

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 5 OF 10

* * * * *

BEFORE: THE HONORABLE JOHN J. DELANEY,
Circuit Court Judge
Pennington County Courthouse
Rapid City, South Dakota
DECEMBER 3, 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
CANDY HAMILTON	4	25	51, 66	61, 68
CLEO GATES	70	80	90	92
DARLENE KAMOOK ECOFFEY	93			

1	EXHIBITS:	OFFERED/ADMITTED
2	21 - Photo	98/98
3	21B - Photo	96/96
4	21C - Photo	96/96
5	26 - Photo	10/10
6	27 - Photo	10/10
7	30 - Photo	70/71
8	49 - Transcript	54/54
9	116 - Court Document	44/44
10	117 - Court Minutes	44/44
11	122 -	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

(Whereupon, the following proceedings were had in open court with the jury present.)

THE COURT: Mr. Jackley, are you satisfied this is the jury?

MR. JACKLEY: The state is, Your Honor.

THE COURT: Mr. Murphy?

MR. MURPHY: Yes, Your Honor.

THE COURT: Thank you.

You may proceed.

MR. OSWALD: The state calls Candy Hamilton.

THE COURT: Please raise your right hand.

CANDY HAMILTON,

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

THE COURT: Please take a seat.

DIRECT EXAMINATION

BY MR. OSWALD:

Q. Tell us your name, please.

A. Candy Hamilton.

Q. What do you do for a living now?

A. I work for Lakota Circles of Hope.

Q. In 1975, were you living in this area?

A. Yes. I lived in Oglala.

Q. What were you doing in 1975?

1 **A.** I worked with the Oglala legal community.

2 **Q.** What did that consist of, ma'am?

3 **A.** It was helping anyone who was arrested from
4 the reservation, the people who got busted and
5 released and connected with the shooting of the two
6 FBI agents. Helping people in the community who
7 threatened and harassed by the goons and by the FBI
8 agents.

9 **Q.** At some point in 1975, I am talking about
10 around Thanksgiving time, November, December, did you
11 come to Rapid City?

12 **A.** I did.

13 **Q.** Do you remember why you came here?

14 **A.** I came to hook up with a ride to go to Sioux
15 Falls because I was a witness at Russell Means' trial
16 in connection with the Sioux Falls courthouse
17 disturbance.

18 **Q.** How did you get from Oglala to Rapid City,
19 then?

20 **A.** Jeanette Eagle Hawk and Charlie Long Shoulder
21 give me a ride.

22 **Q.** Do you remember when you got here?

23 **A.** Yes. Well, we got here the night before
24 because I was meeting a friend from when I worked with
25 the Wounded Knee Defense Committee who was here for

1 the Dick Wilson trial. And I met her at Thelma Rios'
2 house.

3 Q. Was her name Kathy?

4 A. Yes.

5 Q. Where did you stay that night?

6 A. We spent the night at Thelma's.

7 Q. Is that Thelma Rios?

8 A. Yes.

9 Q. Where was that at, do you?

10 A. It was in those apartments they call them the
11 ABC apartments. The mall wasn't here but they are
12 down there near the mall.

13 Q. Do you know them now as the Knollwood
14 Apartments?

15 A. Yes.

16 Q. The mall wasn't there then?

17 A. No.

18 Q. Just for foundational purposes, Ms. Hamilton,
19 what does WKLDOD stand for?

20 A. The Wounded Knee Legal Defense Offense
21 Committee.

22 Q. So if I say WKLDOD, you know what I mean?

23 A. Yeah.

24 Q. So when you were at Thelma Rios who was
25 there?

1 **A.** First it was just Kathy and me, and then
2 Thelma came home and then we were sitting in the
3 kitchen talking and Dave Hill walked in.

4 **Q.** And who is Dave Hill?

5 **A.** He is an Indian from Oklahoma who was around
6 the Wounded Knee committee some and around AIM.

7 **Q.** Okay.

8 Does he have any particular relationship with
9 Thelma?

10 **A.** They had been a couple for a while, but they
11 weren't at that point as far as I know.

12 **Q.** Did you attend any court appearances or
13 observations before you spent the night at Thelma's
14 that afternoon?

15 **A.** I can't remember whether it was the day I
16 came -- I guess it was the day I came up because the
17 next day I was at the committee house all day. Yeah,
18 that afternoon I had gone to the Wilson trial for a
19 while.

20 **Q.** Did -- when -- did you spend the whole night
21 then at Thelma's?

22 **A.** Yes.

23 **Q.** And it was you, Kathy, Thelma, and David?

24 **A.** Yeah, but shortly after Dave came in Kathy
25 and I went upstairs.

1 Q. Now, did you go to sleep?

2 A. Well, we visited a while and then went to

3 sleep.

4 Q. Nothing event full happened in the night?

5 A. Not that I know of.

6 Q. How go when you goat up in the morning did

7 you hear anything?

8 A. Before I got up I heard somebody come in the

9 downstairs door and --

10 Q. Let me ask you this. When that person came

11 in the downstairs door, did you then hear any voices?

12 A. Yes.

13 Q. Did you recognize the voice?

14 A. Yes.

15 Q. And who was the voice that you heard?

16 A. Bruce Ellison's.

17 Q. And did he talk to somebody, just yes or no?

18 A. Yes.

19 Q. And who was he talking to?

20 A. He called up the stairs to Thelma that they

21 had Annie Mae --

22 MR. MURPHY: Objection, Your Honor. Calls

23 for hearsay.

24 THE COURT: Who was he talking to does not.

25 Anything they talked about is hearsay.

1 **MR. MURPHY:** Move to strike the portion of
2 the response.

3 **THE COURT:** Yes. The portion of the response
4 directing to had Anna Mae is stricken. You are to
5 treat that statement as though it never occurred. You
6 may not use it or any inference whatsoever in your
7 deliberations unless it comes in through some other
8 course.

9 Thank you.

10 **Q. (BY MR. OSWALD)** So you heard a conversation
11 between Bruce and Thelma?

12 **A.** Yes.

13 **Q.** After that conversation, where did Bruce and
14 Thelma go?

15 **A.** I don't know, but I assume --

16 **MR. MURPHY:** Objection to anything after.

17 **THE COURT:** Sustained.

18 **Q. (BY MR. OSWALD)** At some point did you go to
19 WKLDOC?

20 **A.** Yes.

21 **Q.** And who was there?

22 **A.** I didn't see anybody when I first got there.
23 And then during the day I saw Lucky Hollander and -- I
24 can't remember his name. One of the legal workers.
25 Everybody else was closed up in one of the rooms.

1 Q. At that time did you know if Bruce and Thelma
2 were at WKLDLOC?

3 A. Not till later.

4 Q. Ms. Hamilton, I would like to show you
5 Exhibit 26 and Exhibit 27, if I may.

6 Do you recognize those?

7 A. Yes. That's the house we -- or they used for
8 the Wounded Knee committee.

9 Q. This is what we call WKLDLOC?

10 A. Yes.

11 Q. Is this a true and accurate depiction of what
12 it looked like?

13 A. Yes.

14 MR. OSWALD: Offer 26 and 27, Your Honor.

15 MR. MURPHY: No objection to either.

16 THE COURT: Will be received.

17 MR. OSWALD: If I could show them, Judge?

18 THE COURT: You may.

19 Q. (BY MR. OSWALD) Ms. Hamilton, we're looking
20 at State's Exhibit 27 here, and I'm going to have my
21 ink pen and I'm going to show you this area here.

22 Is that the back door?

23 A. Yes.

24 Q. Did you go in that back door?

25 A. Yes.

1 **Q.** And in this area here, was this parking
2 still?

3 **A.** It was parking but there used to be a big
4 garage back there, too. Maybe it's just not in the
5 picture but that's what it looked like.

6 **Q.** Okay.

7 Showing you Exhibit 26, and this area here is
8 the front door?

9 **A.** Yes.

10 **Q.** When you go in the front door, where do
11 you -- describe the rooms.

12 **A.** Okay. You can go straight ahead into the
13 kitchen back to the back door and then there are rooms
14 along the right-hand side. And at that time it was
15 just an open area. You went in and there was a little
16 sitting area or living room and then the kitchen and
17 then that back shed that you went in through the back
18 door. And rooms along the other side of the house.
19 And some stairs going up out of the kitchen.

20 **Q.** What was upstairs?

21 **A.** More office rooms and some bedrooms.

22 **Q.** Going back to the other exhibit, 27, was
23 there a kind of what you would call a crawl space?

24 **A.** I don't know.

25 **Q.** Okay.

1 Ms. Hamilton, did you later on then see Anna
2 Mae?

3 A. Yes, I did.

4 Q. How did you -- describe the events leading up
5 to how you saw her?

6 A. Well, I had been upstairs and I came
7 downstairs to the kitchen and just as I came down the
8 stairs, she came in from toward the front to get a cup
9 of coffee and we stood there and talked for a few
10 minutes.

11 Q. Describe her emotions and demeanor please?

12 A. Well, she had clearly been crying and looked
13 sad, serious.

14 Q. What did you tell her?

15 A. Well, I just asked how she was and I knew
16 that she -- I didn't know what was going on with her
17 there, but I knew that she had been very worried about
18 threats the FBI had made against her and that she also
19 didn't -- might not feel safe just anywhere and I told
20 her that strange as it may seem, that she might be
21 safe with me in Oglala and I would be glad to have her
22 come stay any time she could.

23 Q. So as far as you know, and if you know, there
24 were no FBI agents at that time interrogating her,
25 were there?

1 **A.** No, not there.

2 **Q.** Okay.

3 When you told her she might be safe at

4 Oglala, what was Anna Mae's response?

5 **A.** She said something about she didn't think so
6 or she didn't think she could come down there.

7 **Q.** Then what happened?

8 **A.** Then we chatted another few minutes about
9 stuff in general and then she said well I have to go
10 back in there and she went back toward the front of
11 the house and I got something to eat and went back
12 upstairs.

13 **Q.** Did you know who was in that room?

14 **A.** I could hear voices but I never ever went in
15 there.

16 **Q.** Well, did you know who was in that room,
17 Ms. Hamilton?

18 **A.** Well, when my ride got there later -- late
19 that afternoon early evening, I saw people who were in
20 the house then.

21 **Q.** Did you see people who were in that room?

22 **A.** I didn't see anybody in the room and I didn't
23 see anybody come out of the room.

24 **Q.** Did you hear and recognize any voices from
25 inside that room?

1 **A.** Yeah, I could hear the voices.

2 **Q.** Who were they?

3 **A.** It sounded like Thelma, Madonna -- Gilbert
4 then, Lorelei Means, and those were the main ones I
5 recognized.

6 **Q.** On May 10, did you -- of 1996 -- did you talk
7 to Robert Ecoffey?

8 **A.** I talked to him a few times and I don't know
9 the dates of any of them.

10 **MR. OSWALD:** Counsel, Graham document 996.

11 **Q.** **(BY MR. OSWALD)** Did you tell Marshal Ecoffey
12 on the 10th of 1996 in May that you know that
13 Lorelei Means, Madonna Gilbert, Thelma Rios, and Bruce
14 Ellison were in that room with Anna Mae?

15 **MR. MURPHY:** Objection. Improper
16 impeachment.

17 **THE COURT:** It's not impeachment at this
18 point. It's a simple, straight-forward question.

19 **A.** Well, I thought they were because I saw them
20 later in the house. That's who I thought was there
21 from the voices, but I never saw them in the room.

22 **Q.** **(BY MR. OSWALD)** Okay.

23 Did you tell Marshal Ecoffey that they took
24 Anna Mae in the room and that is the last time you
25 ever saw Anna Mae?

1 **A.** I don't think so because I didn't see them.
2 I just saw her go back in that room. And I didn't
3 ever see her again.

4 **Q.** Well, how long did you stay there?

5 **A.** I had to wait till my ride showed up and it
6 was after dark, but it was December so it was dark
7 early so I would say 4:30, 5:00. Around that time.

8 **Q.** After that coffee incident that you talked to
9 Anna Mae, did you ever see her again?

10 **A.** No.

11 **Q.** Never again?

12 **A.** Never again.

13 **Q.** Did you have an argument at some point about
14 Anna Mae with Madonna and Thelma and Bruce Ellison?

15 **A.** I had an argument with Thelma, Lorelei, and
16 Bruce about Annie Mae.

17 **Q.** Okay.

18 And without telling me or telling anyone what
19 they said, tell us what the argument was about.

20 **MR. MURPHY:** Objection. That's just an end
21 run around hearsay.

22 **THE COURT:** Calls her for knowledge.

23 You may answer.

24 **A.** I am sorry. You will have to tell me the
25 question again.

1 **Q.** **(BY MR. OSWALD)** Well, you made some comments
2 to them in the argument?

3 **A.** Uh-huh.

4 **Q.** And what was the subject matter that you were
5 arguing about with them?

6 **A.** That I would never believe that Annie Mae was
7 a snitch; that I had worked with her that summer and I
8 had seen how hard she worked, how much she cared about
9 the movement and about the people. How much concern
10 she had. And how -- and she lived in really difficult
11 conditions and snitches never put up with that kind of
12 stuff.

13 **Q.** When you had this argument, where were you
14 at?

15 **A.** At the WKLDOC house.

16 **Q.** And when was that?

17 **A.** It must have been sometime, maybe two months,
18 six weeks -- I just can't place that particular day,
19 but must have been a couple months before I saw Annie
20 Mae at the house.

21 **Q.** Before?

22 **A.** Uh-huh.

23 **Q.** When you saw Anna Mae at WKLDOC that last
24 time, did you think she was free to leave?

25 **A.** No.

1 **Q.** At some later point did you attend Anna Mae's
2 exhumation?

3 **A.** Yes.

4 **Q.** Describe that, please.

5 **A.** Well, I got there first. It was just me and
6 they had brought some guys from the jail and a backhoe
7 to dig. And then, I guess, maybe five or ten minutes
8 later, three FBI agents came and they kind of stood
9 off to the side. They were laughing and joking and
10 making fun of me and making fun of her. And just
11 being generally ugly.

12 And then when -- and I was -- I didn't have
13 any idea how they buried her. I was really worried
14 about what they were going to pull up. But she was in
15 a coffin. And then they put the coffin in a pickup
16 truck and took it over to the hospital.

17 **Q.** Did any FBI agents talk to you that day?

18 **A.** No. I could hear them jeer -- well, later
19 that day while they were waiting for the -- there were
20 a whole bunch of us by then. There were a lot of
21 women there who had known Anna Mae and we were just
22 waiting for the autopsy to start. And they asked me
23 to ask the agents about her personal property because
24 her family was coming for her funeral -- wake and
25 funeral and burial and it would be nice to have some

1 of her personal stuff for them. And they said, no, we
2 couldn't have it because it was all evidence.

3 And then a few minutes later -- well, then
4 Bill Wood went outside the area where we were
5 waiting -- outdoors and came back and had a box in his
6 hand and he said, you want something of Annie Mae's,
7 here, and he just threw the box and he said, there is
8 her hands.

9 Q. Now, did you talk to the FBI agents that day
10 about the investigation?

11 A. No.

12 Q. They wanted you to, didn't they?

13 A. They didn't ask me anything.

14 Q. And you haven't seen any FBI reports in
15 regard to your conversation with them, have you?

16 A. No. I've asked for my FBI file and they said
17 there wasn't one.

18 Q. Well --

19 A. Through the Freedom of Information Act.

20 Q. Well, if the -- so you don't know their
21 version of the events, do you?

22 A. No, but I wouldn't trust it.

23 Q. Okay.

24 You would think they would purposely lie?

25 A. I know they have.

1 **Q.** Now, Ms. Hamilton, you were with the FBI
2 agents there and they were jeering at you and they
3 threw hands at you at different times I understand.

4 **A.** Uh-huh.

5 **Q.** Did you tell them or volunteer when you last
6 saw Annie Mae?

7 **A.** No.

8 **Q.** Did you tell them you saw her crying at
9 WKLDOC?

10 **A.** No.

11 **Q.** Why?

12 **A.** The way they were behaving, the way they
13 treated all of us, I never had any reason to talk to
14 them.

15 **Q.** Did you notify Marshal Ecoffey -- or Officer
16 Ecoffey at that time?

17 **A.** I didn't even know him then.

18 **Q.** How about go to the Tribal police?

19 Did you trust them?

20 **A.** They were all goons.

21 **Q.** So there were no law enforcement people that
22 you can trust at that time?

23 **A.** Absolutely.

24 **Q.** Now, at that -- you were at that second
25 autopsy, weren't you?

1 **A.** Yes.

2 **Q.** And did you see, at some point later, Theda
3 Clarke?

4 **A.** Yes, I saw her later at my house in Oglala.

5 **Q.** Did you tell her what they found in that
6 second autopsy?

7 **A.** That she just came walking right into my
8 house and said, did you go to that autopsy, and I
9 said, yes, and she said --

10 **MR. MURPHY:** Objection, Your Honor. Hearsay.

11 **THE WITNESS:** She said it to me.

12 **THE COURT:** Be quiet.

13 I am going to overrule it.

14 **Q.** **(BY MR. OSWALD)** You may answer.

15 **A.** She said, did you go to that autopsy, and I
16 said, yes, and she said, what did they find, and I
17 said, they found a bullet right here. And she said,
18 oh. And then Allen Moose Camp was there and they
19 talked to each other in Lakota. I don't know what
20 they were saying. And then Theda said --

21 **MR. MURPHY:** Objection. Continuing hearsay.

22 **THE COURT:** Sustained.

23 **Q.** **(BY MR. OSWALD)** All right.

24 Were you surprised to see Theda at your
25 house?

1 **A.** I wasn't surprised to see her there. I was
2 surprised to see how fast she got out of there.

3 **Q.** That was after you told her they found a
4 bullet?

5 **A.** Yes.

6 **Q.** Okay.

7 **MR. OSWALD:** Judge, may I have a moment?

8 **THE COURT:** Yes.

9 **Q.** **(BY MR. OSWALD)** I'd like to take you back,
10 Candy Hamilton, to WKLDOC. And it was getting dark
11 and you had seen Anna Mae a couple hours earlier?

12 **A.** Yes.

13 **Q.** Okay.

14 Did you go anywhere from there?

15 **A.** When my ride got there we left to go to Sioux
16 Falls.

17 **Q.** What was happening in Sioux Falls?

18 **A.** Russell Means was on trial and I was a
19 witness the next morning.

20 **Q.** Who was your ride?

21 **A.** I think the car belonged to one of the
22 Bellecourt's because there was Vernon, Clyde -- and
23 one of them was driving. Ted Means was with us,
24 Web Poor Bear and another guy who I didn't know then
25 and I have never known who he was.

1 **Q.** Where did you go then?

2 **A.** We started out for Sioux Falls and then they
3 went down to Rosebud Reservation to Kills Means'
4 house.

5 **Q.** Is that a brother of Russell?

6 **A.** Yes.

7 **Q.** You all road in the same car?

8 **A.** Yes.

9 **Q.** It was dark when you were traveling?

10 **A.** Yes.

11 **Q.** What happened when you got to Mr. Means'
12 house on Rosebud?

13 **A.** They pulled in. They all got out and went in
14 the house.

15 **Q.** Where -- what did you do?

16 **A.** I just sat in the car.

17 **Q.** Why?

18 **A.** Well, nobody invited me to come in and so I
19 didn't.

20 **Q.** Do you know what went on inside that house?

21 **A.** Pardon me?

22 **Q.** Do you know what went on inside that house?

23 **A.** I have no idea.

24 **Q.** How long were they in there?

25 **A.** I would guess maybe 30, 45 minutes.

1 Q. Did they leave the car running for you?

2 A. I don't remember.

3 Q. Was it cold outside?

4 A. Yeah, it was cold, but I had on a coat and
5 hat.

6 Q. Now, do you know the relationship between
7 Mr. Means' house that you were there at and Ted Means
8 that you were traveling with?

9 A. You mean the relationship between Ted and
10 Kills -- they are twins.

11 Q. They are twins?

12 A. Yes.

13 Q. And they are both brothers of Russell?

14 A. Yes.

15 Q. Do you know what Madonna Gilbert -- we've
16 heard her as Madonna Thunder Hawk --

17 Who is she?

18 A. She's closely related to them. They are
19 cousins, but in the Lakota way they are brothers and
20 sisters. They were all raised together.

21 Q. And Lorelei, she's the one -- correct me if I
22 am wrong -- you had an argument with Lorelei and
23 Madonna?

24 A. Lorelei and Thelma.

25 Q. Lorelei and Thelma.

1 What relationship is Lorelei to this group?

2 **A.** Lorelei was married to Ted at that time.

3 **Q.** Ted Means?

4 **A.** Yes.

5 **Q.** Was Mr. Bellecourt active in the American
6 Indian Movement?

7 **A.** They both were.

8 **Q.** Vernon and Clyde?

9 **A.** Yes.

10 **Q.** And Vernon is now deceased?

11 **A.** Yes.

12 **Q.** Did they ever talk to you about Anna Mae
13 being an informant?

14 **MR. MURPHY:** Objection. Leading.

15 **THE COURT:** Overruled.

16 **MR. MURPHY:** Objection. Calls for hearsay.

17 **THE COURT:** Overruled.

18 **A.** You mean the Bellecourts?

19 **Q.** (BY MR. OSWALD) Yes.

20 **A.** No. I didn't know them very well.

21 **Q.** Now, this incident, was this the first part
22 of December that you saw Annie Mae?

23 **A.** Yes. Whatever the date -- I don't know what
24 the date of that trial was. I don't know what the
25 date was then, but it was near the early part of

1 December.

2 Q. Ms. Hamilton, did you talk to the FBI agents
3 or anybody about this case after 1975 to 1980?

4 A. I never talked to FBI agents.

5 Q. So you didn't talk to them in the 80s either?

6 A. No.

7 Q. Or the 90s?

8 A. No.

9 Q. When is the first time you talked about this
10 case to somebody, do you remember?

11 A. Well, I mean everybody that knew Anna Mae
12 talked about it whenever we got together because
13 nobody could figure out what had happened.

14 Q. Can I ask you, didn't you think it would be
15 important for law enforcement to know what you saw and
16 heard in the early part of December?

17 A. I didn't think they would -- that they would
18 care.

19 MR. OSWALD: No further questions.

20 THE COURT: Mr. Murphy?

21 CROSS-EXAMINATION

22 BY MR. MURPHY:

23 Q. Good morning, Mr. Hamilton. My name is John
24 Murphy. I represent Mr. Graham.

25 I am going to ask you some questions, but if

1 you don't understand a question or if I mess it up,
2 just let me know.

3 **A.** Yes.

4 **Q.** Don't hesitate to stop me -- I know you have
5 a dry throat -- if you need water.

6 **A.** Okay.

7 **Q.** First, just for clarification, you talked to
8 the jury about goons. You used that phrase. Some
9 people might not know what that means.

10 What do you mean by the term goons?

11 **A.** They were supporters of Dick Wilson who was
12 the Tribal a chairman then and they were all well
13 armed. They were violent. They were after anybody
14 who didn't support Dick Wilson.

15 **Q.** Okay.

16 Did goons stand for Guardians of the Oglala
17 Nation?

18 **A.** Well, somebody made that up at some point,
19 but I don't know that that was ever really it.

20 **Q.** Sure.

21 And Mr. Oswald just asked you a question, he
22 said, did you ever talk to anybody about this case.

23 Would it be fair to say this has been a
24 source of -- this case has been a source of constant
25 conversation over the last 30 years?

1 **A.** Yes.

2 **Q.** Okay.

3 Internet, in person, books, articles, et
4 cetera?

5 **A.** Uh-huh. Yes. Sorry.

6 **Q.** And then I want to start a bit with what you
7 were doing in 1975.

8 You indicated you were a legal worker for the
9 WKLDOC group?

10 **A.** Well, I did some legal-aid-type work. I did
11 fund raising. I did community support and community
12 organizing. Tried to get support for the people who
13 were getting arrested nationwide. I mean, I didn't go
14 anywhere. I was mostly on the reservation but being
15 in touch with people because I had worked for WKLDOC
16 for about two years before that and had a lot of
17 contacts and that sort of thing around the country.

18 **Q.** And before you came to South Dakota you had
19 been a journalist?

20 **A.** Yes. That was my career.

21 **Q.** All right.

22 And kind of confining yourself to the legal
23 work aspect. You were there to help defendants who
24 were charged, correct?

25 **A.** Yes.

1 Q. And you would go to trials?

2 A. Occasionally.

3 Q. You would work with the attorneys. Help
4 assist them?

5 A. Yes.

6 Q. Help review legal documents and other matters
7 that you had gathered during the course of a case?

8 A. Yes. And just the daily -- I mean, Oglala
9 was totally disrupted then and try to help people.

10 Q. And when you say totally disrupted, what do
11 you mean?

12 A. Large groups of FBI agents armed with M16s
13 and AR15s were there every day knocking down people's
14 doors, threatening people, hauling people off to jail.
15 Threatening to -- threatening people's children.

16 Q. Okay.

17 A. You know -- and I was -- I tried to help
18 people deal with that.

19 Q. This was in the wake of the killing of the
20 two FBI agents?

21 A. Yes.

22 Q. All right.

23 I want to talk to you about your familiarity
24 and contact with Anna Mae Aquash.

25 A. Yes.

1 Q. Mr. Oswald talked to you about your
2 conversation with her at WKLDLOC?

3 A. Yes.

4 Q. But you knew her from going back at least six
5 months, didn't you?

6 A. Yes.

7 Q. Okay. Let's talk about that.

8 You and her lived in the village of Oglala
9 together, did you not?

10 A. Well, we lived in the Lakeside Community
11 which is a little bit outside the village, but it's in
12 that district.

13 Q. And would you mind before we go spelling
14 Lakesack?

15 A. Lakeside. Lake and side all written
16 together.

17 Q. All right.

18 A. You know what I really need is a cough drop
19 out of my purse.

20 **MR. MURPHY:** Your Honor, may the witness grab
21 one?

22 **THE COURT:** Yes.

23 **THE WITNESS:** Sorry. I think I can talk
24 around it.

25 Q. **(BY MR. MURPHY)** All right.

1 **A.** So what we did that summer before?

2 **Q.** Let me ask you, when do you recall first
3 meeting Ms. Aquash?

4 **A.** The first time I went down to the reservation
5 after the shooting at Jumping Bull's. I went to the
6 house where the first people who worked with the
7 Oglala legal committee were staying and she was there.

8 **Q.** Okay.

9 And would that have been June of 75, then?

10 **A.** I think it may have been July because that
11 was -- the shooting was July the 26th. Then I think
12 it was early in July before I went down to the
13 reservation.

14 **Q.** Let me just correct you. You said the
15 shooting was July?

16 **A.** June 26.

17 **Q.** So it would have been shortly after there?

18 **A.** Uh-huh.

19 **Q.** May have lapsed into July?

20 **A.** Uh-huh.

21 **Q.** Did there come a time when you and Ms. Aquash
22 lived in this small community called Lakeside?

23 **A.** Yes. We lived across Lakeside Road from each
24 other.

25 **Q.** Did you visit during that period of time?

1 **A.** Yes, we did.

2 **Q.** Got to know her?

3 **A.** Yes.

4 **Q.** And later, you actually got to conduct an
5 interview with Ms. Aquash, correct?

6 **A.** Yes.

7 **Q.** And is it your understanding that that's the
8 only interview she ever gave to the press?

9 **A.** No. I think she had talked to the press
10 other times. I think it was -- it was certainly the
11 last radio interview that was done with her -- last
12 recorded interview.

13 **Q.** And do you recall about when that interview
14 was done?

15 **A.** I don't know the date, but I know it was the
16 morning -- or the afternoon after Jim Little was
17 killed in Oglala and we found out about the people
18 being arrested in Kansas.

19 **Q.** Okay.

20 **A.** And that must have been early September.

21 **Q.** All right.

22 And during that interview you actually talk
23 about the incident at Al Runnings?

24 **A.** Yes.

25 **Q.** And that happened September 5, 1975?

1 **A.** Yes.

2 **Q.** So it would have had to have been some time
3 after that?

4 **A.** After that.

5 **Q.** Okay.

6 Now, September 24, 1975, was the protest at
7 the Wagner Pork Processing Plant.

8 Do you remember that?

9 **A.** Yes.

10 **Q.** And do you remember being or visiting with
11 Anna at that point, too?

12 **A.** Yes.

13 **Q.** You had time -- contact with her throughout
14 the June through December period intermittently?

15 **A.** Yes.

16 **Q.** Okay.

17 **A.** After she went back to California, she called
18 once and she -- as they had activities and did things
19 in California or things were going on there she would
20 send me stuff in the mail.

21 **Q.** Okay.

22 And in fact at one point she was in your
23 house or she was in the house of Luke and Rose's and
24 you were there, correct?

25 **A.** Yes. That was earlier.

1 **Q.** Okay.

2 Would you explain what happened at Luke and
3 Rose's house when you were there with Ms. Aquash?

4 **A.** Yes. There were a lot of us there.

5 **Q.** Uh-huh.

6 **A.** And all of a sudden like three or four cars
7 of the armed FBI agents came roaring in and we were
8 all outside and the minute she saw them she ran
9 inside. And I waited a few minutes but there were
10 other legal workers there then. So I went inside to
11 see if she was all right.

12 And she said I can't let them find me. I
13 don't want them to get ahold of me. And she was
14 worried they would just come charging in. And we
15 looked up and there was a little opening, crawl space,
16 up in the ceiling, and she climbed up on a chair,
17 pushed that little opening open.

18 **Q.** Like an attic panel?

19 **A.** Yeah, a panel.

20 She pushed that panel up and climbed up into
21 the crawl space which must have been roasting because
22 it was a really hot day. Then she called down to me,
23 get one of those guys to pull a car up right by the
24 door. So I went out and got somebody to do that. And
25 they pulled up right by the door and they went running

1 out and jumped in the car and they took out and she
2 went over to the housing and stayed in somebody's
3 basement.

4 Q. How long was she up in the attic?

5 A. Gee, I don't know, five, ten minutes.

6 Q. And this happened in June of 1975, correct?

7 A. It would have been July.

8 Q. July.

9 At that point, to your knowledge, she
10 wasn't -- she hadn't been charged yet for anything at
11 Al Runnings?

12 A. No.

13 Q. She wasn't a fugitive or anything like that?

14 A. No.

15 Q. It was just her fear of the FBI at that
16 point?

17 A. Exactly.

18 Q. All right.

19 Now, I want to talk to you about what you
20 learned from Ms. Aquash throughout the months that you
21 had contact with her.

22 She repeatedly told you she was afraid of the
23 FBI, correct?

24 A. Yes.

25 Q. She believed the FBI and the federal

1 government was following her?

2 A. She knew they were.

3 Q. Okay.

4 She also told you about specific threats made
5 on her life by FBI agents?

6 A. She did.

7 Q. What did she tell you in regard to that?

8 A. While she was in jail after the Al Runnings'
9 raid -- or the raid at Al Runnings' house, she said
10 that Agent David Price showed up. He had showed up --
11 he had interrogated her before or after Wounded Knee
12 and he had showed up there. And he was one of the
13 main agents on the reservation at that time. And that
14 he was trying to get her to talk about June the
15 26th and who was there and what happened although
16 she wasn't there that day.

17 Q. And she was actually in Cedar Rapids, Iowa on
18 that date?

19 A. That's right.

20 Q. That was for Leonard Crow Dog's trial?

21 A. That's right.

22 Q. Okay.

23 A. And she wouldn't talk about it, except
24 reminding that Joe Stunts was killed on the 26th,
25 too.

1 **Q.** And Joe Stunts was the AIM member that was
2 killed in the shoot-out?

3 **A.** Yes.

4 And finally he got really angry with her and
5 told her that if she didn't start cooperating that he
6 would see that she died.

7 **Q.** Okay.

8 And that's something she actually talked
9 about during your interviews?

10 **A.** She did.

11 **Q.** And she talked about her fear of people like
12 Doug Durham, correct?

13 **A.** Yes.

14 **Q.** And Doug Durham was an FBI operative?

15 **A.** Yes.

16 **Q.** When it came to talking about being accused
17 of being an informant, the person she identified as
18 making that accusation was John Stewart, correct?

19 **A.** She didn't tell me that. Somebody else told
20 me that the first time they ever heard anything about
21 Annie Mae being a snitch came from John Stewart.

22 **Q.** And John Stewart was somebody also who was an
23 FBI operative?

24 **A.** Yes. He worked with David Price and Bill
25 Wood.

1 **Q.** Okay.

2 Let's talk about, you know, you had these
3 conversations. You came to believe that she felt
4 comfortable talking to you, correct?

5 **A.** Yes.

6 **Q.** She never said anything to you at all about
7 Leonard Peltier putting a gun to her head at the
8 Farmington convention, did she?

9 **A.** No.

10 **Q.** In fact, when somebody presented you with
11 that accusation, you specifically said, I never heard
12 anything about that?

13 **A.** I never heard anything from her about it.

14 **Q.** Okay.

15 But that was kind of part of the gossip in
16 the community, correct?

17 **A.** It was gossip.

18 **Q.** Yeah.

19 She never told you that at any time -- and
20 I'm talking all the way up in your conversations all
21 the way up through 1975, that she had ever been held
22 captive by anybody in the American Indian Movement,
23 did she?

24 **A.** She didn't come out and say anything like
25 that, no.

1 Q. Right.

2 She didn't say anything about being forced to
3 travel with Leonard and Dennis in that motor home out
4 to the Pacific northwest?

5 A. No.

6 But I only -- after that period of time the
7 only time I saw her was the day at the WKLDQC house.

8 Q. Okay.

9 Regarding Leonard Peltier, though, you
10 understood that Anna Mae admired him, correct?

11 A. Evelyn Bordeaux told me -- or Ray, one or the
12 other -- told me that when they were taking her to
13 Denver that she said she admired Leonard. That you
14 could rely on him to do what -- to take care of people
15 and look after them.

16 Q. In fact, if I may, weren't you told she
17 expressed a lot of admiration for Leonard and said if
18 she were ever in trouble or if there was trouble, he
19 was the one she would want to be with because he had
20 the courage to do what needed to be done?

21 A. Yes.

22 Q. She never deviated or told you anything
23 differently?

24 A. No.

25 Q. Now, you knew Anna well enough to know that

1 if -- let me back track.

2 That conversation that you -- was relayed to
3 you by Evelyn and Ray Hand Boy --

4 **A.** Yes.

5 **Q.** -- that was on their trip from Pierre down to
6 Denver?

7 **A.** Right.

8 **Q.** November 24, give other take?

9 **A.** Yes.

10 **Q.** So that would have been after the motor home
11 trip?

12 **A.** Yes.

13 **Q.** If Anna had heard Leonard Peltier confess to
14 executing the FBI agents in cold blood while they
15 begged for help, do you think she would have ever said
16 anything like, I admire Leonard?

17 **MR. OSWALD:** Objection, your Honor. It's
18 speculation.

19 **THE COURT:** Sustained.

20 **Q.** **(BY MR. MURPHY)** I'd like to talk to you about
21 the date of this situation at WKLD.OC. And I want to
22 be very clear so we'll take some time here. You have
23 talked about this being -- this occurring at a time
24 when you were in Rapid City and the Dick Wilson Senior
25 trial was going on?

1 **A.** Yes.

2 **Q.** For those who don't know, who was Dick
3 Wilson?

4 **A.** He was then the Tribal Chairman at Pine
5 Ridge.

6 **Q.** All right.

7 And he was on trial for doing what?

8 **A.** He and some of his goons had attacked some of
9 the legal workers back in -- it must have been
10 probably 74 when they were on the reservation to do --
11 put some lawyers to do some investigation into one of
12 the Wounded Knee cases. And the goons attacked them
13 and beat them up.

14 **Q.** All right.

15 They were standing trial -- or Dick Wilson
16 was standing trial, and your friend Kathy James was a
17 witness, correct?

18 **A.** Right.

19 **Q.** Okay.

20 And in the past the state has -- or the
21 government has tried to get you to commit to a
22 particular date.

23 Do you recall that during prior questioning?

24 **A.** Yes.

25 **Q.** And you told them candidly, I can't tell you

1 the day?

2 A. Right. It's just whenever the trial was.

3 Q. Okay.

4 And so I want to make sure we're clear, it
5 was during the time of the Dick Wilson trial that you
6 were in Rapid City?

7 A. That's right.

8 Q. And Kathy was in town for that to become a
9 witness, correct?

10 A. Yes.

11 Q. And in fact, you, while you were in Rapid
12 City, went down to the federal court building to watch
13 part of the trial, correct?

14 A. Yes.

15 Q. Now I think you said today you did that the
16 first day?

17 A. I think -- it's hard to remember 35 years ago
18 and I'm old now. But I went either the day we got up
19 there or maybe I went the morning of the next day, but
20 I don't think so. I think it was the day before.

21 Q. If on a prior occasion some time ago when you
22 were giving Grand Jury -- well, first, do you remember
23 giving Grand Jury testimony on a number of occasions?

24 A. Just once.

25 Q. Just once.

1 And do you recall the year of that?

2 **A.** No.

3 **Q.** Okay.

4 It was a long time ago?

5 **A.** Yeah.

6 **Q.** Okay.

7 Do you recall back then telling -- the
8 prosecutor was asking you questions. I went back
9 upstairs -- and you are referring to WKLD0C -- and at
10 some point that day I went down to the federal court
11 building where the Wilson trial was going on and spent
12 a little time there?

13 **A.** Well, then, it must have been that day.
14 That's closer to the time.

15 **Q.** All right.

16 Now, pardon me. I am going to grab some
17 documents.

18 You indicated before -- you are familiar with
19 some legal documents?

20 **A.** Yes.

21 **Q.** I am going to show you what are marked
22 Defendant's Exhibit 116, 117, and 122. And I am going
23 to start with Exhibit 116.

24 First off, can you feel the certification?

25 **A.** Yes.

1 Q. And is this captioned the United States vs.
2 Richard Wilson Senior?

3 A. Yes.

4 Q. And that's Dick Wilson?

5 A. Yes.

6 Q. What are the dates of the trial listed on
7 that?

8 A. December 15, 16, 17, and 18.

9 Q. All right.

10 And then I am going to show you what's been
11 marked December -- excuse me, Exhibit 117.

12 Do you recognize this as the Court minutes?

13 A. I have never seen it before.

14 Q. But you have seen documents like this in
15 court files?

16 A. Yes.

17 Q. And again, this is the certified raised
18 document?

19 A. Yes.

20 Q. I am going to turn to page 9 and is the date
21 of that December 16, 1975?

22 A. Yes.

23 Q. And does that talk about your friend Kathy
24 James being sworn as a witness on that date?

25 A. Yes, but I didn't see her testify.

1 **Q.** Okay.

2 I just want to identify the date that she was
3 a witness.

4 **A.** Yes.

5 **MR. MURPHY:** All right.

6 I would move to admit Exhibits 117 and 116,
7 Your Honor.

8 **MR. OSWALD:** No objection.

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

10 **MR. MURPHY:** Actually, you know what, Your
11 Honor, may I confer with counsel for just a moment?

12 **THE COURT:** Certainly.

13 **MR. MURPHY:** Your Honor, rather than admit
14 the whole transcript, we'll admit Exhibit 117 in its
15 entirety and then just the first few pages of the
16 transcript.

17 **THE COURT:** Agreeable, counsel?

18 **MR. OSWALD:** Agreeable.

19 **THE COURT:** So be it.

20 **MR. MURPHY:** Thank you.

21 **Q.** **(BY MR. MURPHY)** Now, you were -- we were just
22 leaving off with your discussion about Ms. James being
23 up here for that trial?

24 **A.** Yes.

25 **Q.** And you visited her with -- with her the

1 night you got there?

2 **A.** Yes.

3 **Q.** And it was your understanding she was up
4 there to testify at that trial?

5 **A.** Yes.

6 **Q.** And was it your understanding that when you
7 talked to her, she had already testified?

8 **A.** I don't know.

9 **Q.** Okay.

10 Do you recall on a previous occasion that --
11 stating that you were waiting for her at Ms. Rios'
12 house? She came back after she got done testifying
13 and you visited into the evening?

14 **A.** Maybe so. I don't remember whether she was
15 coming in Minnesota or she came from the courthouse
16 there.

17 **Q.** Okay.

18 In any case --

19 **A.** But it related to that trial.

20 **Q.** She was there and she was a witness?

21 **A.** She was one of the victims.

22 **Q.** Oh, she was one of the victims --

23 **A.** Yes.

24 **Q.** And she was testifying?

25 **A.** Yes.

1 Q. Okay. Enough said.

2 Now, let's talk about WKLD,OC, the day that
3 you were there.

4 A. Yes.

5 Q. You came from Oglala?

6 A. Yes.

7 Q. With Jeanette Eagle Hawk?

8 A. Yes.

9 Q. And Charlie Long Shoulder?

10 A. Yes.

11 Q. When you arrived in Rapid City, where did you
12 first go?

13 A. I have no -- I just don't remember.

14 Q. Would you recall --

15 A. We probably ate and maybe went to the trial
16 and -- I don't know.

17 Q. Would you recall if you had gone to WKLD,OC
18 and had been told that you couldn't walk into the
19 WKLD,OC building?

20 A. Jeanette told I that --

21 Q. I know what Jeanette told you.

22 A. No, that didn't happen to me.

23 Q. Okay.

24 You weren't present when all of that --

25 A. No.

1 Q. All right.

2 When you got to WKLDLOC the next day --

3 A. Yes.

4 Q. -- the day that you talked about earlier, you
5 were free to roam throughout the building?

6 A. Yes.

7 Q. You went upstairs and came down for coffee,
8 correct?

9 A. Yes.

10 Q. Left to go to the trial perhaps that day?

11 A. Yes. Maybe so.

12 Q. Okay.

13 You hear other people. You see Anna.

14 A. Yes.

15 Q. At no time during that day did you ever see
16 John Graham, correct?

17 A. No.

18 Q. And you knew my client by look at that point?

19 A. Yes.

20 Q. You would have recognized him if you saw him
21 there?

22 A. Yes.

23 Q. And you never saw Arlo Looking Cloud?

24 A. No.

25 Well, I had never seen him but -- after I did

1 see him I didn't remember seeing anybody like that
2 there.

3 Q. And let's talk about when you are meeting
4 with Ms. Aquash.

5 A. Yes.

6 Q. It's in the kitchen which is at the back of
7 the house?

8 A. Yes.

9 Q. And the back door is just three or four steps
10 away, correct?

11 A. Yes.

12 Q. You said earlier that you got the sense she
13 was not free to leave?

14 A. Yes.

15 Q. I want to talk about that more specifically.
16 She was not tied up?

17 A. No.

18 Q. Okay.

19 There was nobody else in the kitchen guarding
20 her, correct?

21 A. No.

22 Q. It was just you and her, correct?

23 A. Yes.

24 Q. And you and her are friends?

25 A. Yes.

1 **Q.** You would never have stopped her from walking
2 out the back door?

3 **A.** No.

4 But she didn't have a car. I didn't have a
5 car. Neither one of us had any money. I don't know
6 what we would have done if we left.

7 **Q.** You might know what you would have done, but
8 when you say somebody was not free to leave, that has
9 certain connotations that I want to explore with you.

10 **A.** Okay.

11 **Q.** You were in the kitchen. You were -- even
12 though you didn't have money and you didn't have a
13 car, you were free to walk out the door?

14 **A.** Yes.

15 **Q.** And she's there and she might not have a car
16 or money but she's free to walk out the door?

17 **A.** Yes.

18 **Q.** And at no time when she first entered the
19 kitchen did somebody else walk in there with her and
20 say, Candy, make sure she doesn't go anywhere?

21 **A.** No. Nobody said that.

22 **Q.** So she really was free to walk away from the
23 situation?

24 **A.** Yeah.

25 **Q.** Okay.

1 In fact, you talked to her about the
2 situation with the FBI and you said, hey, if you need
3 a place to go, come to my place?

4 **A.** Yes.

5 **Q.** And she declined your offer?

6 **A.** Yes.

7 **Q.** And she trusted you at this point?

8 **A.** I hope so.

9 **Q.** I mean, you had -- she trusted you enough to
10 give you an interview?

11 **A.** Yes.

12 **Q.** And you weren't affiliated with the American
13 Indian Movement leader ship, were you?

14 **A.** No.

15 **Q.** I mean --

16 **A.** I knew them but I wasn't -- certainly wasn't
17 part of any leadership.

18 **Q.** You are a Caucasian woman?

19 **A.** Yes.

20 **Q.** And that -- just by in and of itself was
21 going to make it so that you are not an AIM leader?

22 **A.** Right.

23 **Q.** So this isn't somebody -- you are not
24 somebody who Anna Mae would have associated as being
25 in tight with Russ Means or Dennis Banks or the

1 Bellecourt brothers?

2 A. No.

3 Q. In fact, you indicated you barely knew the
4 Bellecourt brothers?

5 A. Right.

6 Q. You indicated you heard voices in this other
7 room?

8 A. Right.

9 Q. You never heard anybody use the word snitch
10 or informant or anything like that coming through the
11 door?

12 A. I couldn't hear distinct words. It was just
13 voices.

14 Q. Just discussion?

15 A. Yes.

16 MR. MURPHY: Thank you.

17 I have nothing further.

18 THE COURT: Anything further, Mr. Oswald?

19 MR. OSWALD: Thank you.

20 **REDIRECT EXAMINATION**

21 **BY MR. OSWALD:**

22 Q. Ms. Hamilton, are you completely familiar
23 with that Dick Wilson trial?

24 A. No. I just went that one day, and read the
25 newspapers.

1 **Q.** Are you familiar with the pretrial
2 depositions and things that went on?

3 **A.** No.

4 **Q.** And there were a lot of legal proceedings on
5 December 10, 11 and 12?

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

7 **Q.** Well, those were open to the public and you
8 could view those?

9 **MR. MURPHY:** Objection. Facts not in
10 evidence.

11 **THE COURT:** Overruled.

12 **Q.** (BY MR. OSWALD) You --

13 **A.** I never did.

14 **Q.** Well, Ms. Hamilton, Mr. Murphy showed you
15 some documents about some court exhibits that were
16 offered and he asked you if you were familiar with
17 some of these legal documents.

18 So you have some legal knowledge as a
19 journalist?

20 **A.** Yes.

21 **Q.** Okay.

22 And you know if there were several lawyers
23 that showed up at a motions hearing and there were
24 court proceedings going on, on December 11 and 12, you
25 could have attended that, couldn't you?

1 **A.** Yes.

2 **Q.** Ms. Hamilton, I would like to show you what I
3 previously marked as State's Exhibit 49. Can you look
4 at that, please.

5 Now, in your experience as a journalist and
6 as you have noted earlier, familiarity with some legal
7 documents, what is the caption on that Exhibit 49?

8 **A.** United States of America, plaintiff, versus
9 Richard Wilson Senior, Duane Brewer, Richard Wilson
10 Junior, Fred Brewer, Everett Brewer, Shanfield Oakland
11 and Tony Russo.

12 **Q.** And what did that document say was the
13 proceeding?

14 **A.** Deposition of Mari Kingi.

15 **Q.** Do you know Mary Kingi?

16 **A.** I do. I didn't know him then, but I've know
17 him since.

18 **Q.** And are you familiar with date stamps and
19 certifications and filing stamps by the Clerk of
20 Courts offices?

21 **A.** Somewhat.

22 **Q.** Is that stamped at the top?

23 **A.** Yes.

24 **Q.** And what date was that filing stamped, that
25 proceeding?

1 **A.** December 12, 1975.

2 **MR. OSWALD:** I would offer Exhibit 49, Your
3 Honor.

4 **MR. MURPHY:** No objection.

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

6 **Q.** **(BY MR. OSWALD)** Now, you had mentioned
7 something about -- to Mr. Murphy about Anna Mae and
8 the Farmington incident?

9 **A.** Yes.

10 **Q.** And she had never related that to you?

11 **A.** No.

12 **Q.** But you had started to say that you had heard
13 about it?

14 **A.** Well, it was gossip. All of it, but, yeah,
15 through the movement. I'm not sure when I first heard
16 it but I think later after all of this happened.

17 **Q.** And you talked about that Leonard Peltier, I
18 believe it was, had the courage to do what needed to
19 be done?

20 **A.** That's what Annie Mae said.

21 **Q.** That's what Anna Mae said?

22 **A.** Yes.

23 **Q.** Did you know Leonard Peltier?

24 **A.** Yes.

25 **Q.** Did you feel the same way?

1 **A.** I didn't know him that well, but I would
2 assume so.

3 **Q.** And he -- your knowledge of Leonard Peltier,
4 he's serving time for the killing of the FBI agents?

5 **A.** Yes.

6 **Q.** You are not alleging at all, are you, that
7 agent -- FBI Agent Dave Price killed Anna Mae?

8 **A.** I don't think he pulled the trigger, but I
9 think he could make it happen.

10 **MR. OSWALD:** Your Honor, I'm going to
11 publish, if I could -- or show Exhibit 3 to the
12 witness and ask her to point out some things on
13 Exhibit 3.

14 **MR. MURPHY:** Your Honor, this is beyond the
15 scope of cross. I'd ask the Court review Exhibit 3.

16 **MR. OSWALD:** I can tell you what my inquiry
17 is if you want.

18 **THE COURT:** It is.

19 **MR. OSWALD:** All right.

20 I will do this.

21 **Q. (BY MR. OSWALD)** Do you remember Mr. Murphy
22 talking to you about the events at WKLD0C and Anna
23 Mae?

24 **A.** Yes.

25 **Q.** On that day?

1 **A.** Yes.

2 **Q.** And you saw Anna Mae that day?

3 **A.** Yes.

4 **Q.** What kind of clothing was she wearing that
5 day?

6 **A.** She had on a shirt and jeans. I don't
7 remember any more than that.

8 **Q.** And did she have a coat, do you know?

9 **A.** Not -- she didn't have it on in the house.

10 **Q.** All right.

11 If I show you State's Exhibit 3, would you be
12 able to recognize if this was the shirt she was
13 wearing or not?

14 **A.** I don't think so.

15 **MR. OSWALD:** May I try?

16 **THE COURT:** Yes.

17 **Q.** **(BY MR. OSWALD)** I'm showing you what's marked
18 as State's Exhibit 3.

19 Do you see that's the body of Anna Mae when
20 she was found?

21 **A.** Yes.

22 **Q.** Do you recognize any clothing items?

23 **A.** No.

24 **Q.** And now by that answer, do you mean she could
25 have been wearing these, she might not have, or you

1 specifically know that these weren't the clothing
2 items she was wearing?

3 A. I don't remember what the shirt looked like
4 that she had on. And I couldn't tell one pair of
5 jeans from another.

6 Q. Did you recognize any jewelry that she was
7 wearing at any point?

8 A. No.

9 It was later that I heard about her bracelet.

10 Q. Do you remember talking to Mr. Serle Chapman?

11 A. Yes.

12 Q. And he tape recorded you?

13 A. Yes.

14 Q. And you didn't know about it or did you know
15 he was tape recording?

16 A. I knew he was taping. He presented himself
17 as a journalist or writing a book.

18 Q. And you talked to -- about -- at great length
19 with him about this incident?

20 A. Well, we really didn't have that long. Maybe
21 an hour, hour and a half.

22 Q. Were you -- did you express to him that you
23 were -- that you didn't want to partake in
24 Indian-on-Indian discussions?

25 MR. MURPHY: Objection. Leading.

1 **THE COURT:** Overruled.

2 **A.** I don't know what I said to him, but that's
3 true.

4 **Q.** **(BY MR. OSWALD)** When you were talking to
5 Mr. Chapman, how did you refer to this -- this room
6 incident that Annie Mae was in at WKLDOC with these
7 other people?

8 How did you refer to that?

9 **A.** I don't know how I said it to him.

10 **MR. OSWALD:** Counsel, Graham document
11 page 1,069.

12 **Q.** **(BY MR. OSWALD)** Did you talk about it as an
13 interrogation?

14 **A.** I may have.

15 **Q.** That's the word you used, isn't it?

16 **MR. MURPHY:** Objection.

17 **A.** I don't remember because I don't remember the
18 details of my conversation with him.

19 **Q.** **(BY MR. OSWALD)** If I could show you a partial
20 transcript of one page, page 1,069, would you look at
21 that and you don't have to read the whole thing but
22 you are welcome to. If you would look right in this
23 area. Just read it to yourself.

24 **A.** Okay.

25 **Q.** Does that refresh your memory, Ms. Hamilton?

1 **A.** Well, not about --

2 **Q.** Did you use the word interrogated?

3 **A.** I didn't see it in there. You will have to
4 show me.

5 **A.** Yeah.

6 **Q.** You did?

7 **A.** Well, I don't know but whether he transcribed
8 exactly what I said or not, I have no way of knowing.

9 **Q.** Back then, Ms. Hamilton, was there a -- what
10 was the -- probably the biggest insult you could do to
11 somebody regarding their relationship with the federal
12 government?

13 **A.** To call them a snitch, and it happened to
14 almost everybody. Somebody would get mad at somebody
15 and the first thing they would say is that person is a
16 snitch. That's why I didn't think there was anything
17 so serious happening that day because it had
18 happened -- I think Tina Trudell is the only person I
19 know that it never happened to at all.

20 **Q.** Were you called a snitch?

21 **A.** Yeah.

22 **Q.** Did you want this case -- Anna Mae's case
23 investigated?

24 **A.** I thought it needed to be.

25 **Q.** Were there some people in the American Indian

1 Movement that suggested it not be?

2 **MR. MURPHY:** Objection. Vague. Foundation.

3 **MR. OSWALD:** All right --

4 **THE COURT:** You may answer.

5 **MR. MURPHY:** Well, I object on hearsay
6 grounds.

7 **THE COURT:** Not at this point.

8 **Q. (BY MR. OSWALD)** You may answer, ma'am.

9 **A.** I don't know of anybody in AIM that said
10 that.

11 **Q.** Was there somebody that represented the
12 American Indian Movement that told you that?

13 **MR. MURPHY:** Objection. Calls for hearsay.

14 **THE COURT:** No, it doesn't. Overruled.

15 **A.** Yes.

16 **Q. (BY MR. OSWALD)** Who was that person?

17 **A.** Ken Tilson.

18 **Q.** Can you just tell us who Ken Tilson is?

19 **A.** He was an attorney -- he is an attorney in
20 Minneapolis. He's retired now. He represented a lot
21 of AIM members in court.

22 **Q.** Do you know an investigator named Kevin?

23 **A.** He was a journalist, a reporter, and yes, I
24 know him.

25 **Q.** You told him what happened here, didn't you?

1 **A.** Yes. And it was in the newspaper published.
2 Anybody could see it.

3 **Q.** Did you ever see a letter --

4 **MR. MURPHY:** Objection. This is beyond the
5 scope, Your Honor.

6 **THE COURT:** It is. I think quite a ways.

7 **MR. OSWALD:** All right. I respect the Court.
8 No further questions.

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

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

11 **RE-CROSS-EXAMINATION**

12 **BY MR. MURPHY:**

13 **Q.** Ms. Hamilton, I want to start where
14 Mr. Oswald was asking you about the deposition of Mari
15 Kingi?

16 **A.** Mari Kingi.

17 **Q.** You didn't know this person at the time?

18 **A.** No.

19 **Q.** You know the difference between a deposition
20 and a trial, do you not?

21 **A.** Yes.

22 **Q.** A deposition is where some attorneys sit in a
23 room with a court reporter and ask somebody questions?

24 **A.** Yes.

25 **Q.** This is a trial?

1 **A.** Yes.

2 **Q.** Mr. Oswald suggested that you might not know
3 whether you were at Dick Wilson's trial or a
4 deposition.

5 Do you recall talking to Mr. Ecoffey on
6 May 5, 1995?

7 **A.** Well, as I said, I have talked to him several
8 times, but I don't know what the dates were.

9 **Q.** Do you recall saying -- well, I will read
10 what he said you said. Ms. Hamilton stated that in
11 1975 during the trial for Dick Wilson in Rapid City,
12 South Dakota, Dick and others were on trial for
13 assaulting some WKLDOC workers at the Pine Ridge
14 Airport?

15 **A.** Yes.

16 I believe when I went, the prosecution was
17 testifying.

18 **Q.** Okay.

19 Do you remember testifying before the Grand
20 Jury, quote, I went back upstairs and at some point
21 that day, I went down to the federal court building
22 here where the Wilson trial was going on and spent a
23 little time there.

24 Do you remember saying that?

25 **A.** I guess I did if it's in the transcript.

1 **Q.** Well, in fact, you went there during the
2 trial?

3 **A.** Yes.

4 **Q.** You are not confused in your mind
5 whatsoever --

6 **A.** No.

7 **Q.** And again, you testified at the Arlo
8 looking -- excuse me -- yeah, the Arlo Looking Cloud
9 trial that, quote, it was during the trial for Dick
10 Wilson?

11 **A.** Yes, it was the trial.

12 **Q.** All right.

13 And as we previously discussed, that trial
14 began December 15 and ended the 18th?

15 **A.** Right.

16 **Q.** Okay.

17 Now, Mr. Oswald asked you about your
18 perceived unwillingness to cooperate in this
19 investigation.

20 You testified voluntarily at the Grand Jury,
21 right?

22 **A.** Right.

23 **Q.** You didn't invoke your right to remain
24 silent?

25 **A.** No.

1 Q. Didn't hire an attorney to quash a subpoena?

2 A. No.

3 Q. You went there and testified?

4 A. Right.

5 Q. And you were subpoenaed to testify at Arlo
6 Looking Cloud's trial?

7 A. Right.

8 Q. That was a subpoena coming from the state or
9 the government?

10 A. Right.

11 Q. And you showed up?

12 A. Yes.

13 Q. And you testified?

14 A. Yes.

15 Q. Under oath?

16 A. Yes.

17 Q. You did that again at Dick Marshall's trial
18 just last April?

19 A. Yes.

20 Q. Or actually this April?

21 A. Yes.

22 Q. Again, subpoenaed by the government, you
23 showed up you, you gave testimony?

24 A. Yes.

25 Q. And here today you are by subpoena?

1 **A.** Yes.

2 **Q.** From them?

3 **A.** Yes.

4 **Q.** You have never ever resisted providing sworn
5 testimony, have you?

6 **A.** No.

7 **Q.** The use of the term interrogation on
8 page 1,069, that was during an interview conducted in
9 June of 2000, the Serle Chapman interview?

10 **A.** That would have been about right because it
11 was when I was in Vermillion.

12 **Q.** More than 20 years after the incident?

13 **A.** Yes.

14 **Q.** And you relayed to him all sorts of
15 information that you had heard from other sources over
16 the past 25 years or so?

17 **A.** Yes.

18 **Q.** And you didn't say that you saw Anna Mae
19 Aquash being interrogated?

20 **A.** No.

21 **Q.** You did not see Anna Mae being interrogated,
22 did you?

23 **A.** No, I didn't.

24 **MR. MURPHY:** Nothing further.

25 Thank you.

1 **MR. OSWALD:** Thank you.

2 **CONTINUED REDIRECT EXAMINATION**

3 **BY MR. OSWALD:**

4 **Q.** Ms. Hamilton, isn't it true that you were
5 compelled by Federal District Judge Lawrence Piersol
6 to appear before the Grand Jury?

7 **A.** Well, I was subpoenaed.

8 **Q.** But you didn't want to appear on that
9 subpoena. They had to compel you to do that?

10 **A.** I didn't fight that subpoena at all. I
11 didn't want to but I complied with it.

12 **MR. MURPHY:** Your Honor, may we approach?

13 **THE COURT:** Uh-huh.

14 (Whereupon, a bench conference was then
15 held.)

16 **MR. MURPHY:** Your Honor, there is nothing --
17 they got a court order. There is nothing that they
18 are presenting that indicates anything that
19 contradicts the witness's testimony. There is no
20 motion to quash by her. They don't have any record
21 showing that she ever filed such a motion. They got
22 an order that says the judge finds in his satisfaction
23 that he's going to order her testimony but nothing
24 foundational to establish she ever resisted. Further,
25 that's not even a certified copy.

1 **THE COURT:** I don't find it's impeachment
2 material. It indicates a Fifth Amendment potential
3 and they wanted to ensure the order of immunity was
4 there. A realistic fear on the part of the government
5 that she might take that route and that's that.

6 (Whereupon, the bench conference was then
7 concluded.)

8 **Q. (BY MR. OSWALD)** Ms. Hamilton, do you remember
9 for the Dick Marshall trial?

10 **A.** Yes.

11 **Q.** And the FBI agent and DCI agent attempted to
12 serve you?

13 **A.** Yes.

14 **Q.** And you -- and did you throw that subpoena
15 out the window at them?

16 **A.** No. I just didn't open the door when they
17 came and they threw the subpoena in the window when it
18 fell out again.

19 **Q.** And they left it and you left it on the
20 ground at your house?

21 **A.** After they left I went out and picked it up.

22 **Q.** You didn't want to talk to them, did you?

23 **A.** No.

24 **Q.** You didn't want to be subpoenaed?

25 **A.** No.

1 **Q.** And didn't that happen for the Arlo Looking
2 Cloud case also that you were reluctant to be served?

3 **A.** Well, I don't like testifying and I don't
4 like being served with subpoenas, but I show up when I
5 am.

6 **Q.** And I've asked you to call me and you didn't
7 call, did you?

8 **MR. MURPHY:** Objection. This is beyond the
9 scope, as well.

10 **THE COURT:** I'm not sure where we're going.

11 **MR. OSWALD:** Okay.

12 I have no further questions.

13 **MR. MURPHY:** If I may just ask one final
14 question.

15 **THE COURT:** I hope.

16 **RE-CROSS-EXAMINATION**

17 **BY MR. MURPHY:**

18 **Q.** Ma'am, do you know anybody who enjoys being
19 subpoenaed and brought into a courtroom?

20 **A.** No.

21 **MR. MURPHY:** Nothing further.

22 **THE COURT:** Thank you, ma'am. You may step
23 down.

24 Is she released from her subpoena?

25 **MR. OSWALD:** Yes.

1 **THE COURT:** You are excused from the
2 proceedings, ma'am.

3 (Witness excused.)

4 **THE COURT:** I think it's time to take a break
5 unless you have a 15-minute witness.

6 **MR. JACKLEY:** I am not sure there is such a
7 thing.

8 **THE COURT:** Ladies and gentlemen, we'll be in
9 recess for approximately 15 minutes. You are reminded
10 you are not to talk to one another or anybody else
11 including yourselves about this case. You are not to
12 form or begin to perform any opinions hereon.

13 Thank you.

14 (Off the record.)

15 **THE COURT:** Satisfied this is the jury?

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

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

18 **THE COURT:** You may proceed.

19 **MR. JACKLEY:** Your Honor, the state would
20 call Cleo Gates.

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

22 CLEO GATES,

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

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

DIRECT EXAMINATION

BY MR. JACKLEY:

Q. Ms. Gates, would you please introduce yourself to the jury, including where you live.

A. My name is Cleo Gates. Cleo Clifford Gates. I live in Manderson, South Dakota.

Q. Ms. Gates, are you employed?

A. No, I'm not employed. I'm retired.

Q. Before you retired, were you employed?

A. Yes, I was.

Q. Where was that at?

A. At Wounded Knee District School in Manderson.

Q. Ms. Gates, I want to take you back to 1975.

Were you married at that time?

A. Yes, I was.

Q. Who were you married to?

A. I was married to Dick Marshall.

Q. Where did you and Dick live back in 1975?

A. Allen, South Dakota.

Q. Ms. Gates, I am handing you what has previously been marked as State's Exhibit 30.

Do you generally recognize what that is?

A. It looks like the house that we lived in.

MR. JACKLEY: Your Honor, I would offer State's Exhibit 30.

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

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

3 **Q. (BY MR. JACKLEY)** Ms. Gates, do you generally
4 remember how many bedrooms were in your house?

5 **A.** It was a four-bedroom house.

6 **Q.** Fairly small house?

7 **A.** No, it was a big house.

8 **Q.** Okay.

9 I want to take you back to the fall/winter of
10 1975.

11 Did there come a time in the evening that you
12 were visited by several people including Anna Mae?

13 **A.** Yes, sir, there was.

14 **Q.** Do you remember what time of day that visit
15 occurred?

16 **A.** It was at night.

17 **Q.** How late at night?

18 **A.** Probably around -- it was after the news.
19 Probably ten -- about eleven o'clock, 10:30.

20 **Q.** Were you awake?

21 **A.** We had probably just gone to bed.

22 **Q.** Okay.

23 I want to walk through who arrived at your
24 house that evening.

25 Who do you remember being in your house

1 before those folks arrived?

2 **A.** Gee, we had nobody. Just our family was
3 home.

4 **Q.** When they arrived, who arrived?

5 **A.** Theda, John Boy, Arlo Looking Cloud, and Anna
6 Mae.

7 **Q.** I want to walk through prior to them
8 arriving, whether you knew each of them, okay?

9 **A.** I knew Theda, I knew Arlo, I hadn't -- I had
10 seen Graham, but I didn't know him personally. And I
11 did not know Anna Mae at all.

12 **Q.** That was the first time you had met Annie
13 Mae?

14 **A.** Yes, it was.

15 **Q.** What do you recall taking place when they
16 arrived at your house?

17 **A.** When they arrived, one of them walked Anna
18 Mae over to a chair in the living room and sat her
19 down. And they proceeded to go into the bedroom with
20 my husband.

21 **Q.** Okay.

22 And again, who was your husband at the time?

23 **A.** Dick Marshall.

24 **Q.** When you say they, who walked into the
25 bedroom?

1 **A.** Theda, Arlo, and John.

2 **Q.** And Dick, too?

3 **A.** And Dick.

4 **Q.** Was the door closed?

5 **A.** If I am not mistaken it was.

6 **Q.** In any event, could you see into the bedroom
7 from where you were at?

8 **A.** No, I couldn't.

9 **Q.** Did there come a point in time when somebody
10 emerged from the bedroom?

11 **A.** Dick came out of the bedroom.

12 **Q.** Let's talk about that.

13 How long was Dick, Theda, Arlo, and John Boy
14 in that bedroom before Dick emerged?

15 **A.** Probably less than ten minutes. Maybe five
16 minutes or more.

17 **Q.** When Dick Marshall leaves the bedroom, where
18 does he go?

19 **A.** I was in the kitchen. It's a small kitchen.
20 And the living room was really large. And I had
21 gotten Anna Mae some coffee. She said she wanted some
22 coffee so I got her a cup of coffee and she took a
23 doughnut. I was back in the kitchen. Then Dick comes
24 in the kitchen.

25 **Q.** What did you and Dick discuss?

1 **A.** I said what's going on and he goes, they
2 want --

3 **MR. MURPHY:** Objection. Calls for hearsay.
4 Confrontation.

5 **THE COURT:** I was under the impression that
6 Mr. Marshall was going to testify.

7 **MR. JACKLEY:** He is, Your Honor, on Monday.

8 **THE COURT:** Overruled.

9 **Q.** (BY MR. JACKLEY) Cleo, so Dick has now
10 emerged from the bedroom and you have a discussion
11 with him.

12 What is that discussion?

13 **A.** About keeping Anna Mae at our house.

14 **Q.** Okay.

15 **A.** And I told him no.

16 **Q.** Was there any discussion about tying her up?

17 **A.** Well, I said keep --

18 **MR. MURPHY:** Objection. Leading.

19 **THE COURT:** Overruled. It isn't.

20 **THE WITNESS:** Can I answer?

21 **Q.** (BY MR. JACKLEY) Yes, you can answer.

22 **A.** I said, what do you mean keep her here, and
23 he goes, maybe tie her up in the basement and keep her
24 down in the basement, and I told him, no.

25 **Q.** Why did you tell him no?

1 **A.** Because I didn't like what was going on.

2 **Q.** Did you and him at that point have any
3 discussion or was there reference to her being an
4 informant?

5 **A.** No.

6 **Q.** After you tell Dick Marshall no, what
7 happens?

8 What does he do?

9 **A.** He turned around and went back in the
10 bedroom.

11 **Q.** When he went back into the bedroom, could you
12 see into the bedroom?

13 **A.** No.

14 I didn't go in that far into the living room.
15 He walked back in there and I just kind of came back
16 into the living room because you couldn't see the
17 bedroom door the way the house is situated. I mean,
18 the way the rooms were. There was, like, two
19 bathrooms and then the bedroom was off to the side so
20 I really couldn't see.

21 **Q.** So it would be fair to state that the two
22 times that Mr. Marshall was in the bedroom, you don't
23 know exactly what was going on in the bedroom; is that
24 fair?

25 **A.** Right.

1 **Q.** So he had gone back into the bedroom. Then
2 does there come a point -- he's back in there and
3 second time, and you have just told him no that Annie
4 Mae is not staying at your house.

5 Does there come a point somebody emerges
6 again from the bedroom?

7 **A.** They all came out.

8 **Q.** They call, again, and that would be who?

9 **A.** Arlo, Theda, and John.

10 **Q.** I want to take a second and talk about the
11 bedroom.

12 Did -- how many beds were in the bedroom?

13 **A.** One.

14 **Q.** Were there any dressers or furniture that
15 would hold clothing in the bedroom?

16 **A.** I would -- there were two dressers in the
17 bedroom.

18 **Q.** Okay.

19 Describe generally the two dressers to this
20 jury.

21 **A.** There was a dresser, kind of a long narrow
22 that came about waist high. Then there was another
23 dresser that was so big and it was taller.

24 **Q.** Okay.

25 I want to now focus a little bit -- while

1 the -- Dick -- well, Dick and Theda and John Boy and
2 Arlo are in the bedroom, I want to focus on what you
3 and Annie Mae are doing.

4 Was Annie Mae talkative at that time?

5 **A.** She was not talkative.

6 **Q.** Did she appear to want to be there?

7 **A.** Well, she came in with them. They were
8 guiding her in. One of them had hold on the back of
9 her arm. And like I said they walked her to the chair
10 and sat her down and that's where she stayed.

11 **Q.** Okay.

12 Did you provide her anything to eat?

13 **A.** The coffee and I offered her -- it was -- we
14 still had some soup in the refrigerator that was still
15 warm and she didn't want any. She just wanted the
16 coffee and she took a doughnut.

17 **Q.** Did she arrive with any luggage with her?

18 **A.** No.

19 **Q.** Did she arrive with any baggage or anything
20 in a bag or anything?

21 **A.** No. All she had on -- it was cold out. She
22 had like a heavy jacket on.

23 **Q.** Did you provide her any clothing when she was
24 there?

25 **A.** Just before they left they asked me if I had

1 a pair of clothes for her. So I gave her a pair of
2 jeans and a T-shirt.

3 Q. After you gave her a T-shirt and the jeans,
4 what happens?

5 A. They leave.

6 Q. Okay.

7 I want to be very specific. They. Who is
8 they?

9 A. Theda, Arlo, John, and Anna Mae.

10 Q. Annie Mae walked out of your house alive that
11 night in 1975?

12 A. Yes, she did.

13 Q. Would you consider yours and Dick's house an
14 AIM safe house back in 1975?

15 A. No, sir, I wouldn't. This is the first I
16 heard of it.

17 Q. Ms. Gates, did you ever see Annie Mae again
18 after the night she left your house?

19 A. No, I didn't.

20 Q. How did you learn of Anna Mae Aquash's death?

21 A. On the news.

22 Q. When you first saw that, how did you feel
23 after the events that you testified to the jury?

24 How did you feel?

25 A. Oh, my God it was terrible. I thought, oh my

1 God. This -- this is -- you know, this is when that
2 happened to her. You know I had no idea but I was
3 like -- I was afraid to express my feelings. I didn't
4 know who to trust. I didn't know who to talk to. I
5 could talk to my sister or my brother, but they
6 weren't always around.

7 Q. Speaking of that trust, you have been visited
8 through the years by several law enforcement officers
9 and prosecutors; is that fair?

10 A. Yes, sir.

11 Q. To talk to you about the events of that
12 evening?

13 A. Yes.

14 Q. Initially, were you very cooperative?

15 A. No, I wasn't.

16 Q. Were there times that perhaps you didn't
17 necessarily volunteer information?

18 A. Yes, sir, I didn't. I didn't know who I
19 could trust.

20 Q. Why are you coming forward and testifying to
21 the jury about what happened at your house?

22 MR. MURPHY: Objection, Your honor. It's
23 self-serving.

24 THE COURT: Sustained.

25 MR. JACKLEY: No further questions at this

1 time, Your Honor.

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

3 **CROSS-EXAMINATION**

4 **BY MR. MURPHY:**

5 **Q.** I am going to ask you some questions. My
6 name is John Murphy and I will try to speak clearly,
7 but if you need me to stop and rephrase something,
8 will you let me know?

9 **A.** Yes, I will.

10 **Q.** Okay.

11 First thing I want to talk to you about is
12 your testimony today where you say that somebody sat
13 Ms. Aquash in a chair.

14 Do you recall just talking about that?

15 **A.** Yes.

16 **Q.** Okay.

17 Let's back up a little bit. These people
18 come to your house in the evening, correct?

19 **A.** In the night.

20 **Q.** In the night.

21 About eleven o'clock?

22 **A.** Yeah.

23 **Q.** I believe in prior testimony you have said
24 the coffee pot was still warm?

25 **A.** Yeah.

1 **Q.** You and Dick had just settled down?

2 **A.** Went to bed.

3 **Q.** I don't want to get Tina to yell at me. I
4 got to finish my question before you start answering.

5 **A.** Okay.

6 **Q.** She has a hard time writing two at once.

7 And when they came into the house, somebody
8 introduced you to Annie Mae, correctly?

9 **A.** No, they didn't introduce her. Nobody
10 introduced her to me.

11 **Q.** Well, I am going to show you your testimony
12 on April 15 of this year at the Dick Marshall trial.

13 Do you remember testifying at Dick Marshall's
14 trial?

15 **A.** Yeah. Uh-huh.

16 **Q.** I'm going to read something to you and this
17 is a question. What took place next? Your answer,
18 Theda -- I'm not sure if it was Theda. I need to talk
19 to you. I think we went to the bedroom. I think it
20 was. And then I went up -- in the meantime someone
21 had said to me, this is Annie Mae. I didn't know who
22 she was.

23 Is that what you said back in April of this
24 year?

25 **A.** That's -- because that's what one of them

1 said that was Annie Mae.

2 Q. Okay.

3 And Anna Mae is right there?

4 A. Uh-huh.

5 Q. So they essentially introduced you? Gave you
6 her name?

7 A. I thought you went mean, Cleo, this is Anna
8 Mae.

9 Q. Okay.

10 And you said today that somebody sat her in
11 the chair. You even said somebody maybe had her arm.

12 A. Like guided her over to the chair.

13 Q. I am going to go to the same page of your
14 testimony back at Dick Marshall's trial. You were
15 asked the question, where did she go to sit? Your
16 answer, she went to a chair that we had right off the
17 dining room. There was a chair. There is a couch and
18 TV. She went to that chair at that time.

19 Correct?

20 A. Uh-huh.

21 Q. That's what you said when you testified
22 against Dick Marshall?

23 A. Yes.

24 Q. And back at Arlo Looking Cloud's trial, you
25 were asked about the same issue by Mr. Mandel. When

1 they came over, what took place? They came in and
2 they brought the girl in and she sat on the chair in
3 the living room and they went into the bedroom with my
4 husband.

5 Isn't that what you told the jury at Arlo
6 Looking Cloud's trial?

7 **A.** Yes, it is.

8 **Q.** Okay.

9 And Anna Mae stayed outside with you?

10 **A.** Yes.

11 **Q.** And you had coffee and she a doughnut?

12 **A.** No. She had coffee -- I didn't -- I didn't
13 drink no more coffee.

14 **Q.** Oh, you didn't. All right.

15 While they were in having this meeting in the
16 bedroom, she was there alone with you, correct?

17 **A.** Uh-huh.

18 **Q.** And nobody was standing guard?

19 **A.** No.

20 **Q.** She was not tied up?

21 **A.** No.

22 **Q.** As people left the room to go back to the
23 bedroom nobody said to you, watch her?

24 **A.** No..

25 **Q.** You had a back door, correct?

1 **A.** A kitchen door and the door that came in with
2 the living room. Two doors.

3 **Q.** And she was in close proximity to both doors?

4 **A.** Yeah.

5 **Q.** A few steps away from the kitchen door,
6 correct?

7 **A.** Yes.

8 **Q.** And you weren't preventing her from leaving
9 at any time?

10 **A.** No.

11 **Q.** Now, during the time that you and Ms. Aquash
12 are alone, she never indicated to you that she needed
13 help?

14 **A.** No, she didn't.

15 **Q.** Never asked you to use your phone?

16 **A.** No, she didn't.

17 **Q.** And you had a phone there?

18 **A.** Yes, sir.

19 **Q.** And she didn't try to leave the house?

20 **A.** No, she didn't.

21 **Q.** And in fairness, you don't know whether the
22 bedroom door was open or closed, do you?

23 **A.** No, I don't.

24 **Q.** Okay.

25 **A.** I didn't bother to look.

1 Q. Sure.

2 But just so we're clear you didn't -- you
3 couldn't even see down the hall from where you were
4 sitting, could you?

5 A. Right.

6 Q. All right.

7 At this time, in the fall of 1975, you didn't
8 have any guns in your house, did you?

9 A. No, we didn't.

10 Q. And you know that you didn't have any?

11 A. I know that.

12 Q. All right.

13 And you didn't have guns in any of the
14 dressers in the bedroom?

15 A. No, sir.

16 Q. And this was something you were vigilant
17 about?

18 A. Oh, you bet.

19 Q. Okay.

20 In fact, Dick had given his guns to his
21 parents, correct?

22 A. Yes, he did.

23 Q. You didn't have cases of bullets?

24 A. No.

25 Q. And your night stand, that was next to the

1 bed, didn't have any drawers in it, did it?

2 **A.** No, it didn't.

3 **Q.** All right.

4 Now, the last thing I want to touch base with
5 you about is your statement today that Dick said
6 something to you about tying her up. Okay.

7 Do you recall when you answered the question
8 that was put to you?

9 **A.** Yes.

10 **Q.** You've given three sworn statements in this
11 case.

12 Do you recall testifying at the Grand Jury
13 back in 2003?

14 **A.** Yes, I do, sir.

15 **Q.** And then you testified at Arlo's trial?

16 **A.** Yes.

17 **Q.** And that was in 2004?

18 **A.** Yes.

19 **Q.** And you testified at Dick's trial?

20 **A.** Yes.

21 **Q.** I am going to bring your attention, first, to
22 your Grand Jury testimony. And that was at a time you
23 were under oath, correct?

24 **A.** Yes, sir.

25 **Q.** And you were trying to provide complete

1 information to the Grand Jury?

2 **A.** Yes.

3 **Q.** Okay.

4 I am going to read to you what you said in
5 response to a question about your conversation with
6 Dick. And they -- I guess they wanted us to keep her
7 there and I just said I didn't feel good. I didn't
8 have a good feeling, you know, about everything. So I
9 told him no.

10 Is that correct?

11 **A.** Yes, sir, that's correct.

12 **Q.** You didn't mention on that occasion anything
13 about a request to tie Anna Mae Aquash up?

14 **A.** No, I didn't.

15 **Q.** Okay.

16 And then back at Arlo Looking Cloud's trial,
17 you were asked about the same conversation when Dick
18 comes out of the room. And you were asked, who said
19 that -- well, let me back track. You said, well they
20 came in and they went -- they came out of the bedroom
21 and called me in the kitchen and he said they want us
22 to keep her here. Question, Who said that? Dick --
23 answer, Dick. I said what for. I don't know. Just
24 keep her here. And I said no.

25 Was that your testimony then?

1 **A.** Yes, it was.

2 **Q.** Okay.

3 Again, you never mentioned anything in 2003
4 or 2004 about tying up or requests being made to tie
5 up Ms. Aquash, correct?

6 **A.** Correct.

7 **Q.** The last thing I want to ask you about the
8 final departure.

9 Somebody asked you for some clothes?

10 **A.** Right.

11 **Q.** Okay.

12 And you said yes?

13 **A.** I got a change of clothes for her.

14 **Q.** And then you were asked for directions by
15 somebody?

16 **A.** Yes.

17 **Q.** And the directions were to Rosebud, correct?

18 **A.** I'm not sure who asked the question but they
19 wanted to know the back road to Rosebud.

20 **Q.** And I want to get a sense -- and get a sense
21 for the jury, your house was in Allen, South Dakota?

22 **A.** Yes, sir.

23 **Q.** And that's on the Pine Ridge Reservation?

24 **A.** Yes.

25 **Q.** How far is it to Rosebud?

1 **A.** Probably 50 miles or so from there. Maybe a
2 little more.

3 **Q.** Okay.

4 An hour, hour-and-15-minute drive?

5 **A.** About an hour or so.

6 **Q.** An hour or so?

7 **A.** Uh-huh.

8 **Q.** How long does it take to drive from your
9 house to Wambli?

10 **A.** You mean the house in Allen?

11 **Q.** Yes.

12 **A.** Going the back road?

13 **Q.** Going whatever way is quickest.

14 **A.** Okay.

15 Well, there were some dirt roads and gravel
16 back road. Then there was a highway. And if we went
17 to Wambli we just went on the highway towards Kyle and
18 then took that road on up to Wambli.

19 **Q.** How long would it take?

20 **A.** Probably about 40 minutes. Half hour maybe.

21 **Q.** And how long would it take if you went to
22 Wambli and then all the way up to Kadoka?

23 **A.** Probably about 45 minutes longer depending on
24 how fast you were going.

25 **Q.** So do you know where Roger Amiotte lives?

1 **A.** No, I don't.

2 **Q.** So 45 minutes to Wambli, another 40
3 minutes -- 45 minutes all the way up to Kadoka?

4 **A.** Right.

5 **Q.** Okay.

6 And the people who left your house, they left
7 before midnight in any regard?

8 **A.** Oh, yes, sir.

9 **MR. MURPHY:** Nothing further.

10 Thank you.

11 **MR. JACKLEY:** Briefly, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. JACKLEY:**

14 **Q.** Ms. Gates, I want to go back to the bedroom
15 and you and Mr. Murphy talked about the bedroom.

16 I just want to make sure it's clear, there
17 was the small dresser that you described, do you
18 remember that?

19 **A.** Yeah.

20 **Q.** Were there drawers in that small dresser?

21 **A.** Yes, there were.

22 **Q.** Do you remember what you were doing earlier
23 that day before they came?

24 Were you working that day?

25 **A.** I worked that day.

1 **Q.** So in other words you didn't stand guard in
2 the bedroom to see whether Dick Marshall was bringing
3 guns in or out, did you?

4 **A.** No.

5 **Q.** In fact, you weren't in the bedroom that
6 night that John Graham, Theda Clarke, Arlo Looking
7 Cloud and Dick went in the bedroom?

8 **A.** No, I didn't go in there.

9 **Q.** Mr. Murphy was talking to you about
10 directions. Do you recall that? Just before he sat
11 down about them requesting directions.

12 Do you recall that?

13 **A.** Right.

14 **Q.** And you indicated that there is a highway, do
15 you remember that?

16 **A.** Yes.

17 **Q.** And I believe you indicated that they had
18 requested directions in the back roads.

19 Do you recall that?

20 **A.** Yes.

21 **Q.** So there is a highway there, but they are
22 asking about back roads, correct?

23 **A.** Yes.

24 **Q.** Why do you suppose they wanted to know the
25 back roads to Rosebud?

1 **MR. MURPHY:** Objection. Calls for
2 speculation.

3 **THE COURT:** Sustained.

4 **Q. (BY MR. JACKLEY)** Do you know why they wanted
5 to know where the back roads were?

6 **A.** No, I don't, sir.

7 **Q.** When they left that evening, do you know
8 where they went?

9 **A.** No.

10 **MR. JACKLEY:** No further questions, Your
11 Honor.

12 **RE-CROSS-EXAMINATION**

13 **BY MR. MURPHY:**

14 **Q.** Ma'am, at this time in 1975, there was a lot
15 of activity on the Pine Ridge Reservation, correct?

16 **A.** Yes.

17 **Q.** A lot of law enforcement, a lot of conduct by
18 what had been called the goons, correct?

19 **A.** Yes.

20 **Q.** And from time to time, there was acts of
21 violence on the highway?

22 **A.** Yes.

23 **Q.** People were actually shot at as they were
24 driving down the highway, correct?

25 **A.** Right.

1 **MR. MURPHY:** Nothing further.

2 Thank you.

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

4 **THE COURT:** Thank you, ma'am you. You may be
5 excused --

6 Is she on subpoena here?

7 **MR. JACKLEY:** She is. I would ask she not be
8 released, but she is certainly welcome to go home.

9 **THE COURT:** Certainly.

10 Thank you.

11 We have -- I think Ms. Hamilton is in the
12 courtroom and she's still under subpoena.

13 Is there a problem with that?

14 **MR. JACKLEY:** She was released from her
15 subpoena.

16 The state would call Darlene Nichols.

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

18 DARLENE KAMOOK ECOFFEY,
19 called as a witness herein, having been duly sworn,
20 under oath testified as follows:

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

22 **DIRECT EXAMINATION**

23 **BY MR. JACKLEY:**

24 **Q.** Ma'am, would you please introduce yourself to
25 the jury.

1 **A.** My name is Darlene Nichols Ecoffey.

2 **Q.** Do you go by a nickname sometimes?

3 **A.** Most people call me Kamook.

4 **Q.** Is it okay if I call you Kamook today?

5 **A.** Yes.

6 **Q.** Kamook are you married?

7 **A.** Yes, I am.

8 **Q.** Who are you married to?

9 **A.** Robert Ecoffey.

10 **Q.** Kamook, in the 1970s, were you involved with
11 the American Indian Movement?

12 **A.** Yes, I was.

13 **Q.** Who, generally, was considered to be the
14 leadership of the American Indian Movement during
15 those days?

16 **A.** Well, there were at any given time probably
17 ten to 12 people.

18 **Q.** Who were some of the names -- some of the
19 bigger names?

20 **A.** The bigger names, probably, I would say
21 Dennis Banks, Russell Means, Clyde Bellecourt, Vernon
22 Bellecourt, Ted Means, Bill Means, John Trudell,
23 Madonna Gilbert, Herb Hollows.

24 **Q.** Okay.

25 Did you have a relationship back then with

1 Dennis Banks?

2 A. Yes, I did.

3 Q. Please describe that relationship to the
4 jury.

5 A. I lived with Dennis Banks for 17 years from
6 1972 until April of 1989.

7 Q. And did you have children with Dennis Banks?

8 A. We have four children.

9 Q. Did you know Anna Mae Aquash?

10 A. Yes, I did know Annie Mae.

11 Q. How did you know Annie Mae?

12 When did you meet her?

13 A. I met Annie Mae when she came to Wounded Knee
14 in 1973.

15 Q. Kamook, I am going to have you look up the at
16 screen there.

17 Do you recognize the individual into the
18 photo?

19 A. Yes.

20 Q. Who is that?

21 A. That is Annie Mae.

22 MR. JACKLEY: For purposes of the record I am
23 referring to State's Exhibit 18.

24 Q. (BY MR. JACKLEY) Kamook, did you know Theda
25 Clarke sometimes going by Theda Nelson?

1 **A.** Yes, I do know Theda.

2 **Q.** How did you know Theda?

3 **A.** Because Theda was just always there like
4 everybody else.

5 **Q.** How would you describe Theda Clarke's
6 personality?

7 **MR. MURPHY:** Objection. Relevance.

8 **THE COURT:** Overruled.

9 **A.** Theda was very bossy. She was older so
10 people pretty much listened to her whenever she told
11 individuals what to do.

12 **MR. MURPHY:** Marty, may I see the exhibits?

13 **Q.** **(BY MR. JACKLEY)** Kamook, I am handing you
14 what has been marked as State's Exhibit -- proposed
15 Exhibits 21B and 21C.

16 Do you generally recognize what those photos
17 depict?

18 **A.** Yes.

19 **Q.** What do they depict?

20 Who is that?

21 **A.** That's Theda Clarke.

22 **MR. JACKLEY:** Your Honor, I would offer
23 State's Exhibits 21B and 21C.

24 **MR. MURPHY:** No objection.

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

1 **Q.** **(BY MR. JACKLEY)** Do you remember when you
2 would have first met Theda Clarke generally?

3 **A.** In the early 70s. She -- I also kind of knew
4 Theda a little bit because her brother and my dad were
5 really close friends.

6 **Q.** Back then did you know John Boy Patton or
7 John Graham?

8 **A.** In the early 70s.

9 **Q.** How did you know John Graham?

10 **A.** Because he was always with Theda.

11 **Q.** Was he generally considered to be related to
12 Theda in any way?

13 **A.** Well, Theda used to say that he was her
14 nephew.

15 **Q.** Okay.

16 Kamook, I am handing you what has been
17 previously marked as State's Exhibit 21.

18 Do you generally recognize the individual
19 appearing in that photograph?

20 **A.** Yes.

21 **Q.** Who is the individual?

22 **A.** That's John Graham.

23 **Q.** Is that generally how he would have looked
24 back in the 1970?

25 **A.** Well, he had long hair. I don't know if it's

1 just tied back in that picture but he had longer hair.

2 Q. Would it be fair that the picture generally
3 depicts what he looked like back then?

4 A. Yes.

5 MR. JACKLEY: Your Honor, I would offer
6 State's Exhibit 21.

7 MR. MURPHY: Let me see the exhibit, please.
8 No objection, Your Honor.

9 THE COURT: Will be received.

10 Q. (BY MR. JACKLEY) Kamook, did you know Arlo
11 Looking Cloud back in that time frame?

12 A. I knew who Arlo was but I didn't know him
13 personally.

14 Q. Did you know Troy Lynn Yellow Wood?

15 A. Yes, I knew Troy Lynn.

16 Q. How did you know Troy Lynn?

17 A. Well, because Troy Lynn was always just
18 around.

19 Q. Around various AIM activities?

20 A. Yes.

21 Q. Back in 1975, did there come a time where you
22 are aware that there existed a concern of Anna Mae
23 Aquash being an informant for the government?

24 A. Yes.

25 Q. I want to take you back to June of 1975.

1 Did you attend the National AIM convention?

2 A. Yes, I did.

3 Q. Where was that convention held at if you
4 recall?

5 A. In Farmington, New Mexico.

6 Q. Do you remember who you were there with in
7 Farmington, New Mexico?

8 A. I was with my sister, Dennis, Leonard
9 Peltier, Dino Butler, Neelock (phonetic) Butler, Gene
10 Day, Bob Rubideaux.

11 Q. Were there general discussions of Annie Mae
12 Aquash being an informant down at the convention?

13 MR. MURPHY: Objection. Calls for hearsay.

14 THE COURT: Overruled.

15 A. Yes, there were.

16 Q. (BY MR. JACKLEY) Did you become aware when
17 you were in New Mexico of a confrontation involving
18 Anna Mae Aquash and Leonard Peltier?

19 MR. MURPHY: Objection. Foundation.

20 THE COURT: Overruled.

21 Q. (BY MR. JACKLEY) What was your understanding
22 of that confrontation?

23 MR. MURPHY: Your Honor, calls for hearsay.
24 It's speculation. Confrontation issues.

25 THE COURT: It certainly may. And it is

1 likely an end run around both *Crawford* issues and
2 hearsay rules.

3 **MR. JACKLEY:** May we approach, Your Honor?

4 **THE COURT:** You may.

5 (Whereupon, a discussion was held at the
6 bench.)

7 **MR. JACKLEY:** Your Honor, this is the subject
8 of the pretrial motion on the Leonard Peltier evidence
9 for which the Court denied -- in which the Court
10 denied the defendant's motion on the basis that it is
11 being elicited not for the truth of the matter
12 asserted, but in relation to the informant evidence.
13 And I have to look at the order, but I also believe
14 the state of mind. It is consistent evidence with the
15 Arlo Looking Cloud trial that was affirmed by the
16 Eighth Circuit Court.

17 **THE COURT:** You can whisper.

18 **MR. JACKLEY:** That was confirmed with the
19 Eighth Circuit Court of appeals. The evidence is
20 admissible in relation to that informant evidence.
21 The actions of Leonard Peltier and the affect that
22 had --

23 **MR. MURPHY:** Your Honor, nothing in any of
24 the prior rulings indicate it could come in through a
25 witness who has no personal knowledge of the events in

1 question. It is incompetent evidence. She is about
2 to testify as to rumors or gossip. Nothing that she
3 has personal knowledge of.

4 The state knows who allegedly was in the car:
5 Leonard Peltier, Dino Butler, Anna Mae Aquash. They
6 have not attempted to subpoena Dino Butler. I have
7 confirmed that with him. He is the only person, or
8 Leonard Peltier, who could provide competent evidence
9 on this information.

10 Therefore, it violates my client's
11 confrontation rights. It's also lack of personal
12 knowledge. There is no foundation. It's just gossip.

13 **THE COURT:** I believe it's offered to prove
14 the truth of the matter asserted without any knowledge
15 from whence it came but general rumors. But it has to
16 be offered for the proof of the contents or it
17 wouldn't be offered at all. You would have no
18 interest in it.

19 You are trying to establish that Peltier held
20 a gun to her head or she was afraid of him as a result
21 of that?

22 **MR. JACKLEY:** That's fair.

23 **THE COURT:** But then that goes to prove that
24 happened -- that did in fact happen. And there is no
25 other reason to put it in. We're repeating rumors

1 from unnamed persons to establish the truth of the
2 rumors and I have a little trouble with that.

3 **MR. JACKLEY:** This is the same witness --

4 **THE COURT:** You may make an offer of proof
5 after this, but at the moment, I am not going to allow
6 it to be addressed.

7 **MR. JACKLEY:** Can I ask her whether she's had
8 discussions with Annie Mae Aquash regarding that
9 incident?

10 **THE COURT:** I think you can ask that.

11 **MR. MURPHY:** I think the same issues are
12 implicated because that is not going to Anna Mae's
13 state of mind but it is going to prove that the
14 incident occurred.

15 **THE COURT:** I think we're going -- I think
16 you may ask her whether Anna Mae had conversations
17 with her regarding an incident with Leonard Peltier.
18 No more definitive than that.

19 **MR. JACKLEY:** Okay.

20 **MR. MURPHY:** And then it ends at yes or no?

21 **MR. JACKLEY:** If she says yes, I get to go
22 further. If she says no then I am done.

23 **MR. MURPHY:** No, because then you are going
24 into the substance that this -- I am not able to
25 confront Ms. Aquash. It is not proven for state of

1 mind.

2 If they were to ask, did you have the
3 conversation with her about an incident, she says yes,
4 and then they ask, well, what was her reaction and if
5 she were to express that I was nervous or something,
6 that would be the state of mind evidence.

7 But relaying the substance of the incident is
8 to prove that the incident in fact occurred. And
9 that's not what they have competent evidence to
10 present.

11 **THE COURT:** Well, that's first of -- first of
12 all, let's see what she has to say and then I am
13 thinking she can describe Anna Mae's reactions or
14 nature of her appearance to that discussion without
15 getting into the discussion, you know, and her
16 appearances to your client are admissible or -- not
17 your client -- this witness are admissible so let's go
18 down that line before we go further.

19 (Whereupon, the discussion at the bench was
20 then concluded.)

21 **Q. (BY MR. JACKLEY)** Kamook, I am going to ask
22 you -- I am looking for a yes or no response to this
23 question, okay?

24 In your discussions with Annie Mae Aquash,
25 did you ever have an opportunity to discuss an

1 incident involving Annie Mae Aquash and Leonard
2 Peltier in Farmington, New Mexico?

3 **A.** Yes.

4 **Q.** Based upon those discussions, what was your
5 understanding of the confrontation between Leonard
6 Peltier and Annie Mae Aquash?

7 **A.** That Leonard had --

8 **MR. MURPHY:** Objection, Your Honor.

9 **THE COURT:** I mean, that's not where we're
10 going to go at this stage.

11 **Q. (BY MR. JACKLEY)** Where did the discussions
12 with Annie Mae Aquash occur that you talked about an
13 incident involving Leonard Peltier and Annie Mae
14 Aquash?

15 **A.** When we were in jail in Oregon.

16 **Q.** When she was relating to you an incident
17 involving her and Leonard Peltier, how did she appear
18 to you?

19 What were her reactions?

20 **A.** Nervous. Upset.

21 **Q.** Did she describe to you or did you glean from
22 that conversation why she was appearing upset?

23 **MR. MURPHY:** Your Honor --

24 **THE COURT:** I think that's a fair question.

25 He's not asking you to describe. He's -- you

1 are not being asked to repeat the substance of the
2 conversation, but whether from the conversation you
3 understood why she was upset.

4 **THE WITNESS:** Yes.

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

6 When she was describing the incident between
7 her and Leonard Peltier, did she appear genuine to
8 you?

9 **A.** Yes, she did.

10 **Q.** When you left that conversation, at least
11 from what you heard and what you saw, did you believe
12 her?

13 **A.** Yes, I did.

14 **Q.** Kamook, I want to take you now to June 26,
15 1975?

16 **A.** Okay.

17 **Q.** Where were you staying at that time?

18 **A.** In Oglala, South Dakota.

19 **Q.** Were you saying at a specific place?

20 **A.** Yes.

21 **Q.** Where would that be?

22 **A.** It would be at the Jumping Bull residence.

23 **Q.** On June 26, 1975, did something happen at the
24 at the Jumping Bull residence?

25 **A.** Yes.

1 **Q.** What happened?

2 **A.** There was a shoot-out between two FBI agents
3 and some other individuals that had been also living
4 down there.

5 **Q.** With respect to that shoot-out, were you
6 there later that day on June 26, 1975?

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

8 **Q.** When you arrived at Jumping Bull's on
9 June 26, 1975, describe to the jury what you saw.

10 **A.** I had driven -- this had been during the
11 shoot-out. I didn't know it was happening. I drove
12 into the road. We lived maybe a quarter of a mile or
13 something off the road. I turned to go toward our
14 house. I looked over here to the right. There were
15 some BIA cop cars with individuals that had rifles.
16 They were leaning behind the door.

17 I had my daughter in the car. She had been
18 sick so I had taken her to the doctor and I was on my
19 way home. So then I knew something was wrong when I
20 saw these cars lined up over here. And I was -- I was
21 driving toward our house and the grass was maybe
22 three, four feet high. And all I could see was some
23 hands that came out of the grass motioning for me to
24 turn around. I was in my pick up and I made a turn
25 and I just went back toward the highway.

1 Q. Are you generally aware that two FBI agents
2 had been killed that day at that place?

3 A. Yes.

4 Q. I now want to take you to later in the fall
5 of 1975 to Columbus day, October 12, 1975.

6 Do you recall that general time frame?

7 A. Yes, I do.

8 Q. Do you recall a particular motor home?

9 A. Yes.

10 Q. Who owned the motor home?

11 A. Marlin Brando.

12 Q. Did there and a time that you, around
13 Columbus day, were riding in the motor home?

14 A. Yes, I was.

15 Q. Who were you riding with?

16 A. I was with Dennis Banks, Leonard Peltier,
17 Annie Mae, my sister, and Kenny Loud Hawk and Dave
18 Hill.

19 Q. Who is your sister?

20 A. Bernadine Nichols.

21 Q. Did there come a time while in the motor home
22 that Leonard Peltier began to talk about some
23 incriminating matters?

24 A. Yes.

25 Q. Who was present during those discussions?

1 **A.** The same individuals I had just named. All
2 of us.

3 **Q.** Okay.

4 **A.** Except I don't believe that Dave was in the
5 motor home at the time.

6 **Q.** So those individuals would have been, of
7 course, Leonard Peltier, yourself, Annie Mae Aquash
8 your sister Bernie, and Dennis Banks?

9 **A.** And Kenny Loud Hawk.

10 **Q.** And Kenny Loud Hawk.

11 Is Kenny Loud Hawk still with us?

12 **A.** No, he is not.

13 **Q.** Were part of the discussion that was going on
14 the talk about the two FBI agents that had been killed
15 on June 26, 1975 at Jumping Bull's?

16 **A.** Yes.

17 **Q.** What do you recall -- what did you take from
18 that event from those discussions?

19 **A.** That Leonard Peltier --

20 **MR. MURPHY:** Objection. Calls for hearsay.
21 Also confrontation.

22 **THE COURT:** Sustained.

23 **MR. JACKLEY:** May we approach, Your Honor?

24 **THE COURT:** Yes.

25 (Whereupon, a discussion was held at the

1 bench.)

2 **MR. JACKLEY:** Your Honor, as with the Looking
3 Cloud case, as affirmed by the Eighth Circuit Court of
4 appeals, and consistent with the order that this court
5 has issued in the pretrial rulings, this evidence is
6 being elicited from the witness not for the truth of
7 the matter asserted. We don't care whether or not
8 Leonard Peltier shot the two FBI agents.

9 What it's being introduced to show is that
10 Annie Mae Aquash had obtained the incriminating
11 evidence which is the motive upon which she was
12 ultimately killed for. That is the purpose of this
13 testimony, and it is not hearsay.

14 **MR. MURPHY:** Your Honor, the state of mind
15 exception applies to the state of mind of the
16 declarant. The declarant in this case would be
17 Leonard Peltier. The rule is unequivocal on that.

18 So what they are trying to do is bring in the
19 statement that Leonard Peltier supposedly said, I shot
20 the motherfucker or something to that effect. That's
21 how it's been relayed before.

22 So first off, they are trying to prove that
23 that event did occur because their later theory is --
24 and they've argued this consistently -- is that Anna
25 Mae Aquash was shot in part because she had overheard

1 Leonard Peltier confess.

2 So, first, they are doing it for the truth of
3 the matter asserted. That is the motive for the
4 killing that's been alleged.

5 Secondly, they are not introducing this for
6 Anna Mae's state of mind because she is not the
7 declarant. They have not tried to subpoena Leonard
8 Peltier. I have talked to his attorney, a woman named
9 Jane Tigar (phonetic). There has been no attempt to
10 try to subpoena him. She indicated to me that he
11 would have responded to a subpoena. And so they are
12 using the wrong exception.

13 The fact that this evidence came in in the
14 Looking Cloud trial is largely irrelevant because as I
15 indicated in my previous submissions and motion in
16 limine, which has not been ruled on directly, the
17 objection was not made in this form at the Looking
18 Cloud trial. Mr. Rensch never argued that they didn't
19 have it or they weren't asserting it for the state of
20 mind of the actual declarant.

21 Furthermore, when this court ruled it's --
22 issued it's prior order, it said that the topics may
23 come in; that they were not excludable on their face.
24 But it never ruled that incompetent evidence, hearsay
25 evidence, or evidence that violates a defendant's

1 right to confrontation could come in.

2 You merely said the topics are not forbidden
3 if in fact the state can lay the proper foundation and
4 admit it in the proper format. That's why we're here
5 today. Leonard Peltier's state of mind is not at
6 issue.

7 **THE COURT:** Fundamentally, I agree with the
8 hearsay because you can't show his state of mind until
9 he actually believes he did it and that poses a
10 threat -- that creates the problem with the statement.
11 It's offered to prove that and then use it as proof to
12 establish a motive for her being afraid and perhaps
13 for her being killed.

14 I am reluctant to do that at the status of
15 this testimony at this point. That ruling is
16 sustained.

17 I am going to make a brief statement to the
18 jury of what hearsay constitutes and to explain
19 various rulings which may be inconsistent but will
20 certainly appear to be inconsistent to the jury.

21 And at that point this objection is
22 sustained.

23 **MR. JACKLEY:** Your Honor, because there has
24 been apparent disagreement with Mr. Murphy on maybe
25 what the Court's previous order said and because I

1 believe the Court's previous order would shed light on
2 the further rational of why this is admissible
3 evidence, may I refer back to that order? It will
4 just take a moment.

5 **THE COURT:** Sure.

6 (Whereupon, the bench conference was then
7 concluded.)

8 **THE COURT:** I will make a note of explanation
9 to the jury. You have heard multiple times an
10 objection to something called hearsay or being
11 described as hearsay. And you may have seen what
12 appear to be rulings which seem to be inconsistent and
13 hard to understand why I made those rulings.

14 Hearsay in its technical terms, and for legal
15 purposes, involves a statement made by somebody other
16 than the person who is testifying and it was made
17 outside the courtroom. And it becomes hearsay if it's
18 being offered to prove the truth of the things stated.

19 For instance, if I were to ask somebody what
20 the weather was in Spearfish last week and that person
21 said my grandmother told me it was snowing, then that
22 statement would be offered to prove the weather at
23 that time. The question then is whether grandma was
24 right or wrong and we have no opportunity to address
25 grandma's statement with grandma, who would be the

1 person who would have known. The person answering the
2 question has no idea whether it's true or not except
3 they tend to believe grandma.

4 But other than that -- so statements of that
5 nature are not admissible absent certain exceptions
6 recognized in the law. And these objections will come
7 up and I have to figure out why it's being offered and
8 whether it can come in and I do my best to do that.

9 Mr. Jackley is going to show me some previous
10 documents.

11 My ruling today stands.

12 Sustained.

13 **Q. (BY MR. JACKLEY)** Kamook, we were talking
14 about -- and I want to be careful not to elicit
15 directly what Leonard Peltier said -- but we were
16 talking about a discussion that you were a witness to
17 in Marlin Brando's motor home.

18 Do you recall that?

19 **A.** Yes.

20 **Q.** And you were present for that discussion?

21 **A.** Yes.

22 **Q.** And Annie Mae Aquash was present for that
23 discussion?

24 **A.** Yes.

25 **Q.** At the time of that discussion did Leonard

1 Peltier -- did you witness Leonard Peltier make any
2 hand gestures?

3 **MR. MURPHY:** Your Honor, I am going to
4 object. I know the next question is yes or no, but
5 the answer to follow may just slide in. We're talking
6 about verbal conduct now.

7 **THE COURT:** Well, we're not -- she can
8 testify as to what she observed. Not what she heard,
9 but what she observed.

10 **Q. (BY MR. JACKLEY)** Understanding the Court's
11 ruling to not have you talk about what you heard, but
12 I want to ask you about what you observed Leonard
13 Peltier gesture or do during his discussion in front
14 of an Annie Mae Aquash?

15 **A.** He used his hand to (indicating).

16 **Q.** Just show the jury what he did with his hand.

17 **A.** He -- he -- (indicating) like a gun.

18 **Q.** Okay.

19 And where did he -- where did he put -- where
20 did he put his hand that he was gesturing with?

21 **A.** To his head.

22 **Q.** I don't want to ask you what he said, but I
23 want to ask you, did you hear what he said?

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

25 **Q.** What was your reaction when you heard what he

1 said and when he made that gesture?

2 **A.** Shocked.

3 **Q.** What was the other people standing around
4 listening to him's reaction?

5 Not what they said but what was their
6 reaction?

7 **MR. MURPHY:** Vague, over broad, and
8 foundation.

9 **THE COURT:** She may testify as to what she
10 observed their reaction to be. Not what she thought
11 it was but what she observed.

12 **A.** The same. I would say that they were
13 shocked.

14 **Q.** **(BY MR. JACKLEY)** Was the motor home and the
15 people in it ultimately involved in contact with law
16 enforcement?

17 **A.** Yes.

18 **Q.** When that occurred, did Leonard Peltier and
19 Dennis Banks escape?

20 **A.** Yes, they did.

21 **Q.** And you and Annie Mae were there?

22 **A.** Yes, we were.

23 **Q.** Were you pregnant at the time?

24 **A.** I was.

25 **Q.** Was there any shooting that you either heard

1 or observed at that time?

2 **A.** Yes, there was.

3 **Q.** Describe that to the jury.

4 **A.** Well, when the officer stopped us, he knocked
5 on the back of the motor home. Told us to step out.
6 Annie Mae got out first. And Leonard got out in front
7 of me. And then I got out with my daughter. And
8 there was a small ditch right here so he asked us to
9 lay down. I couldn't lay down. I was seven months
10 pregnant. So I sat by Annie Mae. Then Leonard was to
11 my right. And he kept knocking on the back of the
12 motor home. He said if anybody else is in there to
13 please come out. At that time Dennis started driving
14 down the road and then there were gunshots between him
15 and the police officer.

16 **Q.** And Leonard Peltier and Dennis Banks were not
17 arrested that night?

18 **A.** No.

19 **Q.** Okay.

20 After that event, and I guess as a result of
21 that event, were you placed in jail?

22 **A.** Yes.

23 **Q.** Did you share a cell with somebody?

24 **A.** With Annie Mae.

25 **Q.** What did you and Annie Mae talk about in that

1 cell?

2 **A.** Well, we talked about what had just happened.
3 We talked about different events we had been to. She
4 talked a lot about her kids. Talked about my
5 daughter. We talked about family. We talked about
6 everything.

7 **Q.** Did you talk at all about the discussion that
8 you had earlier both witnessed in the motor home with
9 Leonard Peltier of an incriminating nature with his
10 hand?

11 Did you discuss that at all?

12 **A.** Yes.

13 **Q.** And that was a discussion between you and
14 Annie Mae Aquash?

15 **A.** Yes.

16 **MR. JACKLEY:** Your Honor, may we approach?

17 **THE COURT:** Yes.

18 (whereupon, a discussion was held at the
19 bench.)

20 **MR. JACKLEY:** Am I speaking too loud or too
21 soft or about right?

22 **THE COURT:** She can pick up anything.

23 **MR. JACKLEY:** Okay.

24 Your Honor, I believe this witness can
25 testify to discussions she had with the victim in this

1 case in a jail cell. She was privy to the
2 conversations. They were all present when the things
3 and events had happened and obviously Annie Mae Aquash
4 is no longer with us. She's the murder victim in this
5 case. And I believe it's appropriate for me to go
6 into what was discussed and what reactions were had.

7 **MR. MURPHY:** Your Honor, in your order one of
8 the things you said as a condition was that if the
9 Peltier confession as to the murder of the agents was
10 true, then the stuff might be admissible.

11 It's the second to the last line on page 10.
12 You said as to the confession by Peltier, to quash,
13 the disclosure of this information to quash if true
14 could provide a motive for members.

15 So what they are trying to do here without
16 actually calling the witnesses that they should have
17 called is to prove that allegation. If -- they can do
18 the same thing they did with Ms. Ecoffey in regard to
19 Ms. Aquash. Did you have a conversation about the
20 subject matter that we previously discussed. What
21 were Ms. Aquash's reactions to it.

22 But they are trying to get into the substance
23 of an allegation that has not proven to be true. And
24 so that's where they are trying to cross the line.
25 Just like we just saw, they can say, you know, what

1 was Ms. Aquash's demeanor when you talked about this
2 subject matter. Was she shocked or whatever. You
3 know, words she's going to try to say.

4 But to try to prove up the allegation through
5 Anna Mae Aquash who was not present at Jumping Bull
6 and has no information of a probative or reliable
7 nature as to what actually happened, that would be
8 damaging. Incredibly damaging.

9 **THE COURT:** I agree with Mr. Murphy.

10 (Whereupon, the discussion at the bench was
11 then concluded.)

12 **Q. (BY MR. JACKLEY)** Kamook, again, I do not want
13 to elicit from you the specifics of a conversation,
14 okay?

15 I am going back to the conversation that you
16 and Annie Mae were a witness to in the motor home with
17 Leonard Peltier that you then later discussed with
18 Annie Mae in the jail cell.

19 Would that information that we're talking
20 about be potentially incriminating to Leonard Peltier?

21 **MR. MURPHY:** Objection. Calls for
22 speculation. It's a legal conclusion.

23 **THE COURT:** Overruled.

24 **A.** Yes.

25 **THE COURT:** It's already been answered in any

1 event.

2 Q. (BY MR. JACKLEY) If that information were to
3 get out, would that be a concern to those involved?

4 MR. MURPHY: Objection. Calls for
5 speculation.

6 THE COURT: Agreed.

7 Sustained.

8 Q. (BY MR. JACKLEY) Kamook, we talked about
9 sharing the cell with Annie Mae and the discussion
10 about her kids.

11 With respect to, you know, your case, what
12 was the resolution?

13 What became of you with respect to that
14 particular case or charge?

15 A. The charges were dismissed.

16 Q. Kamook, did there come a time when you
17 separated from Dennis Banks?

18 A. In April of 1989.

19 Q. Did there come a time when you began looking
20 further into what may have happened to Annie Mae
21 Aquash?

22 A. Yes.

23 Q. Describe about when that was.

24 A. In the year 2000.

25 Q. Were you recruited by the United States

1 government to do this?

2 **A.** No.

3 **Q.** Were you recruited by the State of South
4 Dakota to do this?

5 **A.** No.

6 **Q.** Did you do it on your own?

7 **A.** Yes.

8 **Q.** Were you paid for what you were doing?

9 **A.** No.

10 **Q.** Were you provided any reimbursements?

11 **A.** Yes, I was.

12 **Q.** Describe for a moment to the jury what those
13 reimbursements were for?

14 **A.** Travel expenses, hotel expenses, if I rented
15 a car, for moving.

16 **Q.** You said for moving.

17 Did there come a time when you had to move
18 after you began assisting with the government?

19 **A.** There were two times.

20 **Q.** Let's walk through that a little bit. Let's
21 walk through the first time.

22 What happened or what events happened that
23 required you to move?

24 **MR. MURPHY:** Objection. Relevance.

25 **THE COURT:** You may answer the question.

1 **A.** Well, I had been told to move to a secure
2 area the first time. And then Dennis Banks showed up
3 at my door. So when I contacted the FBI, then they
4 told me that I needed to move a second time.

5 **Q.** **(BY MR. JACKLEY)** Did you want to move?

6 **A.** No.

7 **Q.** Beginning in 2000 as you began to look into
8 this case, did you have meetings with people that knew
9 about the case that had information about the case?

10 **A.** Yes, I did.

11 **Q.** Were some of those individuals -- or did you
12 ever meet with Theda Clarke regarding the case?

13 **A.** I did.

14 **Q.** Did you ever meet -- let me ask you this.
15 Do you remember approximately when you met
16 with Theda Clarke?

17 **A.** You mean the first time?

18 **Q.** Did you meet with Theda more than once?

19 **A.** Yes.

20 **Q.** Do you remember a meeting with Theda Clarke
21 in July of 2000?

22 **A.** Yes.

23 **Q.** I don't want to ask you what Theda said, I
24 just want to ask you what you discussed, what you
25 said, okay?

1 **A.** Okay.

2 **Q.** In that meeting, did you discuss or did you
3 talk about the death of Annie Mae Aquash?

4 **A.** Yes, I did.

5 **Q.** Did you discuss concerns about Annie Mae
6 being an informant?

7 **A.** Yes.

8 **MR. MURPHY:** Your Honor, I am going to
9 object. These are out-of-court statements offered for
10 the truth of the matter asserted.

11 **THE COURT:** He's asking, I believe, if this
12 witness said that or words to that effect.

13 **MR. MURPHY:** I understand.

14 **THE COURT:** Responses of other people I am
15 not interested in.

16 Do you understand?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Thank you.

19 **MR. MURPHY:** Your Honor, my objection would
20 be her statements -- this witness's out-of-court
21 statements are still hearsay if offered for the truth
22 of the matter asserted.

23 **MR. JACKLEY:** Your Honor, the witness is
24 here.

25 **THE COURT:** You may answer the question.

1 **A.** Yes.

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

3 Did you also discuss -- let me ask you this.

4 As part of your looking into the death of
5 Annie Mae Aquash, did you have a or some discussions
6 with Arlo Looking Cloud?

7 **A.** Yes, I did.

8 **Q.** Do you recall having a discussion with Arlo
9 Looking Cloud in Denver?

10 **A.** Yes.

11 **Q.** Would that have been in about December of
12 2000?

13 **A.** Yes, it was.

14 **Q.** I don't want to go into what Arlo said. I
15 want to talk about who was present for that
16 discussion.

17 **A.** Troy Lynn Yellow Wood, Arlo, and myself.

18 **Q.** In December of 2000 had Arlo Looking Cloud --
19 was he under any indictment or charges for the death
20 of Annie Mae Aquash, if you know?

21 **A.** No.

22 **Q.** Again, without eliciting from you what Arlo
23 may have said, did you talk to him and Troy Lynn about
24 Annie Mae Aquash?

25 **A.** Yes.

1 **Q.** At points in the discussion did Arlo Looking
2 Cloud have any physical reaction?

3 **A.** Yes, he did.

4 **Q.** Describe that to the jury.

5 **A.** When I visited with Arlo, I was sitting in
6 the driver's seat. Arlo was sitting in the back seat
7 in the middle. And when I asked him certain
8 questions, he became very emotional. He would turn to
9 the left and look out the window. He became choked up
10 at times and at some points he would nod his head. He
11 wouldn't answer clearly. He would just kind of grunt,
12 but he was very emotional during the discussion.

13 **Q.** Kamook, when did you ultimately learn of
14 Annie Mae's death?

15 **A.** In 2000 or -- do you mean the first time?

16 **Q.** Yeah. When you first learned she had been
17 killed.

18 **A.** It was in February of 1976.

19 **Q.** Do you remember when in February of 1976?

20 **A.** I do remember exactly when.

21 **Q.** When?

22 **A.** It was -- I lived in Portland, Oregon. It
23 was February 24 of 1976.

24 **Q.** How are you so sure of that date?

25 **A.** Well, because I had been sitting at my desk.

1 Dennis Banks had been living in California and he
2 called me. And during the discussion when he had
3 called me, hanging on the wall was a calendar, which
4 was my nephew's birthday, February 24. And during
5 that conversation is when he told me that they had
6 found Annie Mae.

7 Q. And you took from that conversation that he
8 said that they had found, specifically, Annie Mae; not
9 that they had just found a body?

10 A. No, he said that they had found Annie Mae.

11 Q. Kamook, after you received the word -- the
12 phone call of February 24, 1976, are you generally
13 aware of what events took place with respect to the
14 identification of Annie Mae Aquash?

15 A. Yes, I am.

16 Q. What is your understanding of what those
17 events are?

18 A. That they didn't know it was Annie Mae when
19 she had been found. She had been buried as Jane Doe.
20 And that they had not discovered that it was Annie Mae
21 for approximately two weeks after that.

22 Q. Two weeks after you had received the phone
23 call identifying that it was Annie Mae?

24 A. Yes.

25 MR. JACKLEY: No further questions, Your

1 Honor.

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

3 **MR. MURPHY:** Your Honor, in light of the fact
4 that my cross-examination will be lengthy -- it's ten
5 to 12:00.

6 Would you like me to start now or could we
7 start on Monday?

8 **THE COURT:** I think we're best doing it all
9 at once, do you not?

10 **MR. MURPHY:** I would prefer that.

11 Thank you.

12 **THE COURT:** We're going to reconvene Monday
13 morning at 8:30, folks. You are reminded, and it's
14 particularly difficult and important over the weekend,
15 that you are not to cause this case with anybody. You
16 may not form opinions on it. You must be specifically
17 and especially alert to avoiding news, newspapers, and
18 anything that may contain it. Even avoiding if it's
19 front page, and get back on page 6, there may be an
20 article. So continued stories. So forget newspapers
21 at home. They are history until this matter is
22 finished.

23 Any questions about that?

24 Please don't -- please try very hard not to
25 form or begin to form any opinions on this matter.

1 We will be in recess and see you Monday
2 morning at 8:30.

3 (Whereupon, the proceedings in this matter
4 were then concluded.)

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

1 STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
 2 COUNTY OF PENNINGTON)
 3

4 I, TINA RAE PRUSS, Official Court Reporter
 and Notary Public in and for the County of Pennington,
 5 State of South Dakota,

6 DO HEREBY CERTIFY that the foregoing
 transcript is a true and accurate transcript of the
 7 questions asked, the testimony given, and of the
 proceedings had.

8 I FURTHER CERTIFY that I am not of kin or in
 9 any way associated with any of the parties to said
 cause of action, or their counsel; and that I am not
 10 interested in the event thereof.

11
 12 IN WITNESS WHEREOF, I have hereunto set my
 hand this 3rd day of May, 2011.
 13

14
 15 **COPY**

16 Tina Rae Pruss
 Official Court Reporter and
 Notary Public
 17 Pennington County, South Dakota
 My Commission expires: 10-04-2012
 18

19
 20
 21
 22
 23
 24
 25