you gave as little information as
17 possible, correct?

18 A. Initially, I did.

19 Q. Okay.

20 And you did so because you wanted to protect
21 Arlo Looking Cloud?

22 A. Primarily, yes.

23 Q. He was your friend?

24 A. Yes.

25 Q. And so now I have got some of your

1 statements. I got 13 of your statements here. You
2 were asked to testify at Grand Juries, correct?

3 **A.** Yes.

4 **Q.** And you did so on a couple occasions?

5 **A.** I did.

6 **Q.** And you talked to law enforcement on a number
7 of occasions, correct?

8 **A.** Many.

9 **Q.** Many.

10 And you are saying that during those
11 instances where you were asked to give information
12 that you gave inaccurate information to protect
13 Mr. Looking Cloud?

14 **A.** I never gave inaccurate information. I just
15 left pieces out.

16 **Q.** You left pieces out.

17 So you were willing to give incomplete
18 answers in order to protect Mr. Looking Cloud?

19 **A.** Yes.

20 **Q.** Okay.

21 And so your feelings about some outside
22 consideration, in this case Mr. Looking Cloud, was
23 something that you allowed to affect how you presented
24 evidence or provided information to law enforcement or
25 the Grand Jury?

1 **A.** It affected it.

2 **Q.** It affected it.

3 Now, I want to get a sense of what you might
4 have left out and what you were holding back.

5 From what I have gathered, you have given at
6 least four voluntary interviews with the FBI.

7 Does that sound about fair?

8 **A.** I think it's much more than four.

9 **Q.** Okay.

10 In any regard, in none of those interviews
11 were you required to give them information, were you?

12 **A.** No.

13 **Q.** You were free to talk to them or not to talk
14 to them?

15 **A.** Yes.

16 **Q.** You were never read your Miranda rights or
17 anything like that?

18 **A.** No.

19 **Q.** You weren't a suspect in a crime?

20 **A.** No.

21 **Q.** And you began giving them information as
22 early as 1987?

23 **A.** I am not certain. If that's what you have,
24 yes.

25 **Q.** Do you recall giving information any time

1 prior to 1987?

2 **A.** I am not certain. I don't remember. I am
3 not certain. I could have or maybe not. I don't
4 know.

5 **Q.** Okay.

6 If the first report I have is from June 15,
7 87, do you think that might be an accurate assessment
8 of when you started talking?

9 **A.** Possibly.

10 **Q.** Okay.

11 But it even could have been earlier?

12 **A.** I don't know.

13 **Q.** In any regard, you gave many statements to
14 law enforcement and you also appeared before the Grand
15 Jury on several occasions?

16 **A.** I did.

17 **Q.** And gave lengthy testimony in front of the
18 Grand Jury?

19 **A.** I did.

20 **Q.** And you also testified at Arlo Looking
21 Cloud's trial?

22 **A.** I did.

23 **Q.** And you testified against Dick Marshall at
24 his trial?

25 **A.** I did.

1 **Q.** One of the interviews you gave back in
2 2000 was the interview Mr. Oswald discussed where you
3 and Arlo and Kamook Banks sat down to talk.

4 Do you remember that?

5 **A.** Yes.

6 **Q.** If I represent to you that the recording of
7 that interview is about six hours in duration, does
8 that fairly and accurately represent what you recall
9 as to the duration?

10 **A.** No, it wasn't that long.

11 **Q.** If it covered nine cassette tapes, is that
12 something that you would be disputing as well?

13 **A.** It wasn't that long.

14 **Q.** You are sure of that?

15 **A.** That I can remember.

16 **Q.** That you can remember?

17 **A.** Yeah.

18 **Q.** If the transcript is 257 pages --

19 You have seen portions of that interview,
20 correct?

21 **A.** Excerpts of it.

22 **Q.** Did they ever give you the whole chunk of it?

23 **A.** No.

24 **Q.** Happened a long time ago, correct?

25 **A.** In 1987?

1 Q. No. 2000, you, Troy Lynn, and Kamook?

2 A. Oh.

3 What is your question?

4 Q. My question is, it happened a while ago. You
5 are not sure exactly how long the interview took?

6 A. No.

7 Q. Well, what I'm interested in is that you said
8 you had left out portions of your story and conceded
9 that it's affected your story because you were
10 interested in protecting Arlo.

11 But in each of the statements you have given,
12 over the last -- since 1987, you have always mentioned
13 Arlo east involvement, true?

14 A. Yes.

15 Q. Okay.

16 In fact, you were one of the witnesses that
17 testified against him at his own trial, correct?

18 A. I testified at the trial. I wouldn't say
19 against him.

20 Q. Well, let me ask you this, if you were trying
21 to give as little information as possible, how is it
22 that you have actually been for the last decade or
23 more probably the most productive and talkative
24 witness the government has?

25 A. Initially, I was not.

1 I told you later, after Arlo had spoken with
2 Trudell and after the story had basically become
3 public, then I didn't feel that there was anything to
4 withhold.

5 Q. But the discussion with Trudell happened way
6 back in the 80s, did it not?

7 A. I don't know -- I don't remember what the
8 time period was. It was previous to that.

9 Q. It was previous to -- it was previous to
10 1987, was it not?

11 A. Probably.

12 Q. Because you talk about that meeting from the
13 very beginning, correct?

14 A. I don't know. I don't remember that. I
15 don't know what's in that, so I don't really remember.

16 Q. So --

17 A. If you say it does, it does.

18 Q. Well, if you were withholding information up
19 until the time Arlo spoke with Mr. Trudell, then every
20 statement after that, whether it happened in 87 or 88,
21 would have been a complete rendition of events, would
22 it not?

23 A. Probably for the most part.

24 Q. You weren't slanting your testimony after
25 that?

1 **A.** I don't think so.

2 **Q.** So it should be relatively consistent?

3 **A.** I believe that the facts that I can remember
4 have been consistent, yes.

5 **Q.** In any regard, for about a decade you have
6 been an epicenter of this case, true?

7 **MR. OSWALD:** I will object, Your Honor --
8 I will withdraw the objection.

9 **THE COURT:** Okay.

10 **Q.** **(BY MR. MURPHY)** I want to go to another issue
11 you discussed on direct which is you were asked by
12 Mr. Oswald, after Anna left your house, whether you
13 were concerned for her safety.

14 Do you recall basically that line of
15 questioning?

16 **A.** I do.

17 **Q.** You didn't do any follow-up after that, did
18 you?

19 **A.** I didn't because I got a call from another
20 person in South Dakota who said that Anna Mae was in
21 Oglala.

22 **Q.** And she was safe in Oglala, correct?

23 **A.** That's what this person said, yes.

24 **Q.** Okay.

25 And so you heard from somebody you knew in

1 South Dakota that after Ms. Aquash left your house,
2 whenever that was, some time at a later date, she was
3 still doing okay in Oglala?

4 **A.** That's what this person told me, yes.

5 **Q.** Do you remember how many weeks after Anna
6 left your house that that call happened?

7 **A.** I don't know. It was relatively soon after,
8 but I couldn't tell you the dates or anything.

9 **Q.** Okay.

10 It wasn't like the next day on the day after?

11 **A.** No. No. No.

12 **Q.** Okay.

13 Last thing I am going to touch base with
14 you -- well, take that back.

15 I want to talk about the term flanking. That
16 was used several times during your direct examination.

17 When Anna Mae left your house, Theda Clarke
18 was standing or walking in front of her, correct?

19 **A.** I think so, but -- or they -- I'm not sure.
20 I'm not sure of the order. I just know that John Boy,
21 Aunt Theda, and Anna Mae -- or they walked her out. I
22 don't know the exact order.

23 **Q.** Okay --

24 **MR. MURPHY:** Your Honor, may I approach?

25 **THE COURT:** Yes.

1 **MR. MURPHY:** Okay.

2 Thanks.

3 **Q. (BY MR. MURPHY)** I'm going to show you your
4 testimony from the trial of Richard Marshall.

5 If you could just maybe read that page.

6 **A.** In the yellow --

7 **Q.** To yourself. I just want to get you
8 familiar. And if that helps you --

9 Have you had time to read that now?

10 **A.** Uh-huh.

11 **Q.** At least on that occasion you recall Theda
12 walking first, Anna Mae walking second, and my client,
13 Mr. Graham, walking behind her?

14 **A.** That's what it says.

15 **Q.** Are you saying it was untrue when you said
16 that four months ago?

17 **A.** Well, that's what I remember. I can't tell
18 you the exact order, but I think that's probably what
19 it was. I don't know. I can't really tell you the
20 exact order.

21 **Q.** But you told that jury that that was the
22 exact order?

23 **A.** Well, that's what I remembered at that time.

24 **Q.** So -- and that was in April of this year?

25 **A.** Uh-huh.

1 Q. That's a yes?

2 A. Yes.

3 Q. So it was exact, then; it's not exact now.

4 That's fair enough. Fair enough.

5 What I want to get to is at the time that you
6 saw them walking down the hall, you were in the
7 hallway, too, correct?

8 A. I think I was at the end of the hallway or --
9 or yeah, I could have been in the hallway with them.
10 It was wide enough for all -- we could have all fit in
11 there.

12 Q. Well, you indicated that Theda brushed past
13 you as they walked out, correct?

14 A. She sort of pushed me, I guess you could say.

15 Q. Okay.

16 If you said on that occasion that she brushed
17 me aside, would that be a fair statement?

18 A. Yes.

19 Q. So you were very very close to these three
20 individuals at that time?

21 A. Yes.

22 Q. All right.

23 You got a good look at what was going on?

24 A. Yes.

25 Q. Okay.

1 Earlier today you were asked about phone
2 calls you made, and you said that you called the
3 police or attempted to call the police, and that Angie
4 Janis stopped you from doing so?

5 **A.** She.

6 **Q.** You recall that?

7 **A.** Yes.

8 **Q.** You also said today that during that time
9 period you went into the back bedroom and you tried
10 calling your mom, and you tried calling another -- a
11 number of other individuals, correct?

12 **A.** Yes.

13 **Q.** Now -- and you said that you were seeking
14 help for Anna because you felt that something wrong
15 was going on, correct?

16 **A.** Yes.

17 **Q.** You were making valiant efforts to stop this?

18 **A.** I really didn't know how to -- or what to do.
19 But I didn't think that I could -- I could stop it,
20 but I thought possibly others could.

21 **Q.** Okay.

22 And so that's why you made these efforts on
23 her behalf?

24 **A.** Yes.

25 **Q.** Well, during the lunch break I read the

1 entire transcripts of your testimony at both Dick
2 Marshall's trial and Arlo Looking Cloud's trial. In
3 neither of those trials even though you are asked
4 about phone calls do you mention anything about any of
5 these other calls.

6 Does that shock you?

7 **A.** No.

8 **Q.** So even though today you are saying to this
9 jury that you were making heroic efforts, essentially,
10 to stop this, that's something that just never came up
11 in six months ago or four years ago or five years ago?

12 **A.** I think it has come up in the past.

13 **Q.** You do.

14 Do you recall when?

15 **A.** No, but I know it's been a topic of
16 discussion before so I know that it's got to be in
17 there somewhere.

18 **Q.** Well, if you had brought that up at, say,
19 Dick Marshall's trial, that wouldn't have hurt Arlo,
20 would it?

21 **A.** I don't know.

22 **Q.** Well, he was already convicted and doing a
23 life sentence, right?

24 **A.** I don't know.

25 **Q.** But you know he's been convicted?

1 **A.** Yes, I know.

2 **Q.** You know he's lost his appeal?

3 **A.** Yes.

4 **Q.** You know he's been sentenced to life?

5 **A.** Yes.

6 **Q.** So you wouldn't have withheld that
7 information at Dick Marshall's trial because you were
8 afraid of hurting Arlo, would you?

9 **A.** Which information?

10 **Q.** The information you gave today about calling
11 your mom and calling other people to try to get them
12 to stop this?

13 **A.** No.

14 **Q.** Okay.

15 And at Arlo's trial, by that time it wasn't
16 going to hurt Arlo, was it?

17 **A.** I don't know. I don't think so. I don't
18 know.

19 **Q.** Well, you already made -- you already gave
20 the testimony about the call to the police, right?

21 **A.** Uh-huh.

22 **Q.** Yes?

23 **A.** Yes.

24 **Q.** Well, I am going to start back talking about
25 some of the things that you discussed, the sequence of

1 events, and I want to start with why Theda brought
2 Anna to your house.

3 Theda brought Anna to your house and she told
4 you that she brought Anna to your house so you could
5 help protect Anna, correct?

6 A. For safe keeping, basically, yeah.

7 Q. Well, to protect her?

8 A. Yes.

9 Q. To keep her safe?

10 A. Yes.

11 Q. To watch out for her and not let anything bad
12 happen to her?

13 A. Yes.

14 Q. And the plan at the time she was dropped off
15 at your house was for Anna to stay at your house
16 temporary before she moved to the next safe house,
17 correct?

18 A. Yes. I think so.

19 Q. That's what you were given reason to believe
20 by Theda, correct?

21 That's what she told you?

22 A. I don't know if she did or not, but that was
23 probably the assumption. I don't know.

24 Q. I want to ask you if you would read to
25 yourself lines 4 through 13 or actually 1 through 13.

1 **A.** Uh-huh.

2 **Q.** So the idea was -- the plan was that she
3 would stay at your house for a little while, then be
4 moved to some other place, correct?

5 **A.** I assume so, yes.

6 **Q.** And you weren't going to be privy to where
7 she was going to be moved to next?

8 **A.** That was never discussed. I don't know.

9 **Q.** Well, was the question asked to you, and you
10 were not privy to what those arrangements might be,
11 correct? And you answered, no.

12 **A.** You know, I really don't know. I don't know
13 if I would have been or not.

14 **Q.** Okay.

15 I asked you if that's what you said
16 previously. I will approach so in fairness you can
17 take a look at the transcript. Let me know if I'm
18 reading this incorrectly. Question, and you were not
19 privy to what those arrangements might be, correct,
20 and you answered no?

21 **A.** Uh-huh.

22 **Q.** You will have to answer yes or no for Tina.
23 She can't write down uh-huh.

24 **A.** Okay.

25 What is your question?

1 **Q.** That's what you said under oath six months
2 ago?

3 **A.** Yes.

4 **Q.** Okay.

5 And the reason you wouldn't be privy to the
6 details of where she might go next because that's how
7 fugitives operated when they were trying to stay under
8 ground, correct?

9 **A.** I suppose.

10 **Q.** Well, it's more than a supposition. You were
11 there.

12 A woman who you knew to be a fugitive was
13 staying at your house, correct?

14 **MR. OSWALD:** I will object, Judge, to the
15 comment of counsel. More than a supposition. It's
16 not a question.

17 **THE COURT:** Overruled.

18 **Q.** **(BY MR. MURPHY)** You may answer.

19 You knew this woman was a fugitive, right?

20 **A.** Yes.

21 **Q.** You knew she was supposed to move from house
22 to house, correct?

23 **A.** I assumed so, yes.

24 **Q.** You knew she was under ground at the time she
25 was at your house, correct?

1 **A.** She told me she was.

2 **Q.** And by under ground, it means that she was
3 fleeing from the feds, correct?

4 **A.** Yes.

5 **Q.** And she was attempting to evade capture by
6 the federal government?

7 **A.** Yes.

8 **Q.** And part of being under ground meant that she
9 was not going to carry any other ID or any other
10 identifying information, correct?

11 **A.** I think it would have to be.

12 **Q.** Well, when you testified previously, you
13 indicated that that's why she wasn't carrying ID, and
14 in fact, why she was even using a fake name.

15 Do you remember that?

16 **A.** No, but I -- when she initially came, she did
17 come by a different name.

18 **Q.** She used the name Joanna?

19 **A.** I think so.

20 **Q.** And you told the jury in that case that she
21 would not have carried any identification with her
22 because she didn't want to be known or recognized?

23 **A.** I would think so.

24 **Q.** And that's what you told them back then, at
25 least?

1 Now -- and part of the other attempts she was
2 using to evade detection by the feds -- and when I say
3 the feds, the federal government, the FBI, those are
4 the people she was trying to hide from, correct?

5 **A.** Yes.

6 **Q.** She had also cut her hair very short?

7 **A.** Yes.

8 **Q.** It was even shorter than your hair is today?

9 **A.** Yes.

10 **Q.** Though she was trying to avoid detection, she
11 opted to stay at your house, correct?

12 **A.** Yes.

13 **Q.** And your house was a house where people
14 affiliated with the American Indian Movement came and
15 went regularly?

16 **A.** Yes.

17 **Q.** At one point you even offered her the
18 opportunity to stay at an empty house somewhere else,
19 correct?

20 **A.** Yes. There is -- it's called the projects
21 right -- a field between my house and the projects.
22 And we had another friend who had an apartment there
23 but wasn't staying there. So she felt like there were
24 too many people coming and going and she wanted to go
25 somewhere else. So I gave her the key and she stayed

1 over there for a few days.

2 Q. Just a couple days?

3 A. Uh-huh.

4 Q. Again, so the court reporter can write down
5 actually what you are saying, you have to answer yes
6 or no.

7 A. Okay.

8 Q. So that was a yes?

9 A. Yes.

10 Q. And although she had that option, she came
11 back to your house after a couple days?

12 A. She was only gone for, yeah, two days
13 probably, and then she came back.

14 Q. And people affiliated with the American
15 Indian Movement knew she was at your house, correct?

16 A. I don't know. I guess they would.

17 Q. I don't want you to guess.

18 A. I think so. I am not sure. I don't know
19 what other people knew.

20 Q. Did you testify previously that other Indian
21 people came to your house and that they knew she was
22 there?

23 A. Yeah. But they -- not all the people that
24 came to my house were not American Indian Movement
25 members. They were just Indian people in general.

1 **Q.** Okay.

2 Let's -- let me ask it this way. Were you
3 asked the question, under oath, November 17, 1995,
4 question, were other people eventually aware of the
5 fact that Anna Mae was at your residence? And by
6 other people I mean other people in the American
7 Indian Movement. Your answer, I'm not certain, but a
8 lot of people came to my house all the time, a lot of
9 Indian people, and they knew she was there.

10 Do you remember giving that answer?

11 **A.** Yeah. Well, that is the truth. A lot of
12 people knew she was there. Whoever came there would
13 see her.

14 **Q.** All right.

15 So -- and in fact, during this period of
16 time, she even went over to your parents' house and
17 had a big Thanksgiving dinner with a lot of other
18 people?

19 **A.** She did.

20 **Q.** So if she was hiding from somebody, she
21 certainly wasn't hiding from the American Indian
22 Movement when she was at your house, was she?

23 **A.** I don't think so.

24 **Q.** She was hiding from the FBI and the feds,
25 correct?

1 **A.** I would think so, yes.

2 **Q.** In fact, you said at Dick Marshall's trial
3 that what Annie Mae Aquash was afraid of during the
4 time she was at your house was that she was very
5 paranoid of the government, of the feds, the FBI, the
6 feds.

7 Is that accurate?

8 **A.** She was. She was -- but they weren't the
9 only ones she was paranoid -- she was paranoid
10 about -- just about everybody.

11 **Q.** Well, I understand that's what you say today.
12 But yet, if she was paranoid of everybody, she
13 wouldn't have opted to return from an empty apartment
14 where she could stay anonymous, would she?

15 **A.** I don't know. She -- it was her choice to
16 come back and she came back. It was -- there was
17 nothing in that apartment, like, any -- really nothing
18 to do at that apartment. There wasn't a television.
19 There wasn't anything there, but I think it was just
20 out of loneliness she came back.

21 **Q.** Well, you testified today that she was
22 paranoid -- in an agitated state because of her fear
23 of people in AIM believing she was an informant.

24 Do you remember saying that earlier today?

25 **A.** She was -- I think that's not exactly the way

1 I meant it to sound. She was paranoid about, really,
2 basically everything.

3 Q. Okay.

4 If she was paranoid -- if among the things
5 she was paranoid about --

6 A. Yes.

7 Q. -- was, as you said earlier, AIM people who
8 believed she was an informant, would that be part of
9 the people you are saying she was afraid of?

10 A. I think so.

11 Q. Okay.

12 So what I am getting at, if that's true --
13 well, let me ask you this. That's something you are
14 assuming to be the case?

15 A. Yes.

16 Q. Okay.

17 It's an assumption on your part?

18 A. Yes.

19 Q. All right.

20 Well, let's look at her conduct. She opts
21 not to stay in an apartment where she could have
22 remained anonymous, correct?

23 A. Yes.

24 Q. She opted to go to a Thanksgiving dinner with
25 you and your family and other people?

1 **A.** There wasn't any other people except for my
2 immediate family, my brothers and sisters, my mother,
3 father, and children that's about it.

4 **Q.** She elects to stay in your house which is a
5 house where people from the American Indian Movement
6 come and go, correct?

7 **A.** I don't know if she would have chosen that
8 place but she was brought there, yes, she did stay
9 there.

10 **Q.** She was brought there to keep her safe?

11 **A.** Yes.

12 **Q.** And she stayed there, correct?

13 **A.** Yes.

14 **Q.** So if your assumption was right that she was
15 also paranoid about people in AIM, she wasn't doing a
16 good job of staying hidden from people in AIM, was
17 she?

18 **A.** I think she was. I think she did a fairly
19 good job of staying -- you know, the reason why she
20 went to the other place was because she -- you know,
21 she thought too many people came there and she didn't
22 feel comfortable around them. She didn't know what
23 they were. Different people came and went.

24 **Q.** You indicated earlier this is woman who was
25 afraid of -- for her life from AIM. And now it's --

1 well, she came back to your apartment where you have
2 already testified this was a gathering place for
3 people in the American Indian Movement because she --

4 **A.** Yes, she did.

5 **Q.** -- because she felt lonely and she didn't
6 have a TV over at the other place?

7 **A.** I can't tell you why she came back. I don't
8 know why except for, you know, she didn't want to be
9 over there anymore so she came back. I don't know if
10 she would have stayed long or not. But that same day
11 that she came back is when they took her to South
12 Dakota. So I don't know. Maybe she wouldn't have
13 stayed there. Maybe she just came for a little while.
14 I don't know.

15 **Q.** You don't know, and maybe that's what I am
16 getting at.

17 Maybe of the things you have today to this
18 jury are basically assumptions you've made over the
19 course of the last 35 years as to why she acted a
20 particular way at a particular be time, correct?

21 **A.** Well, yeah, they could be assumptions, but I
22 would base them on how she behaved and how she spoke
23 and what she said.

24 **Q.** All right.

25 Well, then we've just been talking about how

1 she behaved and some of the choices she made. She
2 went out, went to 7-Eleven, went to the mailbox, hung
3 out with people at your house, correct?

4 **A.** Yes.

5 **Q.** Now, you spent about a week together; is that
6 accurate?

7 **A.** I don't know the exact time frame. Had to --
8 the minimum it could have been was a week. It could
9 have been longer.

10 **Q.** And she came to your house some time before
11 Thanksgiving because you know she had Thanksgiving
12 dinner with you and your family?

13 **A.** Yes.

14 **Q.** During that week you did spend quite a bit of
15 time together?

16 **A.** Yes.

17 **Q.** You talked about personal subjects?

18 **A.** Yes.

19 **Q.** You got to know each other?

20 **A.** Yes.

21 **Q.** Some of the things she told you about were
22 personal things?

23 **A.** Yes.

24 **Q.** Such as that she told you about her love for
25 Dennis Banks?

1 **A.** Yes.

2 **Q.** In fact, she was very much in love with him,
3 correct?

4 **A.** Yes.

5 **Q.** And that the reason she told -- she told you
6 the reason why she traveled from Pine Ridge out to
7 Washington State and Oregon in November of 1975 was to
8 be with Dennis Banks, correct?

9 **A.** I believe so.

10 **Q.** During that time that you and her are
11 confiding with each other, she never mentioned to you
12 once that the reason she was on that trip in the motor
13 home was because she was being held captive or forced
14 to be along for the ride, did she?

15 **A.** No.

16 **Q.** So she was willing to talk about some pretty
17 personal things, but that wasn't something she brought
18 up?

19 **A.** No.

20 **Q.** I want to us discuss with you your statement
21 that during this period of time she told you that
22 Leonard Peltier held a gun to her head out at
23 Farmington.

24 Do you recall that?

25 **A.** Yes.

1 Q. And I don't know how much we discussed it
2 earlier, but Farmington is a town in New Mexico?

3 A. Yes.

4 Q. In early June of 1975 there was a conference
5 of AIM chapters there, correct?

6 A. Yes.

7 Q. Now, I understand that's your testimony
8 today, but at previous -- on previous occasions, you
9 claimed that Anna Mae told you that she and Leonard
10 Peltier were at a drunken party together and that's
11 when he put a gun to her head and accused her of being
12 an informant?

13 A. I don't remember that.

14 Q. I will show you two documents -- actually,
15 they are duplicates of each other.

16 And does this appear to be a summary of an
17 interview done between you and Mr. Ecoffey and
18 Mr. Pourier?

19 A. Uh-huh.

20 Q. Again, you have to say yes or no.

21 A. Do I have what?

22 Q. You have to say yes or no.

23 Does this appear to be a summary of an
24 interview between you and Mr. Ecoffey?

25 A. I have never seen it before, but if you say

1 it is, it is.

2 Q. Read the first paragraph. I am not trying to
3 put words into your mouth.

4 A. Yes.

5 Q. Okay.

6 Then I am going to turn to page 2,665 Graham
7 document. I am going to ask you to read the last
8 there to yourself.

9 Have you a chance to read that now?

10 A. Yes.

11 Q. So --

12 A. I don't recall making that statement, but --

13 Q. At least the statement that was made was that
14 when you went to the authorities and spoke with
15 them --

16 A. I didn't go to the authorities.

17 Q. When they came to you and spoke with you, in
18 1994, they say you told them that Anna Mae told you
19 that at a drunken party --

20 A. I don't recall that.

21 Q. You have to let me finish asking my question.

22 They said in their report that you said that
23 this whole incident about a threat was at a drunken
24 party with Leonard Peltier and Anna Mae, correct?

25 A. I don't recall that.

1 Q. You don't recall telling them that?

2 A. No.

3 Q. So if they wrote it down, you believe that
4 was either inaccurate on their part --

5 A. I don't know. I don't remember telling them
6 that.

7 Q. Could you have said that to them?

8 A. Possibly, but I don't remember it.

9 Q. But in any regard, today you are saying that
10 this threat that Ms. Aquash relayed to you happened at
11 Farmington, not at a drunken party?

12 A. Yes.

13 Q. Okay.

14 During the course of time that Ms. Aquash was
15 confiding to you about her love affair with Mr. Banks
16 and these alleged threats, she never told you about
17 any time Mr. Peltier confessed to executing any FBI
18 agents, did she?

19 A. No.

20 Q. Okay.

21 But you were at that point one of the closest
22 people in the world to her, were you not?

23 A. I was probably her last friend.

24 Q. Uh-huh.

25 And in fact, you have indicated in previous

1 testimony you considered her one of your best friends
2 at that time?

3 **A.** I did.

4 **Q.** Okay.

5 Now, on the night of this alleged meeting,
6 first off, the meeting itself, took about 15 minutes
7 is that not correct?

8 **A.** I don't know exactly, but probably. I
9 couldn't tell you the exact time.

10 **Q.** If you testified on previous occasions that
11 it was about 15 minutes, would that be inaccurate or
12 accurate?

13 **A.** It's probably close to that time. I just
14 can't tell you the exact time of things. I don't
15 remember, but possibly or probably.

16 **Q.** In any regard it was not a long protracted
17 meeting?

18 **A.** No.

19 **Q.** There was not any kind of mock trial?

20 **A.** No.

21 **Q.** And it was in your house so if there was you
22 would know about it?

23 **A.** I probably would.

24 **Q.** It was a small apartment, was it not?

25 **A.** About the living room was about from that

1 poll -- about -- about that big.

2 Q. All right.

3 And you were walking around your own
4 apartment during this time period?

5 A. I didn't go into the living room any time
6 except to set the coffee down, but I went from the
7 kitchen down the hall to the bedrooms.

8 Q. But the living room was not walled off or
9 sequestered off from the rest of the house by doors,
10 was it?

11 A. No. It had an open door way.

12 Q. Open door way into the kitchen?

13 A. Yes.

14 Q. And then into the hallway to where the
15 bedroom was?

16 A. Yes.

17 Q. During the meeting that you say happened,
18 neither Arlo Looking Cloud nor John Graham were
19 participants in that meeting, were they?

20 A. I don't know. I don't know where -- I -- you
21 know, I can't remember where John Boy was, but Arlo
22 hadn't come into the house yet that -- to my
23 recollection. I am not certain where John Boy was,
24 but I am pretty fairly certain that Arlo hadn't come
25 into the house yet.

1 Q. So at least --

2 A. Or -- in that regard, I don't think he ever
3 came all the way in the house. I think he just came
4 to the back door -- when you come to the back door
5 there was steps that come into the basement. He may
6 have gone down there, but I think he came to the back
7 door. That's what I can vaguely remember.

8 Q. Vaguely remember?

9 A. Vaguely, yeah.

10 Q. Did you have a conversation with him about
11 Joe Morgan, that he was looking for a drinking partner
12 and all of that?

13 A. At that particular time?

14 Q. Yeah.

15 A. I really -- I don't remember. I don't
16 remember when I knew of that. I don't know -- I don't
17 think -- I don't think that I talked to Arlo one on
18 one. I don't remember talking to him.

19 Q. If in previous sworn statements you said you
20 didn't have any conversation with Arlo on that night,
21 would that be consistent with what you recall now?

22 A. Yes.

23 Q. And so information you relayed to the jury
24 earlier about Arlo coming to your house, looking for
25 his drinking buddy Joe, and whatnot, would have been

1 information you learned afterwards, correct?

2 A. Yeah. I remember talking with him about it.

3 Q. Okay.

4 A. About him looking for Joe Morgan, yes.

5 Q. But that wasn't --

6 A. That he told me that night, no, I don't think
7 so.

8 Q. Okay.

9 Now, you said today that when you laid down
10 the coffee you heard somebody say or one of the
11 Crusade for Justice folks say about, this is what we
12 do to snitches and you drew your finger across your
13 throat?

14 A. Yes.

15 Q. You have been asked repeatedly over the years
16 about what happened during that meeting, right?

17 A. Yes.

18 Q. And you were in the house during that the
19 time when the meeting occurred?

20 A. Yes.

21 Q. And even though it wasn't a long meeting you
22 were at least in there long enough to put coffee down
23 and do some other stuff, correct?

24 A. I didn't do anything but put the coffee down
25 and turn around and walk back out.

1 Q. Well, you were in the kitchen making coffee,
2 correct?

3 A. Initially I made the coffee, then I took it
4 in the kitchen, and then I came back out.

5 Q. Well, the kitchen and living room are right
6 next to each other?

7 A. Yes.

8 Q. And it's an open door way?

9 A. Yes.

10 Q. Okay.

11 And so you are in there making the coffee,
12 getting the cups, and all that stuff ready, correct?

13 A. Yes.

14 Q. And then you bring it in, correct?

15 A. Yes.

16 Q. And then you come out?

17 A. Yes.

18 Q. All right.

19 You have repeatedly testified that you have
20 no idea what they were talking about in that room,
21 correct?

22 A. That's correct.

23 Q. You didn't hear any of the -- overhear any of
24 the conversation that was taking place in the living
25 room, correct?

1 **A.** I did not.

2 **Q.** You have told other forums, Grand Jurors, in
3 the past that you don't know how many people were in
4 the meeting, correct?

5 **A.** I don't, but I think -- the room was fairly
6 full. But you know, I really don't know. No, I don't
7 remember.

8 **Q.** You don't remember who all were participants
9 in the room?

10 **A.** The only people I can absolutely say were
11 there was Ernesto, Corky, and Theda absolutely.

12 **Q.** All right.

13 You had said in Arlo's trial you had no idea
14 what the meeting was about in your living room,
15 correct?

16 **A.** That's correct.

17 **Q.** Let's talk about Anna's departure after the
18 meeting. You were standing right there in the hall
19 when Theda and Anna and John allegedly left?

20 **A.** Yes.

21 **Q.** We talked about. They were close enough to
22 you that you -- they brushed aside you or at least
23 Theda brushed aside you?

24 **A.** Yes.

25 **Q.** And you had a chance to look at Anna and even

1 have a brief exchange of conversation with her,
2 correct?

3 **A.** I don't know so much that we had a
4 conversation; that she just made the statement that --
5 you know she wanted to go but --

6 **Q.** That's fine. That's what I am talking about.
7 You had that opportunity to talk or she at
8 least had an opportunity to say something to you?

9 **A.** Yes.

10 **Q.** And she was not tied up at that point was
11 she?

12 **A.** No.

13 **Q.** In fact, at no time when she was in your
14 house did you ever see her tied up, did you?

15 **A.** I never saw her tied up.

16 **Q.** And you testified earlier not only did you
17 see Theda and John and Anna walk out of the house but
18 you actually saw them get in the car, correct?

19 **A.** I didn't watch them walk all the way to the
20 car. I think I went back into the bedroom. I was
21 really, you know -- just raw energy and I -- you know,
22 I paced and then I went back and I looked out the
23 door. And that's when I saw that she was in the
24 hatchback. So that's why I really don't know who --
25 how people were seated in there. But --

1 **Q.** You indicated you saw her well enough to --
2 you saw her out there well enough to see how she was
3 seated and whatnot in the car?

4 **A.** Yes. From my back door to where the back of
5 that hatchback was -- the back of the car was backed
6 into my house, it's only from here to where the people
7 are over there.

8 **Q.** All right.

9 **A.** It's not very far.

10 **Q.** All right.

11 So you had a good opportunity to see her?

12 **A.** Yes.

13 **Q.** And you never saw her tied up or indications
14 of her being tied up in the car?

15 **A.** I don't think she was.

16 **Q.** And in fact, you testified previously that on
17 occasions that she walked out of the house on her own
18 voluntarily?

19 **A.** She did, but she didn't want to go.

20 **Q.** But she -- you at least characterized her
21 leaving the house voluntarily because she wanted to go
22 face her accusers, correct?

23 **A.** She didn't have a choice.

24 **Q.** Well, you testified previously at Arlo's
25 trial, you used the words, she went voluntarily?

1 **A.** Well, you know, it's just like making the
2 best of a bad situation. Okay. You can go or --

3 **Q.** Okay.

4 Ma'am, did you use the term voluntarily at
5 least in the past when describing --

6 **A.** Yes, she walked out on her own.

7 **Q.** Now, you talked today about your
8 confrontation with Theda where she allegedly swore at
9 you and told you you don't know what you are doing?

10 **A.** Yes.

11 **Q.** You gave statements to law enforcement in
12 1987, August of 94, going all the way through 94, 95,
13 multiple statements, and you never mentioned once that
14 confrontation with Theda?

15 **A.** I think that I did. Every time that we have
16 ever talked about it I did.

17 **Q.** I'm going to ask you to review -- first, take
18 a look at the first paragraph of that document, and
19 let me know when you are done with the first page.

20 **A.** In yellow?

21 **MR. OSWALD:** John, what document are you
22 showing her?

23 **MR. MURPHY:** Aquash box document 87-3.

24 **MR. OSWALD:** But what document is it?

25 **MR. MURPHY:** I am going to have her identify

1 it. It's the June 15, 1987 --

2 Q. (BY MR. MURPHY) Okay.

3 Was that a summary of an interview conducted
4 between yourself and FBI Agents Gunderson and Kerwin
5 on June 15, 1987?

6 A. Yes.

7 Q. Okay.

8 Would you please read the rest of the
9 document, then.

10 Have you finished reading it?

11 A. Yes.

12 Q. And you don't mention anything to the law
13 enforcement authorities about any confrontation with
14 Theda?

15 A. I never gave very much information to them.

16 Q. You gave them all sorts of information about
17 the alleged abduction?

18 A. That isn't very much information compared to
19 what has been said.

20 Q. If you would, showing you Graham document
21 2663, a five-page report of an interview you gave with
22 FBI Agent James Graf, August 4, 1994.

23 Would you skim through that and see if you
24 can find any indication whatsoever about the alleged
25 confrontation with Theda Clarke.

1 **A.** No, it doesn't, but it also doesn't -- it
2 also says that I didn't know how she got there.

3 **Q.** The question --

4 **A.** The information --

5 **Q.** Ma'am, I'm asking the questions right now.
6 The government will have a chance to respond.

7 This is -- 1994 is the time. You said early
8 on you weren't willing to give --

9 **A.** I was never willing to give --

10 **THE COURT:** Hold on, ma'am. You have to let
11 the question get finished. Then you get to answer.
12 And then we go on.

13 Thank you.

14 **Q.** **(BY MR. MURPHY)** At this time when you said
15 you weren't willing to give authorities information,
16 you voluntarily discussed this matter with
17 Mr. Ecoffey, Mr. Pourier, and FBI Agent Graf, correct?

18 You weren't forced to give this information?

19 **A.** Basically, Mr. Ecoffey came to my place of
20 employment. Continuously. He came to my home. He
21 kept coming until I finally did agree to talk with
22 them.

23 **Q.** And you gave them page after page of
24 information, correct?

25 **A.** Four pages.

1 Q. Four pages?

2 A. But it's not all of the information, no, it
3 isn't.

4 Q. You added stuff later on, right?

5 A. Yes.

6 Q. And you made assumption as to what happened
7 later on, correct?

8 A. Some.

9 Q. And you added details about your own efforts
10 to help Anna Mae Aquash as time went on, correct?

11 A. I don't know. From the initial -- from the
12 beginning, I told that, but I don't know. I don't
13 know when. I don't know where or when, but I did.

14 Q. At least in the beginning, before this case
15 was at the status it is now, you weren't talking about
16 making calls to stop the abduction?

17 A. No, not in that report.

18 Q. And you weren't talking about attempts you
19 made to stop Theda from taking Anna Mae out, correct?

20 A. If it's not in there, I guess not. I don't
21 know.

22 Q. So those details about your own efforts
23 didn't come until later, correct?

24 A. I don't -- I recall it from the beginning,
25 but I don't know. Whatever -- whatever is in there,

1 whatever you say --

2 Q. Those details wouldn't have implicated Arlo
3 or harmed Arlo, right?

4 A. I don't think so.

5 Q. So you weren't holding back those kind of
6 details at that point because of your concern for
7 Arlo, correct?

8 A. I don't think so.

9 Q. Let's talk about when you last saw Anna Mae
10 Aquash. You say you didn't see them actually get into
11 the car, correct?

12 A. No. I don't know who was sitting where.

13 Q. But you did see who -- somebody you thought
14 to be George Palfy in the car with them, correct?

15 A. I just -- I think I assumed that he -- he
16 left with them. I don't really know. But he was
17 there. And there were -- I -- I assumed there were
18 four people and that's why they put her in the
19 hatchback. So that's why I thought he was the fourth
20 person. I didn't know for certain. I can't really
21 tell.

22 Q. Well, would you have testified in the past
23 that there were two people in the front, two people in
24 the back and Anna in the hatchback area?

25 A. Yes.

1 **Q.** And that you thought it was George Palfy in
2 the car?

3 **A.** I thought it could have been George Palfy.

4 **Q.** All right.

5 You might have said that on repeated
6 occasions that you thought George --

7 **A.** Well, he was there and then I didn't know
8 where he went. And yes, I did think he was with them.

9 **Q.** Okay.

10 And that's -- you were just a short distance,
11 you said, from the window to the car or the door to
12 the car?

13 **A.** Uh-huh.

14 But -- the hatchback was parked so I could
15 see the -- what was in the back, but I couldn't see
16 exactly what was in the front.

17 **Q.** In any regard, at this time today when you
18 testified about them driving away, you indicated Anna
19 was -- had her arms around her knees and she was
20 slumped overruled.

21 Do you recall that?

22 **A.** Yes.

23 **Q.** Do you remember saying that Anna was sitting
24 up and -- sitting up erect in the back and that she
25 was back there because the car was full?

1 **A.** That was my assumption, yes.

2 **Q.** Well, it wasn't -- when you testified
3 previously that she was sitting up in the back, not
4 slumped over, that wasn't an assumption, that's
5 something you observed, correct?

6 **A.** Yes. I believe that she did both. She both
7 sat up and later at one time -- she did both.

8 **Q.** Okay.

9 You knew my client to some extent back in
10 1975?

11 **A.** I did.

12 **Q.** He was a young guy?

13 **A.** Yes.

14 **Q.** Had no significant involvement in the
15 American Indian Movement?

16 **A.** I don't know that. I don't know.

17 **Q.** Okay.

18 **A.** He was --

19 **Q.** That's fine.

20 **A.** -- with Angie Begay.

21 **Q.** I want to show you a transcript of sworn
22 testimony you gave November 17, 1995. If you might
23 read from, say, lines 12 to 19. My client didn't have
24 any significant involvement in the American Indian
25 Movement, did he?

1 **A.** I believe they were members. I don't know --
2 I couldn't say what their significance was. I don't
3 think it was any great significance but they were
4 members.

5 **Q.** When you say members, there was no membership
6 card?

7 **A.** No. If you wanted to be you could be.

8 **Q.** In other words, when we're talking about
9 being a member, somebody who supports the ideals of
10 the American Indian Movement?

11 **A.** Yes.

12 **Q.** And if somebody wanted to, they could say,
13 I'm a member?

14 **A.** Yes.

15 **Q.** And that's about as far as it went, right?

16 **A.** Yeah.

17 **Q.** John wasn't a dangerous person?

18 **A.** I didn't know him to be a dangerous person.

19 **Q.** And he wasn't a thug? Previous statements
20 you have made.

21 **A.** I didn't know him to be.

22 **Q.** And you didn't know him to be particularly
23 close to Theda?

24 **A.** I don't really know what their relationship
25 was. I believe that the first time I met him was

1 through her, but I don't know -- I can't say other
2 than that.

3 I believe that she initially said that he was
4 her nephew from California or something like that. I
5 don't remember. But I knew that he wasn't my first
6 cousin whom she was saying were the Pattons from
7 California.

8 Q. Do you recall testifying just six months ago
9 that Theda was -- and John weren't in the same
10 company; that you don't think Theda knew him before he
11 became partners with Angie Begay?

12 A. Probably, yeah. I don't really know when
13 they met. All I know is that for some reason she --
14 she named him Patton. I don't know why.

15 Q. All right.

16 But regardless -- I mean if Angie and John
17 had a relatively short-term relationship, it was your
18 understanding that John and Theda met once he started
19 dating Angie, right?

20 A. I would think so, yes.

21 Q. And Angie and Theda were related?

22 A. No.

23 Q. Angie and Theda were friends?

24 A. Yes.

25 MR. MURPHY: Nothing further.

1 Thank you.

2 **THE COURT:** Redirect?

3 **MR. OSWALD:** Thank you.

4 **REDIRECT EXAMINATION**

5 **BY MR. OSWALD:**

6 **Q.** Troy Lynn, when Mr. Murphy asked you this
7 question about many of the things you said today were
8 assumptions, do you remember that question?

9 **A.** Yes.

10 **Q.** There is facts, assumptions. I want to ask
11 you this.

12 It is your assumption or a fact that Anna Mae
13 did not want to go with John Boy and Theda?

14 **MR. MURPHY:** Objection. Form of the
15 question.

16 **THE COURT:** Overruled.

17 **Q.** (BY MR. OSWALD) You may answer.

18 **A.** She did not want to go.

19 **Q.** Is it a fact or an assumption that you saw
20 Ernesto Vigil slash his throat talking about snitches
21 or informants?

22 **A.** It is a fact.

23 **Q.** Is it a fact or an assumption that you saw
24 Anna Mae in the back of that hatchback?

25 **MR. MURPHY:** Your Honor, I am going to object

1 to the term fact as opposed to observation.

2 **THE COURT:** Well, let's move it this way. Is
3 it an observation or an assumption.

4 **MR. OSWALD:** Very good.

5 **Q. (BY MR. OSWALD)** Is it an observation or an
6 assumption?

7 **A.** It was an observation.

8 **Q.** Was it an observation or an assumption that
9 Anna Mae was crying?

10 **A.** She -- well, she was crying, initially. She
11 would -- she would regain her composure and -- so
12 yeah. She would cry and then she would regain her
13 composure and then she would just be, like, resigned
14 to whatever was going to happen. I don't know.

15 I can't -- it's hard for me to explain it,
16 but I know that she didn't want to go. I believed
17 that she went and that she just braved up to whatever
18 because she thought that was the best way to take
19 things away from me. I believe she did that for my
20 sake.

21 **MR. MURPHY:** Objection. Speculative
22 testimony.

23 **THE COURT:** All right.

24 At that point, the point where she said I
25 believe that she thought, is speculative and the jury

1 will disregard that.

2 Q. (BY MR. OSWALD) All right.

3 You know, Mr. Murphy talked to you about --
4 and he showed you some documents that maybe you said
5 this or something that about the flanking.

6 Do you remember that?

7 A. Yes.

8 Q. Did you ever deviate about who was present in
9 flanking her?

10 A. No.

11 Q. You just didn't know who was first and
12 maybe --

13 A. No.

14 Q. Okay.

15 Now, remember, he showed you the report from
16 Jim Graf? You read that.

17 A. I don't remember who Jim Graf is, but yes.

18 Q. FBI Agent Jim Graf.

19 A. I don't remember him.

20 Q. But you remember that report you just saw?

21 A. Yes.

22 Q. And you were trying to explain something.

23 Do you remember that?

24 A. Yes.

25 Q. And what did you want to explain to the jury?

1 **MR. MURPHY:** Vague. Improper form.

2 **THE COURT:** Well, I'd like to make sure that
3 you and she know what you're are talking about. And
4 then I will understand the incident, but I am not sure
5 this is where we want to be.

6 **A.** Can I look at the paper?

7 **Q.** (BY MR. OSWALD) Yes.

8 **MR. OSWALD:** May I approach, Judge?

9 **THE COURT:** Absolutely.

10 **A.** It was on the second page.

11 **Q.** (BY MR. OSWALD) Okay.

12 **A.** It just says here that I said I didn't know
13 how Anna Mae Aquash got to my home. And so the point
14 was just that, you know, I didn't give a lot of
15 information. I didn't -- basically that was answers
16 to questions that they asked me. And you know, most
17 certainly I knew how she got there, but I didn't
18 volunteer that information.

19 **Q.** Now, do you remember the conversation you and
20 Mr. Murphy had about the drunken party --

21 **A.** Uh-huh.

22 **Q.** -- and Anna Mae and Leonard Peltier.

23 Regardless of the drunken party or not, did
24 Anna Mae tell you a gun was held to her head?

25 **A.** Yes.

1 And -- can I add one thing to that? I didn't
2 know of Anna Mae to drink so that's -- I don't know
3 why that would be in there. I know that she was at
4 parties the same as I. But I don't -- I can't ever
5 say that -- I mean, I don't -- I never knew or heard
6 of her to drink. So I don't know. I don't know why I
7 would have said that because she may have been at a
8 party, yes, most certainly. But a drunken party or
9 drunk, if that alludes to the fact that she was
10 drinking or drunk, no, I don't think that was ever the
11 case.

12 **Q.** Do you remember the question Mr. Murphy asked
13 you about getting a call that Anna Mae was in Oglala
14 and doing fine?

15 **A.** Yes.

16 **Q.** Do you know who made that call to you?

17 **A.** Wilma Blacksmith said that -- she told me
18 that Anna Mae was in Oglala and I believe she said she
19 was with Candy Hamilton. I don't know. That's kind
20 of a vague memory, too. But she just said that she
21 was there and that she was okay.

22 **Q.** Do you know -- was that before you found out
23 Anna Mae was dead?

24 **A.** Yes.

25 **Q.** When do you first recall hearing about Anna

1 Mae dying and being dead?

2 **A.** There was -- it was at a Wounded Knee
3 memorial in Rapid City. There was this rumor just
4 everywhere that this -- a woman's body was found in
5 the Badlands and that was the first that I heard.
6 Nobody knew that it was Anna Mae. We just knew that
7 this woman's body was found.

8 And then some time following, after that, it
9 was -- the body was identified as Anna Mae's. It
10 wasn't a long period of time. So the Wounded Knee
11 memorial is around the end of February. And so it
12 would have been some time after that. Shorty after.
13 Maybe a week after. I don't know.

14 **MR. OSWALD:** Nothing further, Judge.

15 **THE COURT:** Mr. Murphy?

16 **MR. MURPHY:** Very briefly.

17 **RE-CROSS-EXAMINATION**

18 **BY MR. MURPHY:**

19 **Q.** You were redirected towards the flanking
20 comment that you made.

21 You didn't tell the authorities about that
22 for years in your initial interviews, did you?

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

24 **Q.** Well, I --

25 **A.** If it's not there, then I guess not.

1 **Q.** Well, I will show you -- Mr. Oswald asked,
2 you haven't you always been consistent about --

3 **A.** I have. I have always been consistent.

4 **Q.** Ma'am, let me ask you to let me finish my
5 question.

6 He asked you, haven't you always told the
7 same story, essentially, about flanking.

8 But for years when you were questioned on
9 that, on this instance, you never brought up that
10 issue at all, did you?

11 **A.** It's not there, but at other times I think it
12 was brought up.

13 **Q.** So it wasn't always brought up? You weren't
14 always consistent about the flanking, were you?

15 **A.** If it's not there, I guess not.

16 **Q.** And in regard to this use of this term
17 flanking, which I am not sure what that really means.

18 What you testified to is you saw Theda walk
19 out, Anna walk out, and John walk out, correct?

20 **A.** Yes.

21 **Q.** And you never saw my client push Anna Mae?

22 **A.** No.

23 **Q.** Never shoved her, never grabbed her, or
24 anything like that, did he?

25 **A.** No. I don't believe that he did that but --

1 **Q.** That's fine. You answered the question.

2 When you were asked about being honest with
3 law enforcement, you brought up the fact that you once
4 told law enforcement you had no idea how Anna Mae got
5 to your house, correct?

6 **A.** I once told law enforcement she was never
7 there.

8 **Q.** Okay.

9 So you were willing to lie to law
10 enforcement?

11 **A.** I did.

12 **Q.** Okay.

13 And you said in regard to this drunken party
14 allegation, I don't know why I would have said that.
15 Is that --

16 **A.** Yes.

17 **Q.** Sometimes you just don't know why you say
18 things to law enforcement, correct?

19 **A.** I don't think I said that. I told you I
20 don't think I said that. I don't know why I would say
21 that. I don't remember saying that.

22 **Q.** So either they are wrong or you are wrong?

23 **A.** Yes.

24 **Q.** But you -- you have discussed earlier how you
25 would slant your testimony to protect a friend like

1 Arlo?

2 A. I didn't slant. I left information out.

3 Q. Okay.

4 MR. MURPHY: Nothing further.

5 Thank you.

6 MR. OSWALD: I have -- may I?

7 THE COURT: Yes.

8 CONTINUED REDIRECT EXAMINATION

9 BY MR. OSWALD:

10 Q. Troy Lynn, you were talking about did John
11 Boy Graham every touch her or push her.

12 Do you remember that?

13 A. Yes.

14 Q. And you were cut off?

15 A. Yes.

16 Q. Do you remembering that happening?

17 A. I think there was something, but I can't -- I
18 can't say that it happened if I can't exactly remember
19 it. I don't know. But what I do know is that there
20 was the threat -- the threatening feeling. You know,
21 I never saw him do that. I mean, I can't remember.
22 But there was that threatening feeling. I don't know.
23 It's --

24 MR. OSWALD: Okay.

25 Nothing further.

1 **CONTINUED RECROSS-EXAMINATION**

2 **BY MR. MURPHY:**

3 **Q.** Ma'am, you have given at least -- you have
4 given sworn testimony in at least five prior
5 proceedings. In each of those you have been asked
6 about this event.

7 You've never indicated that my client
8 physically did anything adverse to Ms. Aquash, isn't
9 that true?

10 **A.** I never -- that -- of what I can remember, I
11 don't think that he laid hands upon her.

12 **MR. MURPHY:** Very well. Nothing further.

13 **THE COURT:** Ma'am, thank you very much.

14 You may step down.

15 She here on a subpoena?

16 **MR. OSWALD:** She is.

17 **THE COURT:** Released?

18 **MR. OSWALD:** No.

19 (Witness excused.)

20 **THE COURT:** Next?

21 **MR. JACKLEY:** Do you want to do one more
22 witness or take a break, Your Honor?

23 **THE COURT:** I am having trouble staying
24 awake. That's just because I am on cough syrup. I am
25 not bored, I am on medication. So let's take a little

1 break. About 15 minutes.

2 (Off the record.)

3 **THE COURT:** Satisfied this is the jury,
4 Mr. Jackley?

5 **MR. JACKLEY:** Yes, Your Honor.

6 **MR. MURPHY:** Yes, Your Honor.

7 **MR. JACKLEY:** The state would call Evan
8 Hodge, Your Honor.

9 **THE COURT:** Please raise your right hand.

10 EVAN HODGE,

11 called as a witness herein, having been duly sworn,
12 under oath testified as follows:

13 **THE COURT:** Please take a seat.

14 **DIRECT EXAMINATION**

15 **BY MR. JACKLEY:**

16 **Q.** Mr. Hodge, please introduce yourself to the
17 jury and where you live.

18 **A.** My name is Evan Hodge. And I am a retired
19 special agent of the Federal Bureau of Investigation,
20 and I now reside in Pennsylvania near Gettysburg.

21 **Q.** When you were with the FBI, what was your
22 specialty?

23 **A.** I trained to become a specialist or an
24 expert, if you will, in the forensic area of firearms
25 and tool marks examination.

1 **Q.** What was your general educational background?

2 **A.** Well, I studied engineering and business
3 administration in my undergraduate courses at Union
4 College and the University of Maryland. And I have a
5 master's degree -- master of science degree from the
6 George Washington University in Washington DC.

7 **Q.** I'd like to take a minute, Mr. Hodge, and
8 talk a little bit about your work background.

9 Please take a moment and tell the jury your
10 work history.

11 **A.** My work history, well, when I graduated from
12 high school I went into the military, United States
13 Army.

14 Upon concluding that, I went back and made up
15 some courses at the senior high school level that I
16 didn't do well in because I was too busy playing
17 around. That took a full year semester. And then I
18 got on the general ledger college level apprentice
19 course to study engineering at Union College and that
20 was a work study program where I would go in at 7:30,
21 get off at 4:00 and go right to the engineering
22 classroom and take other subjects and other general
23 subjects.

24 I abandoned the engineering program to become
25 an employee of the FBI in 1962. And I had to make up

1 enough credits to get a college degree so I went to
2 the University of Maryland. I couldn't continue my
3 engineering studies because there wasn't -- it was
4 wasn't offered at night time.

5 So I graduated in 1968 and went into special
6 agent training. And then did field investigative work
7 in the Mobile and Washington DC field offices.

8 In 19 -- late 1969, early 1970, I was called
9 back into the laboratory to formalize my training as a
10 firearms and tool marks identification specialist.

11 And since that has been formalized, I have
12 testified over 360 times in various courts, both
13 state, municipal, and federal all across the United
14 States. I retired --

15 Want me to go on?

16 **Q.** Yes.

17 **A.** I retired in 1988 and went to work for the
18 Vermont State Police as a forensic laboratory
19 supervisor in charge of firearms and fingerprints.

20 And I retired from that job in 1973 but got
21 called back -- or let's see -- pardon me. In 2000 --
22 2001. But then got called back when employees had to
23 leave the lab and go fulfill their National Guard
24 obligation after the September 11 bombing of the two
25 buildings. So I finally retired in 2003, fully

1 required, moved to Pennsylvania and have been their
2 since.

3 Q. Mr. Hodge, what was your position back in
4 1976 with the FBI?

5 A. I was a firearms and tool marks examiner.

6 Q. What does a firearms and tool mark examiner
7 do?

8 A. Well, basically through the microscopic study
9 of accidental marks that are created on bullets or on
10 a surface that has been worked on with a tool like a
11 screw driver or a pry bar, and then having a gun, you
12 can test fire it and see if those accidental marks are
13 the same. Much like you would take a known
14 fingerprint card with a person's fingerprints on it
15 and compare it to a latent fingerprint that was lifted
16 at some scene. It's basically the same idea. It's
17 the accidental random nature that you look at to
18 determine if there is a common source.

19 Q. Mr. Hodge, did there come a time that you
20 were asked to review a piece of evidence in the Annie
21 Mae Aquash death case?

22 A. Yes.

23 Q. I am handing you what has previously been
24 marked as State's Exhibit 8.

25 Could you take a moment and please see if you

1 recognize that.

2 **A.** My marking is on the box along with the case
3 number. And just a few moments ago I observed this
4 and saw that my marking is on the nose area of the
5 bullet. So these are two -- these two items did come
6 into my possession.

7 **Q.** And through your position with the lab, did
8 you examine and do any testing of the bullet?

9 **A.** I examined the bullet. There wasn't anything
10 to test. I made notes on the condition of the bullet.
11 And I made certain conclusions regarding the bullet.

12 **Q.** Did you -- I am going to hand you what's been
13 previously marked as State's Exhibit 15.

14 Do you recognize that document?

15 **A.** Yes, I do.

16 **Q.** Is that your report or your finding?

17 **A.** This is my report concerning that bullet
18 right there.

19 **MR. JACKLEY:** Your Honor, I would offer
20 State's Exhibit 15.

21 **MR. MURPHY:** No objection, Your Honor.

22 **THE COURT:** Will be received.

23 **Q. (BY MR. JACKLEY)** Mr. Hodge, what did your
24 examination of this bullet show?

25 What could you tell from the bullet?

1 **A.** Well, number one, that it is a 32-caliber
2 bullet with various characteristics of having been
3 manufactured by the Winchester Ammunition
4 Manufacturing Facility, which is a gilded brass
5 coating -- gilded copper coating. It's not copper
6 plated, but it's gilded with a -- tumbled in this fine
7 copper and adheres to the softer lead surface. It has
8 those characteristics. And it does appear to have
9 been fired from a revolver. And it is consistent with
10 being a revolver bullet in 32 caliber.

11 However, that's the only positive thing I
12 could say about it in that the bullet is so mutilated
13 that I could not ever identify that with a particular
14 firearm should I have one to compare it against.

15 **Q.** I want to take just a second and can you talk
16 to the jury about that concept, firearms
17 characteristics and comparisons.

18 **A.** Well, you have to have characteristics that
19 are individual to a particular gun on a bullet in
20 order to make a comparison.

21 Now, if you take a bullet and fire it out of
22 a gun and then you take a file or it goes into a brick
23 wall or -- and gets all mutilated, then those
24 characteristics are gone.

25 **Q.** Does bone have the ability to damage those

1 characteristics?

2 **A.** Oh, yes.

3 **Q.** So would it be fair to state -- people often
4 watch CI shows. If I were to bring a firearm to you
5 and ask for you to do a comparison and ask whether you
6 could tell me whether that bullet came out of that
7 firearm, due to the condition of the bullet, could you
8 tell me?

9 **A.** No.

10 **MR. JACKLEY:** I have nothing further, Your
11 Honor.

12 **MR. MURPHY:** No questions.

13 **THE COURT:** Thank you, sir.

14 You may step down.

15 (Witness excused.)

16 **MR. OSWALD:** The state will call Bob Riter.

17 **THE COURT:** Please come forward, sir.

18 Please raise your right hand.

19 ROBERT RITER,

20 called as a witness herein, having been duly sworn,

21 under oath testified as follows:

22 **THE COURT:** Please take a seat.

23 **DIRECT EXAMINATION**

24 **BY MR. OSWALD:**

25 **Q.** Would you state your name?

1 **A.** Certainly. Robert Riter.

2 **Q.** Mr. Riter, what do you do for a living?

3 **A.** I'm a lawyer.

4 **Q.** And your primary practice is in what town?

5 **A.** In Pierre.

6 **Q.** Were you a lawyer in October or November of
7 1975?

8 **A.** Yes, I was.

9 **Q.** And was that also in Pierre?

10 **A.** Yes.

11 **Q.** Did you know an individual by the name of
12 Anna Mae?

13 **A.** Yes.

14 **Q.** How did you come to know her?

15 **A.** I was appointed to represent her on some
16 charges pending against her in federal court in
17 Pierre.

18 **Q.** Did you have communications with her at
19 times -- in 1975?

20 **A.** Yes, I did.

21 **Q.** And can you briefly explain how you would
22 communicate mainly with Anna Mae?

23 Personal, telephone, letter?

24 **A.** I saw her when -- when I was initially
25 appointed she was -- I saw her in person. Met her in

1 person. She came up on another occasion as I recall
2 in Pierre so we had personal contact. She gave me a
3 way I could contact her by mail where I could write to
4 her. And I believe gave me a telephone number. So
5 those -- I had a methodology established how I could
6 make contact. I wasn't always successful in that
7 effort.

8 Q. At some point did there come a time when this
9 matter was set for trial?

10 A. Yes. I was -- I was appointed in September
11 and the matter was scheduled for trial in November.
12 My recollection was there was actually going to be a
13 hearing in advance of the trial which would have
14 required her attendance as well as at the trial.

15 I think I answered your question. Maybe
16 there is more.

17 Q. Okay.

18 And did -- did she -- was she present at that
19 motion hearing?

20 A. No, she was not. I was unable to make
21 contact with her.

22 Q. So did you write her a letter informing her
23 of the dates of the hearing and the trial?

24 A. Yes, I did. I wrote letters to the addresses
25 that she had provided to me to try to get that

1 information to her so she could appear when she was
2 required to appear because obviously the Court wants
3 all the litigants to be present when they are supposed
4 to be present.

5 Q. Was there a particular judge from Pierre
6 assigned to this case?

7 A. My recollection -- I remember Cliff Pay
8 (phonetic) was the United States Magistrate back then
9 so he would have handled the initial appearance. Then
10 generally Judge Bogue, who was a federal judge in
11 Rapid City, handled matters that were in Pierre, but
12 there were a lot of criminal matters pending at that
13 time.

14 So as it turned out, there was a visiting
15 judge from another district who came to South Dakota
16 to handle this matter and some others.

17 Q. Were you -- was Annie Mae in this case just
18 charged separately by herself or was there a group?

19 A. My recollection is there were a number of
20 defendants charged, and in fact in preparation for
21 coming to testify today I looked back at my file that
22 I have and I noticed in some of the pleadings that
23 there was a list of six or seven defendants. And I
24 know there were five or six other lawyers in Pierre
25 besides myself who had been appointed to represent

1 other of these defendants.

2 Q. Had you been offered from the United States
3 government a plea bargain for Anna Mae?

4 A. Yes, I had.

5 Q. And can you relate to the jury what that plea
6 bargain was for?

7 A. The terms you mean?

8 Q. Yes, sir.

9 A. Certainly. Back in 75 I was a young
10 attorney, and I was appointed, frankly, in quite a few
11 matters in federal court then because there were quite
12 a few matters pending.

13 The normal situation was to inquire of the
14 U.S. Attorney if there was an opportunity to resolve
15 this matter short of a trial. Initially I was advised
16 that Anna Mae Aquash had been charged with two counts.
17 And they said, initially, if she were to plead to one
18 count they would dismiss the other count and make no
19 recommendation at the time of sentencing.

20 Then later as the trial got nearer, they
21 contacted me and advised that that same offer was
22 still pending but then there was also a proposal that
23 if she were to testify as to what she knew as to
24 issues involving herself, that they would let her
25 plead guilty to a misdemeanor. And the charges she

1 had were felonies, subject to ten years. But they
2 would allow her to plead guilty to a misdemeanor and
3 they would recommend that -- as I recall that there
4 be -- if there was a sentence it be suspended.

5 Q. Did you write a letter to her conveying that
6 plea bargain?

7 A. I did.

8 Q. I'd like to show you what I marked as State's
9 Exhibit 48.

10 Do you recognize that letter, sir?

11 A. Yes, I do.

12 Q. And what is that, sir?

13 A. That's a copy of a letter that I wrote to
14 Anna Mae back on November 6, 1975. It's a copy that
15 was taken out of my file. It was a carbon copy.
16 That's what we used back in 1975.

17 And then on the top of it there are some
18 notes that I made that were not part of the letter,
19 but I made them on the letter or my copy of the
20 letter.

21 Q. Based on the letter, can you -- well, is this
22 a true and accurate carbon copy of the letter that you
23 sent?

24 A. Yes, it is. As I said subject to my
25 handwriting on the top and then it appears that I also

1 made a few notes within that letter, as well.

2 **MR. OSWALD:** I would offer 48, Judge.

3 **MR. MURPHY:** No objection.

4 **THE COURT:** Will be received.

5 Looks like a dandy typewriter, too.

6 **Q. (BY MR. OSWALD)** Referring to State's
7 Exhibit 48, sir, instead of putting it up on the
8 display, could you just read out loud the first
9 paragraph of what you wrote?

10 **A.** Certainly. Please be advised that I have had
11 further conversation with the Assistant United States
12 Attorney concerning a possible plea bargain in this
13 plat matter. He advised that if you would agree to
14 testify as a government witness and tell everything
15 you know about this matter, he would reduce the charge
16 against you to a misdemeanor and recommend probation.
17 You should certainly give this thorough consideration
18 and if you desire to confer with me concerning the
19 same, please feel free to contact me.

20 **Q.** Thank you.

21 Do you know if this letter ever reached her?

22 **A.** No, I don't know if it ever did reach her.

23 **Q.** So this was sent and dated November 6?

24 **A.** Correct.

25 **Q.** Did you see Anna Mae after November 6 of

1 1975?

2 **A.** Yes, I did.

3 **Q.** And what were the circumstances of that?

4 **A.** I was contacted in mid or late November and
5 advised that she had been -- picked up isn't the right
6 word -- but she had been found in Oregon. I had not
7 heard from her in several weeks or maybe even
8 months -- a month. So I was pleased that they had
9 made contact with her and I said they, I mean it was
10 the authorities, that she was in their custody. So
11 she was brought back to Pierre from Oregon and I met
12 with her in Pierre upon her return.

13 **Q.** When was the trial date set for, if you can
14 recall?

15 **A.** The trial was ultimately set for either
16 November 24 or November 25, 1975.

17 **Q.** Was this just prior to Thanksgiving?

18 **A.** Probably. I don't really remember.

19 **Q.** Did you have a motions hearing or suppression
20 hearing prior to this trial date?

21 **A.** Yes.

22 **Q.** And was Anna Mae at that?

23 **A.** I am almost certain she was because the
24 general rule if it's a felony charge, the defendant
25 needed to be present.

1 **Q.** Did you have to make any motion or request of
2 the judge regarding bond for Anna Mae during this time
3 period?

4 **A.** I did make a request of the Court during this
5 time period that she be released pending the trial on
6 bond.

7 **Q.** When you thought about it, did you think that
8 would be a futile motion?

9 **A.** I did not think that the Court would be
10 likely to allow her out on bond pending the trial
11 because she had been missing and then found in Oregon
12 and brought back. I realized it was easier for me to
13 prepare for trial if she and I could visit person to
14 person and frankly talk with others similarly situated
15 in preparing for the trial.

16 **Q.** Was it your idea to ask for her bond?

17 **A.** No, it was not my idea to ask for a bond. I
18 frankly thought it was a very unlikely condition that
19 the Court would allow her out on bond. I had been
20 practicing in federal court for several years in front
21 of the judges in South Dakota, and I didn't anticipate
22 that they would allow that.

23 **Q.** Was it the government, either an Assistant
24 U.S. Attorney, the United States Attorney, or an FBI
25 agent -- did they suggest you should ask for bond?

1 **A.** No.

2 **Q.** Do you remember who did?

3 **A.** No. I do not remember the specific person
4 who did to answer your question.

5 **Q.** Okay.

6 And then did you ask for bond?

7 **A.** Yes, I did.

8 **Q.** And what did the judge do?

9 **A.** The judge released her on bond or maybe even
10 personal recognizance. I don't know that she had any
11 money to put up pending the trial date, which was
12 within a day or two.

13 **Q.** Did you ever see Anna Mae again after that
14 time period?

15 **A.** My recollection -- and not only recollection.
16 I am confident I am right on this. There was up at
17 the St. Charles Hotel, which is an old hotel in
18 Pierre, there is kind of a war room, so to speak,
19 where there were a number of lawyers who were getting
20 ready for the trial or trials that were coming up,
21 making preparation, discussing strategies. And I
22 believe I may have seen her up at the St. Charles
23 Hotel when -- after she was released. I -- as I sit
24 here 35 years later, I don't remember that vividly,
25 but that's my general recollection.

1 **Q.** And so would that have been either
2 November 22nd or 23rd?

3 **A.** Yes. Part of the discussion with some of the
4 other lawyers in preparation was just trying to
5 consider strategies, as I indicated, and that there
6 was, from one of these other lawyers, a suggestion
7 that maybe we could get her out -- maybe she could get
8 out on bond and maybe have a better opportunity then
9 to work in preparation.

10 **Q.** Now, at this war room that you were talking
11 about, were some of these other lawyers representing
12 the American Indian Movement members?

13 **A.** You know, I don't know that I specifically
14 differentiated between defendants if they were an
15 American Indian Movement member or not, but I suspect
16 one might give them that term or identify them with
17 that terminology.

18 **Q.** All right.

19 **A.** Some of them.

20 **Q.** Mr. Riter, now that I am thinking about it,
21 St. Charles is that a four or five or six-story
22 building in Pierre?

23 **A.** It was the tallest building in Pierre. It
24 was four or five stories.

25 **Q.** Okay.

1 The day for trial comes around on
2 November 24?

3 **A.** Yes, it did.

4 **Q.** Did Anna Mae show up at that?

5 **A.** No, she didn't.

6 **Q.** Did you ever see her after that?

7 **A.** I never did.

8 **Q.** Did you hear about her demies at some point?

9 **A.** I did. I read about it. I know ultimately
10 the United States -- Assistant United States Attorney
11 dismissed the indictment because of her death -- or
12 the charge.

13 **MR. OSWALD:** I have no further questions.

14 **THE COURT:** Mr. Murphy.

15 **CROSS-EXAMINATION**

16 **BY MR. MURPHY:**

17 **Q.** Your daughter is Lindsey?

18 **A.** Yes.

19 **Q.** She used to practice here in town?

20 **A.** Yes, she did.

21 **Q.** And now she's practicing with you, I
22 understand?

23 **A.** Very proud dad, too.

24 **Q.** I want to take you back to when you were
25 first appointed to this case, the case that you were

1 representing Ms. Aquash on.

2 Was that around September 5, 1975?

3 **A.** Yes, it was.

4 **Q.** Okay.

5 Typically in federal practice, if somebody is
6 charged with a federal crime, they bring them into
7 court quite quickly after the incident; is that your
8 experience?

9 **A.** Yes. I mean, in this particular
10 circumstance -- and I looked back and maybe I am
11 telling you more than you are asking me -- but she was
12 arrested and brought in on a complaint initially. So
13 she had not been indicted by a Grand Jury at that
14 time.

15 **Q.** Okay.

16 If -- is it your recollection that the events
17 she was arrested on occurred on September 5, 1975?

18 **A.** Right in that time frame, yes. And she
19 was -- I am sure I was appointed within a day or so
20 after that, likely.

21 **Q.** Okay.

22 What she was charged with, you indicated she
23 was -- had -- facing two felonies, correct?

24 **A.** Correct.

25 **Q.** Both of them were punishable by up to ten

1 years in prison, correct?

2 A. That's my understanding.

3 Q. The first charge was for possession of
4 illegal firearms; is that your recollection?

5 A. Yes.

6 Q. Specifically firearms with obliterated serial
7 numbers?

8 A. Exactly.

9 Q. And the second count was for possession of
10 illegal explosives.

11 A. Yes. I think the count maybe said explosives
12 or A, B, or C something like that.

13 Q. Right.

14 It involved grenades, dynamite, and some
15 other explosive devices?

16 A. I recall dynamite.

17 Q. Yeah.

18 And one of the weapons involved was an M1
19 rifle.

20 Do you recall that?

21 A. I recall a rifle, but I don't remember M1.

22 Q. All right.

23 Just so we have a context, the arrest or the
24 charges stemmed out of a raid at a place called Al
25 Runnings, correct?

1 **A.** Yes.

2 **Q.** All right.

3 And in a nut shell, what happened in regard
4 to Ms. Aquash is that the FBI did a raid on Al
5 Runnings place; is that fair?

6 **A.** That's fair.

7 **Q.** And she was in a tent when they got to the
8 place?

9 **A.** Yes.

10 **Q.** And inside the tent it was just her?

11 **A.** Yes.

12 **Q.** And also these explosives and other weapons,
13 correct?

14 **A.** Yes.

15 **Q.** And that other people were also arrested
16 in -- on the property called Al Runnings, correct?

17 **A.** Correct.

18 **Q.** So that's would have been her codefendants?

19 **A.** Yes.

20 **Q.** Now, you indicated we had a visiting judge --
21 or you had a visiting judge at that time. This is
22 less than three months after the two FBI agents were
23 killed on June 26, 1975, correct?

24 **A.** I don't recall that date for sure,
25 Mr. Murphy.

1 **Q.** Okay.

2 Do you recall the incident where the two FBI
3 agents were killed?

4 **A.** Yes.

5 **Q.** After that, there were numerous arrests
6 throughout South Dakota, correct?

7 **A.** Yes. It was a very difficult time and a busy
8 time for lawyers who were being appointed on these
9 cases.

10 **Q.** Kind of a full employment policy for young
11 defense attorneys like yourself?

12 **A.** Yeah.

13 **Q.** And there was so many cases because of the
14 FBI search for the people responsible for the killing
15 the FBI agents that we had to bring in other judges,
16 essentially?

17 **A.** I suspect that was a major reason other
18 judges were brought in. I know from time to time
19 during a longer period even than just that immediate
20 time frame that they had visiting judges come in to
21 help relieve some of the burden that the federal court
22 judges had.

23 **Q.** Because at this time there was also the
24 courthouse real of an interview in Custer and in Sioux
25 Falls?

1 Do you recall those instances?

2 A. Yes.

3 Q. Lots of indictments coming out of those
4 particular matters, correct?

5 A. Probably. I was not involved in any of that.

6 Q. All right.

7 Moving ahead, so you -- we have you appointed
8 in September of September of 1975. You make the
9 initial appearance of Ms. Aquash, correct?

10 A. Correct.

11 Q. And she's released from custody?

12 A. Yes.

13 Q. Okay.

14 And things progress along. There is supposed
15 to be a motions hearing at some point prior to trial,
16 correct?

17 A. Correct.

18 Q. And if -- is the date November 10?

19 Does that ring a bell as the date?

20 A. Yes, it does.

21 Q. She doesn't show for that hearing so a
22 warrant is issued for her arrest, correct?

23 A. She did not show and I believe a warrant was
24 issued. I don't recall that clearly show.

25 Q. That would have been standard practice?

1 **A.** Correct.

2 **Q.** Especially when the attorney comes before the
3 Court and says I can't explain why my client is not
4 here?

5 **A.** Right.

6 **Q.** Right.

7 And so at that point it's likely she became a
8 federal fugitive, correct?

9 **A.** Likely, yes.

10 **Q.** Yeah.

11 In any regard, you learned shortly after that
12 missed court hearing that she has been apprehended in
13 Oregon, true?

14 **A.** True.

15 **Q.** And what you learn from your discussions with
16 the U.S. Attorney's Office is that she was involved in
17 a shoot-out with the Oregon Highway Patrol on
18 November 14, 1975?

19 **A.** You know, I don't think I learned that from
20 the U.S Attorney's Office. I was contacted by a
21 lawyer out there who she had visited with. And that
22 lawyer told me maybe a little bit of it. But then
23 there was, like, a newspaper article I remember
24 reading a newspaper article.

25 **Q.** You learned ultimately that she was in a

1 motor home and Dennis Banks and Leonard Peltier and
2 other AIM leaders were in that motor home with her?

3 **A.** Correct.

4 **Q.** And they -- an Oregon Highway Patrol tried to
5 pull them over. You heard about that?

6 **A.** I don't recall that.

7 **Q.** Did you hear at some point that shots were
8 fired; that there was a shoot-out between the motor
9 home and the Oregon Highway Patrol?

10 **A.** I may have. I don't -- as I sit here today,
11 I don't clearly recall that.

12 **Q.** Okay.

13 In any regard, you know she's taken into
14 custody in Oregon?

15 **A.** Correct.

16 **Q.** And you did get a call from an attorney in
17 Oregon so does that lead you to believe she's charged
18 with federal crimes also in Oregon?

19 **A.** Probably. But I -- I can't say that I recall
20 that she was specifically charged with anything out
21 there. I recall that I was contacted by an attorney
22 from Washington State, I think, who may have been down
23 in Oregon. I don't -- when I look back through my
24 file, I didn't see that she had been charged with
25 anything out there, but wouldn't be unexpected, I

1 guess.

2 Q. Wouldn't be unexpected if someone was
3 involved in a situation like that.

4 And in any regard she's then brought back to
5 Pierre?

6 A. Correct.

7 Q. You know, when she comes back to Pierre she's
8 now been alleged to have been involved in serious
9 felonious conduct out in Pierre, the weapons --

10 A. Down at Al Runnings, yes.

11 Q. And failed to show for a court hearing which
12 is also a serious matter, correct?

13 A. Yes.

14 Q. And then she's brought back from Oregon by
15 the authorities, correct?

16 A. That's correct.

17 Q. So you go before the Court some time
18 November 22, 23rd, and at some point you ask the
19 Court to release her on bond, correct?

20 A. Yes.

21 Q. And that's pretty much expected that you are
22 going to make that request on behalf of a client; is
23 it not?

24 A. It always is at the beginning when they are
25 first charged and first come before the Court.

1 Q. Right.

2 A. But not as likely, certainly, under
3 circumstances as were existing at that time.

4 Q. Let me put it this way. Your client
5 typically asks you to try to get them out of jail when
6 they are in custody?

7 A. That's true.

8 Q. All right.

9 So you wouldn't have made that request unless
10 Ms. Aquash wanted to get out of jail?

11 A. I'm sure that's true.

12 Q. Okay.

13 And she was released, correct?

14 A. Yes.

15 Q. And though it was unexpected or
16 unanticipated, it wasn't something that in your
17 recollection that the U.S. Attorney or the FBI
18 petitioned the Court to reconsider the bond decision?

19 A. I don't recall that they asked the Court to
20 reconsider. My recollection is that they certainly
21 didn't support my motion.

22 Q. Right.

23 But you made your motion and the Court
24 granted it?

25 A. Correct.

1 **Q.** All right.

2 Now, after that, we were -- you were talking
3 with Mr. Oswald about your -- or Mr. Jackley about
4 your -- who was it -- it's getting late in the day
5 here and they are blending together.

6 When you were discussing your communication
7 with Mr. Quash you said you sent her a plea letter,
8 correct?

9 That was the exhibit?

10 **A.** Yeah.

11 **Q.** You didn't send her any communication
12 indicating that she had already agreed to plead
13 guilty, did you?

14 **A.** No.

15 **Q.** In fact, she hadn't agreed to plead guilty?

16 **A.** That's correct.

17 I spoke with her -- I spoke with her up in
18 the federal building in Pierre when she was in what I
19 call the holding cell up there. Went over there again
20 with her again carefully because the opportunity to
21 get a misdemeanor and have probation recommended is a
22 pretty good circumstance for her -- a good result and
23 she would not agree.

24 **Q.** She wasn't interested in any way, shape, or
25 form with any plea bargain?

1 **A.** That's correct.

2 **Q.** All right.

3 Either initially when it was to one felony or
4 even when they sweetened the deal?

5 **A.** I didn't hear from her the first time.

6 **Q.** Okay.

7 So that first letter that you sent out that
8 of the exhibit, you never heard anything back from her
9 on that?

10 **A.** I believe that was the second letter.

11 **Q.** Okay. My mistake.

12 All right. So you sent out multiple letter,
13 one with the initial offer, and one with the better
14 offer?

15 **A.** I think so.

16 **Q.** In any regard, she wasn't interested if
17 taking the plea, correct?

18 **A.** That's correct.

19 **Q.** And if she had taken a plea, she would then
20 have become a government witness?

21 **A.** Under the second proposal -- under the first
22 proposal she would have plead guilty to one and they
23 would have made no recommendation at the time of
24 sentencing. There would have been no requirement for
25 her to cooperate as a witness. The second one with

1 the misdemeanor, yes, there was.

2 Q. So on the first plea bargain, had she plead
3 and not cooperated, she would have been exposed to up
4 to ten years?

5 A. Correct.

6 Q. But when they gave you the better offer, they
7 expected her to testify, correct?

8 A. Yes.

9 Q. And so she would have become a government
10 witness, correct?

11 A. She would have testified -- she probably
12 would have been called by the government to testify.

13 Q. Right.

14 And she would have been brought under their
15 protection at that point, correct?

16 A. Under their protection?

17 Q. She would be somebody who was working for the
18 prosecution?

19 Somebody that --

20 A. No. I don't -- that wasn't the way I -- that
21 wasn't the way I felt it was. I mean -- and I
22 represented quite a few individuals charged
23 criminally. And it was not a matter of necessarily
24 choosing sides. It was a matter of testifying and
25 being willing to testify honestly and that was the

1 opportunity given to her.

2 Q. Well, let me ask you this. When she was in
3 jail being held by the authorities, she was not
4 subject to any -- she was -- when she was in jail,
5 nobody from the outside could cause her harm, correct?

6 A. Correct.

7 Q. Okay.

8 She's there protected by law enforcement,
9 correct?

10 A. Correct.

11 Q. And throughout the whole time she's in the
12 federal court system and you are talking to
13 prosecutors and whatnot, she never relayed to you any
14 concerns for her own safety from the American Indian
15 Movement, did she?

16 A. I don't recall that she did.

17 Q. She never asked you to make as part of the
18 deal that the government give her any type of
19 protection, did she?

20 A. Not that I can recall at this time.

21 Q. Okay.

22 What you learned from her is that no matter
23 how much they sweetened the deal, she wasn't
24 interested in taking one?

25 A. That's correct.

1 **MR. MURPHY:** All right.

2 Thank you.

3 **REDIRECT EXAMINATION**

4 **BY MR. OSWALD:**

5 **Q.** Mr. Riter, if she turned down the plea
6 agreement, she wouldn't have asked for any help from
7 anybody would she have?

8 **A.** I wouldn't think so, other than her lawyer.

9 **Q.** Was there another young lawyer assisting you
10 and Anna Mae in this case?

11 **A.** There was a lawyer who did some legal
12 research early on in support of a motions hearing.
13 The motion that was being filed. So he hadn't been --
14 to my knowledge hadn't been appointed and I was her
15 lawyer. He assisted me in getting a brief put
16 together.

17 **Q.** What was that lawyer?

18 **A.** Bruce Ellison.

19 **Q.** Is he a lawyer?

20 **A.** Yes.

21 **Q.** Where?

22 **A.** Rapid City.

23 **MR. OSWALD:** Okay.

24 Nothing further.

25 **MR. MURPHY:** Briefly?

1 **THE COURT:** Thank you, sir.

2 **MR. MURPHY:** Your Honor, may I ask a couple
3 questions?

4 **THE COURT:** Sure.

5 **REXCROSS-EXAMINATION**

6 **BY MR. MURPHY:**

7 **Q.** Mr. Ellison merely was providing some
8 research to you?

9 **A.** Yes. I did call upon him to try to try to
10 help me find my client when I didn't hear from her.
11 So he helped with the research and I thought he was
12 helping with that effort too.

13 **Q.** Sure.

14 Appeared to you he was somebody who was
15 concerned about Ms. Aquash's situation and was willing
16 to lend a hand?

17 **A.** My recollection was a probably broader
18 concern from him that there were these six or seven
19 defendants, that his concern was of a broader scope
20 because I know at least one of the motions we filed
21 was filed by all six or seven defendants and I think
22 that may have been part of what the research that he
23 helped provide was utilized for.

24 **Q.** So he was not only willing to help with
25 Ms. Aquash, but willing to help all of these other

1 defendants with his research, correct?

2 **A.** Yes.

3 **Q.** And he wasn't getting paid by you guys for
4 that?

5 **A.** He asked to get paid and I said I didn't
6 think the judge would pay him for that other than
7 maybe the copies that he had to make.

8 **Q.** But he still went ahead and helped all the
9 defendants to the extent that he could?

10 **A.** Yes.

11 **MR. MURPHY:** All right.

12 Nothing further.

13 **THE COURT:** Thank, sir.

14 You may step down. You are excused.

15 (Witness excused.)

16 **MR. MANDEL:** The state calls George Palfy,
17 Your Honor.

18 **THE COURT:** Please raise your right hand.

19 GEORGE PALFY,

20 called as a witness herein, having been duly sworn,
21 under oath testified as follows:

22 **THE COURT:** Please take a seat.

23 **DIRECT EXAMINATION**

24 **BY MR. MANDEL:**

25 **Q.** Sir, would you state your name, please.

1 **A.** George Palfy.

2 **Q.** Mr. Palfy, where are you from?

3 **A.** Wheatridge, Colorado.

4 **Q.** Is that a suburb of Denver?

5 **A.** Yes, sir.

6 **Q.** How long have you lived there?

7 **A.** About 20 years.

8 **Q.** Are you originally from Denver?

9 **A.** Yes. I was born in Denver.

10 **Q.** Okay.

11 Where does your family come from?

12 **A.** Well, my mother IS Indian, my father is white
13 so my mom is from Oklahoma and my dad is from Brush,
14 Colorado.

15 **Q.** Are you an enrolled member of the Osage
16 Tribe?

17 **A.** Not enrolled.

18 **Q.** Do they have enrollment?

19 **A.** It's complicated.

20 **Q.** Okay. I won't go there, sir.

21 Prior to 20 years ago, were you still -- let
22 me ask you, have you spent your whole life living in
23 the Denver area?

24 **A.** Yes.

25 **Q.** What's your most recent employment?

1 **A.** Retired from the postal service last year.

2 **Q.** How long were you with the Postal Service?

3 **A.** Twenty-four years.

4 **Q.** Prior to that, you had other different jobs
5 down there?

6 **A.** Yes.

7 **Q.** Going back to the 1970s, did you have some
8 involvement with the American Indian Movement in
9 Denver?

10 **A.** Yes.

11 **Q.** Can you tell me what that was and how it came
12 about?

13 **A.** Well, we -- you know, basically was a
14 socializing group as it started.

15 **Q.** About what year are we talking?

16 **A.** Around about 74.

17 **Q.** Okay.

18 What kind of socializing?

19 **A.** Pow Wows, benefits, marches, you know,
20 protests, and then we got into -- involved with
21 starting an alternative school about 74.

22 **Q.** Were you directly involved in that?

23 **A.** Yes, sir.

24 **Q.** Let me ask you, how many people were
25 regularly involved in AIM down there?

1 **A.** It's hard to say. Maybe, you know, a hundred
2 to maybe 200.

3 **Q.** Okay.

4 Were a number of people involved with the
5 alternative school?

6 **A.** Yes. We had -- we had a lot of groups
7 helping us like NARF and ACIS and some of the public
8 school people were helping us. We were trying to, you
9 know, set up the alternative school.

10 **Q.** What was going to be the purpose of the
11 alternative school?

12 **A.** It was for all -- all kids, not just Indian
13 kids. It was for kids that were having a hard time
14 dealing with the public school system and they could
15 come to our school and we -- we worked more with our
16 ideas, you know, Indian spirituality and the way we do
17 things.

18 **Q.** Did the school have it's own building?

19 **A.** No. We didn't have the money to get our own
20 building. We were offered housing at the Denverane
21 House (phonetic).

22 **Q.** Where was that located?

23 **A.** About 12th and Gaylord. Somewhere about
24 there. Downtown Denver.

25 **Q.** Did you have any specific position in AIM at

1 that time?

2 **A.** No.

3 **Q.** So did the school get started back in 1974?

4 **A.** The concept was started in 74. We did a lot
5 of grant writing and about 74 or 75 it started to
6 develop.

7 **Q.** Did that pretty much end up being your
8 employment at that time?

9 **A.** Nobody got paid. Nobody got paid.

10 **Q.** We'll call it your occupation then?

11 **A.** My second job, yeah.

12 **Q.** Okay.

13 Did you spend a fair amount of time at the
14 American Indian Movement house there in Denver because
15 of that?

16 **A.** All the time I wasn't working, yes.

17 **Q.** Do you remember in the fall of -- fall or
18 early winter of 1975 receiving some contact from Troy
19 Lynn Yellow Wood or Troy Lynn Irving?

20 **A.** Yes.

21 **Q.** Do you recall getting a phone call from her
22 when you were at the AIM house?

23 **A.** I got a phone call. She wasn't looking for
24 me, but I was the only one there so, yeah, I took the
25 call.

1 Q. Did you previously to that know Troy Lynn?

2 A. Yeah.

3 Q. How do you know her?

4 A. Through Pow Wows and stuff. My wife and her
5 grew up together.

6 Q. Your wife is from Pine Ridge?

7 A. My wife is from Pine Ridge.

8 Q. So she had known Troy Lynn for a long time?

9 A. Uh-huh.

10 Q. That's how the two of you got together?

11 A. Yes.

12 Q. Was anyone else present there when you got
13 the call?

14 A. No, I was the only one there.

15 Q. Do you remember what date it was about?

16 A. I do not remember.

17 Q. Do you know what month it was?

18 A. November.

19 Q. Do you recall what was said to you?

20 A. She told me that -- well, first off, she was
21 asking for different people. And I told her there was
22 nobody around but me. So you can talk to me or
23 whatever. She said, well, she's having trouble at her
24 house and she asked me if I could come over and help
25 work things out.

1 So I knew where she lived. We were in the
2 same neighborhood so I said, well, when I got done
3 with my paperwork, then I would come over.

4 **Q.** Did she tell you what kind of trouble?

5 **A.** She mentioned that there was a lady at her
6 house that supposedly her aunt had got a call and said
7 it was from National AIM and they wanted to take this
8 lady back to South Dakota.

9 **Q.** Did she say why?

10 **A.** Not really, no.

11 **Q.** Where was her house located?

12 **A.** In north Denver about 44th and Pecos right
13 next to I-70.

14 **Q.** About how far was that from the AIM house?

15 **A.** Across town.

16 **Q.** Twenty minutes?

17 **A.** Twenty without traffic, yeah.

18 **Q.** Today 40 minutes?

19 **A.** Today, yeah.

20 **Q.** Okay.

21 When did you arrive there?

22 **A.** It was late afternoon.

23 **Q.** Getting dark yet or still light out?

24 **A.** It was still -- it was still fairly light
25 out, yes.

1 Q. What do you recall first happening when you
2 got there?

3 A. I went in and asked her what was going on and
4 her aunt was standing there, too.

5 Q. Who was her aunt?

6 A. Theda Nelson. Theda Clarke.

7 Q. Okay.

8 Go on.

9 A. She said, well, my aunt said she got a call
10 from National AIM to take this lady up to South
11 Dakota, Rapid City, because they wanted to confront
12 her about being a federal informant. And I asked her
13 who is the lady and she said it's Annie Mae Aquash and
14 I said where is she and she said down in the basement.

15 Q. Had you ever heard of Annie Mae Aquash
16 before?

17 A. Yes. What I had read in the papers.

18 Q. Had you ever met her?

19 A. No.

20 Q. What did you do next?

21 A. Well, I asked her if I could go talk to her
22 and they said okay. Went downstairs and I don't know
23 who introduced us to each other. But that's the first
24 time I had met her. First and last time.

25 Q. What was the basement of this place like?

1 Was it finished?

2 **A.** It was finished. Finished basement. Some
3 rooms down there. It was like a large living room.

4 **Q.** Who was present down there besides you and
5 Annie Mae?

6 **A.** Theda was down there, Troy Lynn -- I don't
7 know if Troy Lynn went down there or not. I can't
8 remember that. But I remember John Boy being there.
9 And that's about all I can remember being downstairs.

10 **Q.** When you say John Boy, who are you referring
11 to?

12 **A.** John Boy Patton.

13 **Q.** Did you know him by any other name at that
14 time?

15 **A.** No.

16 **Q.** If you were to see him today, do you believe
17 you would still be able to recognize him?

18 **A.** I don't know. It's been 35 years.

19 **Q.** I'll ask if you could look around and see if
20 you see him seated here in the courtroom?

21 **A.** Well, I guess that's John Boy. I don't know.
22 Looks like him.

23 **Q.** Okay.

24 **A.** Little different.

25 **Q.** As you said, 35 years ago, right?

1 **A.** Yeah.

2 **Q.** So what happened, then, down there in the
3 basement?

4 **A.** They left us down there and we started
5 talking. And she asked me who I was -- who I was with
6 or what I was doing. I told her, you know, about the
7 alternative school and what we were starting. And we
8 talked about her and her exploits.

9 **Q.** What kind of exploits, if you remember?

10 **A.** Just what -- the stuff I had read in the
11 paper, you know. I asked her what this was all about
12 and as I said what I said before, she thought it was
13 just somebody that was upset with her or jealous of
14 her. She told me that she had been through this
15 before. And I told her, well, you know you don't have
16 to stay here. I said you can -- you can go with me.
17 I can take you to the Indian center or wherever you
18 want to go. You don't -- you don't have to stay here.
19 And she said it wasn't a problem.

20 **Q.** Was the Indian center something different
21 from the AIM house?

22 **A.** Yeah.

23 **Q.** I'll just ask you, generally, was there a
24 fairly good sized Indian community down in Denver at
25 that time?

1 **A.** There has always been a pretty big community.

2 **Q.** That was just some social gathering-type
3 place or what?

4 **A.** Supposedly they had, you know, social
5 services and stuff like that. But sometimes it gets
6 pretty political.

7 **Q.** But there would have been a place for her to
8 stay there?

9 **A.** Yeah, or somebody she could stay with, but
10 she didn't seem concerned.

11 **Q.** Did you discuss with her the accusations that
12 had been made against her at all?

13 **A.** Yeah. She told me that they thought she was
14 an FBI informant. She said it wasn't the first time
15 and she said it probably wouldn't be the last time.
16 And you know, that's when I told her, well, she could
17 leave with me and I could take her where she wanted to
18 go. She was not concerned about it.

19 **Q.** What happened then?

20 **A.** Went back upstairs and that's when I seen
21 Corky and Ernesto talking to Theda.

22 **Q.** Corky Gonzalez?

23 **A.** Corky and Ernesto Vigil.

24 **Q.** Where were they seated?

25 **A.** They weren't seated. They were gathered in

1 the kitchen.

2 Q. Who was there?

3 A. And they were talking.

4 Theda was there, Troy Lynn was there, and a
5 few other people I cannot remember. I know Angie
6 Begay was in the house. She wasn't right there in the
7 kitchen. There was a bunch of kids, like little kids.

8 Q. Was John Boy there?

9 A. John Boy was around, but I don't remember him
10 being in the kitchen discussing things.

11 Q. Did you see Arlo Looking Cloud at all?

12 A. Arlo wasn't there.

13 Q. Go on.

14 What was going on then in the kitchen?

15 A. They were just talking about the situation
16 and I heard one of them say, well, what we do with
17 snitches is take them out to the country and get rid
18 of them. And that's when I said, you know --

19 Q. Who said that?

20 A. Either Corky or Ernesto. Probably Ernesto.
21 He was the younger one.

22 Q. Did he make any kind of gesture?

23 A. Yeah. He made the throat slit gesture.

24 Q. Tell you what you are talking about.

25 A. Like this (indicating) we get rid of them.

1 Q. And what did you say?

2 A. That's when I got mad and told them that's
3 not our way. We don't do that kind of stuff.

4 And then they decided it was time to leave,
5 so they left.

6 Q. After they left, who was in the house?

7 A. Just me, John Boy, Theda, Troy Lynn, Angie
8 Begay. There might have been a few other adults. I
9 cannot remember.

10 Q. And Anna Mae?

11 A. And Anna Mae, and all the kids.

12 Q. What do you remember taking place next?

13 A. Theda was in a hurry to get going. So she
14 kept telling everybody, you know, hurry up, hurry up.
15 We got to go. And I --

16 Q. About what time have we gotten to now?

17 Is it dark out yet.

18 A. Probably about 4:30 five o'clock in the
19 evening. And yeah, it's starting to get dark at that
20 hour in the evening.

21 Q. What do you recall took place at that time?

22 A. They went downstairs and got Anna Mae and
23 brought her upstairs.

24 Q. When you say they, who are you referring to?

25 A. I don't know for sure who it was, but I know

1 we all walked outside to the car to Theda's station
2 wagon.

3 Q. Do you remember what kind of station wagon
4 she had?

5 A. Yeah. It was a red Pinto station wagon with
6 wood siding like the old Woodys.

7 Q. Did this station wagon have a hatch that
8 opened in the back?

9 A. Yes.

10 Q. But it was definitely a station wagon?

11 A. Yes.

12 Q. And then what took place?

13 A. Then Theda pulled out some rope and I don't
14 know if she told John Boy to tie her or if she tied
15 her hands together. And I asked Anna Mae if she was
16 okay with that and she said, it's okay. Just get it
17 over with. Let's go.

18 Q. Anna Mae's hands were tied together?

19 A. Yes.

20 Q. In front or in back if you remember?

21 A. I remember in front.

22 Q. Okay.

23 Do you know which one of them did the tying?

24 A. I can't say for sure, but I think it was
25 Theda.

1 Q. Okay.

2 Then what happened after that?

3 A. Then I asked her if she was okay with that
4 and she said, yeah. Let's get it over with. And
5 Theda was hollering at everybody as usual. Get the
6 show on the road. So they put her in the back of the
7 Pinto and Theda got in the driver's seat and John got
8 in the front seat and Ida Mae got in the middle seat
9 and they took off.

10 Q. Now who is Ida Mae?

11 A. Theda's daughter.

12 Q. Now, at that point you never saw Arlo around
13 there?

14 A. No.

15 Q. And you didn't have any recollection of
16 seeing him that night?

17 A. No. If he would have been there he would
18 have come and talked to me. And I did not see him.

19 Q. And we're just up to about 5:00 or
20 six o'clock in the evening?

21 A. Uh-huh.

22 Q. Did it strike you odd that she was being tied
23 up?

24 A. Yeah, it did, but nobody seemed too worried
25 about it. So it was -- you know, it was like -- it

1 was surreal.

2 Q. She was a relatively small woman, right?

3 A. Yeah, she was a very small woman.

4 Q. What happened then?

5 A. Then they took off. They drove out of the
6 parking lot, north on Pecos, and caught I-70 east.

7 Q. What happened next?

8 Did you see them again?

9 A. No.

10 Q. What did you do after that?

11 A. Just -- I don't know if I talked to Troy Lynn
12 or not, but got in my car and went home -- in my truck
13 and went home. Told my wife what had gone on and she
14 said it was hard to believe.

15 Q. Shortly after that, did you head to South
16 Dakota?

17 A. I'm recollecting we left two or three days
18 after that.

19 Q. What did you go up to South Dakota for?

20 A. We had gone to one of the ladies that was
21 working on the alternative school with us, Mary
22 Johnson, and her father was a Medicine Man in Pine
23 Ridge.

24 Q. Was his name Charlie Mexican?

25 A. Charlie Mexican, yeah.

1 Q. Why in particular were you going up looking
2 for him?

3 A. We were going to bring him back down to do
4 ceremonies for the school, and you know, sweats and
5 that with the kids.

6 Q. When you were up in South Dakota, did you
7 look for Annie Mae at all?

8 A. No. We --

9 Q. Did you ask about her?

10 A. We came to Rapid City. That was the first
11 time I was in South Dakota. And Mary said she knew
12 where the AIM house was in South Dakota -- or in Rapid
13 City. So we drove over there. I couldn't tell you
14 where it is now. And she went -- she went in and I
15 had -- we had told her what had happened, too. And so
16 she stopped in at the AIM house and she said one --

17 **MR. MURPHY:** Objection, Your Honor. This is
18 going to go into hearsay.

19 **THE COURT:** It might go into hearsay, but I
20 think it's time to start with a question.

21 Q. **(BY MR. MANDEL)** What took place at the AIM
22 house, sir?

23 A. Mary said one of the boys told her --

24 **MR. MURPHY:** Objection, Your Honor.

25 **THE COURT:** Hold on. That is hearsay as far

1 as I can tell so we won't go there.

2 Q. (BY MR. MANDEL) Did you attempt to look for
3 her when you were at the AIM house?

4 A. No. There was no attempt made to look for
5 her.

6 Q. Did you ask as to whether or not she was
7 there?

8 MR. MURPHY: Objection. It's calling for
9 hearsay.

10 MR. MANDEL: No, it's not. I asked him --

11 THE COURT: At ease. I will respond.

12 It does not. The question is pretty simple.
13 Did you ask. And the answer to that is even simpler,
14 yes or no.

15 Q. (BY MR. MANDEL) Again, did you ask where she
16 was at the AIM house?

17 A. I didn't ask.

18 Q. Okay.

19 You weren't able to locate her up there?

20 A. No.

21 Q. Did you take any further action looking for
22 her?

23 A. No.

24 Q. Did you ultimately hear what had happened to
25 her?

1 **MR. MURPHY:** Objection. It calls for
2 hearsay.

3 **THE COURT:** My question is, what's the point
4 of the question? We stipulated that Anna Mae was
5 killed. We've had testimony for a day and a half
6 about her being killed and autopsies and all of that.

7 What is the point if this gentleman heard or
8 did not hear what happened to her?

9 And if it's to add other data, then it is
10 hearsay. Okay. So I'm just trying to figure out
11 where we're going. If it's helpful.

12 **MR. MANDEL:** I have nothing further, Your
13 Honor.

14 **THE COURT:** Thank you.

15 Mr. Murphy?

16 **CROSS-EXAMINATION**

17 **BY MR. MURPHY:**

18 **Q.** Mr. Palfy, I am John Murphy and we have never
19 met I don't believe?

20 **A.** No.

21 **Q.** I'm going to ask you some questions. The
22 first thing I want to do is get a sense of the time
23 line on the night in question.

24 You said you were at the AIM house doing
25 paperwork?

1 **A.** Uh-huh.

2 **Q.** And I apologize, but you are going to have to
3 answer yes or no so she can take it down.

4 **A.** Yes.

5 **Q.** All right.

6 And you get this call from Troy Lynn,
7 correct?

8 **A.** Yes.

9 **Q.** And you tell her at some point after you get
10 done with your paperwork you will head on over?

11 **A.** Yes.

12 **Q.** Do you recall about how long it took you to
13 finish up your paperwork?

14 **A.** Probably about half an hour, 45 minutes.

15 **Q.** Okay.

16 So 30 to 45 minutes later you start the drive
17 over to Troy Lynn's house, correct?

18 **A.** Yes.

19 **Q.** And that takes at least another 20 minutes?

20 **A.** Yes.

21 **Q.** All right.

22 So we're at least an hour after you get the
23 call before you arrive at Troy Lynn's house, correct?

24 **A.** Yes.

25 **Q.** But you arrive in time to hear Mr. Vigil or

1 Mr. Gonzalez make a comment about what the Crusade for
2 Justice does to snitches?

3 A. They weren't there when I got there.

4 Q. So they came even after you?

5 A. They came while I was downstairs with Anna
6 Mae.

7 Q. Okay.

8 So Troy Lynn calls you about some problems.
9 You arrive an hour later, give or take. You go down
10 in the basement and that's when the Crusade for
11 Justice folks come?

12 A. Yes.

13 Q. And then you, after talking to Anna Mae, come
14 back up and then you hear him make this comment?

15 A. Yes.

16 Q. So well before the Crusade for Justice people
17 even showed up, Troy Lynn called you about some
18 problems?

19 A. About the problem that turned out to be about
20 Anna Mae, yes.

21 Q. I wanted to get that straight.

22 Now, once you get there you recall clearly
23 that Anna Mae was in the basement, correct?

24 A. Yes.

25 Q. And she's not in a back bedroom or anything

1 like that, she's downstairs?

2 A. Yes.

3 Q. And she's not tied up at that point?

4 A. No.

5 Q. She's not being held captive?

6 A. No.

7 Q. There is nobody guarding her there, correct?

8 A. No.

9 Q. And at that point -- it appeared today you
10 said that you thought Mr. Graham was downstairs?

11 A. I think he was. I can't be sure.

12 Q. Well, do you recall testifying previously
13 under oath at the trial of Dick Marshall, question,
14 when you went down to the basement, who was present?
15 Answer, Anna Mae and there was a bunch of kids all
16 over. Question, referring to young kids? Answer,
17 yes. Just little kids. And maybe three or four other
18 people. I believe Theda and Troy Lynn were two of
19 them. I can't remember for sure who was the other
20 ones were. One may have been Richard Peters. I don't
21 remember.

22 Do you recall that?

23 A. Yeah.

24 Q. You never have indicated in any testimony
25 prior to today that John Graham was down in that

1 basement when you arrived; is that fair to say?

2 A. Yes.

3 Q. And what you have been consistent with,
4 though, through all your statements is that at no time
5 during this event, whenever it may have happened, Arlo
6 Looking Cloud was present, correct?

7 A. Yes.

8 Q. And when we talk about Arlo Looking Cloud, he
9 wasn't present in the house, correct?

10 A. No, I didn't see him in the house.

11 Q. And you were throughout the house, correct?

12 A. No. I was in the kitchen and the basement.

13 Q. Okay.

14 We're not talking about a large house?

15 We're talking about an apartment that's part
16 of a triplex, correct?

17 A. Yes.

18 Q. So there is the basement, there is a couple
19 bedrooms and kitchen and living room, right?

20 A. Yeah.

21 Q. As you go from the basement -- you come in
22 the house, you go down to the basement, you come out
23 of the basement, you go to the kitchen, you go to the
24 living room. You never see Arlo Looking Cloud there,
25 correct?

1 **A.** Never did.

2 **Q.** And you then walk with these folks -- these
3 folks meaning Theda and John and Ida Mae and Anna Mae
4 out to the car, correct?

5 **A.** Yes.

6 **Q.** And you stay with them the entire time period
7 as the car is being loaded up?

8 **A.** Yes.

9 **Q.** And Arlo Looking Cloud is not present?

10 **A.** No, he's not.

11 **Q.** Okay.

12 And in fact, you stand there and watch as
13 they drive away, correct?

14 **A.** Yes.

15 **Q.** All right.

16 Now, let me ask you, where was the car
17 located in relation to Troy Lynn's house?

18 **A.** Right in front. There is, you know, parking
19 spots. Marked parking spots.

20 **Q.** Okay.

21 And how far from the house was where the car
22 was parked from the front door?

23 **A.** Ten, 15 feet.

24 **Q.** Okay.

25 So there is no time period between when you

1 leave the house and when you are standing there near
2 the car for Arlo to insert himself in the crowd,
3 correct?

4 **A.** Correct.

5 **Q.** Okay.

6 Now -- by the way, you testified at Dick
7 Marshall's trial, correct?

8 **A.** Yes.

9 **Q.** But you weren't asked to testify at Arlo's
10 trial, were you?

11 **A.** No.

12 **Q.** Now, my client, John Graham, was present in
13 the house at times during the time you were there,
14 correct.

15 **A.** Yes.

16 **Q.** And at this time John is a young Canadian
17 kid?

18 **A.** He's a teen-age kid.

19 **Q.** And you were familiar with him because
20 sometimes he crashed at the AIM house?

21 **A.** Yes. Well, he was always with Theda.

22 **Q.** But he stayed at the AIM house from time to
23 time or you saw him there?

24 **A.** Yeah.

25 **Q.** And you never saw him in any leadership role

1 in the Denver AIM chapter?

2 **A.** No. He always called Theda Aunt Theda so I
3 assumed that was his aunt.

4 **Q.** Okay.

5 **A.** And she was good at giving orders.

6 **Q.** Well, my question was, he wasn't part of the
7 AIM upper echelon, correct?

8 **A.** No.

9 **Q.** He wasn't even part of the upper echelon of
10 the AIM house in Denver, was he?

11 **A.** No.

12 **Q.** And now, today, you said you thought it was
13 Theda who tied Anna Mae up outside, correct?

14 **A.** Yes.

15 **Q.** But you weren't sure?

16 **A.** Not sure.

17 **Q.** Well, on brief occasions you have said under
18 oath that you were sure it was not my client, correct?

19 **A.** I believe so, yes.

20 **Q.** In fact, on previous occasions you have said
21 I saw who tied Anna Mae up and it was Theda, correct?

22 **A.** Yes.

23 **Q.** Okay.

24 So at least closer to the time of events you
25 were sure that it wasn't my client who tied her up,

1 correct?

2 A. Yes.

3 Q. In fact, my client didn't have anything to do
4 with tying her up; isn't that true?

5 A. As far as I remember it's not true.

6 Q. This issue about statements you overheard by
7 the Crusade for Justice, either by -- you believe it
8 was Mr. Vigil who said that or was it Mr. Gonzalez?

9 A. I couldn't say for sure.

10 Q. Okay.

11 At the time it was said, though, you
12 understood that they were joking; isn't that true?

13 A. Well, you know, I thought it was just a joke
14 the way he said it, yeah. Because there had never
15 been anything -- bodies found all over Denver, you
16 know, with their throats slashed.

17 Q. Well, but the way he said it to you was in a
18 joking manner; isn't that true?

19 A. I don't know. I didn't take it as a joke.

20 Q. I understand that, but do you recall saying
21 under oath at a Grand Jury, to me, it was like they
22 were joking around, in regard to that comment?

23 A. Yeah. It could have been taken that way.

24 Uh-huh.

25 Q. I am talking about the way that it was said.

1 It was said in a joking manner, was it not, even
2 though you didn't like it, it was said in a joking
3 manner?

4 **A.** Yeah. It's possible.

5 **Q.** But your response is that's not what AIM
6 does?

7 **A.** Yeah. I didn't say that's not what AIM does.
8 I said Indian people don't do that.

9 **Q.** Okay.

10 In any regard, moving further after that,
11 Mr. Gonzalez and Mr. Vigil leave the -- leave Troy
12 Lynn's house?

13 **A.** Those two, yes.

14 **Q.** Okay.

15 So by the time -- well -- strike that.

16 Let's talk about what you said -- what you
17 discussed with Anna down in the basement.

18 You are down there by yourself with her more
19 or less?

20 **A.** Yes.

21 **Q.** Nobody stopped you from going on and talking,
22 correct?

23 **A.** No.

24 **Q.** And nobody said, as you decided to go down to
25 the basement to talk with her, stop interfering?

1 **A.** No.

2 **Q.** You were a pretty big guy then, correct?

3 **A.** Yes.

4 **Q.** You are a pretty big guy now still?

5 **A.** Old, but yeah.

6 **Q.** Yeah.

7 Bigger guy then?

8 **A.** All right.

9 **Q.** Would it be fair to say by the time -- by the
10 conclusion of this incident in the house, you were the
11 biggest guy in the house?

12 **A.** Probably, yes.

13 **Q.** Okay.

14 And you told Anna, you don't have to go if
15 you don't want to, correct?

16 **A.** Yes.

17 **Q.** And at this point, if you wanted to walk Anna
18 out of that house, nobody is going to stop you, are
19 they?

20 **A.** No.

21 **Q.** Not only are you a local AIM leader but you
22 are a big guy?

23 **A.** I am not an AIM leader. Never was.

24 **Q.** Weren't you pretty much head of the AIM house
25 down in Denver?

1 **A.** No. I was chairman of the alternative school
2 committee.

3 **Q.** Okay.

4 **A.** Not --

5 **Q.** You were -- you worked at the AIM house?

6 **A.** AIM member, yes. Not an AIM officer.

7 **Q.** All right.

8 In any regard, nobody was going to stop you
9 if you wanted to walk Anna out and take her to the
10 cultural center?

11 **A.** No.

12 **Q.** And today you said that what Anna told you is
13 that she was going to go back to South Dakota to face
14 the accusation that she was an AIM informant?

15 **A.** Government informant.

16 **Q.** A government informant?

17 **A.** Yes.

18 **Q.** Back -- you described this situation before.
19 You've said under oath that what Anna Mae Aquash told
20 you was that the accusations about her were made by
21 some jealous women, correct?

22 **A.** Yes.

23 **Q.** And that they were accusations because it was
24 alleged she had relations with their husbands,
25 correct?

1 **A.** Yes.

2 **Q.** And that was the accusation that she was
3 going back to face, correct?

4 **A.** Well, that and about being an informant.

5 **Q.** Well, let me read you what you said about
6 this matter just back in April of this year. She told
7 me she had gone through this two or three times before
8 and it's usually a jealous woman or a jealous wife.
9 Anna Mae was a very pretty woman and she said, let's
10 just get this over with.

11 Did she go into any detail or expand on that
12 theme about a jealous woman? It was just about a
13 jealous woman? Your answer, no.

14 Correct?

15 **A.** Uh-huh.

16 **Q.** And when you were asked by the government at
17 that time as to what Anna Mae told you, and what your
18 conversation was about, you said, and I said, well,
19 you don't have to stay here if you don't want to. You
20 can leave. I said you can walk out of here with me
21 because I will take you to the Indian center.
22 Wherever you want to go. She told me that she had
23 been through this all before and she was getting tired
24 of being accused all the time of what was going on.
25 And she told me it was probably just another jealous

1 woman.

2 Is that fair to say?

3 A. Yes.

4 Q. In your previous sworn testimony both at the
5 Dick Marshall trial and in the Grand Jury proceedings,
6 you never mentioned Anna Mae ever discussing with you
7 any concerns about being a government informant; isn't
8 that true?

9 A. I guess it is. Because that's what's down
10 there. It was always in the context of her being
11 labeled an informant and she told me that it always
12 ends up being a jealous female accusing her of being
13 an informant to get at her because the lady's husband
14 looked at her twice or whatever.

15 Q. Well, at least we can agree that prior to
16 this occasion, you never inserted any conversations
17 between yourself and Anna about being a government
18 informant as the reason she was going back to Rapid
19 City; is that fair to say?

20 A. Yes.

21 Q. All right.

22 Now I want to talk to you last about when
23 this event occurred.

24 You said it occurred in November?

25 A. Yes.

1 **Q.** Do you recall previously telling
2 investigators that you remembered this meeting, the
3 meeting that you are talking about, happening three
4 days before her body was found?

5 **A.** No.

6 **Q.** If that was put in FBI reports, you would say
7 that was inaccurate?

8 **A.** That's not accurate.

9 **Q.** All right.

10 So you are sure whatever happened on this
11 occasion, it was November?

12 **A.** Yes.

13 **Q.** All right.

14 **MR. MURPHY:** Let me just check my notes, if I
15 may, Your Honor.

16 Nothing further.

17 Thank you, sir.

18 **THE COURT:** Any follow up?

19 **MR. MANDEL:** Yes, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. MANDEL:**

22 **Q.** Mr. Palfy, did you understand why Annie Mae
23 was going to be transported up to Rapid City?

24 **A.** From our conversation, yeah.

25 **Q.** What was your understanding as to why she was

1 being transported up there?

2 **A.** My understanding was that she was being
3 accused of being an informant.

4 **Q.** Is that based on what she told to you?

5 **A.** Basically, yeah, that's what I understood.

6 **Q.** Did Troy Lynn or Theda tell you anything
7 about that, as well?

8 **A.** Well, that's what they both told me, too,
9 that National AIM had called and she's being accused
10 of being an informant and they want her up in South
11 Dakota. And when me and Anna Mae talked about it, she
12 said, yeah, but it -- it's always somebody's mad at
13 her or jealous of her and they accuse her of being an
14 informant.

15 **Q.** She was a very attractive woman, right?

16 **A.** Yes, she was.

17 **Q.** When you saw her depart in that Pinto station
18 wagon she was tied up?

19 **A.** Yes.

20 **Q.** Why do you believe she was tied up?

21 **A.** Because she was tied up and put in the
22 station wagon right in front of all of us.

23 **Q.** What was your reaction to that at the time?

24 **A.** I asked her, do you -- is this okay with you
25 and she said don't worry about me. It's not a

1 problem. She was -- she wasn't concerned about it.

2 **MR. MANDEL:** I have nothing further.

3 **MR. MURPHY:** One follow up.

4 **RE-CROSS-EXAMINATION**

5 **BY MR. MURPHY:**

6 **Q.** When she drove away, Anna Mae Aquash was in
7 the back seat of the car with Theda's 12-year-old
8 daughter Ida Mae?

9 **A.** No. Ida was in the middle seat and Anna Mae
10 was in the back of the station wagon.

11 **Q.** On previous occasions have you told
12 authorities that --

13 **MR. MANDEL:** Your Honor, I object to this as
14 beyond the scope of redirect.

15 **THE COURT:** Yeah. Sustained.

16 **MR. MURPHY:** Your Honor, if may, he was asked
17 questions about the departure of the vehicle.

18 **THE COURT:** Do we have anything new is my
19 problem?

20 **MR. MURPHY:** What's that?

21 **THE COURT:** Ask the question.

22 **Q. (BY MR. MURPHY)** Sir, have you previously
23 stated that Theda and John were in the front seat, Ida
24 Mae and Anna Mae were in the back seat?

25 **A.** No. I always told them that Ida Mae was in

1 the middle seat and Anna Mae was in the back of the
2 station wagon. It wasn't a seat. You know, the
3 luggage area.

4 **MR. MURPHY:** Nothing further.

5 Thank you.

6 **MR. MANDEL:** Nothing further.

7 **THE COURT:** Thank you, sir. You may be
8 excused.

9 **MR. MANDEL:** Your Honor, he's released from
10 our subpoena.

11 **THE COURT:** I am sorry?

12 **MR. MANDEL:** I said he's released from our
13 subpoena.

14 **THE COURT:** Yes.

15 (Witness excused.)

16 **MR. MURPHY:** May we approach?

17 **THE COURT:** Uh-huh.

18 (A discussion was held at the bench and off
19 the record.)

20 **THE COURT:** Folks, the next witness is going
21 to take a spell. And my experience over 30 years is
22 that it is not helpful to break up over night that
23 kind of an examination.

24 Counsel tells me we are running very well in
25 terms of ending the trial before the end of the held

1 time. But I think it's helpful to you if you hear the
2 witness all at once rather than try and remember where
3 we started today. If we don't break now, we'll repeat
4 some of today's tomorrow which we probably don't need
5 to do.

6 So I am going to go into recess advising you
7 and cautioning you again, you may not discuss this
8 case with anybody, even yourselves. You are not to
9 form any opinions about the disputed facts in this
10 case until such time as the evidence is closed, you
11 have heard the final arguments, and go into the room
12 to decide the case.

13 Thank you again our your attendance. We
14 will -- I see no reason we won't start at 8:30 in the
15 morning.

16 (Whereupon, the proceedings in this matter
17 were then concluded.)

18

19

20

21

22

23

24

25

1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)

3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

I, TINA RAE PRUSS, Official Court Reporter
 and Notary Public in and for the County of Pennington,
 State of South Dakota,

DO HEREBY CERTIFY that the foregoing
 transcript is a true and accurate transcript of the
 questions asked, the testimony given, and of the
 proceedings had.

I FURTHER CERTIFY that I am not of kin or in
 any way associated with any of the parties to said
 cause of action, or their counsel; and that I am not
 interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my
 hand this 3rd day of May, 2011.

COPY

Tina Rae Pruss
 Official Court Reporter and
 Notary Public
 Pennington County, South Dakota
 My Commission expires: 10-04-2012