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

FILE NO. CRI 09-3953

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

TRANSCRIPT OF  
JURY TRIAL  
  
VOLUME 7 OF 10

\* \* \* \* \*

BEFORE: **THE HONORABLE JOHN J. DELANEY,**  
Circuit Court Judge  
Pennington County Courthouse  
Rapid City, South Dakota  
**DECEMBER 7, 2010**

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\* \* 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
ARLO LOOKING CLOUD		4	25, 68	51, 70
DENISE MALONEY	71	83	87	89
ROBERT ECOFFEY	90	142	183, 197	189
MITCHELL POURIER	198	221	234	236

	EXHIBITS:	OFFERED/ADMITTED
1		
2	34 - Photo	141/141
3	37 - Photo	140/140
4	42 - My Space video	188/188
5	50 - Immunity Agreement	44/44
6	51 - Video	47/
7	128- 1994 Immunity Agreement	52/52
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1                   \* \* P R O C E E D I N G S \* \*

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

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

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

5                   **THE COURT:** I assume Mr. Looking Cloud is  
6 still on the stand.

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

8                   **CONTINUED CROSS-EXAMINATION**

9                   **BY MR. MURPHY:**

10                  **Q.** Are you ready, Mr. Looking Cloud?

11                  **A.** Yes, sir.

12                  **Q.** All right.

13                               I want to start by going back to the very  
14 first immunity agreement that you entered into. We  
15 talked about it briefly, but I wanted to make sure --  
16 I am showing you a letter to your attorney, Henry  
17 Mullhill dated November 3, 1994, correct?

18                  **A.** Yes.

19                  **Q.** And that's your signature on the bottom of  
20 the page?

21                  **A.** Yes, sir.

22                  **Q.** And that is dated as having been received by  
23 the U.S. Marshal Service on November 4, correct?

24                  **A.** Yes, sir.

25                  **Q.** And that would have been in 1994?

1           **A.**    Yes, sir.

2           **Q.**    And then just 13 days later, you went and  
3 talked to Mr. Ecoffey, FBI Agent Graf, Mr. Ianuchi,  
4 and Mr. Pourier, correct?

5           **A.**    Yes, sir.

6           **Q.**    And you were with your attorney, correct?

7           **A.**    Yes, sir.

8           **Q.**    And you were advised you were a suspect in  
9 this case, correct?

10          **A.**    Yes, sir.

11          **Q.**    And you gave information based on that  
12 immunity agreement?

13          **A.**    Yes, sir.

14          **Q.**    Okay.

15                Let's -- following up on something we left  
16 off at yesterday, we talked about how you had been  
17 told by Kamook and Troy Lynn that my client had blamed  
18 you for Annie Mae's death.

19                Do you remember that?

20          **A.**    Yes, sir.

21          **Q.**    And they told you that it was going to end up  
22 being your word against his, true?

23          **A.**    Yes, sir.

24          **Q.**    All right.

25                The same thing happened to you regarding Dick

1 Marshall, do you recall that?

2 **A.** Yes, sir.

3 **Q.** You were told in 2008 that Dick Marshall had  
4 implicated you in this crime. Do you recall being  
5 told that?

6 **A.** No, sir.

7 **Q.** I am going to show you your sworn testimony  
8 on April 16, 2010 in the trial of Dick Marshall. You  
9 were asked, you didn't like it when you thought about  
10 Richard Marshall telling federal authorities that you  
11 had stopped off at his house with Anna Mae Aquash in  
12 1975 and that you had asked them to keep her there.  
13 You didn't like knowing that, did you? And your  
14 answer was no, correct?

15 **A.** Yes. I didn't understand the question.

16 **Q.** You didn't understand the question.

17 Well, when you found out or you had been told  
18 that Dick Marshall had implicated you, that made you  
19 mad, didn't it?

20 **A.** No, sir.

21 **Q.** And you were happy that you thought he was  
22 blaming you?

23 **A.** No, sir.

24 **Q.** All right.

25 In fact, you learned later that Dick Marshall

1 had never implicated you in this crime, isn't that  
2 true?

3 **A.** Yes, sir.

4 **Q.** It's true that you found out after that  
5 conversation that Dick Marshall had always said I  
6 don't know who stopped at my house?

7 You learned that, didn't you?

8 **A.** Yes.

9 **Q.** But at the time in 2008 when you were talking  
10 with authorities, they told you Dick Marshall ratted  
11 you out?

12 **A.** Is that a question?

13 **Q.** Yes.

14 **A.** Yes, sir.

15 **Q.** And so in 2008 for the first time in 14 or  
16 more years of telling various versions of this story,  
17 you suddenly included the detail that Dick Marshall  
18 gave you the gun, right?

19 **A.** Yes, sir.

20 **Q.** All right.

21 Because by that time you are doing a life  
22 sentence down in Louisiana, right?

23 **A.** Yes, sir.

24 **Q.** And you are going to bring Dick Marshall down  
25 with you, right?

1           **A.**    It's the truth, yes.

2           **Q.**    Truth, as we talked yesterday, has kind of  
3 moved around in this case, right?

4           **A.**    Yes, sir.

5           **Q.**    All right.

6                    So the truth in 2008 was you were going to  
7 bring Dick Marshall down with you because somebody  
8 told you he had ratted you out?

9           **A.**    Yes, sir.

10          **Q.**    All right.

11                    I want to go to the issue of Annie Mae  
12 praying at the time that she was supposedly shot by my  
13 client.

14                    Do you remember on direct examination you  
15 were asked about that?

16          **A.**    Yes, sir.

17          **Q.**    That became a pretty important detail for the  
18 prosecutors here once you started talking to them in  
19 2008, didn't it?

20          **A.**    Yes, sir.

21          **Q.**    They kept asking you about it, right?

22          **A.**    Yes, sir.

23          **Q.**    And you were sworn to testify to tell the  
24 truth just like you were yesterday back before a Grand  
25 Jury on September 9, 2009.

1 Do you remember that?

2 A. Yes, sir.

3 Q. And you were asked a very straight forward  
4 question on this praying allegation. Arlo, right  
5 before John Boy shot Annie Mae, did she appear to you  
6 to be praying or making motions that would look like  
7 she was trying to pray? And your answer was, no. She  
8 was just standing.

9 Do you remember that?

10 A. Yes, sir.

11 Q. But that didn't satisfy Mr. Oswald and  
12 Mr. Jackley. They were doing the questioning.

13 Do you remember that?

14 A. Yes, sir.

15 Q. And so Mr. Oswald asked for a break in the  
16 proceedings.

17 Do you recall that?

18 A. No, sir.

19 Q. Well, do you recall taking a break and having  
20 Mr. Jackley talk to you about this praying incident?

21 Do you remember that?

22 A. Yes, sir.

23 Q. In fact, Mr. Oswald started the examination  
24 again after the break was taken. Arlo, during the  
25 break, or -- now, Arlo, during the break you talked to

1 Marty Jackley about the prayer issue and we asked you  
2 then if you wanted to come back and discuss it a  
3 little more. Can we discuss it some more.

4 Do you remember that?

5 **A.** Yes.

6 **Q.** They weren't happy with your original  
7 statement that she wasn't praying, right?

8 **A.** Yes, sir.

9 **Q.** So they took a little break and they came  
10 back and they asked you the question again and then  
11 you answered, she seemed like she was praying.

12 Do you remember that?

13 **A.** Yes, sir.

14 **Q.** So they clearly indicated to you they wanted  
15 some drama to this story and so you take a little  
16 break, and you come back, and you give them the drama  
17 they ask for, right?

18 **A.** Yes, sir.

19 **Q.** Because that's how it works, you are going to  
20 sing the song they want you to sing so you can get out  
21 of prison?

22 **A.** Is that a yes or no?

23 **Q.** Tha's my question, yes or no? Truth or  
24 false?

25 **A.** Yes.

1           Q. I mean, there during the middle of sworn  
2 testimony you give an answer they don't seem to like.  
3 Mr. Jackley takes you aside, talks to you about some  
4 things, and you give a new answer under oath?

5           A. Yes, sir.

6           Q. Two answers that can't both be true?

7           A. Yes, sir.

8           Q. And that process of people telling you what  
9 you are supposed to say started long before 1994 with  
10 your first meeting with Mr. Ecoffey, didn't it?

11          A. Yes.

12          Q. In fact, as I indicated before, my first  
13 report of any interrogation was that November 17, 1994  
14 report, but he indicated on direct you had gone  
15 through many interrogations do you remember that?

16          A. Yes, sir.

17          Q. Those were with a detective named Abe Alonzo  
18 down in Denver?

19          A. Yes, sir.

20          Q. He was investigating this case.

21          A. Yes, sir.

22          Q. And he started talking to you years before  
23 Mr. Ecoffey got involved, didn't he?

24                    You don't need to look over there, sir. Just  
25 look at me.

1           **MR. OSWALD:** I object, Your Honor.

2 Mr. Looking Cloud can look wherever he wants.

3           **MR. MURPHY:** I don't think he can, Your  
4 Honor.

5           **THE COURT:** That all depends on where he's  
6 looking, but it solves the question if he doesn't --  
7 if he looks at the jury or Mr. Murphy, and I care not  
8 which. He can look at the ceiling. He's not going to  
9 look in the direction of people that may or may not  
10 have an interest in this case.

11          **Q. (BY MR. MURPHY)** You understand when I ask you  
12 a question you don't need to look over to Mr. Mandel  
13 or any of these people?

14          **A.** I was looking at the door to see who was  
15 coming in.

16          **Q.** All right.

17                 Sir, Mr. Alonzo started communicating with  
18 you about this case years before you met Mr. Ecoffey,  
19 correct?

20          **A.** No, sir.

21          **Q.** All right.

22                 Sir, if Mr. Alonzo's name is on various parts  
23 of your rap sheet and your criminal history as having  
24 talked to you and been involved in arrests of you  
25 before 1994, would that be inconsistent or consistent

1 with what you remember?

2 **A.** Inconsistent.

3 **Q.** Okay.

4 You never met him before 94?

5 **A.** Yes, I never met him.

6 **Q.** You've never met him?

7 **A.** Before 94.

8 **Q.** Do you remember telling people that you --  
9 that he used to give you money back in the day?

10 **A.** Yes, sir.

11 **Q.** And he gave you money so you could go out and  
12 buy heroine?

13 **A.** No, sir.

14 **Q.** Well, when you got money, your -- when you  
15 got money you went and bought heroine, didn't you?

16 **A.** I bought alcohol, sir.

17 **Q.** Well, when you area talking to the United  
18 States probation office you told them that in addition  
19 to crack, meth, acid, and marijuana, heroine was your  
20 drug of choice and you bought it when you could get  
21 money.

22 Do you remember telling them that?

23 **A.** Yes.

24 **Q.** Okay.

25 So you are saying now you never met Abe

1 Alonzo before the time that he and Mr. Ecoffey met you  
2 in 94?

3 A. Yes, sir.

4 Q. Okay.

5 But you did meet with him a number of times  
6 after 1994, correct?

7 A. Yes, sir.

8 Q. And some of those meetings were alone with  
9 Mr. Alonzo, correct?

10 A. Yes, sir.

11 Q. And they weren't recorded to your knowledge,  
12 were they?

13 A. No, sir.

14 Q. And those are some of those meetings where  
15 afterwards he would give you some money?

16 A. Yes, sir.

17 Q. Okay.

18 We talked a bit about the statements you made  
19 during jail calls where you told people that you were  
20 getting out as a result of the -- as a result of your  
21 cooperation against Dick Marshall.

22 Do you remember that topic?

23 A. Yes.

24 Q. And you said it didn't happen, remember?

25 Do you remember saying you never said

1 anything like that?

2 A. Yes.

3 Q. And I asked you even if you had used Lakota  
4 to try to speak in code on those jail calls when you  
5 were telling people that you were getting out.

6 Do you remember that?

7 A. Yes, sir.

8 Q. And you said it didn't happen?

9 A. Yes, sir.

10 Q. Okay.

11 And I am going to show you your sworn  
12 testimony from April 16, 2010, just about six months  
13 ago. You were asked, didn't you say to that person --  
14 and I'm going to slaughter the pronunciation -- would  
15 you say that word -- that Lakota word.

16 A. Wableen apenokte (phonetic).

17 Q. Okay. It was phonetic. Wableen apenokte.

18 And you answered, sorry, I don't answer. You  
19 were asked, does the word wableen apenokte mean I am  
20 getting out in Lakota? Your answer, I may have, yes.  
21 You may have told somebody you were getting out in  
22 Lakota, right? Answer, under oath, yes, I may have.  
23 Question, in fact, didn't you say to one of your  
24 friends, it looks like I'm getting out pretty soon. I  
25 may show up at your door. And he said to you, we can

1 get drunk and smoke some pijs. Answer, is that a yes  
2 or no? Question, that's what I'm asking you. Answer.  
3 Yes.

4 Do you remember that?

5 **A.** Yes.

6 **Q.** That was just before Dick Marshall's trial  
7 that you are on the phone from the jail telling people  
8 that you are about ready to get out. You are going to  
9 be able to go party with some of your friends, right?

10 **A.** Yes.

11 **Q.** But yesterday under oath you never made those  
12 calls?

13 **A.** Yes.

14 **Q.** But today now you remember making those  
15 calls?

16 **A.** Yes.

17 **Q.** Okay.

18 So the truth again changes from day to day  
19 regardless of whether you are under oath or not?

20 **A.** Sometimes my understand -- yes.

21 **Q.** Okay.

22 Things didn't quite work out how you planned  
23 though because here six months later you are still in  
24 custody, aren't you?

25 **A.** Yes, sir.

1           Q.    And Dick Marshall got acquitted. The jury  
2 acquitted him of murder, didn't they?

3           A.    Yes, sir.

4           Q.    Thelma Rios, my client's other codefendant,  
5 got a probationary plea bargain, right?

6                    Are you aware of that?

7           A.    No, sir.

8           Q.    You weren't aware anything about that?

9           A.    Yes, sir.

10          Q.    But at least you know my client is the last  
11 man standing, right?

12                   **MR. OSWALD:** Objection, Your Honor. That's  
13 calling for speculation as to the investigation.

14                   **THE COURT:** Well, that question is -- if he  
15 knows or believes one way, he can answer.

16          Q.    **(BY MR. MURPHY)** You know my client is the  
17 only guy on trial right now for this crime, right?

18          A.    Yes, sir.

19          Q.    And in a way that makes him your meal ticket  
20 out of federal prison, doesn't it?

21          A.    Yes, sir.

22          Q.    And that Rule 35 motion, that motion to  
23 reduce your sentence, is dependent now on what you say  
24 against my client, right?

25          A.    Yes, sir.

1 Q. And because of that, you want to make sure  
2 he's convicted, don't you?

3 A. It's the truth.

4 Q. One of the things that's happened in this  
5 case since you started working your deal in 2008 is  
6 you never had to go back to Louisiana, did you?

7 A. No, sir.

8 Q. You spent a few months at the South Dakota  
9 state penitentiary, right?

10 A. Yes, sir.

11 Q. And that's a heck of a lot better place than  
12 the Louisiana prison, isn't it?

13 A. No, sir.

14 Q. Oh, yeah. Not stabbings on a weekly basis at  
15 the South Dakota state pen, right?

16 A. Right.

17 Q. And people aren't getting killed on a monthly  
18 basis down at the South Dakota state pen?

19 A. No, sir.

20 Q. That's true, they are not getting killed, are  
21 they?

22 A. No.

23 Q. Are you saying they are getting killed or  
24 they are not getting killed?

25 A. I have no idea.

1           **Q.** Well, while you were there in the three or  
2 four months, did you hear about anybody getting  
3 killed?

4           **A.** There was one that died but I have no idea.

5           **Q.** Well, in any regard, other than those few  
6 months at the South Dakota State Penitentiary, you  
7 have been in local county jails for the last two  
8 years, haven't you?

9           **A.** Yes, sir.

10          **Q.** And at the jails you get to watch TV all day,  
11 right?

12          **A.** No, sir.

13          **Q.** Six months ago, question, that's a whole lot  
14 better than being stranded down in Louisiana without  
15 any relatives or friends to visit you, isn't it? Your  
16 answer, yes. You get to watch TV all day or whenever  
17 you want to up here in South Dakota, don't you? Your  
18 answer, yes.

19          **A.** Yes.

20          **Q.** Okay.

21                    So under oath six months ago it's a yes. Two  
22 minutes ago it's a no. Now it's a yes again, right?

23          **A.** Yes.

24          **Q.** Okay.

25                    Being in these South Dakota county jails

1 where you get to watch TV all day, it's a constant  
2 reminder to you every single day of why you don't want  
3 to go back to Louisiana, isn't it?

4 A. No, sir.

5 Q. You want to go back to Louisiana?

6 A. No, sir.

7 Q. Nobody would want to go back there, right?

8 A. Yes, sir.

9 Q. You were asked questions about what happened  
10 in Rapid City back in November of 1975. Do you  
11 remember that discussion with Mr. Oswald?

12 A. Yes, sir.

13 Q. And you said you stayed in the apartment that  
14 whole day except for when you went to your friend Tony  
15 Red Cloud's house, right?

16 A. Yes.

17 Q. And you were at Tony Red Cloud's house for  
18 what, 30 minutes, 45 minutes.

19 A. Yes, sir.

20 Q. During that entire day and the night before,  
21 you never saw John Graham guarding Annie Mae's  
22 bedroom, did you?

23 A. Yes, sir.

24 Q. You did not see him, true?

25 A. True.

1           **Q.** In fact, you said in prior statements, that  
2 during that time period, my client, John Graham, was  
3 guarding the front door to make sure nobody came in.

4           Do you remember that?

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

6           **Q.** You don't remember that. Okay.

7           Let me show you a transcript of your  
8 2000 interview -- that long interview you did with  
9 Troy Lynn and Kamook.

10           Do you remember we talked about this  
11 interview?

12           **A.** Yes.

13           **Q.** Okay.

14           I am going to ask you to read to yourself the  
15 bottom half of the page. You let me know when you are  
16 done.

17           Done?

18           **A.** Yes.

19           **Q.** Annie Mae was a fugitive at this time?

20           **A.** Yes.

21           **Q.** John Boy was helping protect make sure nobody  
22 kicked the door in to get her, wasn't he?

23           **A.** Yes.

24           **Q.** This is the same John, my client John Graham,  
25 that you saw playing cards with Annie Mae and talking

1 with Annie Mae and hanging out with Annie Mae?

2 **A.** Right.

3 **Q.** You assumed you had never met them before but  
4 they were friends because they were always hanging out  
5 together?

6 **A.** Yes.

7 **Q.** I want to talk to you about how you  
8 incorporate new things into your ever changing story.  
9 I want to talk to you about the fence issue. You told  
10 people originally or at one point that when you guys  
11 got out to the Badlands you parked on the side of the  
12 road.

13 Do you remember that?

14 **A.** Yes, sir.

15 **Q.** You were in fact asked the specific question,  
16 did you park at the approach or on the side of the  
17 road and you said on the side of the road.

18 Do you remember that?

19 **A.** Yes, sir.

20 **Q.** And during that period of time when you were  
21 asked what happened next, you gave various versions of  
22 events of how John or Theda or Anna or you walked out  
23 towards the bluffs.

24 Do you remember that?

25 **A.** Yes, sir.

1           **Q.** But then in 1995 you are taken out there by  
2 Ianuchi and Alonzo, right?

3           **A.** Yes.

4           **Q.** And they park their police vehicles at that  
5 approach.

6                   Do you remember that?

7           **A.** Yes.

8           **Q.** Because they don't want their cars on the  
9 side of the highway, right?

10          **A.** Yes.

11          **Q.** And there is a fence at that approach, right?

12          **A.** Yes.

13          **Q.** And so from that point forward, when you  
14 started telling the story, you talked about seeing  
15 John and Annie Mae climb over that fence.

16                   Do you remember that?

17          **A.** Yes, sir.

18          **Q.** Okay.

19                   Even though we know now that approach is  
20 400 feet up the road from where you supposedly parked  
21 the car?

22          **A.** Yes, sir.

23          **Q.** Okay.

24                   So you don't go to the crime scene for a long  
25 time. In fact, you don't even know -- recall where it

1 is, right?

2 **A.** Yes.

3 **Q.** And then they take you to a place and park in  
4 front of a fence and ask you to tell your story, and  
5 then suddenly now that fence becomes part of your  
6 story?

7 **A.** Yes.

8 **Q.** The trip that you took with John, I want to  
9 talk about that trip and that trip alone.

10 That trip took two days, correct?

11 **A.** Yes, sir.

12 **Q.** And that trip happened November 27 or  
13 November 28 of 1975, correct?

14 **A.** Yes, sir.

15 **Q.** And you can remember that with certainty and  
16 you have testified to it on a number of occasions  
17 because it correlated to your son's birthday, right?

18 **A.** Yes, sir.

19 **Q.** Your son and had left to go to Scottsbluff  
20 for his birthday.

21 Do you remember that?

22 **A.** Yes, sir.

23 **Q.** And because they had left town that day you  
24 decided to go over to Troy Lynn's and find Joe Morgan  
25 to go out drinking, right?

1           **A.**    Yes, sir.

2           **MR. MURPHY:**  Nothing further.

3           Thank you.

4           **THE COURT:**  Mr. Oswald?

5           **MR. OSWALD:**  Thank you.

6                           **REDIRECT EXAMINATION**

7           **BY MR. OSWALD:**

8           **Q.**    Mr. Looking Cloud, do you remember yesterday  
9           Mr. Murphy showed you an article by David Seales about  
10          what you supposedly said?

11          **A.**    Yes, sir.

12          **Q.**    Have you had -- seen that article before  
13          today or yesterday?  Excuse me.

14          **A.**    I don't recall.

15          **Q.**    Do you know anything about David Seales?

16          **A.**    He wrote a book.

17          **Q.**    He wrote about him being abducted by aliens,  
18          didn't he?

19          **A.**    Yes, sir.

20          **Q.**    And he believes that, doesn't he?

21          **MR. MURPHY:**  Objection.  Calls for  
22          speculation.

23          **THE COURT:**  Sustained.

24          **MR. OSWALD:**  Judge, he met Mr. Seals in the  
25          jail.

1           **THE COURT:** I understand.

2           What Mr. Seales believes is another question.  
3           That's what someone else believes. That's always  
4           speculative.

5           **Q. (BY MR. OSWALD)** Now, Mr. Looking Cloud, the  
6           very last question Mr. Murphy talked to you about is  
7           that trip you took with John Graham and Theda.

8           Do you remember that?

9           **A.** Yes, sir.

10          **Q.** He talked about your version -- that you say  
11          it was a little different dates and you remember it  
12          because of your son's birthday?

13          **A.** Yes, sir.

14          **Q.** One thing you are certain about though is  
15          that trip did take place, didn't it?

16          **A.** Yes, sir.

17          **Q.** No matter if it was then, a week later, that  
18          trip took place?

19          **A.** Yes.

20          **MR. MURPHY:** Objection. Leading, Your Honor.  
21          This is redirect.

22          **THE COURT:** I understand. It is. Rephrasing  
23          takes care of the problem.

24          Try not to do that further, counsel.

25          The answer stands.

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

2                    Mr. Looking Cloud, do you remember talking to  
3 Mr. Ecoffey on that bluff? You know, I showed you the  
4 picture yesterday.

5           **A.**    Yes, sir.

6           **Q.**    That was in 1995?

7           **A.**    Yes, sir.

8           **Q.**    Arlo, did you tell him at that time who got  
9 Annie Mae out of the car?

10           **MR. MURPHY:** Your Honor, objection. May I  
11 approach?

12           **THE COURT:** Yes.

13                    (Whereupon, a discussion was held at the  
14 bench.)

15           **MR. MURPHY:** Your Honor, they are going to  
16 try to start introducing prior incident statements.  
17 We have established that the date of the motive to  
18 fabricate was on November 3, 1994. That was the date  
19 he formally entered an immunity agreement with the  
20 United States through his attorney. An agreement  
21 which he signed and then was interviewed after that.

22                    The rule requires that for the admissibility  
23 of prior consistent statements to rebut an implied or  
24 recent fabrication it must antedate the motive to  
25 fabricate. The motive to fabricate is not based on an

1 arrest. It's not based on a conviction or a charge.  
2 It's -- it can be based on the date in which a  
3 particular person is advised that they have been  
4 accused of a crime. When they have official contact.

5 My first questions this morning established  
6 he was advised that he was a suspect. He got an  
7 immunity agreement through an attorney and that his  
8 conversations from that point on were -- should be  
9 prohibited from being introduced as prior consistent  
10 statements.

11 **THE COURT:** Mr. Oswald?

12 **MR. OSWALD:** Your Honor, I wrote down --  
13 Mr. Murphy, in cross-examining, talked about your  
14 story has changed 20 to 30 years. He's also said your  
15 story changed over 14 years. He has brought up the  
16 Troy Lynn Yellow Wood and the Kamook transcript. He  
17 has personally brought up all of these issues. If the  
18 state is handcuffed in coming back, it's not improper  
19 for us. We have a right to rehabilitate on those  
20 consistent statements.

21 **THE COURT:** Well, I think you can go into any  
22 statement that he brought up.

23 **MR. MURPHY:** Specific statement?

24 Okay. What --

25 **THE COURT:** Any specific statements from the

1 same time. I mean -- from whatever document or  
2 records you produced the statement, I think he can go  
3 into that record.

4 **MR. MURPHY:** Just so my record is clear, I am  
5 going to cite Tome, T-O-M-E, United States Supreme  
6 Court, 1995. We would also then ask for a limiting  
7 instruction so that the jury is advised not to  
8 consider the statements he made that they are going to  
9 try to introduce for the truth of the matter asserted  
10 because these statements aren't sworn, but instead  
11 just for the purpose of rebuttal.

12 **THE COURT:** Mr. Oswald?

13 **MR. OSWALD:** Then I would like the same -- if  
14 the Court goes there I would like the same limiting  
15 instruction on his impeachment or his attempted  
16 impeachment.

17 **THE COURT:** I am going to rule this way. I  
18 have no idea what that Supreme Court decision says.

19 **MR. MURPHY:** I got the digest here.

20 **THE COURT:** I don't have a clue what it says.

21 All right. Where are you going?

22 **MR. OSWALD:** I am just --

23 **THE COURT:** Give me time frame.

24 **MR. OSWALD:** I am going to every consistent  
25 statement he made that he was impeached on. He --

1 there was a charge of fabrication in 94. There was a  
2 charge of improper influence in 95 and in 2008.

3 Mr. Murphy referenced a letter that I have here and --

4 **THE COURT:** I think he can make further  
5 inquiry on the record from any statement that was used  
6 to impeach him.

7 I think other statements in the same record  
8 can be used by the state in response to your  
9 examination. They cannot go back within this line for  
10 a consistent statement made prior according to this  
11 law and rulings prior to a motive to fabricate. And  
12 frankly there is another decision that says a prior  
13 consistent statement need not rebut all motives to  
14 fabricate but only the specific motive alleged at  
15 trial. Whatever that means. But that's fairly clear  
16 English but that's the ruling.

17 (Whereupon, the discussion at the bench was  
18 then concluded.)

19 **MR. OSWALD:** Your Honor, for the record, did  
20 you wish to overrule or sustain that objection?

21 **THE COURT:** Overruled with the limitations  
22 discussed at the bench.

23 **MR. OSWALD:** May I proceed?

24 **THE COURT:** Yes.

25 **MR. OSWALD:** Thank you.

1           **Q.**    **(BY MR. OSWALD)** The same question I asked  
2 you, Mr. Looking cloud, did you tell Ecoffey on that  
3 bluff in 1995 who got Annie Mae out of that car?

4                    Just yes or no.

5           **A.**    Yes.

6           **Q.**    And who did you say got her out of that car?

7           **A.**    John Graham.   John Boy.

8           **Q.**    Did you tell Robert Ecoffey in 2003 in Denver  
9 who got Annie Mae out of that car?

10          **A.**    Yes, sir.

11          **Q.**    And who did you say?

12          **A.**    John Boy.

13          **Q.**    Is that that man sitting there that you  
14 pointed out earlier?

15          **A.**    Yes, sir.

16          **Q.**    In the year 2000, with your interview -- or  
17 with your discussion with Troy Lynn and Kamook --

18                    Do you remember that?

19          **A.**    Yes.

20          **Q.**    Did you tell them who got Anna Mae out of  
21 that car in 1975?

22          **A.**    Yes, sir.

23          **Q.**    And who did you say?

24          **A.**    John Boy.

25          **Q.**    Did you tell a Grand Jury in October 2008,

1 who got Anna Mae out of that car in 1975?

2 A. Yes, sir.

3 Q. And who did you say?

4 A. John Boy.

5 Q. When you were on that bluff with Mr. Ecoffey  
6 in 1995, did you tell Mr. Ecoffey who shot Anna Mae?

7 A. Yes, sir.

8 Q. And who did you say shot Anna Mae?

9 A. John Boy.

10 Q. When you were interviewed in 2003, in Denver,  
11 you were videotaped, right?

12 A. Yes, sir.

13 Q. Abe Alonzo and Mr. Ecoffey interviewed you;  
14 is that right?

15 A. Yes, sir.

16 Q. Did you tell those gentleman who shot Anna  
17 Mae?

18 A. Yes, sir.

19 Q. Who did you say?

20 A. John Boy.

21 Q. With Kamook and Troy Lynn in December, you  
22 had just gotten out of jail, do you remember that?

23 A. Yes.

24 Q. You were in the back seat of Kamook's car?

25 A. Yes, sir.

1 Q. What parking lot were you in?

2 A. Denny's parking lot.

3 Q. Did you know you were being recorded, sir?

4 A. No, sir.

5 Q. Did you tell Kamook and Troy Lynn who shot  
6 and ended Anna Mae's life?

7 A. Yes, sir.

8 Q. And who did you say did that?

9 A. John Boy.

10 Q. In the Grand Jury in 2008 who did you tell  
11 that Grand Jury shot Anna Mae?

12 A. John Boy.

13 Q. At the Dick Marshall trial, in 2010, April,  
14 did you tell that jury who shot Anna Mae?

15 A. Yes, sir.

16 Q. And who did you say?

17 A. John Boy.

18 Q. When you talked to Mr. Ecoffey, did you tell  
19 Mr. Ecoffey who was hauled in the back of that  
20 hatchback?

21 A. Yes, sir.

22 Q. And who did you say was hauled in the back of  
23 that hatchback?

24 A. Anna Mae.

25 Q. Did you tell Mr. Alonzo and Mr. Ecoffey in

1 2003, who was hauled in the back of that hatchback?

2 A. Yes, sir.

3 Q. Who was that?

4 A. Anna Mae.

5 Q. Did you tell Kamook and Troy Lynn in the year  
6 2000 who was hauled in the back of that hatchback?

7 A. Yes, sir.

8 Q. And who was that?

9 A. Anna Mae.

10 Q. In 1995 on that bluff with Mr. Ecoffey, did  
11 you tell him when you got out of that car on the night  
12 Anna Mae was killed?

13 A. The question, please.

14 Q. The night Anna Mae was killed, or the  
15 morning -- excuse me -- are you there with me?

16 A. Yes, sir.

17 Q. In previous testimony what you said was that  
18 John Boy and Anna Mae got out of the car, then you  
19 did.

20 Do you remember that?

21 A. Yes, sir.

22 Q. That's what you testified today?

23 A. Yes, sir.

24 Q. Is that what you told Mr. Ecoffey in 1995?

25 A. Yes, sir.

1           Q. Did you tell Mr. Ecoffey that you walked  
2 towards those two?

3           A. Yes, sir.

4           Q. You implicated yourself in the murder, then,  
5 didn't you?

6           A. Yes, sir.

7           Q. What two people were present at Troy Lynn's  
8 before you got there?

9           A. John Boy and Anna Mae.

10          Q. Was Theda there, too?

11          A. Yes, sir.

12          Q. Had you been called to come over to drive or  
13 anything like that?

14          A. No, sir.

15                **MR. OSWALD:** The Kamook/Troy Lynn transcript  
16 page 108, sir.

17          Q. **(BY MR. OSWALD)** Mr. Looking Cloud, showing  
18 you the transcript from Kamook, Troy Lynn, and you,  
19 okay.

20                    Do you see that question by Kamook?

21          A. Yes.

22          Q. So what did she say to you while you were  
23 there?

24                    Does that refresh your memory?

25          A. Yes.

1 Q. What did she say to you?

2 A. Theda --

3 Q. Pardon me?

4 A. Theda told me to go with him.

5 Q. And what did you say?

6 A. I just went with him.

7 Q. To Theda, you said -- you just went with  
8 Theda?

9 Is that what you are talking about?

10 A. No.

11 I need the question again.

12 Q. If you would look at this from here to here.

13 Take a second to read that, Arlo.

14 Have you looked at that document?

15 A. Yes, sir.

16 Q. Does that refresh your memory as to the  
17 conversation?

18 A. Yes, sir.

19 Q. Did Kamook say to you, then, so, whenever  
20 Arlo, whenever John Boy shot her, did she just fall  
21 right off of that cliff or did you -- or did she just  
22 fall on the ground, and there was a pause.

23 Do you remember that?

24 A. Yes, sir.

25 Q. Then Kamook, do you remember her saying to

1 you, I mean you didn't in my mind give her the,  
2 unintelligible, faith and let it go and go away from  
3 it.

4 Do you remember that?

5 **A.** Yes, sir.

6 **Q.** Later in that same colloquy, do you remember  
7 Kamook saying --

8 **MR. MURPHY:** Your Honor, I am going to  
9 object. This isn't a prior consistent statement.

10 **THE COURT:** Sustained.

11 **MR. OSWALD:** Page 109.

12 **Q. (BY MR. OSWALD)** Do you remember Mr. Murphy  
13 talked to you about the prayer issue?

14 **A.** Yes, sir.

15 **Q.** Did Kamook ask you, did she say anything to  
16 him? I mean, cuz I know her so well.

17 And do you know what you responded?

18 Can I show that to you?

19 **A.** Yes, sir.

20 Yes, sir.

21 **Q.** And what did you say?

22 **A.** She prayed.

23 **Q.** Kamook asked you, did she actually kneel down  
24 or did she just stand there and start praying?

25 **A.** She was standing.

1 Q. That's what you said, isn't it?

2 A. Yes, sir.

3 Q. Your exact words were what?

4 A. She stood.

5 Q. Did Mr. Jackley or Mr. Mandel cook up this  
6 story to have you tell?

7 A. No, sir.

8 Q. Did Abe Alonzo or Robert Ecoffey tell you  
9 have to say something and cook this story up?

10 A. No, sir.

11 Q. Did I?

12 A. No, sir.

13 Q. You held back, it's true, about Dick  
14 Marshall, didn't you?

15 A. Yes, sir.

16 Q. Were you aware that Dick Marshall and Cleo,  
17 though, came in and corroborated what you said?

18 **MR. MURPHY:** Objection.

19 **THE COURT:** Sustained.

20 Q. **(BY MR. OSWALD)** Are you aware that Dick  
21 Marshall and Cleo admitted that you were there?

22 A. Yes.

23 Q. Answer this, just yes or no, Arlo, would you  
24 please?

25 A. Yes.

1           **Q.** Is there a reason why you did not want to  
2 talk about Dick Marshall?

3           **A.** Yes, sir.

4           **MR. OSWALD:** Your Honor, can we approach?

5           **THE COURT:** Yes.

6           (Whereupon, a discussion was held at the  
7 bench.)

8           **MR. OSWALD:** Your Honor, my next question is,  
9 why, and I anticipate he's going to say because he  
10 knew Dick Marshall committed a killing and that he had  
11 family on the reservation and he was scared. And I  
12 believe the door was opened on this line of inquiry.  
13 He was challenged as to whether -- as to motive, as to  
14 fabrication, and we think it's just fair for the state  
15 to come back and let the jury know and complete this  
16 story about what really happened and why he did this.

17           **MR. MURPHY:** Your Honor, we've previously  
18 discussed the unattenuated nature of that whole  
19 inquiry. Dick Marshall was convicted of shooting a  
20 man in a bar in scenic. Wasn't present. The issue is  
21 that Mr. Looking Cloud in his past testimony has not  
22 been willing to confront or confine his testimony to  
23 what was asked but to go on rants about Russell Means  
24 and Dick Marshall being an enforcer and a bag man and  
25 all sorts of other speculative and inflammatory

1 materials. I should say even instructed by the  
2 federal court to limit his responses he was unwilling  
3 to confine his answers.

4 **THE COURT:** I don't think we're going there.  
5 That's the answer. We're not going there.

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

8 **Q. (BY MR. OSWALD)** Arlo, do you remember when  
9 you testified that you folks went to Rosebud to Kills  
10 Means' house?

11 **A.** Yes, sir.

12 **Q.** Did you tell Robert Ecoffey in 1995 either on  
13 that bluff or around that time period, that the four  
14 of you went to Rosebud with Anna Mae in that car?

15 **A.** Yes, sir.

16 **Q.** Did you tell Abe Alonzo and Robert Ecoffey  
17 that you went to Rosebud with Anna Mae in that car?

18 **A.** Yes, sir.

19 **Q.** Has your story every changed about that?

20 **A.** No, sir.

21 **Q.** Did you tell the Grand Jury in 2008 that you  
22 went to Rosebud with Anna Mae, John Graham, and Theda  
23 Clarke?

24 **A.** Yes, sir.

25 **Q.** Now, Mr. Murphy talked to you about Thelma

1 Rios getting probation on her conviction.

2 Do you remember that?

3 A. Yes, sir.

4 Q. And do you know what Thelma Rios plead guilty  
5 to, sir?

6 A. No, sir.

7 Q. Did she plead guilty to things surrounding  
8 this incident?

9 MR. MURPHY: Your Honor, lack of personal  
10 knowledge.

11 THE COURT: Sustained.

12 Q. (BY MR. OSWALD) Do you know if she plead  
13 guilty to incidents surrounding this incident?

14 A. Yes, sir.

15 Q. Mr. Looking Cloud, I am not sure if you are  
16 familiar with this, but according to the 1975 federal  
17 law, are you eligible for parole in ten years?

18 MR. MURPHY: Your Honor, objection. Calls  
19 for speculation and legal conclusions.

20 (Whereupon, a discussion was held at the  
21 bench.)

22 THE COURT: You know, my biggest objection to  
23 that is that it's a very leading question when you  
24 simply could have asked him if he was eligible for  
25 parole or if he was eligible in ten years. We have

1 now loaded the gun. And it frankly suggests an answer  
2 even though it's prefaced with, I don't know if you  
3 know this, but under the law were you eligible. I  
4 don't like the form of the question. I don't have a  
5 problem with the answer to the question. But I have  
6 no way of knowing at this point whether it's an  
7 independent knowledge.

8 **MR. OSWALD:** Can I ask him if he's been  
9 informed by his lawyer when he's eligible for parole?

10 **THE COURT:** That's going to be hearsay.

11 **MR. OSWALD:** Yeah. But he -- but it's his  
12 knowledge of when he's eligible.

13 **THE COURT:** I have no idea whether he's  
14 eligible for parole or not. His answer is not going  
15 to help me.

16 **MR. MURPHY:** There is a dispute about that  
17 because the last comments by counsel when this matter  
18 came up was that he wasn't eligible for 15 years. He  
19 believes that he's eligible in ten years, but that's  
20 been a subject of dispute. I think from day one as to  
21 what the old parole rules are under the federal  
22 system. And I don't think anybody has got a gotten a  
23 definitive answer, or not.

24 **MR. MANDEL:** Not to push my way into this,  
25 but I worked under the parole rules when I started --

1           **THE COURT:** Let's --

2           **MR. MANDEL:** -- clearly, he would be eligible  
3 for parole in ten years. Whether he would obtain  
4 parole is another story.

5           **THE COURT:** Now we're asking him to draw  
6 legal conclusions and what he knows. I don't see  
7 we're going anywhere with it that's helpful in the way  
8 the question was asked. I know what the answer is.  
9 What I just don't know is whether it has a grain of  
10 truth in it or not that he knows or even if it's  
11 correct. And you telling me that it's correct is not  
12 all that helpful either.

13           **MR. OSWALD:** Mr. Murphy went into at great  
14 length his legal conclusions about what immunity  
15 agreement -- what that suggested -- what all that  
16 suggested and he had to speculate as to his legal  
17 conclusions there. And I thought that if he wants to  
18 talk about his knowledge of legal conclusions --

19           **THE COURT:** Well, I am sorry. Mr. Murphy had  
20 a letter.

21           **MR. MURPHY:** I didn't go into speculation.

22           **THE COURT:** I don't know where that went and  
23 I don't recall that. But I don't think this line of  
24 question has -- you know I don't know if it's -- okay.

25           (Whereupon, the discussion at the bench was

1 then concluded.)

2 **THE COURT:** The objection is sustained.

3 **Q. (BY MR. OSWALD)** Arlo, I am going to show you  
4 what's just been marked as State's Exhibit 50.

5 Remember, Mr. Murphy showed you that letter?

6 **A.** Yes, sir.

7 **Q.** And he referred to a couple of paragraphs in  
8 this letter, didn't he?

9 **A.** Yes, sir.

10 **Q.** Is this a true and accurate copy, the two  
11 pages of that letter that Mr. Murphy showed you?

12 **A.** Yes, sir.

13 **Q.** Have you seen this letter yourself before  
14 Mr. Murphy even showed it to you?

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

16 **MR. OSWALD:** I would offer Exhibit 50, Judge.

17 **MR. MURPHY:** No objection.

18 **THE COURT:** Received.

19 **Q. (BY MR. OSWALD)** Arlo, do you -- do you read  
20 well out loud?

21 **A.** No, sir.

22 **MR. OSWALD:** May I show it, Judge?

23 **THE COURT:** Yes.

24 **Q. (BY MR. OSWALD)** Mr. Looking Cloud, do you see  
25 paragraph one of that letter to your attorney,

1 Mr. Schlimgin?

2 A. Yes, sir.

3 Q. I'm talking right there.

4 A. Yes, sir.

5 Q. Do you see paragraph 2, sir?

6 A. Yes, sir.

7 Q. Do you see paragraph 3, sir?

8 A. Yes, sir.

9 Q. Can you read that from there, Arlo?

10 A. No, sir.

11 **THE COURT:** If he needs to see it you can  
12 either hand it to him or he can move to a place where  
13 he can read it.

14 Q. **(BY MR. OSWALD)** Arlo, there has been quite a  
15 bit of talk about your criminal history.

16 Do you recall those questions you and  
17 Mr. Murphy had?

18 A. Yes, sir.

19 Q. Now, he talked about some convictions of  
20 false statements.

21 Do you understand those?

22 A. Yes, sir.

23 Q. Can you explain what the circumstances were  
24 on some of those?

25 A. I was afraid that people would know where I

1 reside, where I live, where I'm at.

2 Q. So is that -- did that come from an  
3 interaction with a police officer?

4 A. It came from all over.

5 Q. You didn't want people to know where you  
6 lived is that what the false statement was?

7 A. Yes, sir.

8 MR. MURPHY: Your Honor, I am going to assume  
9 this opens the door now to every prior conviction of  
10 Mr. Looking Cloud's and the facts and circumstances?

11 MR. OSWALD: I thought it was open anyway,  
12 Judge.

13 THE COURT: Okay.

14 Q. (BY MR. OSWALD) When did you first learn  
15 English, Arlo?

16 A. In 08 -- I mean in -- when I was eight years  
17 old.

18 Q. You hadn't spoken English before that?

19 A. Yes, sir. I never spoke English.

20 Q. Did you have a job, sir?

21 A. Yes, sir.

22 Q. Where have you worked in the past?

23 MR. MURPHY: Objection. Relevance.

24 THE COURT: Overruled at this point.

25 Q. (BY MR. OSWALD) Go ahead, sir.

1           **A.**    I worked with J Images, Era Mark, Graphics.

2           **Q.**    Do you -- do you have a special talent or  
3 gift?

4           **A.**    Yes, sir.

5           **Q.**    What is that?

6           **A.**    I draw. I paint. I sculpture.

7           **Q.**    Are you comfortable talking about sex in  
8 front of women?

9           **A.**    No, sir.

10          **Q.**    Did you ever mention sex to Troy Lynn or  
11 Kamook between John Graham and Anna Mae?

12          **A.**    No, sir.

13          **Q.**    Mr. Looking Cloud, I'm going to show you  
14 what's been marked as State's Exhibit 51.

15                   Do you see that?

16          **A.**    Yes, sir.

17          **Q.**    Did you interview with Mr. Alonzo and  
18 Mr. Ecoffey in March of 2003 like we've talked about?

19          **A.**    Yes, sir.

20          **Q.**    Did you know you were videotaped?

21          **A.**    Yes, sir.

22          **Q.**    And have you in your case scene that video  
23 before?

24          **A.**    Yes, sir.

25          **Q.**    And are the statements in that video the same

1 as you and I talked about regarding who you claim and  
2 say shot Anna Mae and things like that?

3 **A.** Yes, sir.

4 **MR. OSWALD:** I would offer Exhibit 51.

5 **MR. MURPHY:** Object, Your Honor.

6 If we might approach?

7 **THE COURT:** Yeah. Why not.

8 (Whereupon, a discussion was held at the  
9 bench.)

10 **MR. MURPHY:** They are trying to admit a 45  
11 minute or an hour long interview to rebut what we  
12 don't know what because he talks about a hundred  
13 topics in that interview. You allowed them to get  
14 into prior consistent statements on specific issues I  
15 brought up. We are so far afield --

16 **THE COURT:** Are we going to put all of the  
17 other statements into evidence?

18 **MR. MURPHY:** No. None of them have been  
19 admitted into evidence.

20 **MR. OSWALD:** It has been challenged that he  
21 is a liar and he's making all of this up. And those  
22 are consistent statements and a consistent interview  
23 and it shows --

24 **THE COURT:** And you have asked him about the  
25 consistent statements. You have gone on freely about

1 that without objection, but pursuant to my ruling.  
2 And it comes as no prize to you that he was -- his  
3 credibility was attacked for inconsistent statements.  
4 I assume. From past history. Nobody raises this  
5 issue on the video tape before the trial that I am  
6 aware of. And so now I sit here with reversible error  
7 question number 37 arising during the course of the  
8 trial. And I frankly don't think it's admissible.

9 But that's a flip of the coin gut reaction  
10 from me. I have no -- but it seems to me unless we  
11 let in all the other statements, they are all as  
12 admissible as that is and it doesn't address specific  
13 questions and answers. It does in part but it  
14 requires the jury to sort out what's been addressed  
15 and what hasn't been addressed and you are capable of  
16 doing that as you have been doing quite nicely  
17 throughout your rebuttal exam and I don't think it's  
18 appropriate to do that at this point.

19 **MR. OSWALD:** Thank you.

20 (Whereupon, the discussion at the bench was  
21 then concluded.)

22 **MR. OSWALD:** Your Honor, may I have a minute  
23 to look at my notes, please?

24 **THE COURT:** Certainty.

25 **THE BAILIFF:** Mr. Looking Cloud needs a

1 restroom break before too long. He said he can wait a  
2 few minutes.

3 **THE COURT:** We're going to take the break  
4 early. You can look at that as a for necessity,  
5 folks. We will take a break for about 15 minutes.

6 Ladies and gentlemen, you are again reminded  
7 you are not to talk amongst yourselves or anybody else  
8 about the case or form any opinions on it until it  
9 comes to you for trial.

10 Thank you.

11 (Off the record.)

12 **THE COURT:** Satisfied, Mr. Jackley?

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

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

15 **THE COURT:** Thank you.

16 You may proceed.

17 **Q. (BY MR. OSWALD)** Arlo, your testimony is that  
18 after Anna Mae was murdered and left in that ravine,  
19 three of you went back to Denver.

20 Do you remember that?

21 **A.** Yes, sir.

22 **Q.** Did the three of you arrive back to Denver in  
23 that same car?

24 **A.** Yes, sir.

25 **Q.** Were the three of you always together after

1 Anna Mae was shot until Denver?

2 A. Yes, sir.

3 Q. Did you tell Robert Ecoffey in 1995 that same  
4 thing?

5 A. Yes, sir.

6 MR. OSWALD: No further questions, Your  
7 Honor.

8 THE COURT: Mr. Murphy?

9 RE-CROSS-EXAMINATION

10 BY MR. MURPHY:

11 Q. Mr. Looking Cloud, I want to start with the  
12 immunity agreement you were shown and was admitted  
13 into evidence, Exhibit 50, which was the immunity  
14 agreement in 2008.

15 Do you recall that?

16 A. Yes, sir.

17 Q. And that immunity agreement as was projected  
18 up onto the wall there said that you had to give  
19 truthful information in order to get the deal, right?

20 A. Yes.

21 Q. I am going to show you what's been previously  
22 marked Exhibit 128.

23 This is the 1994 immunity agreement, is it  
24 not?

25 A. Yes, sir.

1           **Q.**    This is the one that you signed, correct?

2           **A.**    Yes, sir.

3           **Q.**    And like the 2008 one, this one states that  
4 you have to provide truthful and complete summary of  
5 the facts, correct?

6           **A.**    Yes, sir.

7           **Q.**    And I want you to read that paragraph because  
8 I want to make sure that you have no questions about  
9 what your obligations were under that immunity  
10 agreement.

11          **A.**    Okay.

12          **Q.**    Are you done reading that paragraph, sir?

13          **A.**    Yes.

14          **Q.**    And no question in your mind, you were  
15 required to be truthful and complete in 1994, right?

16          **A.**    Yes, sir.

17               **MR. MURPHY:** Move to admit Exhibit 128.

18               **MR. OSWALD:** No objection.

19               **THE COURT:** Received.

20          **Q.**    **(BY MR. MURPHY)** And yet, in 1994, and in the  
21 years afterwards, all those other statements, you gave  
22 20 different versions of events, didn't you?

23          **A.**    Yes, sir.

24          **Q.**    And even though you were told to get immunity  
25 you had to be truthful, you weren't truthful in 1994,

1 were you?

2 A. Yes, sir.

3 Q. Well, you left out all sorts of details that  
4 now you say you remember, right?

5 A. Yes, sir.

6 Q. And all sorts of things about Dick Marshall  
7 and the gun and the fence and the sex and all those  
8 things weren't part of that were they?

9 A. Yes, sir.

10 Q. They were not that's correct, right?

11 A. Yes.

12 Q. All right.

13 But yet within a matter of weeks after making  
14 that deal, the felony charge of assaulting a police  
15 officer was dismissed, correct?

16 A. Yes.

17 Q. That's how the deal worked?

18 A. Yes.

19 Q. You go in and you talk and you give them  
20 truthful information and as long as it says what they  
21 want it to say, charges go away?

22 A. Yes.

23 Q. Because they had the power to do that, right?

24 A. Yes.

25 Q. Now, Mr. Oswald talked to you about a number

1 of things you supposedly said on prior occasions that  
2 were consistent with your testimony today. And one of  
3 the things he asked you was, do you remember telling  
4 Mr. Ecoffey and Mr. Ianuchi or Mr. Alonzo up on that  
5 bluff that you went to Rosebud?

6 Do you remember that question?

7 **A.** Yes.

8 **Q.** And you answered yes, right?

9 **A.** Yes.

10 **Q.** Because you knew that was the answer he  
11 wanted, right?

12 **A.** Yes.

13 **Q.** In fact, and I want you to take all the time  
14 you need, this is the investigative report prepared by  
15 Mr. Ecoffey when you folks traveled from Rapid City,  
16 South Dakota, to the Pine Ridge Indian Reservation.  
17 That the trip when you were up on the bluffs.

18 **A.** Yes.

19 **Q.** I want you to show me anywhere in that  
20 summary there is any indication that you ever told any  
21 of them that you ever went to Rosebud.

22 Are my stickies in your way?

23 **A.** No.

24 **Q.** You have had time now to read that?

25 **A.** Yes.

1 Q. You don't mention Rosebud, do you?

2 A. No, sir.

3 Q. And you don't mention sex, do you?

4 A. No, sir.

5 Q. You just in other words bounced from  
6 statement to statement by Mr. Oswald and he told you  
7 on a prior occasion you were consistent with your  
8 testimony today and you just agreed with him, right?

9 A. The truth, yes, sir.

10 Q. Well, as we talked about several times now  
11 the truth seems to bounce around over the last 15  
12 years, hasn't it?

13 A. Yes, sir.

14 Q. Yeah.

15 And when we're trying to find how that truth  
16 bounces around, we go back to what you said on prior  
17 occasions, right?

18 A. Yes, sir.

19 Q. And just moments ago, you were asked a bunch  
20 of questions under oath about what you had said on  
21 prior occasions. And in fairness to you, you don't  
22 remember what you said on prior occasions, do you?

23 A. No, sir.

24 Q. Yeah.

25 You didn't even know really what you were

1 saying at the time you were saying it, did you?

2 A. I don't know the question, sir.

3 Q. Well, let's talk about, he also directed your  
4 attention to the statement that you gave with Troy  
5 Lynn and Mack.

6 Do you recall that?

7 A. Yes, sir.

8 Q. And have you ever had an opportunity to go  
9 back through and read the 257 pages of the transcript?

10 A. No, sir.

11 Q. Would it be a fair recollection of events  
12 that during this interview Troy Lynn Yellow Wood and  
13 Kamook, then Banks, now Ecoffey, did a lot more  
14 talking than you did, didn't they?

15 A. Yes.

16 Q. They told you all sorts of things that they  
17 had heard about your case, didn't they?

18 A. Yes, sir.

19 Q. And I just grabbed during the break a couple  
20 pages. Start at page 119. CW, that is Kamook, and  
21 Troy Lynn is Yellow Wood.

22 Do you see any input by you on that page at  
23 all?

24 A. No, sir.

25 Q. And again, on the next page, Troy Lynn and

1 Kamook talking all about the facts of the case,  
2 correct?

3 A. Yes, sir.

4 Q. Things that they have read if newspapers and  
5 whatnot?

6 A. Yes, sir.

7 Q. And they are telling you about -- going to  
8 the next page -- still a whole another page where you  
9 don't say a word, do you?

10 A. Yes, sir.

11 Q. I mean, your name is not anywhere here?

12 A. Yes, sir.

13 Q. And Troy Lynn is talking paragraph after  
14 paragraph about what John Trudell said about  
15 Mr. Graham, correct?

16 A. Yes, sir.

17 Q. And other information. Okay. We're now,  
18 what, four pages in? You still don't have a single  
19 word on that page, do you?

20 A. No, sir.

21 Q. Troy Lynn Yellow Wood is just continuing on  
22 narrating to you all about the facts that she believes  
23 are true, doesn't she?

24 A. Yes, sir.

25 Q. And then we finally get to the fifth page and

1 you finally come in with something that they say is  
2 unintelligible, like, a grunt or something, right?

3 A. Uh-huh.

4 Q. Yeah.

5 And then a laugh, right?

6 A. Yes.

7 Q. And then an uh-huh, right?

8 A. Uh-huh.

9 Q. So those are your only contributions. We're  
10 going into the sixth page of narrative and again  
11 Ms. Yellow wood just talks and talks and talks about  
12 the facts of the case?

13 So you see all that information Mrs. Yellow  
14 Wood is giving?

15 A. Yes.

16 Q. And your name doesn't appear as speaking at  
17 all?

18 A. No, sir.

19 Q. And we go to the next page where Ms.  
20 Yellow Wood and Ms. Ecoffey are doing all the talking,  
21 right?

22 A. Yes.

23 Q. And almost ten pages in now you still don't  
24 have anything to say, do you?

25 A. No, sir.

1 Q. All right.

2 That's kind of how this interview went,  
3 didn't it?

4 A. Yes, sir.

5 Q. They just talked and talked and talked, told  
6 you what they had heard, what they believed, what  
7 somebody might have told them, and occasionally you  
8 are asked whether you agree or disagree, right?

9 A. Yes, sir.

10 Q. Sort of like what just happened with  
11 Mr. Ecoffey -- I mean Mr. Oswald when he asked you  
12 about the bluffs and whether you had mentioned  
13 Rosebud, right?

14 You just agree?

15 A. They were the truth.

16 Q. You believed it was the truth when Ms. Yellow  
17 Wood and Ms. Ecoffey were telling you what they heard  
18 in the newspapers and the internet about the case?

19 A. Yes, sir.

20 Q. All right.

21 Now, you were asked about some of the details  
22 that the state alleges you have kept consistent, that  
23 you got -- that my client got Anna Mae out of the car  
24 and that he shoot her.

25 Do you remember that?

1           **A.**    Yes, sir.

2           **Q.**    That you went with him?

3           **A.**    Yes, sir.

4           **Q.**    Well, you haven't even been consistent on  
5 those facts and those are the big easy ones. I mean  
6 over the years, you told Denise Maloney in 2002 that  
7 it was Theda and John that took Anna Mae out, didn't  
8 you?

9           **A.**    Yes, sir.

10          **Q.**    And what you did on those big details, is you  
11 always made sure that you were pointing the finger at  
12 somebody else whether it was Theda or whether it was  
13 John, right?

14          **A.**    It was the truth.

15          **Q.**    Well, that's -- I understand what today's  
16 version of the truth is but in every statement on  
17 those big details, you always made sure that the  
18 attention was pointed somewhere else, didn't you?

19          **A.**    Yes.

20          **Q.**    And even then, when you are trying to ever  
21 point the finger at somebody else, you had trouble  
22 with some of those big details as to who got out of  
23 the car, who did the shooting, those things, right?

24          **A.**    No, sir.

25          **Q.**    Well, you did tell Denise Maloney in 2004

1 that it was Theda and John that got out and did it,  
2 right?

3 **A.** I don't recall, sir.

4 **Q.** Okay.

5 The problem with retelling your story over  
6 the years is when people have tried to corroborate  
7 particular facts about it and you have gone through  
8 the process of being questioned a number of times,  
9 haven't you?

10 **A.** Yes, sir.

11 **Q.** And there over and over again when you get  
12 off script, when you get off those two details that  
13 Mr. Oswald talked about, that's where you can't keep  
14 things straight, right?

15 **A.** Yes, sir.

16 **Q.** I mean, if you had lived and experienced this  
17 the way you claimed to have, you could remember the  
18 details when you retold it over time, couldn't you?

19 **A.** No, sir.

20 **Q.** You couldn't?

21 Because you heard so many different stories  
22 from other people about what happened?

23 **A.** No, sir.

24 **Q.** You have been affected by the fact that you  
25 have read testimony by other witnesses, true?

1           **A.**    Yes, sir.

2           **Q.**    And you have been told what the newspapers  
3 and the internets say about the case, right?

4           **A.**    Yes, sir.

5           **Q.**    And you have been told what Kamook's theory  
6 is and what Troy Lynn's theory is and what other  
7 people's theories about the case are haven't you?

8           **A.**    Yes.

9           **Q.**    So significant details like whether my client  
10 had sex or was playing cards with Anna that hasn't  
11 been able to be kept straight over the years, has it?

12          **A.**    Yes, sir.

13          **Q.**    I mean, the first time you ever mentioned  
14 that to anybody is in 2008 once my client is charged  
15 here in state court, right?

16          **A.**    I don't recall.

17          **Q.**    Well, we went through that before, with Troy  
18 Lynn and Kamook. They asked you that question  
19 directly and you said no. And you have been  
20 interviewed in 2003, 1994, and 1995, and you gave  
21 Grand Jury testimony of your own in 2004 and you never  
22 mentioned anything about sex.

23                    Do you recall that?

24          **A.**    Okay.

25          **Q.**    Now, today Mr. Oswald suggested, well, you

1 might not have felt comfortable talking about sex in  
2 front of Troy Lynn and Kamook, right?

3 **A.** Yes.

4 **Q.** You have given dozens of interviews with  
5 Mr. Ecoffey, a male, Mr. Alonzo, a male, Mr. Ianuchi,  
6 a male, Mr. Pourier, a male.

7 Never mentioned to them before 2008, did you?

8 **A.** Yes, sir.

9 **Q.** That's true, you never mentioned it to them?

10 **A.** Yes, sir.

11 **Q.** You weren't bashful about that in front of  
12 these guys, were you?

13 **A.** Yes, sir.

14 **Q.** Well, I mean you are not a bashful kind of  
15 guy. We talked about how many public urinations you  
16 have and public indecency convictions?

17 **A.** Yes.

18 **Q.** Same thing with the fence and how far the  
19 road was, whether you went to Dick Marshall's, whether  
20 you saw a gun in the drawer of the night stand,  
21 whether Anna Mae was tied up, she wasn't tied up,  
22 whether you shot bullets in the air or in the ground;  
23 what you were doing during these six hours.

24 Those are all pretty significant details that  
25 you haven't been able to keep straight from one -- one

1 story telling session to the next, have you?

2 **A.** Yes, sir.

3 **Q.** Okay.

4 Mr. Oswald went into your criminal record.

5 Yesterday I asked you about whether you had a felony  
6 out of Florida for aggravated assault and you claimed  
7 that you didn't have that conviction?

8 **A.** No conviction, sir.

9 **Q.** I want to bring you to your sworn testimony  
10 in 2010.

11 Did you do some time in Florida, too? Your  
12 answer, yes, I did?

13 **A.** Yes.

14 **Q.** How long were you in prison in Florida? Six  
15 months.

16 **A.** Yes.

17 It was no prison though. It was county jail.

18 **Q.** Wasn't that an aggravated assault charge?  
19 Yes.

20 **A.** Yes.

21 **Q.** Possession of a firearm?

22 **A.** Yes.

23 **Q.** Yes.

24 **A.** Yes, sir.

25 **Q.** Those are felony charges?

1           **A.**    Yes, sir.

2           **Q.**    I asked you yesterday if you had been  
3 convicted of that charge and you said no?

4           **A.**    I was never convicted.

5           **Q.**    How do you do six months in prison if you are  
6 not convicted?

7           **A.**    I was waiting for trial -- waiting for the  
8 trial, the Court.

9           **Q.**    That's not what you said just six months ago?

10          **A.**    I was in jail yes, sir.

11          **Q.**    There is a big difference between jail and  
12 prison. Prison is after you get convicted and jail --

13          **A.**    Right.

14          **Q.**    You said back then you were in prison, right?

15          **A.**    My bad.

16          **Q.**    Your bad.

17                Now today, going through your rap sheet, you  
18 said those 12 convictions for giving false statements  
19 or making false reports, it's because you didn't want  
20 the police to know where you lived, right?

21          **A.**    That was included every one.

22          **Q.**    Sometimes during those false reports you just  
23 made up stories to the police and they charged you  
24 with it, didn't they?

25          **A.**    Yes, sir.

1 Q. And that's why they charged you are making a  
2 false report, right?

3 A. Yes, sir.

4 Q. And you had conviction after conviction of  
5 those over the years, right?

6 A. Yes, sir.

7 Q. And they started actually even before 1975,  
8 didn't they?

9 A. Yes, sir.

10 Q. One of the reasons why you didn't want them  
11 to know where you lived because you had fugitive  
12 warrants out for you and failures to appear for court  
13 hearings, didn't you?

14 A. Yes, sir.

15 Q. You gave them about 20 different aliases over  
16 the years?

17 A. Yes, sir.

18 Q. And, essentially, from the late 60s through  
19 2000, 2003, I guess, you just got convicted about  
20 every couple months for one crime or another, didn't  
21 you?

22 A. Yes, sir.

23 Q. And some of those crimes involved lying, some  
24 of them were felonies, were they not?

25 Right?

1           **A.**    I don't know about the felonies.

2           **Q.**    Well, here is a list of felony convictions.

3           That's the robbery of a business with a knife.

4                    Do you recall that?

5           **A.**    Yes.  That was in 80, I think.

6           **Q.**    That was in 1987.

7           **A.**    Right.

8           **Q.**    And just a few days later you got an  
9           aggravated robbery charge in a different county.

10          **A.**    That's the same one.

11          **Q.**    This is Aurora County and that is one  
12          Arapahoe County?

13          **A.**    Yes.  That's the same charge.

14          **Q.**    They charged you in two different counties  
15          with --

16          **A.**    No.  It's the same one.

17          **Q.**    Menacing.  That was a felony.

18          **A.**    That's the same one.

19          **Q.**    That's seven months later, sir.

20          **A.**    Exactly.  They reduced the charge.

21          **Q.**    First degree felony trespassing 1988?

22          **A.**    Yes.

23          **Q.**    Got convicted of that?

24          **A.**    Yes, sir.

25          **Q.**    All right.

1 False reporting.

2 You had given them a lot of different  
3 addresses over time. You said you didn't want them to  
4 know where you were living, but they had dozens of  
5 addresses over the years, didn't they?

6 A. Yes.

7 Q. So they knew where you lived?

8 A. Yes.

9 Q. So your false reporting convictions and  
10 making false statement convictions are more about you  
11 lying to the police about different things than about  
12 not wanting them to know where you lived, right?

13 A. Yes.

14 MR. MURPHY: Nothing further.

15 Thanks, Your Honor.

16 THE COURT: Mr. Oswald?

17 MR. OSWALD: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. OSWALD:

20 Q. Were you ever convicted in Florida?

21 A. No, sir. I was never convicted.

22 Q. Was it a plea bargain or what happened?

23 A. I bonded out, sir.

24 Q. Okay.

25 So you weren't sentenced to prison?

1           **A.**    No, sir.

2           **Q.**    When you said prison versus jail, is there  
3 one word in Lakota for that?

4           **A.**    Yes, sir.

5           **Q.**    Okay.

6                    Mr. Murphy talked to you about these ten  
7 pages of transcripts where Troy Lynn and Kamook went  
8 on and on and he started with page 119.

9                    Do you remember that just now?

10          **A.**    Yes, sir.

11          **Q.**    They weren't talking consistently about this  
12 case, were they?

13          **A.**    No, sir.

14          **Q.**    In fact, were they talking about friendships  
15 and Jerry Cooney and Angie Begay?

16          **A.**    Yes, sir.

17          **Q.**    And there was some talk about this case in  
18 there?

19          **A.**    Yes, sir.

20          **Q.**    But not ten pages worth?

21                    **MR. MURPHY:**  Leading the witness, Your Honor.

22          **A.**    Yes.

23                    **THE COURT:**  Sustained.

24          **Q.**    **(BY MR. OSWALD)** Arlo, Mr. Murphy asked you  
25 about the one question on recross about shooting in

1 the air or in the ground.

2 Do you remember that?

3 **A.** Yes, sir.

4 **MR. OSWALD:** Page 118, Counsel.

5 **Q.** (BY MR. OSWALD) Do you remember during that  
6 interview Kamook asking you when you seen him shoot  
7 her, did you say anything to him. And you said, I  
8 don't know him that well. And I'm thinking maybe  
9 he'll shoot me next.

10 Do you remember that?

11 **A.** Yes, sir.

12 **Q.** So did he -- excuse me. Did you get that gun  
13 from him and then shoot in the air?

14 **A.** Yes, sir.

15 **Q.** Did you empty the rounds?

16 **A.** Yes, sir.

17 **Q.** I am wondering, did it go through your mind  
18 or were you troubled that somebody might have heard  
19 the gunshots?

20 **MR. MURPHY:** Beyond the scope of recross.

21 **THE COURT:** It is.

22 Sustained.

23 **MR. OSWALD:** I have no further questions.

24 Thank you.

25 **MR. MURPHY:** Very briefly.

**RE-CROSS-EXAMINATION**

1  
2 **BY MR. MURPHY:**

3 Q. Sir, there may be a word in Lakota that  
4 covers prison and jail, right?

5 A. Yes.

6 Q. But over the last 40 years, you are someone  
7 what has been in the criminal justice system almost on  
8 a monthly basis, correct?

9 A. Yes.

10 Q. I mean, South Dakota, Florida, Colorado, you  
11 know the difference as well as anybody between prison  
12 and jail, don't you?

13 A. Yes, sir, I do.

14 **MR. MURPHY:** Nothing further.

15 **THE COURT:** Thank you, sir. You are excused.

16 We're on subpoena. Are we held on the  
17 subpoena?

18 **MR. OSWALD:** He's not completely released  
19 from his subpoena, but he's free to go back.

20 **THE COURT:** All right.

21 (Witness excused.)

22 **MR. JACKLEY:** The state calls Denise Maloney,  
23 Your Honor.

24 **THE COURT:** Please stop here, ma'am.

25 Please raise your right hand.

1 DENISE MALONEY,  
2 called as a witness herein, having been duly sworn,  
3 under oath testified as follows:

4 THE COURT: Please take a seat.

5 DIRECT EXAMINATION

6 BY MR. JACKLEY:

7 Q. Good morning.

8 A. Good morning.

9 Q. Ms. Maloney, please introduce yourself to the  
10 jury.

11 A. My name is Denise Pictou Maloney.

12 Q. Ms. Maloney, what is your profession?  
13 What do you do?

14 A. I'm a stay-at-home mom.

15 Q. Are you related to Anna Mae Aquash?

16 A. Yes. She was my mother.

17 Q. Do you have any -- do you have a sister?

18 A. I do.

19 Q. What is her name?

20 A. Her name is Debbie.

21 Q. Ms. Maloney, I want to ask you a yes or no  
22 question.

23 Have you ever had a conversation with Arlo  
24 Looking Cloud regarding the death of your mother?

25 A. Yes, I have.

1           **Q.** Do you recall when that conversation  
2 occurred?

3           **A.** Early April, 2002.

4           **Q.** How did that conversation come about?

5           **A.** I had gotten a call from Paul Denay, the  
6 editor of News from Indian Country, indicating that a  
7 man by the name of Richard Two Elk had called him and  
8 that Arlo Looking Cloud had been in contact with him  
9 and was asking to speak to us.

10          **Q.** Who is Richard Two Elk?

11          **A.** I was told that he's Arlo Looking Cloud's  
12 brother.

13          **Q.** Was the -- was a telephone conversation --  
14 did a telephone conversation ultimately occur?

15          **A.** Yes.

16          **Q.** Who was on the call?

17          **A.** Myself, Arlo Looking Cloud, and my sister  
18 Debbie.

19          **Q.** Was the call recorded?

20          **A.** No, it wasn't. We actually asked if we could  
21 record it and he said no. And we respected that.

22          **Q.** Please generally describe to the jury what  
23 you observed Mr. Arlo Looking Cloud's emotions to be  
24 during the phone call.

25          **A.** Well, he was pretty quiet when we first

1 started the conversation. I don't think any of us  
2 really knew what to say. His voice broke when we  
3 asked him if this was something that he wanted to do.  
4 He seemed -- we specifically asked him why he was  
5 doing this and he said that it was something that he  
6 had wanted to do for a long time and thought that we  
7 deserved to know what had happened to our mother.

8 Q. Did you talk to Mr. Looking Cloud about any  
9 of the details surrounding your mother's death?

10 A. We asked him -- we specifically told him that  
11 we hoped that he could speak to us from his heart and  
12 that we had considered the fact that he was speaking  
13 to us now to be important and that we wanted to know  
14 how my mother died, but it wasn't fess that he give is  
15 forcing all the details. That we needed to hear from  
16 somebody that was there when she died.

17 Q. Relate to the jury the best you can some of  
18 the details that were relayed during that  
19 conversation?

20 A. Well, he started out the conversation by  
21 saying that there was a phone call and that he was  
22 instructed with Theda and John Boy to take my mother  
23 from Troy Lynn Yellow Wood's house in Denver up to  
24 Rapid City. His voice broke and at that point I  
25 actually asked him if he had been drinking that day

1 because he was so emotional and he replied no.

2 And then he went on to say that the three of  
3 them had taken her from Troy Lynn Yellow Wood's house  
4 the first day to a house in Rapid City and the second  
5 day to a house in Rosebud.

6 Q. Did there come a point in the conversation  
7 that Arlo discussed with you the last few moments of  
8 your mother's life?

9 A. Yes. He had said that when they had stopped  
10 at the house in Rosebud that he was asked to stay at  
11 the car with my mother. For my sister and I it was  
12 important for us to know her demeanor and we asked if  
13 he had had a conversation with her, which he said he  
14 didn't.

15 And then he said he was really sorry. His  
16 voice broke again and he didn't know they were going  
17 to do this to her. That people had been discussing  
18 and talking about her being an informant and that  
19 Angie and Theda and John Boy --

20 MR. MURPHY: Objection. Calls for hearsay,  
21 Your Honor.

22 MR. JACKLEY: Prior consistent statements,  
23 Your Honor.

24 MR. MURPHY: I'd argue not on this issue.

25 THE COURT: It's hearsay within hearsay is

1 the problem I have with it. Her statement might be  
2 okay but I think it goes a step far.

3 Q. (BY MR. JACKLEY) Ms. Maloney, did there come  
4 a time where you and Mr. Looking Cloud discussed the  
5 vehicle pulling over that your mother was in?

6 A. Yes. He said that they had left the house in  
7 Rosebud, had gone to a location that he didn't  
8 designate specifically, and that he was told to stay  
9 at the car. And that John Boy and Theda and my mother  
10 went up over a hill. He heard a gunshot. And John  
11 Boy and Theda came back without my mother. And they  
12 got in the car and drove away.

13 Q. When he said that -- and maybe the question  
14 is maybe more appropriate -- during the conversation,  
15 did you ever feel that Mr. Looking Cloud was maybe  
16 holding anything back?

17 MR. MURPHY: Objection. Relevance.

18 THE COURT: Sustained. It's speculative as  
19 well.

20 Q. (BY MR. JACKLEY) Based upon the conversation  
21 that you had with Mr. Looking Cloud, did you gain an  
22 understanding of who was with your mother when she  
23 died?

24 A. Yes.

25 Q. Who would have those individuals have been?

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

2           **Q.**   And this was in April of 2002?

3           **A.**   That's correct.

4           **Q.**   And this would have been prior to any charges  
5 filed against Mr. Graham or Mr. Looking Cloud?

6           **A.**   That's correct, yes.

7           **Q.**   Ms. Maloney, what of the length of your  
8 conversation with Mr. Looking Cloud?

9           **A.**   It's hard to determine because time stood  
10 still for us so I would guess probably anywhere from  
11 20 to 30 minutes.

12          **Q.**   Ms. Maloney, how old were you at the time of  
13 your mother's death in December of 1975?

14          **A.**   In 75 I turned 11. It would have been just  
15 shortly before my 11<sup>th</sup> birthday.

16          **Q.**   When did you recall seeing your mother last  
17 alive?

18          **A.**   In the fall of that year before she was  
19 killed.

20          **Q.**   Do you remember about what month that was?

21          **A.**   I would say late fall, probably early  
22 September or -- early fall. Early September. I just  
23 know that the leaves were starting to turn. I was  
24 basing it on what produce was coming out of the  
25 backyard in the garden.

1           **Q.**   What do you recall from the last time that  
2 you saw your mother?

3           **A.**   There were lots of conversations amongst the  
4 adults.  It was very secretive.  She came in in the  
5 middle of the night and left in the middle of the  
6 night.  There were conversations that we overheard as  
7 children that we didn't necessarily think were  
8 serious.  But that there were -- there were requests  
9 for her not to leave.  Indications that --

10           **MR. MURPHY:**  Objection.  Calling for hearsay.

11           **THE COURT:**  Sustained.

12           **Q.**   **(BY MR. JACKLEY)**  Ms. Maloney, I want to take  
13 you to Christmastime, 1975.

14                   Did you receive a phone call from your mother  
15 during that time frame?

16           **A.**   No.

17           **Q.**   Did you perceive that as unusual?

18           **A.**   Yes.

19           **Q.**   Why?

20           **A.**   Because she had promised to call in the fall.

21           **Q.**   When did you first learn that your mother had  
22 been found?

23           **A.**   Probably April that following year after she  
24 disappeared.

25           **Q.**   How did you find that out?

1           **A.**   My dad had sat us down. We were actually --  
2   sorry March or April. We were actually making plans  
3   for Easter to go down to see some relatives in the  
4   United States. And he sat down and said that he had  
5   some bad news. That they had found a body. And that  
6   they weren't quite sure at that time what the identity  
7   of that body was. He didn't tell us specifically that  
8   at that point that he knew who it was. And then he  
9   said that they were pretty sure that it was my mother.  
10   And that she had died fighting for her people.

11           **Q.**   This December 11 will mark 35 years or  
12   approximately 35 years since the death of your mother?

13           **MR. MURPHY:** Objection. Facts not in  
14   evidence.

15           **THE COURT:** Folks, come up, please.

16           (Whereupon, a discussion was held at the  
17   bench.)

18           **THE COURT:** Where are we going?

19           **MR. JACKLEY:** I have one last line of  
20   questioning. That questioning is simply, other than  
21   Arlo Looking Cloud, has anybody from AIM been in  
22   contact with her or the family. The reason for that  
23   is based upon Mr. Murphy's cross-examination  
24   previously.

25           **THE COURT:** I don't mind the question, but

1 let's get to it.

2 **MR. JACKLEY:** Can I just say 35 years.

3 **MR. MURPHY:** I want to first renew my motion  
4 in limine. This line of questioning over the 35 years  
5 and all this stuff is purely an attempt to elicit  
6 emotional response. It doesn't go to anything  
7 probative. Whether she's been contacted --

8 **THE COURT:** Essentially, I agree with that.  
9 When she last talked to her mother, near as I can  
10 tell, is not relevant to anything or what her mother  
11 said at that time is not relevant to anything. You  
12 may ask her since her death who talked to you. And  
13 you know have -- anybody spoken to you.

14 **MR. JACKLEY:** From AIM? Can I ask from AIM?

15 **MR. MURPHY:** First off, lack of personal  
16 knowledge as to who was in AIM and who was not. The  
17 general relevance issue. What she's --

18 **THE COURT:** Yeah. How do you establish what  
19 she knew? I think you have to do that to ask the  
20 question. And where are we going? I still don't know  
21 where we're going with it. What we're trying to  
22 prove.

23 **MR. MURPHY:** What he's trying to prove is  
24 that nobody from AIM had any remorse because nobody  
25 from AIM called her. That's completely irrelevant to

1 any issue as to whether my client is guilty or not.

2 **MR. JACKLEY:** Your Honor, I specifically  
3 recall Mr. Murphy going into Bruce Ellison and his  
4 desire to get the order to exhume. If it didn't have  
5 any relevance why was he going into it and why was I  
6 allowed to go into it.

7 **MR. MURPHY:** Well, that was on March 8 of  
8 1976. It was not -- that was at the time the FBI was  
9 investigating this case. And two different bodies  
10 were both claiming responsibility. It goes to the  
11 boggled nature of the investigation which was what I  
12 was drawing out of Agent Wood. They missed a bullet.  
13 They planted the body far too quickly. They are both  
14 rushing to get the exhumation. That has nothing to do  
15 with the emotional -- does AIM care. I mean AIM as we  
16 know over the last 35 years, nobody would even be able  
17 to define what AIM is.

18 **MR. JACKLEY:** May I ask her the question over  
19 the last --

20 **THE COURT:** You can ask her if anybody else  
21 has talked to her about this event if you can  
22 establish that she knows who was in AIM, and who  
23 wasn't. I don't think she can be asked the  
24 question -- you can ask her if anybody called her.  
25 Then make whatever argument you want to make over the

1 response.

2 **MR. JACKLEY:** Can I ask her if anybody that  
3 identified themselves from AIM ever contacted her? Is  
4 that a fair question?

5 **THE COURT:** First of all, you asked her if  
6 anybody talked to her -- anybody called her about the  
7 case and what's the answer to that going to be?

8 **MR. JACKLEY:** Other than probably prosecutors  
9 and victims witness people, I think the answer is  
10 going to be no, none other than that.

11 **MR. MURPHY:** Then I think it ends there.

12 **THE COURT:** Well, then do you know for sure  
13 what the answer is going to be? You ever asked her  
14 that at all before?

15 **MR. JACKLEY:** I know what the answer is as to  
16 whether or not anyone identifying themself as being  
17 from AIM ever contacted her. No other than Arlo  
18 Looking Cloud.

19 **THE COURT:** Well, I think your question is,  
20 again, as I said, if you want to phrase it as has  
21 anybody other than investigators or victims talked to  
22 you about this before or given -- called you since  
23 your mother died.

24 **MR. JACKLEY:** Okay.

25 **THE COURT:** That's it.

1           (Whereupon, the discussion at the bench was  
2 then concluded.)

3           **Q.**   **(BY MR. JACKLEY)** Ms. Maloney, over the last  
4 35 years has anybody other than Arlo Looking Cloud or  
5 investigators contacted you regarding the death of  
6 your mother?

7           **A.**   Arlo Looking Cloud was the only person that I  
8 know of that was there when my mother died that  
9 contacted us.

10           **MR. JACKLEY:** No further questions, Your  
11 Honor.

12           **THE COURT:** Thank you.

13           Mr. Murphy?

14           **MR. MURPHY:** Thank you.

15                           **CROSS-EXAMINATION**

16           **BY MR. MURPHY:**

17           **Q.**   Ms. Maloney, my name is John Murphy. I am  
18 going to ask you some questions.

19                   You indicated the last time you saw your  
20 mother in person was in September of 1975?

21           **A.**   That's correct.

22           **Q.**   Okay.

23                   Do you recall was that before or after the  
24 arrest at Al Runnings' place?

25           **A.**   What date was that?

1 Q. That was September 5.

2 A. I don't recall, no.

3 Q. Okay.

4 In any regard your mother came down to the  
5 states some time in 72 or 73, is that your best  
6 recollection of events?

7 A. We were living in the states. I was with  
8 her -- I was born in Massachusetts.

9 Q. Okay.

10 In Boston?

11 A. That's correct.

12 Q. But when she came out to Wounded Knee in 73,  
13 you --

14 A. We were living in Boston.

15 Q. You were living in Boston?

16 A. Yes.

17 Q. But when she moved out to Wounded Knee in 73,  
18 you didn't come with her at that point?

19 A. No.

20 Q. Okay.

21 So let me -- when did you go back to Canada,  
22 then, do you know?

23 A. I believe it was the summer of 74.

24 Q. Back to Nova Scotia?

25 A. That's correct, with our father.

1           **Q.**    Between 74 and September of 75, how many  
2 times did your mom come up to Canada?

3           **A.**    I believe there was one other time that we  
4 got to see her.

5           **Q.**    Okay.

6                    That she --

7           **A.**    Yes, it was shortly after we had come back to  
8 Nova Scotia.

9           **Q.**    Okay.

10                   So between 74 and June -- September of 75 at  
11 least twice she made her way up to Canada?

12           **A.**    Yes.

13           **Q.**    Okay. All right.

14                   I want to talk to you about just Arlo's  
15 story.

16                   And you didn't try to call him; he tried  
17 calling you, correct?

18           **A.**    That's correct.

19           **Q.**    And he knew at the time you spoke with him  
20 that you were Anna Mae's daughters, right?

21           **A.**    That's what we told him on the phone, yes.

22           **Q.**    Sure.

23                   And even before you got him on the phone, it  
24 was your understanding that this had been coordinated  
25 through a couple other people, Mr. Denay and

1 Mr. Two Elk?

2 A. That's correct.

3 Q. From that you gathered he knew who he was  
4 going to talk to, right?

5 A. Yes.

6 Q. And really, what you wanted from him was some  
7 honest communication, right?

8 A. That's correct. Yes.

9 Q. An incredibly heart-felt moment? An  
10 emotional moment?

11 A. Of course.

12 Q. And yet he told you at that occasion that  
13 Theda and John Boy were the people responsible for  
14 shooting your mom, right?

15 A. That's correct, why he.

16 Q. In fact, he claimed in that conversation or  
17 during that conversation that he stayed in the car and  
18 Theda and John Boy took your mother out over a hill  
19 and he heard a gunshot?

20 A. Well, he didn't say he stayed in the car. He  
21 was at the car. He was instructed to stay at the car.

22 Q. He said he was told to stay with the car?

23 A. With the car. He didn't say he was inside  
24 the car.

25 Q. In any regard, he was clearly trying to

1 distance himself from whatever happened over that  
2 hill?

3 **A.** I don't know what he was trying to do.  
4 That's what he told me.

5 **Q.** He told you he didn't see the shooting  
6 happen, right?

7 **A.** That's correct, yes.

8 **Q.** That he heard a gunshot, right?

9 **A.** Yes.

10 **Q.** And that it was John and Theda who did it?

11 **A.** Yes. That they went up over the hill.

12 **Q.** At that point, that was in 2003, you know  
13 that he had been investigated already in this case for  
14 eight years at least by that time?

15 **A.** I didn't know how long he had been  
16 investigated. But, yes, I had heard his name.

17 **Q.** And you heard that as you've been in the  
18 courtroom that from 1994 on he was working immunity  
19 agreements?

20 **A.** I wasn't in the courtroom, no. I had never  
21 been in the courtroom until 2004.

22 **Q.** I am talking today and yesterday?

23 **A.** Yes. Yes. That's correct.

24 **Q.** And then so you heard that he has been  
25 working immunity agreements eight years prior to your

1 conversation with him?

2       **A.** I heard that, yes.

3       **MR. MURPHY:** Nothing further.

4       Thank you.

5                               **REDIRECT EXAMINATION**

6 **BY MR. JACKLEY:**

7       **Q.** Ms. Maloney, the discussion that you had with  
8 Arlo Looking Cloud, in 2002, did Arlo implicate  
9 himself?

10       **MR. MURPHY:** Objection. Calls for a  
11 conclusion.

12       **THE COURT:** Sustained. We have what the  
13 conversation was.

14       **Q. (BY MR. JACKLEY)** Did you testify about the  
15 conversation you had with Arlo at Arlo Looking Cloud's  
16 jury trial?

17       **A.** Yes, I did.

18       **Q.** I want to go back one year, Christmastime, so  
19 we're talking Christmastime of 1974.

20               Do you recall whether or not you talked to  
21 your mother during that time frame, Christmastime of  
22 1974?

23       **A.** I did not speak to her.

24       **Q.** Okay.

25               In 74 or 75?

1           **A.**    Sorry.  In 74 we would have spoken to her --  
2 no.  Seventy-four we didn't.

3           **Q.**    Maybe my question wasn't very good.

4                     She came to see you in September of 1975.  Do  
5 you recall that?

6           **A.**    Yes.  Yes.

7           **Q.**    And then she left and you didn't see her  
8 again; is that right?

9           **A.**    That's correct, yes.

10          **Q.**    So in the Christmas of 1975, did you talk to  
11 her?

12          **A.**    No.

13          **Q.**    Okay.

14                     Now I want to go one year back earlier,  
15 Christmas of 1974.

16                     Do you generally recall that time frame?

17          **A.**    Yes.  Yes.

18          **Q.**    Do you recall either being with your mother  
19 or talking to your mother at Christmastime, 1974?

20          **A.**    On Christmastime, 74, I don't think we saw  
21 her then but there would have been some communication.

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

23                     **MR. MURPHY:**  One very briefly, if I may, Your  
24 Honor.

25

**RE-CROSS-EXAMINATION**

1  
2 **BY MR. MURPHY:**

3 Q. Mr. Jackley asked you about your testimony at  
4 Arlo Looking Cloud's trial?

5 A. Yes.

6 Q. You testified at that point that when Arlo  
7 called you in 2002, he told you that he was the one  
8 who had received the phone call and was instructed to  
9 go with Theda and John to Denver, right?

10 A. That is -- there was a phone call, yes.

11 Q. May I approach and show you --

12 A. Yeah -- yes, that's correct.

13 Q. That he had told you that he had gotten a  
14 phone call, right?

15 A. Yes. Yeah.

16 **MR. MURPHY:** Nothing further.

17 Thank you.

18 **MR. JACKLEY:** Nothing further, Your Honor.

19 **THE COURT:** Thank you. Thank you, ma'am.

20 You may be excused.

21 (Witness excused.)

22 **MR. OSWALD:** The state calls Robert Ecoffey.

23 **THE COURT:** Please come forward, sir.

24 ROBERT ECOFFEY,

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

1 under oath testified as follows:

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

3                           **DIRECT EXAMINATION**

4 **BY MR. OSWALD:**

5           **Q.** Would you tell us who you are, sir?

6           **A.** My name is Robert D. Ecoffey.

7           **Q.** And currently what is your employment?

8           **A.** I am the superintendent with the Bureau of  
9 Indian affairs, Pine Ridge, South Dakota.

10          **Q.** Were you in law enforcement in the past?

11          **A.** Yes, I was.

12          **Q.** Can you explain some of your background in  
13 law enforcement, sir?

14          **A.** I have 35 years of service with the federal  
15 government. Of the 35 years, 25 years of that was  
16 with law enforcement.

17                   I have a college degree in criminal justice.  
18 I am a graduate of the FBI National Academy. I have  
19 had hundreds of hours of formal investigative training  
20 both in homicide investigations, forensics,  
21 firearms -- certified firearms structure. I am a  
22 certified hostage negotiator.

23          **Q.** Did you get involved in the Anna Mae Aquash  
24 investigation?

25          **A.** Yes, I did.

1 Q. And how did that come about, sir?

2 A. I was originally approached, I think  
3 probably, back in the mid 80s by the FBI asking if I  
4 could assist them with the investigation. At the time  
5 I was a criminal investigator with the Bureau of  
6 Indian Affairs stationed in Fort Totten, North Dakota.

7 Q. Are you an enrolled member of Pine Ridge  
8 tribe?

9 A. Yes, I am. A member of the Oglala Sioux  
10 Tribe.

11 Q. Bob, is it all right if I call you Bob?

12 A. Yes.

13 Q. Bob, did you work in law enforcement in 1975  
14 at the time of this incident?

15 A. In 1975, I started with my law enforcement  
16 career. I was going to college at Chadron State  
17 College and I started my internship in law  
18 enforcement.

19 So during the summer of 75, I was assigned to  
20 the criminal investigative division on the Pine Ridge  
21 Reservation. And at that point in time I began my law  
22 enforcement career.

23 Q. Okay.

24 So you weren't actually a police officer that  
25 went to the scene or anything in 1975?

1           **A.** Oh, no. I was actually -- because of my  
2 schooling and my interest in law enforcement I was  
3 assigned as an investigator. I was actually started  
4 involvement in direct investigations of homicide cases  
5 during the summer of 75.

6           **Q.** Now, are you generally familiar with the  
7 Rapid City area and -- regarding this investigation?

8           **A.** Yes, I am.

9           **Q.** Okay.

10                   It may seem a little out of place but I got  
11 to do it before I forget.

12                   Did you happen to take Arlo Looking Cloud and  
13 at a separate occasion Thelma Rios around the area?

14           **A.** Yes, I did.

15           **Q.** And did you take them to where?

16           **A.** As far as Arlo Looking Cloud --

17           **Q.** Just in the Rapid City area.

18           **A.** In the Rapid City area, Arlo Looking Cloud  
19 took us to the Norwood Apartments (sic) and then  
20 showed us a residence that -- where Thelma Rios had  
21 been living and told us that that's where --

22           **Q.** It's okay.

23                   That will get into hearsay, Bob.

24                   Do you know what WKLDOC stands for?

25           **A.** Yes.

1 Q. And did they take you there at all?

2 A. Yes.

3 Q. Okay.

4 Now, here is my basic question, are those all  
5 in Pennington County?

6 A. Yes, they are.

7 Q. All right.

8 Now, do you know John Graham?

9 A. Yes, I do.

10 Q. Do you see him here in the courtroom today?

11 A. Yes, I do.

12 Q. Point him out for the jury, please.

13 A. He's sitting right here next to be his  
14 attorney. Glasses.

15 Q. And what color shirt?

16 A. Kind of a grayish color.

17 MR. OSWALD: May the record reflect this  
18 identification, Your Honor?

19 THE COURT: Yes.

20 A. I would like to maybe go back a little bit as  
21 far as my law enforcement expertise. I guess I left  
22 something out.

23 Q. (BY MR. OSWALD) Okay.

24 Is it about your training and experience?

25 A. Yes, it is.

1           **Q.**    Go ahead, then.

2           **A.**    In 1994 I became the United States Marshal  
3 for the Federal District of South Dakota. I was  
4 appointed by President Clinton in 94. I was the first  
5 Indian marshal in a 200-year history of a Marshal  
6 Service.

7                         And then after leaving the position of the  
8 Marshal Service, I went on to become the director of  
9 law enforcement services for the Bureau of Indian  
10 Affairs in Washington DC so I was the direct of all  
11 law enforcement throughout Indian country throughout  
12 the United States.

13           **Q.**    Were you a marshal and had you been appointed  
14 by President Clinton on April 20 of 1994?

15           **A.**    Yes, I was.

16           **Q.**    And were you actually sworn in at that time?

17           **A.**    Yes. It was actually in March of 1994.

18           **Q.**    Did you happen to go to Canada April 20,  
19 1994?

20           **A.**    Yes. On April 20, 1994 myself and Special  
21 Agent Mitch Pourier, who was a criminal investigator  
22 with the Bureau of Indian Affairs -- we left Rapid  
23 City here and went to white house in the Yukon  
24 Territory.

25           **Q.**    What -- why -- why did you make that trip,

1 sir?

2       **A.** The purpose of the trip was to try to attempt  
3 to contact Mr. Graham and to interview him pertaining  
4 o to some information that had come up concerning the  
5 murder of Anna Mae Aquash.

6       **Q.** Then did you arrive in the Yukon Territory  
7 April 20?

8       **A.** Yes, we did.

9       **Q.** How did you get there?

10       **A.** We flew into -- we flew actually from here  
11 went to Seattle, on to Vancouver, and then from  
12 Vancouver up to Whitehorse. We arrived in Whitehorse  
13 approximately 3:30 p.m. on April 20.

14       **Q.** What did you do?

15       **A.** At the airport a Constable with the Royal  
16 Canadian Police, RC Miller, met us at the airport. He  
17 picked us up. He then took us to a motel that we were  
18 staying at the Gold Rush Motel located in Whitehorse.

19       **Q.** Then what happened?

20       **A.** At that time, then, Constable Miller gave us  
21 a tour of the Whitehorse community. We first went up  
22 by a residence located in Whitehorse. At that time  
23 Constable Miller said that this residence -- he  
24 identified it as the residence belonging to John  
25 Graham and that John Graham had lived there. We drove

1 by there. He just showed us the place and then we  
2 returned back to the motel.

3 Q. Was there anyone else with you folks or that  
4 had met you there?

5 A. No. It was just us three at that time.

6 Q. Then what happened, sir?

7 A. It was getting late in the day so at that  
8 time we decided not to attempt to contact Mr. Graham.  
9 That we decided to wait till the following day, the  
10 21<sup>st</sup> of April. Special Agent Jim Graf with the FBI  
11 was scheduled to fly in at 3:30 in the afternoon to  
12 assist us with the investigation.

13 Q. Then did you spend the night in the motel in  
14 Whitehorse?

15 A. Yes, we did. We spent the night at the  
16 motel. The next afternoon, was approximately  
17 12:15 p.m., we decided that we were going to attempt  
18 to contact Mr. Graham to see if we could set up an  
19 interview.

20 Q. Okay.

21 So did you know where to go when you tried to  
22 contact him?

23 A. Yes, we did.

24 Q. Where did you go?

25 A. Constable Miller -- actually went with him,

1 he drove the car, and he took us to the residence that  
2 he described the before as the residence that belonged  
3 to Mr. Graham.

4 Q. Did you find Mr. Graham at that residence?

5 A. No, we didn't.

6 Q. Were you directed elsewhere then?

7 A. Yes. Myself and Special Agent Pourier went  
8 to the door. Constable Miller stayed in the vehicle.  
9 I knocked on the door. At that point in time a young  
10 child said come in. So I said is John Graham here.  
11 And he said no. He said he's working on the roof of  
12 the West Mark Motel downtown. And said that he would  
13 be back about 6:30 p.m.

14 At that point in time another child that was  
15 in the back room, he said, no, he'll be back about  
16 4:30 p.m. So I said okay, thank you. And then we  
17 left.

18 Q. Then where did you go?

19 A. After -- after that it had to be about  
20 12:30 p.m. He went directly down to the West Mark  
21 Motel to see if we could observe Mr. Graham working on  
22 the roof of the motel. We went down there. Both  
23 myself and Investigator Pourier got out. We walked  
24 around the back of the motel, the side of the  
25 building. We looked up and at that point in time we

1 could see Mr. Graham working on the roof.

2 Q. What happened then?

3 A. We decided at that point in time we wasn't  
4 going to attempt to interview him. We wanted to wait  
5 until Special Agent Graf arrived. He wasn't due to  
6 arrive until 3:30 in the afternoon. We went to the  
7 airport at 3:30 and we picked him up.

8 Q. And did you go back to the roof?

9 A. Yes.

10 At that point in time we decided that myself  
11 and Special Agent Pourier would be the ones that would  
12 approach Mr. Graham.

13 Q. Why is that, sir?

14 A. Since from the case, that in prior history  
15 that he refused to cooperate with the FBI --

16 MR. MURPHY: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained. Stricken.

18 You are not to consider that remark at all in  
19 your deliberations.

20 Q. (BY MR. OSWALD) Bob, did you talk to John  
21 Graham, then, at the job site?

22 A. Oh, yes, we did.

23 Q. Explain how that happened.

24 A. It was right about 4:30 p.m. both me and  
25 Mr. Pourier we were -- we got off -- we walked into

1 the back of the motel. There was a large ladder  
2 running up the back of the building. Going up to the  
3 roof. We were just standing on the corner of the  
4 building waiting for Mr. Graham to get off of work.

5 It was right about 4:30 p.m. that Mr. Graham  
6 climbed down the ladder and as soon as he got to the  
7 ground, and started walking, both myself and criminal  
8 investigator Pourier approached him.

9 Q. And what did you do?

10 A. I walked up to January. I reached out. I  
11 shook his hand, and I said, John, my name is Bob  
12 Ecoffey. This is Mitch Pourier and we're law  
13 enforcement officers from South Dakota. And we would  
14 like to talk to you about some new information  
15 concerning the investigation and death of Anna Mae  
16 Aquash. And then I told John, I said, I want to let  
17 you know that I have no legal authority; that we're  
18 not going to arrest you. That I have no legal  
19 authority to arrest you here in Canada.

20 Q. What did you observe then?

21 A. At that point John looked at me and he said,  
22 well, how do you know about me? How did you find out  
23 about me?

24 Q. Did you tell him then?

25 A. Yes.

1 Q. What did you say?

2 A. I said --

3 MR. MURPHY: I am going to object. Calls for  
4 a hearsay source, Your Honor.

5 THE COURT: Overruled.

6 A. I said that information had come about  
7 that --

8 Q. (BY MR. OSWALD) Don't tell me what the  
9 information was, just from who.

10 A. I basically told John that an elderly  
11 gentlemen by the name of Al Gates came forward with  
12 information --

13 MR. MURPHY: Objection, Your Honor. This is  
14 the hearsay.

15 MR. OSWALD: That's all. That's fine.

16 Q. (BY MR. OSWALD) You told him that?

17 A. Yes.

18 Q. What was his response when you said that?

19 A. Well, I also told him some more.

20 Q. Okay.

21 Was it about the Al Gates' information, you  
22 mean?

23 A. I told him that Al Gates --

24 MR. MURPHY: Objection.

25 THE COURT: Hold on.

1           You are going to answer the question that's  
2 asked or we're going to go sideways pretty fast.

3           **THE WITNESS:** Okay.

4           **Q. (BY MR. OSWALD)** Did you tell him some things  
5 other than Al Gates' information?

6           **A.** Yes.

7           **Q.** Okay.

8           What else did you tell him?

9           **A.** I told him that information had been  
10 received --

11           **MR. MURPHY:** Objection, your Honor. This is  
12 outside information. It's hearsay.

13           **MR. OSWALD:** Can I do it in generalities,  
14 Your Honor?

15           **THE COURT:** It's offered for the truth  
16 asserted.

17           Ladies and gentlemen, this -- to be hearsay,  
18 it has to be offered to prove the contents of the  
19 statement -- as evidence of the truth of the content  
20 of the statement. You may not consider what  
21 Mr. Ecoffey was told as being true or accurate or  
22 anything else. It's simply to explain what  
23 Mr. Ecoffey's base of knowledge that he was acting  
24 upon. It is not evidence that that knowledge is  
25 accurate or true. It simply explains his behavior and

1 you may not consider it as evidence to any other  
2 affect than that.

3 **MR. OSWALD:** Thank you.

4 **Q. (BY MR. OSWALD)** Now, you heard the judge's  
5 explanation to the jury just now?

6 **A.** Yes.

7 **Q.** All right.

8 So just narrow and just following the judge's  
9 explanation, what did you tell Mr. Graham other than  
10 what Mr. Gates had said?

11 Mr. Gates isn't part of that.

12 Just tell him what else you said.

13 **A.** Well, I told him that information had come  
14 about a meeting that was held in Denver, Colorado.  
15 And that during this meeting there was discussion that  
16 went on involving Anna Mae Aquash. And that during  
17 the meeting it was -- there was members of the Chicano  
18 movement and that Corky Gonzalez and others were  
19 there. And that a statement was -- in the meeting --  
20 the purpose of the meeting --

21 **MR. MURPHY:** I am going to object. This  
22 goes --

23 **THE COURT:** We're getting narrative and I  
24 think we're stretching admissible evidence or  
25 statements quite a ways.

1           **MR. OSWALD:** Okay. All right.

2           We'll proceed.

3           **Q. (BY MR. OSWALD)** So after you told him this  
4 story about what you know of, what was his reaction?

5           **A.** He got real nervous. His lips started  
6 quivering. He had a cigarette in his hand and he  
7 started shaking this like and he was trying to smoke.  
8 And then I said, you don't have to say anything. We'd  
9 like to meet with you. We'd like for you to sit down  
10 with us and meet with us -- sit down and listen to  
11 what we have to say.

12           So at that point in time, he said -- he  
13 looked at me and said, yeah. He said, I will meet  
14 with you guys. He said, where are you saying. So I  
15 said, we're staying at the Gold Rush Motel. He said,  
16 well, I am -- I want to go home and clean up first.  
17 And he said I will meet you guys down there about  
18 7:30 p.m. And I said, okay. That's fine. And he got  
19 in the car and he left.

20           **MR. OSWALD:** All right, Judge, are we clear  
21 of the admonition regarding hearsay when I go into now  
22 Mr. Graham's statements to Mr. Ecoffey?

23           **THE COURT:** Unless something is objected to  
24 by Mr. Murphy that I sustain, yes.

25           **MR. OSWALD:** Okay. Very well.

1           **Q.**    **(BY MR. OSWALD)** So Mr. Ecoffey, did he meet  
2 you later?

3           **A.**    Yes, he did.

4           **Q.**    Explain the circumstances on how you set up  
5 that meeting.

6           **A.**    Well, at about 7:15 p.m. myself and Special  
7 Agent Pourier went down into the lobby of the motel to  
8 wait for Mr. Graham because he said he would be there  
9 at 7:30. We were just sitting in the lobby waiting  
10 for him. He didn't show up.

11                   And then approximately 8:00 o'clock a lady by  
12 the name of Viola Papiquash entered the lobby. She  
13 walked over to where we were sitting and she said that  
14 John said that he can't talk to you guys. That he  
15 will have to wait till tomorrow to talk to you.

16                   And I said, you know, we're scheduled to  
17 leave tomorrow. It's very important that we talk to  
18 him tonight. And I said, you know -- I said we  
19 traveled a couple thousand miles to get here. All we  
20 want him do is sit down and listen to what we have to  
21 say. And so she said, wait a minute, I will go give  
22 him a call and see what he says. So I said okay.

23                   So at that point in time she walked down the  
24 hallway and she made a telephone call from the  
25 hallway. A couple minutes later she came back to me

1 and she said, well, John wants to talk to you on the  
2 telephone. And so I said, okay. So I went over and  
3 picked up the telephone. And I said hello. This is  
4 Bob Ecoffey. And he said this is John Graham. He  
5 said, you know -- he said, I don't even really want to  
6 talk to you guys because he said I didn't have a  
7 chance to get ahold of my attorney.

8           So at that point in time I said, well, John,  
9 as I said, you have the right to remain silent and I  
10 said you don't have to say anything to us, I said, but  
11 we traveled, you know, a couple thousand miles and I  
12 said it would be good to at least have you sit down  
13 and listen to what we have to say.

14           **Q.** Okay. Very good.

15           So then eventually did he agree to come to  
16 the motel?

17           **A.** Well -- you know -- well, he said -- he  
18 said -- during the conversation he said, well, I hate  
19 to talk to you guys he said because an FBI agent had  
20 threatened him before. And so I said, well, John when  
21 we approach you this afternoon, did I approach you in  
22 a threatening manner? Did I threaten you in any way  
23 and he said no.

24           And I said, once again, I want to tell you  
25 that I have no legal authority to arrest you. I am

1 not here to o arrest you. I have no legal authority  
2 in Canada so he said okay. He said, I will come talk  
3 to you guys.

4 So then I told him, I said, well, come down  
5 to the motel. I said I got a room here with a coffee  
6 table. I said I got some coffee and I said we can sit  
7 down and visit. He said, no, I want to visit at a  
8 neutral location. And he said I will meet you guys at  
9 the Rotary Park in Whitehorse at 9:30 p.m.

10 Q. Is that close to the motel?

11 A. Yes. It's not far from the motel.

12 Q. Did you go to the park then?

13 A. Yes.

14 Q. So you are at the park.

15 What happened?

16 A. Well, Constable Miller took us over to the  
17 park. At that point in time myself, Special Agent  
18 Mitch Pourier and Constable Miller were standing by a  
19 picnic table in the center of the park. We saw a  
20 brown-colored station wagon go by and didn't see  
21 anybody at first. And a short time later an  
22 individual came walking up from the river bottom on  
23 the park and as he got closer I could identify him as  
24 John Boy -- or John Graham.

25 Q. Okay.

1           Did you talk to Mr. Graham, then, in the  
2 park?

3           **A.**   Yes, I did.

4           **Q.**   Before you got into any particular  
5 conversation, did you preface your remarks by any  
6 comments from you?

7           **A.**   Well, when he first came up to us, he --  
8 Constable Miller approached him and showed him his  
9 credentials and said, I am from the RCMP. And at that  
10 time I told Mr. Graham, I said, you know, John, I  
11 said, the RCMP has nothing to do with this case. I  
12 said Constable Miller is just here because we had to  
13 go through him in order to have an opportunity to talk  
14 to you. So that he will be standing in the area. So  
15 John said okay.

16                   At that point in time there was a picnic  
17 bench sitting there. So I asked Mr. Jam, I said we  
18 can sit down here on the picnic bench. So he set down  
19 on the bench and I sit next to him. At that point no  
20 is special poor Part Two Part Two sit down across from  
21 us on the picnic table.

22           **Q.**   Did you talk to him about whether he had to  
23 say anything to you or threaten him in any manner at  
24 that time?

25           **A.**   Yes. At that point in time I still reminded

1 him, I said, John, you know, you have the right to  
2 remain silent. You don't have to say anything to us.  
3 I just want you to sit down and give us an opportunity  
4 to give out some information that has been developed  
5 in Anna Mae Aquash murder case.

6 Q. Then what happened?

7 A. Then I told him -- I said, well, I would like  
8 to start from the beginning of the case. Just kind of  
9 give you from the beginning as I know it, John. And I  
10 started from the beginning of the case. I told him  
11 Anna Mae Aquash --

12 MR. MURPHY: Objection, Your Honor.

13 THE COURT: Point of the objection.

14 MR. MURPHY: The point of the objection is  
15 lack of personal knowledge as well as it's derived  
16 from multiple hearsay sources and it isn't relevant or  
17 necessary to get to the statement or the conversation  
18 between my client and Mr. Ecoffey.

19 THE COURT: Well, it's not necessary to get  
20 to the statement between Mr. Graham and Mr. Ecoffey, I  
21 agree.

22 I frankly don't have any idea whether it's  
23 necessary, but you do; and if it's not necessary,  
24 let's go to the statements. If it's necessary, I will  
25 hear it.

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

2           I am thinking.

3           **MR. MURPHY:** Your Honor, may we approach and  
4 I will show you an exhibit that will help.

5           **THE COURT:** Please.

6           (Whereupon, a discussion was held at the  
7 bench.)

8           **MR. MURPHY:** Your Honor, what I am going to  
9 show you is Graham document 953, which is the summary  
10 of what we're at. If you look here, we're about the  
11 middle of the page. And you are going to see that  
12 what he's going to start summarizing is about 12  
13 paragraphs of material where he relays basically  
14 everything that he learned about the investigation in  
15 the preceding decade or whatever it was. And he goes  
16 through point by point by point as --

17           **THE COURT:** Tell me why you need to go beyond  
18 the top paragraph of page 6.

19           **MR. MURPHY:** And that's -- on the exhibit  
20 that you just reviewed, paragraph after paragraph to  
21 which Mr. Ecoffey is testifying to, almost verbatim,  
22 starts out Ecoffey told -- and then he listed a litany  
23 of accusations and then the next paragraph, Ecoffey  
24 told and then he lists a litany of accusations and  
25 finally after all of that you get to the page that you

1 just referenced and then he starts talking about what  
2 my client actually said.

3           **MR. OSWALD:** Judge, if I may be heard, it's  
4 the context of everything that he's talking about and  
5 the bare statements are limited or have no meaning  
6 unless it's within that context. Plus, all -- I think  
7 all of this information -- the Court's ruling if it  
8 has already been approached and subject to  
9 cross-examination.

10           **THE COURT:** The difficulty is that it  
11 interposes, first of all, stuff that in large part is  
12 hearsay to Mr. Ecoffey.

13           Number two, is it gets confusing as to the  
14 scope of the questions asked of him. You start with  
15 the picture -- showed him the pictures of the scene.  
16 I don't know why you have to go into anything beyond  
17 that.

18           And then the following points on the  
19 questions asked will address most of the things that  
20 are going to go in the interim.

21           **MR. OSWALD:** But, he has to know what he --  
22 if the jury speculates what did Mr. Graham -- or  
23 Ecoffey tell him, and his response is -- it wasn't  
24 about making a birthday cake for crying out loud.  
25 We're talking about accusing --

1           **THE COURT:** You are showing him the  
2 photograph of Anna Mae at the scene. Nobody is going  
3 to confuse that with a cake.

4           **MR. OSWALD:** Yes. But the statements have to  
5 come in for the context of it. This is what they  
6 confronted this man with. They confronted with this  
7 information.

8           **THE COURT:** I don't know that the context is  
9 an exception to hearsay.

10          **MR. MURPHY:** Our position would be that when  
11 you get two pages of single spaced allegations that  
12 maybe he starts -- well he starts with the autopsy and  
13 then in Denver and then in Rapid City. Then he talks  
14 about the Crusade for Justice and he gets all the way  
15 up there, and then he finally says, okay --

16          **THE COURT:** You are not going to get very far  
17 before lunch.

18                        So what are we talking about?

19                        We have heard all of the stuff that's in his  
20 statement before.

21          **MR. OSWALD:** And it's been subject to  
22 cross-examination.

23          **THE COURT:** What are you showing me?

24          **MR. JACKLEY:** I don't want to interject  
25 myself unless I have permission.

1           **THE COURT:** Well, I mean you are. I mean who  
2 is showing me -- what am I trying to be shown?

3           **MR. JACKLEY:** Hearsay is one -- other than  
4 one made by the declarant. The declarant is here  
5 testifying about what he told John. He's here. He's  
6 subject to cross-examination.

7           **THE COURT:** I understand what hearsay is, I  
8 think. Probably better than most lawyers.

9           **MR. MURPHY:** This is actually double hearsay  
10 because this is all stuff that Mr. Ecoffey did not  
11 observe. But he's been told from sources unnamed, and  
12 then he regurgitates it to my client for pages. And  
13 then it all comes down to a picture and gets a  
14 response to the picture. All that stuff in between is  
15 just fluff.

16           But what they are trying to do is just to get  
17 it before the jury through this witness to  
18 independently establish those allegations as having  
19 been true. And so those are out-of-court statements  
20 that Mr. Ecoffey learned from another source that now  
21 are being admitted for the truth of the matter  
22 asserted. They are not just context for the question  
23 because there is two pages of them.

24           **MR. OSWALD:** This isn't an attempt to get in  
25 inadmissible hearsay. Besides all of this information

1 has already been subject to cross-examination. This  
2 is what he told him and his knowledge.

3 **THE COURT:** We never want hearsay in for the  
4 wrong purpose but we just want it in. I mean I  
5 understand that.

6 **MR. OSWALD:** The police officers constantly  
7 accuse somebody of the crime. And they bluff, they  
8 rouse, and it's --

9 **THE COURT:** They bluff and lie and they do  
10 all kinds of things.

11 **MR. OSWALD:** Yes. That's admissible. There  
12 is a witness here that saw this. There is a witness  
13 that saw that.

14 **THE COURT:** First of all, you can ask him if  
15 he has any personal knowledge of any of that  
16 information that he relates. You are going to ask him  
17 that. Then I will at least tell the jury.

18 **MR. OSWALD:** As a limiting instruction?

19 **THE COURT:** At that point if Mr. Murphy wants  
20 to examine him briefly on that extent of knowledge I  
21 will allow that and then I will probably allow them to  
22 go into that information about the understanding that  
23 I don't have a clue whether it's true or not.

24 **MR. MURPHY:** I would ask to voir dire the  
25 witness.

1           (Whereupon, the discussion at the bench was  
2 then concluded.)

3           **MR. OSWALD:** Do you want me to proceed?

4           **THE COURT:** You may.

5           **Q. (BY MR. OSWALD)** Mr. Ecoffey, you made some  
6 statements to Mr. Graham about the investigation?

7           **A.** Yes, I did.

8           **Q.** And was this -- these statements are based  
9 upon your review of the file and reports?

10          **A.** Review of the file, and actually interviews  
11 of different individuals.

12          **Q.** So you had some personal knowledge yourself?

13          **A.** Oh, yes.

14          **MR. MURPHY:** Your Honor, at this point may I  
15 voir dire the witness for the purpose of the  
16 objection?

17          **THE COURT:** You may.

18          **MR. MURPHY:** Of course, Mr. Ecoffey, you  
19 weren't present in Denver in 1975, December of 1975 or  
20 November of 1975, were you.

21          **THE WITNESS:** No, I wasn't.

22          **MR. OSWALD:** And you weren't present at the  
23 autopsy, were you?

24          **THE WITNESS:** No, I wasn't.

25          **MR. MURPHY:** And you weren't present at Troy

1 Lynn Yellow Wood's house in the fall of 75, were you?

2 **THE WITNESS:** No, I wasn't.

3 **MR. MURPHY:** Nor were you present at WKLD  
4 or Thelma Rios' house in 1975, were you?

5 **THE WITNESS:** No, I wasn't.

6 **MR. MURPHY:** When you talked about having  
7 personal knowledge, what you had personal knowledge of  
8 is what certain people that claim to have been at  
9 those places told you years later, correct?

10 **THE WITNESS:** That's correct.

11 **MR. MURPHY:** In some cases decades later,  
12 correct?

13 **THE WITNESS:** Correct.

14 **MR. MURPHY:** I would renew my objection, Your  
15 Honor, to this witness testifying as to any of these  
16 events for lack of personal knowledge, lack of  
17 foundation, and double hearsay.

18 **THE COURT:** I am going to overrule the  
19 objection with this cautionary instruction to the  
20 jury.

21 One, I think you have heard to date likely  
22 variations of the narrative that Mr. Ecoffey gave to  
23 Mr. Graham. The narrative and the purpose of the  
24 narrative is simply to set the parameters of the  
25 interview with Mr. Graham.

1           And once again, you are specifically  
2 prohibited from using any of the information given to  
3 Mr. Graham by Mr. Ecoffey as evidence in the trial.  
4 You may consider the responses specifically made to  
5 specific items by Mr. Graham as part of the normal  
6 ordinary testimony that comes into trial. The  
7 narrative of what Mr. Ecoffey has been told by other  
8 people is not evidence of the truth of anything he was  
9 told. You will have to make that decision from other  
10 testimony and evidence presented to you.

11           Do you understand that?

12           Anybody not understand it?

13           You may proceed, Mr. Oswald.

14           **Q. (BY MR. OSWALD)** What did you tell Mr. Graham,  
15 sir?

16           **A.** I told him that -- I said I would like to --  
17 again told him that I wasn't there to arrest him.  
18 That I would like to start from the beginning of the  
19 case as I knew it. And I told him that in February of  
20 1976 Anna Mae Aquash's body was found in the Badlands  
21 on the Pine Ridge Indian Reservation. That an  
22 investigation was conducted and that it was determined  
23 at first that she died of exposure. That at that  
24 point in time, the FBI or the BIA was unable to  
25 identify her. So that the FBI amputated her hands,

1 sent them in to get fingerprinted and determine her  
2 identity.

3 I told him that upon receiving the hand  
4 hands, the FBI was able to determine that the  
5 individual of Anna Mae Aquash. I then told him that  
6 after she was identified as Anna Mae Aquash, that a  
7 second autopsy was conducted. The body was exhumed.  
8 A second autopsy was conducted. And at the second  
9 autopsy, determined that she died from a gun shoot --  
10 gunshot in the back of the head.

11 Q. Okay.

12 And was Mitch Pourier and Mr. Graham and you  
13 still at this table?

14 A. Yes, we were.

15 Q. Did he do anything in response, then, to  
16 those comments?

17 A. I went on to tell him more information --

18 Q. Okay.

19 What information did you continue with  
20 telling him?

21 A. I then told him that the investigation had  
22 then moved on to Denver, Colorado. And that  
23 information was developed that during the late fall or  
24 early winter of 1975, that it was -- that information  
25 was that he was at the Troy Lynn Irving residence on

1 Pecos Street.

2 Q. Is that Troy Lynn Yellow Wood also?

3 A. Yes. Troy Lynn Yellow Wood.

4 Q. Okay. Go ahead.

5 A. He was in attendance of a meeting that was  
6 being held there at Troy Lynn's residence; that  
7 during the meeting there was several people there  
8 which included two leaders of the Chicano movement  
9 Corky Gonzalez and Ernesto Vigil and that there was  
10 some discussion going on with all of these people  
11 concerning whether or not Anna Mae Aquash was an  
12 informant.

13 Q. Okay.

14 A. And during this discussion --

15 MR. MURPHY: Your Honor, I am going to  
16 specifically object to the next portion of testimony  
17 as being highly prejudicial and not a fact or  
18 presented to this jury through any witness.

19 MR. OSWALD: I will proceed then.

20 THE COURT: Sustained.

21 MR. OSWALD: Thank you.

22 Q. (BY MR. OSWALD) Let's just get it straight.  
23 I don't want the information, but you had told him  
24 information that you had heard about this meeting?

25 A. That's correct.

1 Q. Okay.

2 Gets to -- skip that one portion and let's go  
3 to the part where you told him about the basement.

4 A. Okay.

5 Q. What did you tell him about the basement?

6 A. I said -- at this meeting then it was --

7 Q. Nope. You talked about --

8 A. That it was reported that he then -- that  
9 Anna Mae was tied up in the basement of Troy Lynn's  
10 house and it was reported that John Boy and others  
11 went down there, John Boy tied her up. And they  
12 removed her from the basement. They took her outside  
13 and they placed her in the back of a red station wagon  
14 that belonged to -- at that point in time it belonged  
15 I believe to Troy Lynn. That they put her in the back  
16 they tied her up -- as they tied her up. They tied  
17 her up and when they were placing her in the back of  
18 the station wagon, that Anna Mae was crying and that  
19 she said --

20 MR. MURPHY: I am going to object. This is  
21 also a fact not alleged in evidence and highly  
22 prejudicial.

23 THE COURT: I don't think we need do that.

24 MR. OSWALD: Okay.

25 Q. (BY MR. OSWALD) All right.

1           So you talked about the tying up.

2           Did you tell him what your information showed  
3 where she was taken from the basement?

4           **A.**    Yeah.  That they took her -- they put her in  
5 the car and they took her supposedly back to the Pine  
6 Ridge Indian Reservation.

7           **Q.**    Okay.

8           Then --

9           **MR. OSWALD:**  May I have a minute?

10          **THE COURT:**  Uh-huh.

11          **Q.**    **(BY MR. OSWALD)**  Bob, I'd like to show you a  
12 report that you made.

13                Do you recognize that?

14          **A.**    Yes, I do.

15          **Q.**    Okay.

16                If you would start from there your narrative,  
17 read that and that's where I am going to start with my  
18 next questions, okay.

19          **A.**    Okay.

20          **Q.**    Hold on now.

21                Okay.

22                Starting from that point, what did you tell  
23 him?

24          **A.**    I told Graham that a few days later that  
25 they -- that he and Theda returned from South Dakota

1 and that Anna Mae Aquash wasn't with them.

2 Q. What else did you tell him?

3 A. Then I told him that information was given  
4 that he was bragging around. He was saying that we  
5 had to move --

6 MR. MURPHY: Objection. Another fact not in  
7 evidence. Highly prejudicial.

8 THE COURT: Sustained.

9 Q. (BY MR. OSWALD) All right.

10 Based upon what you had told him, did John  
11 Graham respond to you?

12 A. Yes, he did.

13 Q. What did he do and what did he say?

14 A. He was sitting there at the picnic table next  
15 to me --

16 THE COURT: Let me interject a minute. I'm  
17 assuming this is the best place to break for lunch  
18 before we get into that.

19 MR. OSWALD: I think that's good.

20 THE COURT: I -- so let's do that. And we  
21 will be in recess for the noon hour till about 1:15.

22 Ladies and gentlemen, the same cautionary  
23 instructions about not talking amongst yourselves or  
24 with others or forming any opinions.

25 Thank you.

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

4           **MR. MURPHY:** We would ask for the  
5 sequestration of the witness.

6           **MR. OSWALD:** Judge, I was --

7           **THE COURT:** I don't want Mr. Murphy talking  
8 to his witnesses during breaks either. I think it  
9 gives a bad impression to the jury and everything else  
10 because it's subject to, didn't you talk to Mr. Oswald  
11 during the break and the hearing. Okay. I mean, I  
12 think it's got a smell to it that I don't want going  
13 to the jury.

14           **MR. OSWALD:** Well, I was just going to try  
15 and inform Mr. Ecoffey on what to eliminate so we  
16 don't get into another objection. I am getting  
17 objected to.

18           **THE COURT:** If you and Mr. Murphy agree to  
19 it, that's fine with me. If you are going to tell him  
20 what to stay out of, I assume that John needs to know  
21 that in order to --

22           **MR. OSWALD:** I will just make it easy --

23           **THE COURT:** I don't have any problem with  
24 that, but I think it needs to be mutual so that  
25 Mr. Murphy understands what you are doing.

1           **MR. OSWALD:** I just won't do it. I won't go  
2 there.

3           **THE COURT:** Yeah. I think it smells. Even  
4 if it is absolutely proper, it's going to raise a  
5 smell.

6           (Off the record.)

7           **THE COURT:** Satisfied this is the jury,  
8 Mr. Jackley?

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

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

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

12          **Q. (BY MR. OSWALD)** All right, Bob. I'd like to  
13 ask you these series of questions about the  
14 investigation. I know where we left off, but I want  
15 to back track a little bit.

16          **A.** Okay.

17          **Q.** When you became Marshal for the District of  
18 South Dakota, you kind of took this case on as an  
19 investigation on your part?

20          **A.** Yes, I did.

21          **Q.** Did you review the file about things that  
22 happened in the past?

23          **A.** Yes, I did.

24          **Q.** And about statements that people had made?

25          **A.** Yes, I did.

1           **Q.** Had you done any interviews yourself prior to  
2 going to the Yukon in 1994?

3           **A.** Yes, I did.

4           **Q.** Without saying what was said, tell me who did  
5 you interview?

6           **A.** George Palfy, Al Gates, Frank Dillon, Troy  
7 Lynn Irving, Angie Begay, Theda Clarke Nelson, John  
8 Graham, Arlo Looking Cloud.

9           **Q.** Before John Graham? This is the first  
10 interview, right?

11          **A.** Yes.

12          **Q.** Okay.

13                   So did you interview Arlo before this?

14          **A.** No.

15          **Q.** Okay.

16                   So you had all of that information at your  
17 disposal either mentally or through notes?

18          **A.** Yes, I did.

19          **Q.** Based upon that information that you had, did  
20 you relay to Mr. Graham your theory of the case?

21          **A.** Yes, I did.

22          **Q.** Okay.

23                   Now we're at that question where we left off  
24 at noon. After you had talked to him about some of  
25 that information, did he turn to you and say

1 something?

2 A. Yes, he did.

3 Q. And you are still on the park bench?

4 A. Yes, we are.

5 Q. Tell these folks what he said.

6 A. After I laid out the information or at least  
7 my understanding of what his involvement was in the  
8 kidnapping and murder of Anna Mae Aquash, he turned to  
9 me at the table and he said, well, he said, looks like  
10 you guys have my future planned out for me. You have  
11 your case.

12 Q. What did you ask him then?

13 A. I said, well, John, I want to give you this  
14 opportunity -- I want to give you an opportunity to  
15 fill in some details. I want you to give your side of  
16 the story.

17 Q. What did you do then?

18 A. I then said, well, not too long ago, I had  
19 obtained access of crime scene photographs of Anna Mae  
20 at the scene.

21 Q. So did you have those photos with you at the  
22 time?

23 A. Yes, I did.

24 Q. What did you do with them?

25 A. I reached down at the table and John was

1 sitting here. I reached down at the table. I had  
2 them in a folder. I started taking the photographs  
3 out. I laid them down in front of him. And it  
4 depicted her laying on the bottom of the draw in a  
5 curled up position and I told him -- I said -- he  
6 looked down at the photographs and as I laid them  
7 down, I said it was quite clear from the evidence --

8 **MR. MURPHY:** Objection, Your Honor. This is  
9 going to be a conclusion.

10 **THE COURT:** Is what -- yeah. First of all, I  
11 don't -- Mr. Ecoffey goes on after a question to  
12 address matters other than the question that was  
13 asked. And that leads us to trying to unring a bell  
14 if he gets into bad areas or if any witness does. And  
15 I just as soon avoid telling the jury not to consider  
16 something that they just heard. Okay.

17 Mr. Ecoffey, please answer the question  
18 that's asked and if Mr. Oswald wants to get you into  
19 other areas he will ask the questions.

20 **THE WITNESS:** Yes, sir, I understand.

21 **THE COURT:** Thank you.

22 **Q. (BY MR. OSWALD)** Now, as you laid out the  
23 photos, did you make any observations of Mr. Graham?

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

25 **Q.** What did you see?

1           **A.**   He glanced down at the photos real quick. He  
2 took a look and then he turned away, he looked up in  
3 the air, and he turned back. His eyes were all filled  
4 with tears as if he was going to cry.

5           **Q.**   Answer this yes or no. Did he or -- or did  
6 you tell him, then, any further things about your  
7 theory of the case?

8           **A.**   Yes, I did.

9           **Q.**   Okay.

10                    About your theory of the crime scene?

11           **A.**   Yes, I did.

12           **Q.**   After that, what did he say?

13           **A.**   He said, be Anna Mae was my friend. He said  
14 the only fear that she had was from FBI agent Dave  
15 Price.

16           **Q.**   And then did he say anything else?

17           **A.**   He said that's all I'm going to say.

18           **Q.**   Did you ask him something then?

19           **A.**   Yes, I did.

20           **Q.**   What did you ask him?

21           **A.**   I asked him -- let's see -- let me back up  
22 here.

23           **Q.**   Would it help to refresh your memory?

24           **A.**   Sure.

25           **MR. OSWALD:** Showing page six.

1           **Q.**    **(BY MR. OSWALD)** Does that help refresh your  
2 memory?

3           **A.**    Yes, it does.

4           **Q.**    And you made this report near the time during  
5 the interview?

6           **A.**    Yes.

7           **Q.**    Okay.

8                    What did you ask him?

9           **A.**    I turned to John and I said -- I said, did  
10 anybody ever threaten you. I said did anybody ever  
11 tell you that the same thing would happen to you that  
12 happened to Anna Mae if you talked.

13           **Q.**    What did he say?

14           **A.**    He said, no, nobody threatened me.

15           **Q.**    Did you hear Investigator Pourier ask him  
16 anything?

17           **A.**    Yes.

18           **Q.**    And Mr. Pourier is going to be a witness here  
19 next.

20                    What did Mr. Pourier ask him?

21           **A.**    Mr. Pourier said, well, John do you think  
22 that something would happen to you if you talked to  
23 us.

24           **Q.**    And what is said next?

25           **A.**    He said --

1 Q. Would it help to refresh your memory, sir?

2 A. Yes.

3 MR. OSWALD: Same page six.

4 A. It was after Investigator Pourier said, well  
5 would anybody -- if you talked to us, do you think  
6 that anybody would do anything to you. And he said --  
7 he kind of looked up and he looked into the horizon.  
8 You could see the Whitehorse community in the river  
9 going by. He said, well, I'm ready to leave this  
10 place anyway. He said, I will probably spend the rest  
11 of my life in jail.

12 Q. (BY MR. OSWALD) Did you hear, then,  
13 Investigator Pourier ask him another question?

14 A. He said --  
15 Can I look at the report again?

16 Q. Okay.  
17 Just yes or no.

18 A. No, I didn't.

19 Q. Okay.  
20 Would it help to refresh your memory?

21 A. Yes.

22 MR. MURPHY: Your Honor, that's improper  
23 refreshment. He said he didn't hear the next  
24 question.

25 THE COURT: If he didn't hear the next

1 question he shouldn't be looking at the report.

2 **A.** I misunderstood your question.

3 I did hear it.

4 **Q.** (BY MR. OSWALD) You did hear it?

5 **A.** Yes.

6 **Q.** Would it help to refresh your memory with the  
7 report?

8 **A.** Yes.

9 **MR. OSWALD:** May I?

10 **THE COURT:** Yes.

11 **Q.** (BY MR. OSWALD) Does that refresh your  
12 memory, sir?

13 **A.** Yes.

14 **Q.** What did Investigator Pourier ask him?

15 **A.** He asked him -- he said, John, why would all  
16 of these people that Ecoffey mentioned to you -- why  
17 would they tell him the things that they told him.

18 **Q.** And what happened then?

19 **A.** John kind of sat there for a second and then  
20 he turned and he said, okay, okay. I was there. I  
21 drove the car. I helped take her back to Rapid City.

22 **Q.** Okay.

23 Now, I'd like to -- did you make notes of  
24 what he said exactly at that time?

25 **A.** The mental notes are what -- that are in

1 the -- that are in the report.

2 Q. And when did you make those notes, sir?

3 A. That evening as soon as the interview was  
4 done.

5 Q. And did you make those notes and transcribe  
6 them into a formal report?

7 A. Yes.

8 Q. And would this report that I have reflect as  
9 close as you can come to the quote from Mr. Graham?

10 A. Yes.

11 Q. Would it help to refresh your memory to look  
12 at that report to see exactly the words that you took,  
13 sir?

14 A. Yes.

15 Q. Okay.

16 Does that refresh your memory?

17 A. Yes.

18 Q. What did John Graham say at that point?

19 A. He said okay. Okay. I was there. I helped  
20 drive the car to take her back to the reservation.

21 Q. What did he then say?

22 A. I asked him, I said, well, who went back --  
23 who did -- who went in the car with you. I said, was  
24 it Theda, Ida, and yourself that took Anna Mae back to  
25 the reservation? And he said, I drove, but he said, I

1 am not going to give any other names.

2 Q. Did he say where they went?

3 A. He said that they went to a safe house.

4 Q. Did you ask where that safe house --

5 A. Excuse me.

6 He said that they went to a safe house and so  
7 I said was that safe house in Rapid City, South  
8 Dakota, and he said he didn't know.

9 So then Mitch --

10 Q. Okay.

11 So then did Mitch ask him something?

12 A. Yeah.

13 Q. What did Mitch ask him?

14 A. He said was the safe house in South Dakota  
15 and he said yes.

16 Q. What happened next?

17 A. Then I asked him was the safe house in South  
18 Dakota and he said yes and then he said that they  
19 stopped a couple times on the way back and that but he  
20 wasn't quite sure where they had stopped. And then he  
21 said that they took the back roads to get back to the  
22 reservation -- or to get back to South Dakota they  
23 took the back roads.

24 Q. Do you know, did John Graham make any  
25 statements about whether he knew the people at this

1 safe house or not?

2 **A.** Well, at first he said that he didn't get out  
3 of the car. And then later then he said -- later on  
4 he said, well, he didn't know any of the people at the  
5 safe house.

6 **Q.** Did you ask him where this safe house was?  
7 Try to pin him down?

8 **A.** Yes. I said, well, where was the safe house  
9 and he said that it was in a village.

10 **Q.** Were you able to get any closer information  
11 other than village?

12 **A.** No.

13 **Q.** Did you talk about the time of the day?

14 **A.** Yes.

15 **Q.** What did you say -- what did you hear Pourier  
16 ask him?

17 **A.** Special Agent Pourier asked him -- said,  
18 well, what time was it when you left Denver and John  
19 Boy said it was dark. He said that we drove all night  
20 to get back.

21 **Q.** And at that time you had mentioned there was  
22 talk about back roads.

23 Is that when he said that?

24 **A.** Yes.

25 **Q.** Was he asked about the back roads?

1           **A.**    Yes.

2           **Q.**    What did he say?

3           **A.**    Well, he was asked, how come you took the  
4 back roads to get back, and he said, well, it was Anna  
5 Mae's idea that she was scared of Special Agent Price.

6           **Q.**    Did he then -- did you then ask him what  
7 happened after they dropped Anna Mae off?

8           **A.**    Yes.

9           **Q.**    What did he say?

10          **A.**    He said after they dropped her off, they  
11 immediately turned around and drove back to Denver.

12          **Q.**    Then did you ask him if he killed Anna Mae?

13          **A.**    Yes, I did.

14          **Q.**    And what did he say?

15          **A.**    Well, at the time when I said --

16                **MR. MURPHY:**  Objection.  He's not answering  
17 the question.

18                **THE COURT:**  What did he say?

19          **A.**    He said no.

20          **Q.**    **(BY MR. OSWALD)** Well, at the time he said  
21 that, did you make any observations?

22          **A.**    Yes, I did.

23          **Q.**    And what observations did you make?

24          **A.**    He was very nervous.  He began to tremble.  
25 He was shaking.  Almost to the point where the picnic

1 table was rocking.

2 Q. Did Pourier then ask him anything?

3 A. Yes. He asked him if he knew who killed Anna  
4 Mae.

5 Q. How did he respond?

6 A. He said no.

7 Q. At some point did you concluded this  
8 interview, then?

9 A. Yes.

10 Q. How did it end, sir?

11 A. Just basically after -- he said that he did  
12 not kill her. He didn't know who killed her. Then  
13 basically stood up and at that point in time his wife  
14 came over and that was the end of the interview.

15 MR. OSWALD: May we approach, Judge?

16 THE COURT: Yes.

17 (Whereupon, a discussion was held at the  
18 bench.)

19 MR. MURPHY: Judge, they have just informed  
20 me that they are going to try to introduce a video of  
21 an interview of my client on a My Space which is one  
22 of these social networking sites through Mr. Ecoffey.  
23 It's my understanding Mr. Ecoffey had no part in the  
24 making of this interview. The production -- from what  
25 I understand it was made by some group. I am not sure

1 exactly who. But there is no way in the world he can.  
2 authenticate or lay the foundation for some video  
3 produced and made by somebody else at some other time.  
4 And that's my objection to the admissibility.

5 **MR. OSWALD:** Okay.

6 **THE COURT:** Has it been disclosed, the  
7 existence of this video?

8 **MR. OSWALD:** Yes, and you have ruled on it.  
9 It was advised at the pretrial hearing.

10 **THE COURT:** I mean is it of the interview?

11 **MR. OSWALD:** It's an interview.

12 **THE COURT:** With whom?

13 **MR. OSWALD:** It's with the --

14 **MR. MURPHY:** On My Space.

15 **MR. OSWALD:** -- the Native Youth Movement.

16 It's been disclosed. It's 36 seconds long. And --

17 **THE COURT:** What is it? What's it of?

18 **MR. OSWALD:** He talks about Anna Mae and  
19 dropping her off at a safe house. And then he didn't  
20 know what happened.

21 **THE COURT:** Talks -- who talks about it?

22 **MR. OSWALD:** John Graham does. It's him on  
23 the video and his voice. Marshal Ecoffey saying I see  
24 that man, I listened to his voice, this is him, I have  
25 known the inflexion. I know his voice. I know what

1 he looks like. And that's how I am intending to  
2 authenticate this.

3 **THE COURT:** Why are we telling me this at ten  
4 to 2:00 where I have zip time to think about it? I  
5 have zip time to make a decision about it.

6 **MR. JACKLEY:** I raised this in a pretrial  
7 hearing, the legal authority that was presented to the  
8 Court. There was no objection by defense counsel.  
9 This has been since the federal case. Defense counsel  
10 knew about it.

11 The authorities that been presented -- if I  
12 could dig it out. This was all discussed at the  
13 pretrial hearing.

14 **THE COURT:** Has it been presented to me?

15 **MR. JACKLEY:** Yes, it absolutely has.

16 **MR. MURPHY:** Absolutely not.

17 We presented that we wanted redactions made  
18 but we specifically said we were not conceding to any  
19 admissibility issues.

20 In fact, at prior times they have asked to  
21 stipulate like, for instance, they had an interview  
22 with a woman named Antoinette Claypool. They said  
23 would you stipulate to her foundation or  
24 authentication and I said absolutely not.

25 We have talked about what we deemed

1 inadmissible, the prejudicial portions. But we never  
2 have discussed --

3 **THE COURT:** How are you going to lay the  
4 foundation? I don't know what the foundation has to  
5 be.

6 **MR. JACKLEY:** The foundation is this, Your  
7 Honor. This video is a 30-second video of John Graham  
8 talking about his involvement in this case. The  
9 foundation will be laid by Marshal Bob Ecoffey that  
10 has just spent the last hour testifying.

11 **THE COURT:** What did he have to do with it?

12 **MR. JACKLEY:** He can authenticate that he has  
13 interviewed John Graham so he knows what he looks  
14 like. He can authenticate that he knows his voice.  
15 He ask authenticate that he has watched the video.

16 **THE COURT:** Is the only foundation  
17 requirement, that he be able to identify Mr. Graham?

18 **MR. JACKLEY:** Yes, and I presented these  
19 things to the court before and I can certainly dig  
20 them back out. But this was addressed at a pretrial  
21 hearing.

22 **MR. MURPHY:** And I may have been mistaken on  
23 this but I recall no such presentation of authority  
24 and I stand to be corrected and I will eat that crow.  
25 But I have never seen any authority about the

1 foundations for authentication of a video produced by  
2 somebody we don't even know who produced it I don't  
3 think. There was a third party. Mr. Jackley can dig  
4 up --

5 **THE COURT:** We'll talk about this after the  
6 break when I have time to look at it. I am not going  
7 to make a decision now.

8 **MR. JACKLEY:** During the break I am going to  
9 have to dig out the authority or else we got to find  
10 the transcript of the hearing.

11 **THE COURT:** Somebody has to.

12 **MR. JACKLEY:** It would be easy for me to try  
13 to find the stuff.

14 **THE COURT:** Yeah.

15 (Whereupon, the discussion at the bench was  
16 then concluded.)

17 **Q. (BY MR. OSWALD)** Mr. Ecoffey, Bob, I am going  
18 to show you what's been marked as State's Exhibit 37.  
19 Would you look at this, please.

20 Do you recognize that?

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

22 **Q.** What is this?

23 **A.** This is a picture of Arlo Looking Cloud  
24 walking in the front, myself, walking in the middle,  
25 and United States Deputy Marshal Rich Ianuchi walking

1 in the back.

2 Q. Do you know when this was taken?

3 A. This was in July of 1995.

4 Q. And where was this taken at?

5 A. This was taken out near the crime scene where  
6 the body was found.

7 Q. Is this a true and accurate picture?

8 A. Yes, it is.

9 MR. OSWALD: I would offer Exhibit 37.

10 MR. MURPHY: No objection.

11 THE COURT: Will be received.

12 MR. OSWALD: Judge, I am going to ask to pass  
13 this to the jury.

14 THE COURT: Yes.

15 MR. OSWALD: Thank you.

16 Q. (BY MR. OSWALD) Mr. Ecoffey, I'd like to show  
17 you what's marked State's Exhibit 34.

18 Do you recognize that?

19 A. Yes, I do.

20 Q. And what is this a picture of?

21 A. This is a picture of -- the individual with  
22 the white shirt on is Arlo Looking Cloud. The  
23 individual in the middle is Rick Ianuchi, Deputy  
24 United States Marshal. And I was standing on the  
25 other side of Deputy Ianuchi. And this photo depicts

1 a standing at the crime seen over the embankment where  
2 Anna Mae was found below.

3 **MR. OSWALD:** I would offer Exhibit 34.

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

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

6 **MR. OSWALD:** I am going to show this to the  
7 jury, again, Judge.

8 **THE COURT:** Yes.

9 **MR. OSWALD:** No further questions, Your  
10 Honor.

11 **THE COURT:** Thank you.

12 Mr. Murphy?

13 **MR. MURPHY:** Thank you.

14 **CROSS-EXAMINATION**

15 **BY MR. MURPHY:**

16 **Q.** Mr. Ecoffey, do you need another throat  
17 lozenge or anything?

18 **A.** I am okay now.

19 **Q.** Okay.

20 I want to start where you finished up with  
21 these exhibits.

22 Exhibits 37, do you recall that?

23 **A.** Yes, I do.

24 **Q.** Okay.

25 And that was that time in the summer of 75

1 where you took Arlo Looking Cloud back to the scene?

2 **A.** It was the summer of July of 1995.

3 **Q.** I apologize. I am sorry.

4 July of 1995.

5 **A.** That's correct.

6 **Q.** And when you got, Mr. Looking Cloud didn't  
7 recall that as being the place, did he?

8 **A.** Yes, he did.

9 **Q.** If he testified earlier that when you took  
10 him out -- when you took him out there he didn't  
11 recall that as being where this incident happened, are  
12 you saying he was --

13 **MR. OSWALD:** Judge, I will object. Improper  
14 impeachment.

15 **THE COURT:** I don't think so.

16 **A.** What was the question again, sir?

17 **Q. (BY MR. MURPHY)** If Mr. Looking cloud  
18 testified just a few hours ago that when you brought  
19 him out there to the Badlands in 95, he didn't recall  
20 that being the place where these incidents happened,  
21 are you saying he's wrong now? That he was testifying  
22 untruthfully today?

23 **A.** I'm just saying that he indicated to us that  
24 that was the place where the crime had occurred.

25 **Q.** Well, let me ask you this. Prior to getting

1 out to the scene in July of 95, Mr. Looking Cloud  
2 traveled with Mr. Alonzo and Ianuchi, correct?

3 **A.** That's correct.

4 **Q.** And did you meet them at the scene or did you  
5 meet them some other place?

6 **A.** No, we met them at the federal building in  
7 Rapid City, South Dakota.

8 **Q.** And then you all traveled down there  
9 together?

10 **A.** Yes.

11 **Q.** Mr. Looking Cloud testified earlier that at  
12 some point during this ride with Mr. Alonzo and  
13 Mr. Ianuchi, that Mr. Ianuchi said that he was part --

14 **MR. OSWALD:** Objection, Your Honor. This is  
15 inadmissible hearsay. It's not relevant to the  
16 colloquy between counsel and Mr. Ecoffey.

17 **MR. MURPHY:** I would like to ask whether he  
18 has knowledge of these conversations.

19 **THE COURT:** You may.

20 **Q. (BY MR. MURPHY)** Mr. Looking Cloud testified  
21 that during this trip at some point Mr. Ianuchi told  
22 him he was part of a police death squad where you  
23 needed nine confirmed kills of defendants in order to  
24 be part of that death squad.

25 Did you hear anything like that?

1           **A.**   No, I didn't.

2           **Q.**   And he also said that during this trip prior  
3 to you getting out to the Badlands, that he was told  
4 by Mr. Alonzo that if he should try to make a run for  
5 it or he should try to make it run for it so Alonzo  
6 could also get a confirmed kill.

7                   Did you hear anything like that?

8           **A.**   No, I didn't.

9           **Q.**   He also testified that after this meeting you  
10 guys had, out in the Badlands -- or this visit, that  
11 he was shipped off to a maximum security federal  
12 penitentiary called Elreno where he wasn't charged  
13 with anything but he was held for a period of months  
14 by you guys or as a result of his meeting with you  
15 guys to break him down.

16                   Is there any truth at all to that assertion?

17           **A.**   No.

18           **Q.**   So Mr. Looking Cloud just makes stuff up,  
19 right?

20           **A.**   No, I don't believe so.

21           **Q.**   Okay.

22                   Well, if he just testified to the jury about  
23 these death squad and all this other stuff and Elreno  
24 maximum security prison, you have no knowledge of that  
25 ever happening, do you?

1           **A.** Well, I have no knowledge of it, no.

2           **Q.** Okay.

3                   Well let's go start at the beginning. You  
4 said you started working in law enforcement in 1976,  
5 correct?

6           **A.** That's correct.

7           **Q.** And --

8           **A.** Actually in 1975.

9           **Q.** Seventy-five. Okay.

10                   And that's when you worked that summer down  
11 an Pine Ridge?

12           **A.** That's correct.

13           **Q.** Even back in 75, you were working murder  
14 investigations, right?

15           **A.** That's correct.

16           **Q.** And basically since then for a period of  
17 decades you were in the law enforcement community?

18           **A.** That's correct.

19           **Q.** And you began investigating this case in the  
20 mid or early 80, correct?

21           **A.** Mid 80.

22           **Q.** If I have a report that you of interview you  
23 did in 1981, would that suggest that you were involved  
24 in this case earlier than the mid 80s?

25           **A.** I guess I'd have to see the report.

1 Q. Sure.

2 I'm going to show you an FBI 302.

3 What's the date on the top?

4 A. 9/9/81.

5 Q. And in the first paragraph does it indicate  
6 it summarizes an interview by you, Mr. Vandyke and a  
7 gentleman named Selo Black Crow?

8 A. Yes.

9 Q. And if you take a moment to peruse it, does  
10 it refer generally to an investigation that was  
11 related to this case?

12 A. Yes that's true.

13 Q. So you actually started working the case in  
14 81?

15 A. That's correct.

16 Q. All right.

17 And part of your job when you investigate a  
18 case like this, a murder case, is to first gather all  
19 the information available to you, right?

20 You want to get all the information that's  
21 been gathered prior to your involvement?

22 A. That's correct.

23 Q. And I believe you talked about that earlier  
24 that you looked at what had been accumulated in the  
25 years preceding your involvement.

1           **A.**   That's correct.

2           **Q.**   And you also want to do your own interviews?

3           **A.**   Yes.

4           **Q.**   And you want to establish a time line of  
5 relevant events, correct?

6           **A.**   Yes.

7           **Q.**   And in a case like this where timing is  
8 important, you want to identify an approximate time of  
9 death, correct?

10          **A.**   That's correct.

11          **Q.**   Because what we know about this case is that  
12 Ms. Aquash was last seen by members of the law  
13 enforcement community on November 24, 1975, when she  
14 was released from jail in Pierre, correct?

15          **A.**   That's correct.

16          **Q.**   And then were body was found three months to  
17 the day later, right on February 24, 1975?

18          **A.**   Yes.

19          **Q.**   So, of course, part of your investigation  
20 then is narrowing down the time frame to find out  
21 approximately when she died, correct?

22          **A.**   That's correct.

23          **Q.**   All right.

24                   And you are looking for leads and all sorts  
25 of other information about the case to help build the

1 prosecution, right?

2 A. That's correct.

3 Q. Part of that involved in this case  
4 identifying various events related to the American  
5 Indian Movement, did it not?

6 A. Yes.

7 Q. And you having been on Pine Ridge for the  
8 past 30, 40 years, were certainly familiar with some  
9 of those activities, correct?

10 A. Yes.

11 Q. And you know that there were some people  
12 involved with AIM that were good law abiding peaceful  
13 people, right?

14 A. That's correct.

15 Q. In fact, your own sister was a member of AIM?

16 A. That's true.

17 Q. And then there was some people that were  
18 involved in militant activities, correct?

19 A. That's correct.

20 Q. Okay.

21 And you are not by any means suggesting or of  
22 the opinion that everybody who was associated with the  
23 American Indian Movement was somebody who was involved  
24 in militant or violent activities, are you?

25 A. No, sir.

1           **Q.**    Okay.

2                    And I think we have gone through the time  
3 line of events with prior witnesses.  But just let me  
4 ask you briefly, as part of your investigation, you  
5 looked at events starting say in 73, Wounded Knee,  
6 some of the big events and then got in the 1975  
7 period, correct?

8           **A.**    Actually, I didn't go back into anything  
9 in -- like in 73.

10          **Q.**    Okay.

11          **A.**    It was more 75 and beyond.

12          **Q.**    All right.

13                    Things like the Farmington convention, the  
14 Jumping Bull shoot-out where the FBI agents were  
15 killed, Al Runnings, and all those events that led up  
16 to the fall of 75?

17          **A.**    I was familiar with Jumping Bull's.  I wasn't  
18 familiar with Al Runnings.

19          **Q.**    If you made passing reference to those events  
20 in other reports would that have just been to help you  
21 create a chronology?

22          **A.**    Yes.

23          **Q.**    And you knew that during the time frame in  
24 question, Ms. Aquash was a fugitive times two,  
25 correct?

1           She was a fugitive out of Pierre and she was  
2 also a fugitive from Oregon?

3           **A.** I knew she was a fugitive out of Pierre, yes.

4           **Q.** Uh-huh.

5           But you were aware also of the incidents in  
6 Oregon that led to federal charges being brought,  
7 correct?

8           **A.** Yes. I read about them.

9           **Q.** Okay.

10           Now, I want to bring you up to that 1981.  
11 You had received prior information -- and I am not  
12 going to go into what somebody else told you on a  
13 prior occasion or past information, but it brought you  
14 to a point where you had information that directed you  
15 towards a person named Selo Black Crow, correct?

16           **A.** Yes.

17           **Q.** And based on the information that you got  
18 previously, you decided to go out and interview  
19 Mr. Black Crow, correct?

20           **A.** Yes. I was asked by the FBI to assist in his  
21 interview.

22           **Q.** All right.

23           And you went out there with a guy named  
24 Dr. Edward Vandyke?

25           **A.** Yes.

1           Q.   He's a specialist in interviewing Native  
2 Americans or Indians; is that your understanding?

3           A.   I believe he was an anthropologist from  
4 Canada.

5           Q.   And he was brought in -- he was brought into  
6 this because he -- is there something going on with my  
7 questions?

8                   Do you have a question?

9           A.   No.

10          Q.   He was brought into this because he was  
11 supposed to help in the investigation of this case,  
12 right?

13          A.   He was brought in to assist to interview some  
14 people that might have some knowledge about it.

15          Q.   Okay.

16                   And so the FBI asked you to get involved and  
17 also brought this guy down from Canada to go out and  
18 interview Mr. Black Crow, right?

19          A.   That's correct.

20          Q.   And you confronted Mr. Black Crow with  
21 information about two Indian females, an Indian male,  
22 and a gold car showing up at his house?

23          A.   Yes, I believe that there was some  
24 information at that time.

25          Q.   Uh-huh.

1           And some -- and this was something that  
2 happened in either late January or early February of  
3 1976?

4           **A.** I would have to look at the report.

5           **Q.** Okay. You can read those. Take all the time  
6 you need.

7           Does that help?

8           **A.** Yeah, that assists me.

9           **Q.** That assists you?

10          **A.** Uh-huh.

11          **Q.** Mr. Black Crow lived near Wambli, correct?

12          **A.** That's correct.

13          **Q.** In relative close proximity to where  
14 Ms. Aquash's body was found?

15          **A.** Probably about 6 or 7 miles.

16          **Q.** Sure. Six or 7 miles up -- down Highway 73?

17          **A.** Yes.

18          **Q.** And Highway 73 is the road closest to where  
19 her body was found, right?

20          **A.** Yes.

21          **Q.** And you confronted him with the information  
22 and when you did so your observation of him was that  
23 it looked as if he had been kicked in the stomach.

24                   Is that a fair statement?

25          **A.** Yes.

1           **Q.**   And after he looked like he had been kicked  
2           in the stomach, he remained silent for four to five  
3           minutes, correct?

4           **A.**   I don't remember seeing that in there.

5           **Q.**   Okay.

6           **A.**   Yes. This is in reference to Dr. Vandyke.  
7           This wasn't in reference to anything that I said.

8           **Q.**   Well, sir, you were sitting there right next  
9           to Dr. Vandyke when this interview happened?

10          **A.**   Yes.

11          **Q.**   And Dr. Vandyke said in this report -- or  
12          actually Agent Garber said --

13          **MR. OSWALD:** Objection, your Honor. Hearsay.

14          **MR. MURPHY:** I can rephrase.

15          **THE COURT:** Yeah, please do.

16          **Q.**   **(BY MR. MURPHY)** You just said this refreshed  
17          your recollection?

18          **A.**   Yes.

19          **Q.**   Your recollection is that when Mr. Black Crow  
20          was confronted with the information, looked like he  
21          had been kicked in the stomach; that then he remained  
22          silent for four to five minutes, correct?

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

24          **Q.**   Well, is that -- I am asking you now, is that  
25          your recollection?

1           **A.**    No, it isn't.

2           **Q.**    So the report is wrong?

3           **MR. OSWALD:**  Objection, Your Honor.

4           **THE COURT:**  Got to have more than that.  I  
5 like short objections, but I need a couple more words.

6           **MR. OSWALD:**  Relevancy, and argumentative  
7 whether the report is wrong or not.  It's not for this  
8 witness to determine that.

9           **MR. MURPHY:**  Your Honor --

10          **THE COURT:**  Overruled.

11          **THE WITNESS:**  It wasn't my report.

12          **THE COURT:**  Excuse me.  As I understand it he  
13 was an observer at that time.

14          **MR. MURPHY:**  That's correct.

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

16          **A.**    I guess I didn't remember observing things  
17 that way.

18          **Q.**    **(BY MR. MURPHY)**  What about then Mr. Black  
19 Crow started -- his foot started to tap, his hands  
20 shook, he put his head down, so the cap covered his  
21 face and he gulped several times.

22                    Did you observe that?

23          **A.**    I don't recall.

24          **Q.**    But you are not disputing that he looked like  
25 he had been kicked in the stomach?

1           **A.**    I don't recall that either.

2           **Q.**    I just asked you that a couple minutes ago  
3 and you had a recollection then.

4           **A.**    I just said it wasn't my report.  It's what's  
5 reflected in Dr. Vandyke's report.

6           **Q.**    But you were sitting next to him, right?  
7                    You were sitting next to Vandyke when he did  
8 this interview?

9           **A.**    I think we were -- I can't even remember  
10 where were we sitting at that time.

11          **Q.**    Sir, this isn't the first time you have seen  
12 this report?

13          **A.**    I believe it is.

14          **Q.**    Sir, if this was received in information that  
15 was both in the Aquash box that was collected and from  
16 the United States Attorney's office, and you have been  
17 involved in this investigation for close to 30 years,  
18 you are saying this is the first time you have seen a  
19 report with your name on it?

20          **A.**    It's the first time that I have seen this  
21 report.  There is thousands of reports.

22          **Q.**    Well, you know, one of the things that was  
23 said during that interview with Mr. Black Crow that  
24 you were observing was that Mr. Black Crow claimed he  
25 didn't even know Theresa Kimball.

1 Do you remember that?

2 A. No.

3 Q. You don't recall that?

4 A. No.

5 Q. Would the report refresh your recollection or  
6 no?

7 A. If I could look at it.

8 Q. My apologies. I will have to find that  
9 report.

10 All right.

11 In any regard, during the course of your  
12 investigation, you learned from several witnesses that  
13 Ms. Aquash had been seen alive in Rapid City some time  
14 around December 15, correct?

15 A. It was actually around December 11.

16 Q. Well, let me talk to you about that. You  
17 received information from a woman named Candy Hamilton  
18 who has already testified that she was at the WKLD  
19 house and spoke to Anna Mae Aquash and it was during  
20 the Dick Wilson Senior trial.

21 Do you remember that?

22 A. Yes.

23 Q. Okay.

24 You also received some other information that  
25 it might have been closer or during the Russ Means'

1 trial?

2 **A.** No. It was on December 11.

3 **Q.** Well, let me ask you about what you; learned  
4 about the Russ Means's trial. That was a trial that  
5 went from December 12 through December 15.

6 Is that a fair statement?

7 **A.** I know that it was going on in Sioux Falls,  
8 yes.

9 **Q.** Right.

10 And various witnesses put Anna Mae Aquash in  
11 Rapid City either during the Dick Wilson trial that  
12 went from December 15 through December 18 or the Russ  
13 Means's trial that went from December 12 to  
14 December 15; is that not correct?

15 **A.** That's correct.

16 **Q.** All right.

17 And you know that the Russ Means' trial ended  
18 December 15, correct?

19 **A.** Yes.

20 **Q.** And so the only point of overlap between the  
21 two trials would have been the date of December 15,  
22 correct?

23 **A.** Yes.

24 **Q.** All right.

25 Let's talk a bit about Mr. Graham's

1 interviews with you. I want to go through in a little  
2 more detail what he said, what you said.

3 So your two interviews, April 21, 1994, and  
4 you did a follow-up March 21, 1995?

5 **A.** Yes, that's correct.

6 **Q.** You had previously been contacted by the  
7 FBI -- by the FBI about their interviews with  
8 Mr. Graham?

9 You had been out there and talked to him?

10 **A.** All I had was a general idea that Special  
11 Agent Garber had attempted to interview back him in  
12 the 80s. I didn't see the report.

13 **Q.** Okay.

14 So you knew that the FBI had been up to  
15 Canada to talk to John, right?

16 **A.** That's correct.

17 **Q.** And when you talked to John, he told you that  
18 he perceived the way they you approached him as being  
19 threatening?

20 **A.** That's correct.

21 **Q.** And you come to John's house, April 21, and  
22 he's not there, right?

23 **A.** That's correct.

24 **Q.** His two sons are there?

25 **A.** Yes.

1           **Q.** And they tell you that he's working doing  
2 construction on a motel, right?

3           **A.** At the West Mark Motel.

4           **Q.** Right.

5                   And you go out there later in the day and you  
6 have contact with him, right, as he's coming down the  
7 ladder, right?

8           **A.** That's correct.

9           **Q.** And it's you and Pourier at that time?

10          **A.** Yes.

11          **Q.** Miller and Graf are in the car?

12          **A.** Yes.

13          **Q.** And you tell him right away when you  
14 introduce yourself that you are there to talk to him  
15 about a murder investigation, right?

16          **A.** Yes.

17          **Q.** And right then at the bottom of the ladder  
18 you start to relay some of the information you  
19 believed you had gathered about that murder  
20 investigation, correct?

21          **A.** That's correct.

22          **Q.** And because that was information you gathered  
23 prior -- from prior sources, you don't know if that  
24 information you relayed to Mr. Graham was true or not?

25                   It was just information you had been told

1 about, right?

2 A. Yes.

3 Q. Because you weren't there as we previously  
4 discussed back in 1975, right?

5 A. That's correct.

6 Q. But you tell it to my client, and then you  
7 note that his hands shook while he was smoking his  
8 cigarette, right?

9 A. Yes.

10 Q. You'd agree that that isn't quite the same  
11 kind of reaction as Mr. Selo Big Crow gave you when he  
12 looked like he had been kicked in the stomach, right?

13 A. What I said earlier is I didn't know that  
14 Mr. Big -- Selo Black Crow had got kicked in the  
15 stomach. I didn't recall that happening.

16 Q. Even though -- and we discussed this  
17 before -- Mr. Vandyke put it in a report and you are  
18 named in the report as being an observer.

19 If Mr. Big Crow looked like he had been  
20 kicked in the stomach, remained silent for four to  
21 five minutes, gulped, tapped his feet, pulled his gap  
22 down, those would be more expressive client than my  
23 client trembling with a cigarette, right?

24 A. Yes.

25 Q. And you would acknowledge it's probably

1 common for people to get nervous when they are  
2 approached by law enforcement officers they don't know  
3 and are told within the first couple seconds of  
4 meeting them that they are there to talk about a  
5 murder investigation, right?

6 A. That's correct.

7 Q. People get pretty nervous when they are  
8 pulled over for speeding time sometimes, don't they?

9 A. Yes.

10 Q. They are tremble when trying to get the  
11 driver's license out?

12 A. I don't know.

13 Q. You haven't had to do patrol too much?

14 A. Oh, yeah, I have.

15 Q. All right.

16 Even then, even though you approach my client  
17 and tell him this is about a murder investigation and  
18 you start relaying some investigation, even then he  
19 says, hey, I will listen to what you guy have to say,  
20 right?

21 A. Yes.

22 Q. And you repeatedly told him throughout the  
23 course of this that all he had to do was listen?

24 A. That's correct.

25 Q. He didn't have to talk?

1           **A.**    That's correct.

2           **Q.**    And he didn't even have to meet with you?

3           **A.**    That's correct.

4           **Q.**    But he agreed he would do that?

5           **A.**    That's correct.

6           **Q.**    And the next contact you have is a phone call  
7 or a phone conversation with him at -- when you are in  
8 the lobby of the motel at about 8:00 o'clock?

9           **A.**    Yes.

10          **Q.**    And he said to you at that point that he  
11 hadn't had the opportunity to speak to an attorney,  
12 right?

13          **A.**    That's correct.

14          **Q.**    I believe previously you said it was his  
15 attorney, but he was looking for an attorney, right?

16          **A.**    That's correct.

17          **Q.**    All right.

18                But you told him, hey, I have driven  
19 thousands of miles or flown thousand of miles, won't  
20 you talk to us, right?

21          **A.**    I told him that he had the right to remain  
22 silent; that he didn't have to talk to us. That, yes,  
23 we did drive a thousand miles. It would be good for  
24 him to sit down and listen to us to hear what we had  
25 to say.

1 Q. And he obliged you?

2 A. Yes, he did.

3 Q. He extended that courtesy you?

4 A. Yes.

5 Q. Throughout all of these interviews he  
6 remained courteous to you?

7 A. Yes.

8 Q. Okay.

9 And he agreed, okay, even though I am not too  
10 thrilled about this, I will listen, right?

11 A. That's correct.

12 Q. And that was the point at which he told you  
13 again that he had been threatened by the FBI the last  
14 time they were up in the Yukon.

15 Do you remember that?

16 A. He said that on the telephone when I was  
17 talking to him.

18 Q. Right. That's what we're talking about.

19 A. Yes.

20 Q. Okay.

21 A. And then I told him, I said, well, John, I  
22 said when we approached you this afternoon did I  
23 approach you in a threatening manner, did I threaten  
24 you in any way, and he said no.

25 Q. And he was being straight forward with you?

1           **A.**    Yes.

2           **Q.**    You weren't present during those FBI  
3 interviews up in the Yukon so you have no idea what  
4 happened, do you?

5           **A.**    No, I don't.

6           **Q.**    So you don't know what was said to him?

7           **A.**    No, I don't.

8           **Q.**    And you don't know how it was said?

9           **A.**    No, I don't.

10          **Q.**    The meeting occurs out at Rotary Park.  At  
11 about 9:30 at night it starts?

12          **A.**    Yes.

13          **Q.**    And just so the jury has an understanding of  
14 Whitehorse and Rotary Park, Whitehorse is a community  
15 in the Yukon territory?

16          **A.**    That's correct.

17          **Q.**    Right below the Artic Circle, correct?

18          **A.**    Yes.

19          **Q.**    Rotary Park is a park that runs right along  
20 the Yukon River, correct?

21          **A.**    That's correct.

22          **Q.**    And that's one of those glacial melt streams  
23 or rivers, right?

24          **A.**    Yes.

25          **Q.**    And this is in April and it's at night?

1           **A.** Well, it's 9:30 at night but it's still  
2 daylight out. The sun is still up in the sky. It was  
3 quite something for me.

4           **Q.** All right.

5                   And it's the spring in the Artic Circle more  
6 or less?

7           **A.** Yes.

8           **Q.** John shows up as he promised he would?

9           **A.** Yes.

10          **Q.** And you tell him, again, that you would like  
11 him to listen, right?

12          **A.** Yes.

13          **Q.** And then you go into a long litany of  
14 accusations or information that you relay to him,  
15 right?

16          **A.** It was facts as I knew them.

17          **Q.** Facts as you knew them you relay them to him?

18          **A.** Yes.

19          **Q.** Facts that you had gathered from other  
20 sources or from previous investigations?

21          **A.** That's correct.

22          **Q.** And without getting into the accusations, you  
23 certainly don't know that all of them were true, do  
24 you?

25          **A.** No.

1           **Q.**    No.

2                    In fact, one of the accusations or  
3 allegations of that it was John, Theda, and a  
4 12-year-old girl on this trip, right?

5           **A.**    Yes.

6           **Q.**    All right.

7                    But you relayed these accusations to him,  
8 basically outlined your entire case, your entire  
9 theory of the prosecution?

10          **A.**    Yes.

11          **Q.**    And it takes a while to get through all of  
12 this material, doesn't it?

13          **A.**    Yes, it does.

14          **Q.**    And at the conclusion of your laying out all  
15 of these supposed facts and your theory, his response  
16 is -- and his only response at this time is, well,  
17 looks like you guys have my future planned out for me.  
18 You have your case, right?

19          **A.**    That's correct.

20          **Q.**    He didn't say I did it, did he?

21          **A.**    No.

22          **Q.**    He didn't say you got me?

23          **A.**    No.

24          **Q.**    It's almost set out as a sarcastic comment,  
25 wasn't it?

1           **A.**   No.

2           **Q.**   He was basically mirroring back to you what  
3 you told him which is we got this entire case built  
4 against you?

5           **A.**   The way that I took it is that after he heard  
6 the information, that he looked at us and said, looks  
7 like you got my life planned out for me. You have  
8 your case. It wasn't in a sarcastic manner. It was  
9 in a manner, at least as I perceived, that he realized  
10 that we had information that was pretty good.

11          **Q.**   Well, information such as this alleged  
12 kidnapping involving a 12-year-old girl as one of the  
13 participants, right?

14          **A.**   Yes.

15          **Q.**   All right.

16                And what you've discussed with the jury about  
17 this interview is your recollections of the interview,  
18 right?

19          **A.**   That's correct.

20          **Q.**   And I want to get into that because it's --  
21 you and Agent Pourier travel from Rapid City, South  
22 Dakota, all the way up to the Yukon?

23          **A.**   That's correct.

24          **Q.**   Drive or fly?

25          **A.**   We flew.

1           Q.   Agent Graf from the FBI also flies all the  
2 way from South Dakota to the Yukon, right?

3           A.   Yes.

4           Q.   Thousands of miles trip?

5           A.   Yes.

6           Q.   And you got three professional investigators  
7 handling the case, right?

8           A.   Yes.

9           Q.   And you go up there to speak to one person  
10 which is John Graham, right?

11          A.   That's correct.

12          Q.   And none of you bring a tape recorder, right?

13          A.   That's right.

14          Q.   Nobody is wearing a body wire?

15          A.   Nobody is wearing a body wire.

16          Q.   Nobody is wearing one of the recording --  
17 secret recording devices we have heard about so far in  
18 this trial, right?

19          A.   That's correct.

20          Q.   You don't even set a 15-dollar Casio or Sony  
21 tape recorder on the table, do you?

22          A.   It was decided not to try to record him  
23 because we felt if we laid a recorder on the table  
24 that he wouldn't cooperate.

25          Q.   That doesn't explain why no secret recording

1 devices were used, does it?

2 A. No.

3 Q. You at that point are with the United States  
4 Marshal Service, right?

5 A. That's correct.

6 Q. A nationwide law enforcement office, right?

7 A. That's correct.

8 Q. Thousands of officers, budget of millions of  
9 dollars, right?

10 A. That's correct.

11 Q. You certainly had recording devices available  
12 to you in the U.S. Marshal Service?

13 A. Yes.

14 Q. And Mr. Pourier at that point is a criminal  
15 investigator with the BIA?

16 A. Yes.

17 Q. And though the budget might not be quite as  
18 big -- I am not sure where it goes -- but they  
19 certainly have recording devices available to them,  
20 right?

21 A. Yes.

22 Q. And the FBI, they are a nationwide  
23 investigative outfit, right?

24 A. Yes.

25 Q. Millions and millions of dollars in their

1 budget, right?

2 A. That's correct.

3 Q. Lots of money to buy recording devices?

4 A. Yes.

5 Q. And every day, nationwide, these agencies use  
6 recorders to surreptitiously record conversations,  
7 right?

8 A. Yes.

9 Q. But you -- you three decide to fly all the  
10 way up there for one interview and one interview only  
11 and nobody has got a recorder on them?

12 A. We didn't -- just like I said, we decided not  
13 to use the recorder because we didn't think that  
14 Mr. Graham would cooperate.

15 Q. A surreptitious recording device, he would  
16 never have known about that, would he have?

17 A. Yes.

18 Q. He would have known?

19 A. No, he wouldn't have.

20 Q. Yeah.

21 That would have provided the jury with the  
22 best evidence of exactly what was said and how it was  
23 said, wouldn't it have?

24 A. Yes.

25 Q. After John makes that comment about you guys

1 having his future planned out for him, you ask him for  
2 his side of the story, right?

3 **A.** Yes.

4 **Q.** And at the time you are asking him for his  
5 side of the story, that's when you pull out these  
6 photographs of Anna Mae?

7 **A.** Yes.

8 **Q.** And these were pretty graphic pictures were  
9 they not?

10 **A.** Yes, they were.

11 **Q.** They showed the blood on the sand or on the  
12 dirt under her head at the crime scene?

13 **A.** That's correct.

14 **Q.** And in reaction to that, you described my  
15 client's response as being turning away, his eyes  
16 filling with tears, and him claiming or saying to you,  
17 she was my friend?

18 **A.** That's correct.

19 **Q.** He wasn't shaking at that point, right?

20 **A.** Yes.

21 **Q.** And he wasn't looking like he was kicked in  
22 the stomach or anything else, was he?

23 **A.** No. Just looked like he felt bad about what  
24 had happened to her.

25 **Q.** Yeah.

1           And anybody who saw those pictures would feel  
2 bad this a young woman was killed like that, wouldn't  
3 they?

4           **A.**    Yes.

5           **Q.**    Would have been a pretty heartless response  
6 not to react, correct?

7           **A.**    That's correct.

8           **Q.**    And this comment he made afterwards about FBI  
9 Agent Price, I am not going to suggest to you that  
10 Agent Price actually intended to kill Anna Mae Aquash.

11                   What I want to ask you about is the frequency  
12 with which that statement has been repeated over the  
13 last 30 years.

14                   You've heard about that alleged threat by  
15 Agent Price towards Anna Mae Aquash on a number of  
16 occasions, have you not?

17           **A.**    Yes.

18           **Q.**    Okay.

19                   In fact, it's one of those, for lack of a  
20 better statement, an urban myth that has gone around  
21 the internet for the last 30 years?

22           **A.**    I don't know.

23           **Q.**    Okay.

24                   You have heard it from a number of sources in  
25 a number of -- on a number of occasions that Mr. Price

1 allegedly threatened to kill Anna Mae Aquash?

2 **A.** Just what Mr. Graham told me that she was  
3 scared of Agent Price.

4 **Q.** Right. Okay.

5 But you have heard that from many other  
6 people over time?

7 **A.** I had heard that there was an allegation  
8 made.

9 **Q.** Okay. All right.

10 So it didn't surprise you at that point that  
11 hear that Agent Price's name was brought up?

12 **A.** I mean, I -- you know, when he had said that  
13 I knew Agent Price. I worked with his closely on Pine  
14 Ridge and that that statement would be, you know,  
15 totally untrue.

16 **Q.** And again, I am not disputing with you the  
17 truth of the statement, but the fact that it had been  
18 repeated many times, within people interested in this  
19 case, that did not surprise that happened Agent  
20 Price's name came up?

21 **A.** It surprised me that when he said that the  
22 only when she was scared of was Agent Price.

23 **Q.** You have heard that subsequently, have you  
24 not, in this investigation?

25 **A.** Just -- might have been in a report or

1 something.

2 Q. Right.

3 Witnesses you have interviewed have said that  
4 Annie Mae Aquash was afraid of Agent Price?

5 A. Yes.

6 Q. All right.

7 And you ask him about whether he wants to  
8 give his side of the story, which is essentially your  
9 way of saying he has a story to tell?

10 A. That's correct.

11 Q. Basically an accusation?

12 A. Wanted him had to fill in some details.

13 Q. And again we don't have a recording so we  
14 can't know exactly what Mr. Graham said, but you say  
15 at that point he said, I will probably spend the rest  
16 of my life in jail any way, correct?

17 A. It was when we asked him -- when I asked him  
18 if anybody had ever threatened him. If anybody said  
19 that he would -- the same thing would happen to him  
20 that happened to Anna Mae if he talked and then Mitch  
21 asked him -- said, well, John, do you think anything  
22 would happen to you if you talked and he said --  
23 that's when he paused for a minute and he looked up  
24 and he said -- and that's what he said.

25 Q. Well, when -- in the preceding conversation

1 when you are listing out this litany of accusations,  
2 you are setting out those accusations as facts that  
3 you believe are true, right?

4 **A.** That's correct.

5 **Q.** All right.

6 You are not expressing any doubt about the  
7 validity of the accusations that you are relaying?

8 **A.** Right.

9 **Q.** You are basically telling him we're going to  
10 nail you, right?

11 **A.** No.

12 **Q.** Well, you weren't saying that you were --  
13 that you doubted anything you had been told, right?

14 **A.** Right.

15 **Q.** Okay.

16 And after that, John gives you some  
17 information even though he didn't need to give you  
18 that information?

19 **A.** That's correct.

20 **Q.** And he tells you that he gave Anna Mae a ride  
21 from Denver to the reservation?

22 **A.** Yes.

23 **Q.** They went to a safe house?

24 **A.** Yes.

25 **Q.** It's South Dakota?

1           **A.**    Yes.

2           **Q.**    He isn't exactly sure where the safe house  
3 is?

4           **A.**    That's correct.

5           **Q.**    But it's in a village?

6           **A.**    Yes.

7           **Q.**    And there is lots of villages on Pine Ridge?

8           **A.**    Yes.

9           **Q.**    And when you drive around Pine Ridge not all  
10 of the villages are well marked by big signs saying  
11 welcome to this village, correct?

12          **A.**    That's correct.

13          **Q.**    There is many housing clusters on roads that  
14 aren't even marked, correct?

15          **A.**    Correct.

16          **Q.**    And he said to you that Annie Mae knew where  
17 she wanted to get out, right?

18          **A.**    No, I don't remember him saying that Anna Mae  
19 knew where she wanted to get out.

20          **Q.**    Okay.

21                 Did she not -- did you not put in your report  
22 Graham said because she wanted to get off there?

23          **A.**    Yes.

24          **Q.**    Okay.

25                 That he didn't know the people at the safe

1 house, only that it was a safe house in a village?

2 A. Yes.

3 Q. So he did tell you that she knew where she  
4 was going, he didn't?

5 A. That she wanted to get off there.

6 Q. Yeah.

7 And you, of course, know that Ray Hand Boy  
8 basically gave the same description of events about  
9 his trip from Pierre down to Denver, right?

10 A. That Ray gave his what?

11 Q. The similar description of how things went  
12 that Annie Mae told them to take her down to a place  
13 in Denver and she knew where she wanted to get out and  
14 they got to an intersection and she got out, right?

15 A. Yes.

16 Q. Told you that they took the back roads  
17 because Annie Mae was scared of getting pulled over?

18 A. No. She said that she was scared of Jim  
19 Price.

20 Q. All right.

21 Well, Agent Price was an FBI agent working on  
22 the Pine Ridge Reservation?

23 A. That's correct.

24 Q. And Anna Mae Aquash was a fugitive at the  
25 time?

1           **A.**    Yes.

2           **Q.**    You then asked him the big -- the two big  
3 questions or Mr. Pourier did who was sitting next to  
4 you.

5                    Did kill her and do you know who killed her,  
6 right?

7           **A.**    That's correct.

8           **Q.**    And you are sitting next to him as those  
9 questions are put to him?

10          **A.**    Yes.

11          **Q.**    And he says, unequivocally no to both?

12          **A.**    That's right.

13          **Q.**    And you indicate that his legs were shaking  
14 at this point, right?

15          **A.**    Heavily shaking, yes.

16          **Q.**    Yeah.

17                    Now, it was the 9:30 at night when you began  
18 this interview.

19                    What time do you conclude the interview?

20          **A.**    I suppose it was about an hour later.

21          **Q.**    And it's at night, you are in a park, and you  
22 just accused this man of killing a woman, correct?

23          **A.**    That's correct.

24          **Q.**    And you have shown him some bloody  
25 photographs?

1           **A.**    Yes.

2           **Q.**    Pretty natural somebody might be shaking in  
3 that situation?

4           **A.**    Yeah, if he was accused of shooting her.

5           **Q.**    Or if he was just implicated by you, right?

6           **A.**    That's correct.

7           **Q.**    And you said on your direct that it was  
8 Mr. Graham that stood up.

9                    Isn't it true that the interview concluded  
10 when you stood --

11           **A.**    No. I said when I stood up.

12           **Q.**    I wanted to make sure.

13                    So you stood up at that point?

14           **A.**    Yes.

15           **Q.**    And then the interview concluded?

16           **A.**    Yes.

17           **Q.**    You interviewed basically about a year later  
18 didn't you?

19           **A.**    Yes.

20           **Q.**    And you went back up to the Yukon?

21           **A.**    Yes.

22           **Q.**    And Pourier came with you?

23           **A.**    That's correct.

24           **Q.**    And again the only purpose to go up there was  
25 to interview Mr. Graham?

1           **A.**    That's correct.

2           **Q.**    And despite the budgets and the availability,  
3 neither of you brought a recorder again, right?

4           **A.**    That's right.

5           **Q.**    What Mr. Graham told you in a nut shell --  
6 well, according to you in quote, he said to you twice,  
7 I didn't kill her, I didn't kill her; isn't that true?

8           **A.**    That's true.

9           **Q.**    And that basically concluded that interview  
10 didn't it?

11          **A.**    Yes.

12          **MR. MURPHY:**   Nothing further.

13          **THE COURT:**   Counsel, come here, please.

14                   (Whereupon, a discussion was held at the  
15 bench.)

16          **THE COURT:**   This is a 2010 *State vs. Harris*  
17 decision that talks about the identification and use  
18 of a recording.  And it says the foundation necessary  
19 is for someone who knows or can recognize the voice.  
20 It says only voice here, because it's not a video, is  
21 sufficient regardless of whether the voice was known  
22 before or after -- that -- I am sorry -- that comes  
23 from the restatement.  And I don't know if it was in  
24 Harris.

25                   But it would seem to me on that criteria,

1 Mr. Ecoffey can identify the video of Mr. Graham and  
2 the voice that it's admissible.

3 **MR. MURPHY:** Okay.

4 **THE COURT:** That's on *State vs. Harris*.

5 **MR. MURPHY:** Okay.

6 **MR. OSWALD:** I don't think the WOLFY works.  
7 The lamp is out. So to do this, and play it, he's  
8 going to have to switch and get the other WOLFY.

9 **MR. MURPHY:** Are we coming up on a break or  
10 no because I don't mind --

11 **THE COURT:** Do you know what's wrong with it?

12 **MR. JACKLEY:** The lamp. It's the lamp.

13 **THE COURT:** Okay.

14 You want to take a break and do that now or  
15 get it later through the course of your cross -- or  
16 redirect?

17 **MR. MURPHY:** Let's do it now because the  
18 redirect is not going to be that long and I am not  
19 going to have much recross.

20 **THE COURT:** Okay.

21 (Whereupon, the discussion at the bench was  
22 then concluded.)

23 **THE COURT:** Ladies and gentlemen, we have to  
24 do some equipment repair on modern technological stuff  
25 so we're going to take about a 15 minute break to do

1 that.

2 The standard warnings about opinions and  
3 discussions hold true for now.

4 Thank you.

5 (Whereupon, the following proceedings were  
6 then had in open court and outside the presence of the  
7 jury.)

8 **THE COURT:** Okay.

9 We're here for a hearing outside the presence  
10 of the jury. I think that probably should include  
11 Mr. Ecoffey as outside of here as well.

12 **MR. MURPHY:** That's fine, Your Honor. I am  
13 not sure we need the hearing any more. The issue has  
14 been taken care letter.

15 **MR. OSWALD:** Yes, Your Honor.

16 **THE COURT:** Bring in the jury.

17 Have we had the appropriate come to Jesus  
18 sessions?

19 **MR. MURPHY:** I believe so.

20 **MR. JACKLEY:** I believe so.

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

23 **THE COURT:** Counsel?

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

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

1           **THE COURT:** All right.  
2           I think you are up, Mr. Oswald.  
3           Mr. Ecoffey can return to the stand.

4                           **REDIRECT EXAMINATION**

5           **BY MS. OSWALD:**

6           **Q.** Bob, just where we left -- last left off,  
7           Mr. Murphy asked you in kind of a couple questions  
8           that Price worked on the reservation.

9                         Do you remember that?

10          **A.** Yes.

11          **Q.** And that Anna Mae was scared of Price or  
12          words to that effect?

13          **A.** Yes.

14          **Q.** Does it make sense to you that she would run  
15          to the reservation where Agent Price worked?

16          **A.** No.

17          **Q.** Selo Black Crow information. Okay. I want  
18          to talk about that.

19                         In all of your witness interviews, have you  
20          ever heard of anyone placing Selo Black Crow if  
21          Denver?

22          **A.** No.

23          **Q.** Have you had any witnesses or reports of any  
24          kind that place Selo Black Crow tying her up in  
25          Denver?

1           **MR. MURPHY:** Leading, Your Honor.

2           **THE COURT:** True.

3           Sustained.

4           **Q. (BY MR. OSWALD)** Regarding any -- do you have  
5 any witness that talks about Selo Black Crow in a red  
6 Pinto?

7           **A.** No.

8           **Q.** Do you have any information regarding  
9 Mr. Black Crow ever having been at WKLD0C here in  
10 Rapid City?

11           **MR. MURPHY:** Leading, again.

12           **THE WITNESS:** No.

13           **THE COURT:** I really don't think it is.  
14 Overruled.

15           **A.** No.

16           **Q. (BY MR. OSWALD)** Do you have any information  
17 through witnesses or reports that this Selo Black Crow  
18 was ever at Dick Marshall's?

19           **A.** No.

20           **Q.** Finally, do have you any information that  
21 Anna Mae was killed as a result of a hit-and-run?

22           **A.** No.

23           **Q.** Now, Mr. Murphy asked you this question,  
24 throughout all of those interviews, he was courteous  
25 and obliged you.

1 Do you remember that?

2 **A.** Yes.

3 **Q.** Did Mr. Graham oblige you all the time in  
4 1995?

5 **A.** No.

6 **Q.** Did you go up to the Yukon to try and  
7 interview Mr. Graham again in 1995?

8 **A.** Yes.

9 **Q.** That's when you and Mr. Murphy were talking  
10 about, I didn't kill her, I didn't kill her he said?

11 **A.** Yes.

12 **Q.** But before that, what did you want from him?  
13 What did you want to do before he made those  
14 statements?

15 **A.** I told him that I wanted him to listen to a  
16 tape of Arlo Looking Cloud concerning new information  
17 in the Anna Mae Aquash murder.

18 **Q.** What did he say in response to that, sir?

19 **A.** He said that -- I believe he said we -- that  
20 we don't trust you at that point in time.

21 **Q.** Did you make note of his response in your  
22 report from 1995?

23 **A.** Yes.

24 **Q.** And was that report based upon the notes at  
25 or near the time when you had the interview?

1           **A.**    Yes.

2           **Q.**    Would it help to refresh your memory?

3           **A.**    Yes.

4           **Q.**    Okay.

5                    Now does looking at this report refresh your  
6 memory, sir?

7           **A.**    Yes.

8           **Q.**    What did Mr. Graham say?

9           **A.**    He said, what about all the other murderers.  
10 What about Leonard Peltier.

11           **Q.**    Did you want to meet with Mr. Graham again,  
12 then?

13           **A.**    Yes.

14           **Q.**    And did he?

15           **A.**    No.

16           **Q.**    When you and Mr. Murphy were talking about  
17 the response Mr. Graham gave when it looks like you  
18 have your case, explain, was it sarcastic as he's --  
19 as he questioned you?

20           **A.**    No, it wasn't.

21           **Q.**    Explain what it was.

22           **A.**    I thought that it was from him realizing that  
23 we did have our case. That we had his life planned  
24 out for him.

25           **Q.**    I'd like to show you what's been marked as

1 42, sir?

2 Do you see that.

3 A. Yes, I do.

4 Q. Did you review that before coming to court  
5 last night?

6 A. Yes, I did.

7 Q. And did you recognize the video of the person  
8 in that just yes or no?

9 A. Yes.

10 Q. Did you recognize the voice belonging to that  
11 person at the same time?

12 A. Yes.

13 Q. Is there any doubt in your mind of who is  
14 depicted on that video and audio?

15 A. No, there isn't.

16 Q. And then did I have you initial that DVD?

17 A. Yes, you did.

18 Q. And does this DVD after reviewing it bear  
19 your initials?

20 A. Yes, it does.

21 Q. Who is depicted on that 36-second clip, sir?

22 A. John Graham.

23 MR. OSWALD: I would offer 42.

24 MR. MURPHY: May I see the disk?

25 MR. OSWALD: Sure.

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

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

3           **MR. OSWALD:** May I show it now?

4           **THE COURT:** You may.

5           (Whereupon, Exhibit 42 was then played for  
6 the jury.)

7           **MR. OSWALD:** I have no further redirect,  
8 Judge.

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

10          **MR. MURPHY:** Just a moment, if I may, Your  
11 Honor.

12                           **REXCROSS-EXAMINATION**

13          **BY MR. MURPHY:**

14           **Q.** You were asked by Mr. Oswald about whether it  
15 made sense for Anna Mae Aquash to want to go back to  
16 Pine Ridge, right?

17           **A.** Yes.

18           **Q.** Because Agent Price worked down there?

19           **A.** That's correct.

20           **Q.** In 1975 where were the FBI headquarters?

21           **A.** Rapid City.

22           **Q.** Agent Price's office was in Rapid City,  
23 correct?

24           **A.** That's correct.

25           **Q.** The FBI presence was strong in Rapid City,

1 correct?

2       **A.** It was also strong on Pine Ridge.

3       **Q.** Well, let me ask you about this. Where was  
4 AIM's presence stronger, Rapid City or Pine Ridge?

5       **A.** I'm not sure.

6       **Q.** Sir, the activities we talked about, Wounded  
7 Knee, Jumping Bull, Crow Dog's, Al Runnings, all  
8 occurred on Pine Ridge, didn't they?

9       **A.** Al Runnings' is on Rosebud.

10       **Q.** Okay.

11               Down on the reservation -- one of the  
12 reservations?

13       **A.** Yes.

14       **Q.** AIM safe houses, there were many located  
15 around the Pine Ridge Reservation in the 1970s, were  
16 there not?

17       **A.** I don't know.

18       **Q.** People like Mr. Peltier, Mr. Butler,  
19 Mr. Banks, were able to hide down in Pine Ridge after  
20 the killing of the FBI agents, were they not?

21       **A.** Yes.

22       **Q.** There were a lot of people in Pine Ridge that  
23 weren't willing to cooperate with the FBI and other  
24 law enforcement officers when they were investigating  
25 activities related to AIM, correct?

1           **A.**    Correct.

2           **Q.**    Anna Mae Aquash was well known in Pine Ridge,  
3 was she not?

4           **A.**    Yes.

5           **Q.**    And lived in Oglala?

6           **A.**    Yes.

7           **Q.**    Worked throughout the reservation, correct?

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

9           **Q.**    Okay.

10                    She knew a lot of people down there, didn't  
11 she?

12           **A.**    Yes.

13           **Q.**    Mr. Oswald asked you about this hit-and-run  
14 issue, about whether Anna Mae Aquash was killed as a  
15 result of hit-and-run. I want to talk to you about  
16 that.

17                    Hit-and-run became an issue because Selo  
18 Black Crow's wife made a call to the ambulance, do you  
19 remember that?

20                    Do you remember reading about that?

21           **A.**    Yes.

22           **Q.**    And turned out it was a nonsensical call, do  
23 you remember that?

24           **A.**    Yes.

25           **Q.**    She couldn't explain why she had reported a

1 body up there on Highway 73 but made a number of  
2 claims that it might have been because there was a  
3 hit-and-run, right?

4 A. What I recall is there might have been an  
5 accident.

6 Q. All right.

7 And anyway, her case, once that was  
8 investigated, her explanations held no water  
9 whatsoever, did they?

10 A. That's correct.

11 Q. In fact, she reported things that happened  
12 weeks afterwards as having happened before her call,  
13 right?

14 A. I'm not sure.

15 Q. All right.

16 And anyway, in -- in any case, she wasn't  
17 allowed to talk to you?

18 A. I didn't talk to her.

19 Q. Selo wouldn't let her be interviewed by  
20 anybody, would he?

21 A. I don't know.

22 Q. Okay.

23 Well, why that hit-and-run was an issue is  
24 because it brought Selo on to the radar screen, right?

25 That's how his name first came up?

1           **A.** Well, I believe that the reason that the  
2 hit-and-run came up was that they just thought that  
3 there might have been an accident there and somebody  
4 called it in.

5           **Q.** Right. That was the call Selo's wife made,  
6 right?

7           **A.** Yes.

8           **Q.** And that was reported on the logs of the  
9 ambulance company, right?

10          **A.** Yes.

11          **Q.** And so somebody back in 1976 looked through  
12 those logs and that brought Selo and Irene's names to  
13 their attention; is that a fair statement?

14          **A.** Yes.

15          **Q.** And then when they started investigating Selo  
16 and Irene, they talked to the next-door neighbor,  
17 Herman Zimiga, right?

18          **A.** I don't know.

19          **Q.** How is it you seem to be aware of all of the  
20 reports but just not the ones that involve Mr. Zimiga  
21 and his accusations against Selo?

22          **A.** Like I said, I didn't review all of the  
23 thousands of reports that are associated with this  
24 investigation.

25          **Q.** So in the course of your investigation you

1 never reviewed Agent Wood and Agent Prices' report of  
2 their investigation of Herman Zimiga?

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

4 **Q.** So you were never made aware in the course of  
5 your investigation of this case over the last 35 years  
6 that Mr. Zimiga was the next door neighbor of Selo  
7 Black Crow?

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

9 **Q.** And you were never made aware at any time  
10 even though it's in reports going back from February  
11 of 1976 on that Mr. Zimiga said --

12 **MR. OSWALD:** Objection, Your Honor. Hearsay.

13 **THE COURT:** Overruled.

14 **Q. (BY MR. MURPHY)** That Mr. Zimiga had reported  
15 that two Indian women, one thin short in her 20s or  
16 30s and an Indian male had come to Mr. Black Crow's  
17 house in a gold car at night?

18 Never heard about that?

19 **A.** No.

20 **Q.** And you never heard that they dropped the one  
21 thin younger woman off at the house -- at Mr. Black  
22 Crow's house?

23 **A.** No.

24 **Q.** And how that some time later that woman was  
25 picked up from the house?

1           Never heard that?

2           **A.**   No.

3           **Q.**   And through all of your investigation of this  
4 case, you never -- even during the interview, that you  
5 sat in on with Selo Black Crow, you can't remember  
6 today that when he was confronted with this  
7 information that he looked like he had been kicked in  
8 the stomach and he remained silent for four to five  
9 minutes and he put his head down and he gulped?

10           That just -- you don't remember that either?

11           **A.**   No.

12           **Q.**   Even though you were right in the room?

13           **A.**   No.

14           **Q.**   All right.

15           When you were asked whether my client's  
16 comment was sarcastic or not about, well, it sounds  
17 like you got your case, that was after you had relayed  
18 to him a bunch of information, a bunch of accusations,  
19 right?

20           **A.**   That's correct.

21           **Q.**   And including in one of those accusations was  
22 that a 12-year-old girl participated in the  
23 kidnapping?

24           **A.**   Yes.

25           **Q.**   So he might not have taken you completely

1 seriously?

2       **A.** Well, when somebody accuses you of killing  
3 someone you should take them seriously.

4       **Q.** And he obliged you with interviews and  
5 obliged you with meetings and he sat down and talked  
6 to you even though he didn't have to, right?

7       **A.** Yes.

8       **Q.** Regarding -- the last point is this 1995  
9 interview. You were asked about my client's comment  
10 when he said twice to you, I didn't kill her. I  
11 didn't kill her.

12               Do you remember that?

13       **A.** Yes.

14       **Q.** And you said that was in response to him  
15 being asked -- or him saying that he didn't trust you.

16               Do you remember that?

17       **A.** Yes.

18       **Q.** And your report shows that my client's  
19 comments when he said to you twice, I didn't kill her,  
20 I didn't kill her, came when you were trying to get  
21 him to watch Arlo's tape, right?

22       **A.** Yes.

23       **Q.** All right.

24               Didn't happen when he was saying, I don't  
25 trust you guys. You wanted him to watch a video and

1 he said, I don't need to watch this video. I didn't  
2 kill her. I didn't kill her?

3 A. He didn't say I don't need to watch the  
4 video. He just said, I didn't kill her.

5 Q. That was the implication, though, he didn't  
6 watch the watch the video?

7 A. Apparently not. He didn't show up.

8 MR. MURPHY: All right. Nothing further.

9 Thank you.

10 **REDIRECT EXAMINATION**

11 **BY MR. OSWALD:**

12 Q. Mr. Ecoffey, were there -- you talked  
13 about -- he talked about safe houses just now with  
14 you?

15 A. Yes.

16 Q. Was Kills Means' house on Rosebud Reservation  
17 a known AIM safe house that you know of?

18 A. I don't know.

19 Q. Was Dick Marshall's a known safe house?

20 A. I don't know.

21 Q. How about Arlo's grandmother at Potato Creek,  
22 was that a known safe house?

23 A. I don't know.

24 MR. OSWALD: No further questions.

25 MR. MURPHY: Nothing further.

1 Thank you.

2 **THE COURT:** Thank you, sir.

3 You may step down.

4 (Witness excused.)

5 **MR. JACKLEY:** The state would call Mitch  
6 Pourier, Your Honor.

7 MITCH POURIER,  
8 called as a witness herein, having been duly sworn,  
9 under oath testified as follows:

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

11 **DIRECT EXAMINATION**

12 **BY MR. JACKLEY:**

13 Q. Good afternoon.

14 Please introduce yourself to the jury.

15 A. My name is Mitchell Pourier. I am a special  
16 agent with the BIA.

17 Q. Mr. Pourier, are you an enrolled Tribal  
18 member?

19 A. Yes, I am enrolled with the Oglala Sioux  
20 Tribe.

21 Q. Do you have a college education?

22 A. Yes. I have a Bachelor's degree from Huron  
23 College.

24 Q. Mr. Pourier, could we take just a moment and  
25 walk through your law enforcement work history. Where

1 you started to where you are at now.

2 **A.** Okay.

3 Well, I started part time at Pine Ridge in  
4 1975. I went on to get my Bachelor's degree. I  
5 started full-time with the Oglala Sioux Tribe  
6 Department of Public Safety. I was a police officer  
7 there for a number of years till 1984. I became a  
8 criminal investigator with the Oglala Sioux Tribe. In  
9 1988 I was hired on by the Bureau of Indian Affairs as  
10 a crime investigator. I worked in that capacity on  
11 several reservations in South Dakota up until 1990.

12 And I was hired as the child abuse  
13 investigator for the Aberdeen area office. From there  
14 I -- in 1994 I was selected as one of five district  
15 commanders. My duty station was up in Billings,  
16 Montana. I oversaw the law enforcement programs, BIA  
17 and Tribal in five states in that particular position.  
18 I stayed there until 2000.

19 In 2000 I transferred down to Rapid City here  
20 where we had opened up a new internal affairs office.  
21 I was the supervisory special agent there and I worked  
22 in that capacity until 2006 when the BIA closed that  
23 office down. I then transferred back to Pine Ridge  
24 and basically just waiting to finish up where I  
25 started, I guess.

1 Q. Mr. Pourier, did you ever meet Anna Mae  
2 Aquash?

3 A. No, sir.

4 Q. In April of 1994, what position did you hold?

5 A. In April of 94 I was the child abuse  
6 investigator up in Aberdeen.

7 Q. Did there come a time in relation to the  
8 Annie Mae Aquash case where you went to Canada?

9 A. Yes.

10 Q. When was that?

11 A. It was on April 20, 1994.

12 Q. Generally, why were you going to Canada?

13 A. I was accompanying Marshal Ecoffey to Canada  
14 so -- to see if we could locate and possibly interview  
15 John Graham.

16 Q. Who else was generally involved with  
17 assisting with the interview?

18 A. FBI Special Agent Jim Graf, one of the  
19 Canadian police, Constable Miller. He had assisted us  
20 up there. So it was kind of a joint investigation  
21 type.

22 Q. When you say joint investigation, my  
23 understanding from testimony is there were four  
24 agencies involved, you, with the BIA; Bob Ecoffey,  
25 United States Marshal; somebody from the Canadian

1 authorities; and Agent Graf from the FBI; is that  
2 fair?

3 **A.** Yes, sir.

4 **Q.** Did there come a time when you had an  
5 opportunity to interview John Graham?

6 **A.** Yes, sir.

7 **Q.** What date was that, the actual interview?

8 **A.** The actual interview was on the 21<sup>st</sup> of  
9 April, 1994.

10 **Q.** Please set the stage for the jury about where  
11 the players were at and how the interview began.

12 **A.** Well, we had scheduled an interview down at  
13 our motel which was to Gold Rush Motel in Whitehorse,  
14 Montana -- I mean, excuse me, Canada. We scheduled it  
15 for 7:30 that evening of the 21<sup>st</sup>. However, John  
16 Graham never showed up. About 8:00 o'clock his  
17 significant other showed up and told Marshal Ecoffey  
18 that John Graham --

19 **MR. MURPHY:** Objection. Hearsay.

20 **THE COURT:** Sustained.

21 **Q.** (BY MR. JACKLEY) Mr. Pourier, let me back up  
22 just a moment. I want to take you back earlier in the  
23 day.

24 Did there come a time where prior to setting  
25 up the 7:30 meeting that you and Marshal Ecoffey had

1 an opportunity to meet with John Graham?

2 **A.** Yes.

3 **Q.** Describe approximately what time of day it  
4 was?

5 **A.** It was approximately 4:30 p.m.

6 **Q.** Where did that meeting occur at?

7 **A.** That meeting was at the place of employment  
8 of John Graham at the West Mark.

9 **Q.** Who was present for this interview?

10 **A.** Marshal Ecoffey and myself had approached  
11 John Graham.

12 **Q.** When you approached John Graham, please  
13 describe how that happened.

14 **A.** We were waiting near the building there,  
15 parked. We observed John Graham come down the ladder  
16 that was next to the building. Marshal Ecoffey and I  
17 got out of the vehicle. We walked over to -- John  
18 Graham came down. He started walking down the alley  
19 way. We approached him and introduced ourselves that  
20 we were law enforcement officers from Pine Ridge,  
21 South Dakota.

22 **Q.** What was Mr. Graham's response?

23 **A.** Once Marshal Ecoffey told John Graham that we  
24 were there because new information had been found on  
25 the murder of Annie Mae Aquash, he seemed surprised.

1 Asked us how do you know about me.

2 Q. Mr. Pourier, I now want to ask you a couple  
3 yes or no questions, okay?

4 A. Okay.

5 Q. At that point was there an inquiry about a  
6 ceremony made to John Graham?

7 A. Yes, sir.

8 Q. Again, yes or no, did John Graham provide a  
9 response about that inquiry?

10 A. Yes, sir.

11 Q. What was John Graham asked about that  
12 ceremony?

13 MR. MURPHY: Objection, Your Honor.

14 THE COURT: Approach.

15 (Whereupon, a discussion was held at the  
16 bench.)

17 THE COURT: What ceremony are we talking  
18 about?

19 MR. JACKLEY: The Medicine Man ceremony that  
20 we litigated, Your Honor. What I am eliciting, number  
21 one, was an inquiry made and he said yes. Number two  
22 did John Graham make a response and he said yes.  
23 Basically John Graham has admitted to going to a  
24 spiritual leader and requesting a ceremony and I think  
25 I am entitled to ask this witness that. I can show

1 the Court specifically in the report where it's at if  
2 you want to see further detail.

3 **THE COURT:** Well, I can believe that. My  
4 question is whether it's admissible.

5 **MR. MURPHY:** Right, and we're arguing it's  
6 not admissible. The meeting is clearly offered to  
7 prove the truth of the matter asserted. It is hearsay  
8 because what he is going to do is present my --  
9 Mr. Pourier is going to relay hearsay from Mr. Gates  
10 and then he is going to --

11 **THE COURT:** No, he's not.

12 **MR. JACKLEY:** Because John Graham says that's  
13 what he's going to say.

14 **MR. MURPHY:** Well, all John Graham's response  
15 was yeh, Y-E-H. That's what it says in the report.

16 **MR. JACKLEY:** And he nodded affirmatively.  
17 There is two things I am trying to elicit.

18 **MR. MURPHY:** The elements -- then it can't go  
19 near the contents of what Gates relayed to him. I  
20 mean --

21 **MR. JACKLEY:** Your Honor, this goes to the  
22 subject that we litigated on the Medicine Man theory.  
23 What we are seeking --

24 **THE COURT:** Just a minute.

25 Who?

1           **MR. JACKLEY:** John Graham's -- we're not  
2 asking what Al Gates said; we're asking what John --

3           **THE COURT:** Going to an Indian ceremony, what  
4 does that mean? They have them for all kinds of  
5 things.

6           **MR. JACKLEY:** Can I grab the report?

7           Basically the gist of it is John Graham was  
8 asked a question, the inquiry was made regarding the  
9 ceremony of a -- that he felt in a bad way about Annie  
10 Mae Aquash so --

11           **THE COURT:** That's not going to come in. We  
12 already had that discussion. It's a Gates problem --  
13 I mean that's a distinct *Crawford* problem if we deal  
14 with it.

15           **MR. JACKLEY:** This is what John Graham said  
16 about it. This is John Graham's statement.

17           **MR. MURPHY:** It's not John Graham's  
18 statement. The only thing that John Graham said is  
19 Y-E-H. That's an ambiguous response to a long  
20 accusation that was relayed by Gates or supposedly  
21 from Gates through a law enforcement officer.

22           **THE COURT:** Let me see the report.

23           First of all, I am not excited about anything  
24 from the ceremony.

25           **MR. JACKLEY:** I am seeking to admit it under

1 801, Your Honor. It's this right here.

2 **THE COURT:** What question are you going to  
3 ask?

4 **MR. JACKLEY:** What was John Graham asked and  
5 what was his response.

6 **MR. MURPHY:** So that would allow in all that  
7 garbage which is -- it is not an --

8 **THE COURT:** It would go no further than that  
9 at all.

10 **MR. MURPHY:** Well, but see then he -- if he's  
11 asked what was John Graham asked, that would allow --

12 **THE COURT:** He's not going to ask that.

13 **MR. MURPHY:** Okay.

14 **THE COURT:** The only thing I think you can  
15 ask him -- and I don't know the relevance of it  
16 because there is no context -- but did he have a  
17 cultural ceremony. But that's about it. He says,  
18 yeh, then you are not going anywhere beyond that.

19 **MR. JACKLEY:** A cultural ceremony pertaining  
20 to the death of Anna Mae Aquash? Can I do that?

21 **THE COURT:** No. That is hearsay from  
22 Mr. Gates. And is a *Crawford* problem with Mr. Gates.  
23 That's -- I thought that was a much more solid  
24 response than the Medicine Man theory which has some  
25 merit but it's never been reached in our courts. I

1 think -- there is a distinct *Crawford* problem here.  
2 And I mean that's -- while all you are doing is  
3 putting in from Gates with no ability to cross-examine  
4 him. We're not going to mention Gates in any way,  
5 shape, or form.

6 **MR. JACKLEY:** I am not putting in what  
7 Gates -- I am putting in what John Graham  
8 affirmatively admitted. It's a statement by the  
9 defendant under 802(d).

10 **THE COURT:** That's based on what Gates said.

11 **MR. JACKLEY:** But John Graham confirmed what  
12 Gates said.

13 **THE COURT:** You can ask him if he had a  
14 ceremony and his answer is yeah and that's the end of  
15 it.

16 **MR. JACKLEY:** But a ceremony to what about  
17 Anna Mae. Can I at least say about Anna Mae.

18 **THE COURT:** Well -- we're not going to ask  
19 him that because that comes from Gates. We're not  
20 going to address that issue at all. You are not going  
21 to put in what Gates said one way or the other.  
22 Period.

23 Now if I am wrong on that I am wrong on it.  
24 But I think it's a huge *Crawford* problem to which I  
25 have had no -- I can find no way around it. Neither

1 can my clerk who is a hell of lot smarter than I am.  
2 I can't find a way around it and you can't get around  
3 it this way. You are not going to start something  
4 that's based o what Gates told anybody.

5 **MR. JACKLEY:** I have supplied the case law to  
6 the Court on *Crawford* -- that *Crawford* only applies to  
7 hearsay statements. This is not hearsay under 801(d).  
8 This is a defendant's admission.

9 **THE COURT:** Well, it's investigatory amongst  
10 other things from the get go.

11 **MR. MURPHY:** Clearly doesn't meet the  
12 standard for an adoptive admission because an adoptive  
13 admission has to an unequivocal response.

14 **MR. JACKLEY:** *Crawford* doesn't apply to  
15 801(d). The case law is clear on this. This is not  
16 hearsay. This is defendant's admissions.

17 **MR. MURPHY:** Well, when you say defendant's  
18 admission, the only -- because his response is an  
19 ambiguous Y-E-H. You have to be going -- an adoptive  
20 admission and doesn't meet the standards for that and  
21 that's the 801 issue.

22 **THE COURT:** I don't think it can come in.

23 **MR. JACKLEY:** My record -- 801(d) makes it  
24 not hearsay. If that's all I can --

25 **THE COURT:** That's fine.

1           (Whereupon, the discussion at the bench was  
2 then concluded.)

3           **Q. (BY MR. JACKLEY)** Mr. Pourier, I want to take  
4 you back to -- I believe you indicated to the jury  
5 Mr. Graham had indicated, quote, how do you know about  
6 me, end quote.

7           Do you recall that?

8           **A.** Yes, sir.

9           **Q.** At that point in time, did you and  
10 Mr. Ecoffey have a general discussion with Mr. Graham  
11 about information that you had obtained through  
12 response is -- view of the Aquash investigation file?

13          **A.** Yes, sir.

14          **Q.** Did some of that information that you were  
15 discussing with Mr. Graham include occurrences in  
16 Denver?

17          **A.** Yes, sir.

18          **Q.** Generally describe to the jury what that  
19 discussion was about Denver.

20                 **MR. MURPHY:** Your Honor, objection. Calls  
21 for hearsay. It's also cumulative.

22                 **THE COURT:** I'm not sure I understand the  
23 question.

24                 Say again what you are asking this gentleman.

25          **Q. (BY MR. JACKLEY)** Let me maybe approach it

1 this way.

2 Mr. Pourier, before you went to Canada, did  
3 you take an opportunity to review information from the  
4 Annie Mae Aquash investigation file?

5 A. Yes, sir.

6 Q. Did you have an opportunity to review,  
7 including photos, some of which you took with you for  
8 the interview?

9 A. Yes, sir.

10 Q. Did you have an opportunity to review witness  
11 statements and information contained in the file of  
12 that nature?

13 A. Yes, sir.

14 Q. Based upon the information, the witness  
15 information, the photographs, did you develop a  
16 general theory of the case to inquire of John Graham  
17 about?

18 A. Yes, sir.

19 Q. Was part of that general theory involving  
20 Mr. Graham's activities or alleged activities in  
21 Denver?

22 A. Yes, sir.

23 Q. Please describe what was discussed with  
24 Mr. Graham at that point in the interview in relation  
25 to Denver.

1           **MR. MURPHY:** Objection, Your Honor. This  
2 calls for the same hearsay that came up with  
3 Mr. Ecoffey.

4           **THE COURT:** Depending on where it goes and  
5 how much it goes, I think it's fair within a context  
6 of an interview with Mr. Graham.

7           Again, the statements made or descriptions  
8 made by Mr. Pourier are not evidence that anything  
9 occurred. They are just simply a recitation of things  
10 he is telling Mr. Graham and they cannot be considered  
11 by you in resolving any of the questions in this case.

12           Understood?

13           **MR. MURPHY:** Your Honor, I'd also object on  
14 relevance. How they got to Canada, why they got to  
15 Canada is irrelevant.

16           **THE COURT:** Well, it may be. But I don't --  
17 I think that takes 30 seconds and it doesn't have much  
18 to do with anything.

19           Go ahead.

20           **Q. (BY MR. JACKLEY)** Mr. Pourier, again, then, in  
21 the context of your discussions with Mr. Graham, about  
22 the information you obtained from the file, generally  
23 speaking, what was Mr. Graham being told about the  
24 case as it relates to Denver?

25           What information did you have about his

1 activities in Denver?

2 **A.** It was mentioned to him about a meeting being  
3 held in Denver at Troy Lynn Irving's residence where a  
4 meeting went on and there was an individual by the  
5 name of Corky Gonzalez from the Chicano movement or --  
6 that he --

7 **MR. MURPHY:** Your Honor, this is getting into  
8 double hearsay now.

9 **THE COURT:** Yeah.

10 **Q.** (BY MR. JACKLEY) Did -- during the discussion  
11 with Mr. Graham, about the information that law  
12 enforcement had on its file about Denver, did he show  
13 any emotions or did you observe him do anything?

14 **A.** Once during the discussion he responded, yeh.  
15 He drew his cigarette toward his mouth. I observed  
16 his lips trembling and his hand was shaking.

17 **Q.** Did that initial interview come to an end?

18 **A.** Yes.

19 **Q.** Generally describe that to the jury.

20 **A.** While we were there talking with him, a  
21 brown-colored station wagon pulled into the area. At  
22 that point they had come to pick up John Graham and so  
23 that's when we asked if we could meet later. He  
24 wanted to go -- John Graham wanted to go home, clean  
25 up. So we had a meeting scheduled for our motel at

1 7:30 that evening.

2 Q. Okay.

3 Did you prepare to have a meeting at the  
4 hotel at 7:30 that evening?

5 A. Yes. We had an area to talk with John Graham  
6 and we were waiting for his arrival.

7 Q. Did he ever show up?

8 A. John Graham never showed up at the motel  
9 there.

10 Q. Did somebody show up at the hotel there?

11 A. His significant other, I guess, Viola  
12 Papiquash, she showed up around 8:00 o'clock.

13 Q. When she showed up, was contact attempted to  
14 be made with Mr. Graham?

15 A. Yes. Once she arrived -- and then at that  
16 point she had went and placed a telephone call to John  
17 Graham.

18 Q. Was she the only one that talked to John  
19 Graham on the telephone call or did somebody else talk  
20 to him?

21 A. Marshal Ecoffey also talked with John. Viola  
22 Papiquash came back and advised Marshal Ecoffey that  
23 John Graham would like to talk with him on the  
24 telephone.

25 Q. Were you present -- could you hear at least

1 the conversation that Bob Ecoffey was having at that  
2 time?

3 **A.** No, sir.

4 **Q.** Okay.

5 Did it ultimately turn out that there was a  
6 second meeting that day with John Graham?

7 **A.** Yes, sir.

8 **Q.** And again what date are we talking about?

9 **A.** April 21<sup>st</sup>.

10 **Q.** Of what year?

11 **A.** 1994.

12 **Q.** Where did what I will call the second meeting  
13 occur at?

14 **A.** At Rotary Park in Whitehorse.

15 **Q.** Do you remember about what time the meeting  
16 began?

17 **A.** It was about 9:15 p.m. in the evening.

18 **Q.** Who was present for the meeting?

19 **A.** Marshal Ecoffey, myself, and Constable Miller  
20 was waiting at a -- at one of the tables -- picnic  
21 tables there and John Graham walked up to us. At that  
22 point Constable Miller introduced himself.

23 **Q.** Did Mr. Graham ask to see anything at that  
24 point in time?

25 **A.** At that point in time, we provided our --

1 identified ourselves and provided our credentials.

2 Q. Do you know at the time that interview  
3 began -- you had mentioned a Ms. Papiquash his  
4 significant other.

5 Do you remember was she anywhere nearby the  
6 interview?

7 A. She was a distance away. Just Marshal  
8 Ecoffey and myself and John Graham were at the picnic  
9 table.

10 Q. So you were sitting at a picnic table?

11 A. Yes, sir.

12 Q. Generally describe to the jury where the  
13 folks were seated at the picnic table. Where you were  
14 at, where Marshal Ecoffey was at, and where John  
15 Graham was at?

16 A. The table is there. John Graham was on  
17 the -- my left side across the table. And Marshal  
18 Ecoffey was on my right side on each end of the table.  
19 I was on the opposite side seated in the middle.

20 Q. Mr. Pourier, we again talked about, prior to  
21 you and Marshal Ecoffey coming to the interview, you  
22 had reviewed the file, and that you had developed some  
23 information and a case theory.

24 Do you remember that discussion that we had?

25 A. Yes, sir.

1           **Q.** At this time did Marshal Ecoffey and you  
2 begin going into more detail with Mr. Graham about the  
3 information that law enforcement had obtained in the  
4 file?

5           **A.** Yes, sir.

6           **Q.** Without going into a he said/she said or  
7 specific witnesses, I'd just like to inquire as to  
8 general areas that you discussed with Mr. Graham.

9                   For instance, at all did you talk about the  
10 body being identified?

11          **A.** Yes. We talked about that.

12          **Q.** Was there further information talked about,  
13 the evidence, or information as it related to Denver?

14          **A.** Yes, sir.

15          **Q.** Was there a discussion about information  
16 pertaining to Annie Mae being tied up in Denver?

17          **A.** Yes, sir.

18          **Q.** At the end of, essentially, you and Marshal  
19 Ecoffey outlining the information that was obtained  
20 through the file and through witnesses, did Mr. Graham  
21 have any type of a response?

22          **A.** Yes, sir. He told us, looks like you guys  
23 have my future planned out for me. You have your  
24 case.

25          **Q.** How did you take that when he said it?

1           **A.**   That he was admitting to his involvement.

2           **Q.**   Mr. Pourier, at some point in time did you  
3 show photographs to Graham?

4           **A.**   Yes, sir.

5           **Q.**   Mr. Pourier, I'm handing you what has been --  
6 placed into evidence as State's Exhibits 3, 4, and 5.

7                   Do you recognize those photographs?

8           **A.**   Yes, sir.

9           **Q.**   Are those the photographs that were shown to  
10 John Graham on April 21, 1994?

11           **A.**   Yes, sir.

12           **Q.**   Who had taken those photographs out of the  
13 investigation file?

14           **A.**   Marshal Ecoffey.

15           **Q.**   Okay.

16                   **MR. JACKLEY:** Your Honor, may I briefly show  
17 the jury on the projector?

18                   **THE COURT:** Yes.

19           **Q.**   **(BY MR. JACKLEY)** And again, Mr. Pourier,  
20 those were the photographs that were shown to John  
21 Graham during that interview?

22           **A.**   Yes, sir.

23           **Q.**   Did John Graham have any reaction that you  
24 observed when he saw those photographs?

25           **A.**   Yes. He glanced at the photographs and

1 immediately turned away. At that point in time I saw  
2 his eyes fill with tears.

3 Q. Did there come a point where you and Marshal  
4 Ecoffey talked to Mr. Graham about any threats being  
5 made to him or that if he cooperated any threats, can  
6 you recall that?

7 A. Yes, sir.

8 Q. Can you brief that he describe that  
9 discussion to this jury.

10 A. Well, initially Marshal Ecoffey asked if he  
11 had -- John Graham had been threatened by anyone or if  
12 he thought that -- thought that the same thing would  
13 happen to him if he talked. And I then asked him, did  
14 he think anything would happen to him if he talked.  
15 At that point John Graham said -- looked around,  
16 looked over toward the Whitehorse community, and said  
17 I'm ready to leave this place. I'll probably spend  
18 the rest of my life in jail.

19 Q. When he said that, what did you take from  
20 that?

21 What was your observation?

22 A. I -- my observation was that he was  
23 admitting --

24 MR. MURPHY: Objection, Your Honor. That's  
25 speculation.

1           **THE COURT:** Sustained.

2           **Q.** (BY MR. JACKLEY) Did you take him serious?

3           **A.** Yes, sir.

4           **Q.** Did you take him serious enough that you  
5 placed that quote in your report?

6           **A.** Yes, sir.

7           **Q.** Did there come a point in the interview that  
8 John Graham began discussing his involvement in  
9 Denver?

10          **A.** Yes, sir.

11          **Q.** Describe that to the best that you can recall  
12 to the jury.

13          **A.** Well, we asked -- I asked John Graham why all  
14 the people that had information would bring up his  
15 name as mentioning his involvement in this particular  
16 matter. At that point Graham mentioned -- he said,  
17 okay, okay. I drove the car. I drove the car that  
18 night all the way back to the reservation.

19          **Q.** Was he willing to or did he offer any further  
20 names of people that he went with?

21          **A.** No. He would only say that he drove the  
22 vehicle and wouldn't provide any other names.

23          **Q.** Did there come a point then that there was a  
24 discussion about a safe house?

25          **A.** Yes.

1           **Q.** Please to the best of your recollection tell  
2 the jury what was talked about about the safe house.

3           **A.** John Graham mentioned that he had driven the  
4 vehicle back with Annie Mae Aquash to -- to a village.  
5 Marshal Ecoffey asked him if that was in Rapid City,  
6 South Dakota. He said he didn't know. I asked him  
7 was it in South Dakota, he said yes.

8           **Q.** Did he ever indicate that this safe house was  
9 at Kills Means'?

10          **A.** No.

11          **Q.** Did he ever indicate that this safe house was  
12 at Cleo or Dick Marshall's?

13          **A.** No.

14          **Q.** Did you ask him further questions about this  
15 safe house?

16          **A.** I asked him why he and Theda Clarke Nelson  
17 would tie up Annie Mae in Denver.

18                   **MR. MURPHY:** Objection. Hearsay.

19                   **THE COURT:** Overruled.

20          **Q.** **(BY MR. JACKLEY)** You may continue.

21          **A.** I asked him why they would tie Annie Mae up  
22 in Denver and transport her back to South Dakota and  
23 allow her to get off at a safe house there.

24          **Q.** What was his response?

25          **A.** His response was, because she wanted to.

1           Q.    Was John Graham asked a direct question  
2 whether or not he had killed Annie Mae Aquash?

3           A.    Yes, sir.

4           Q.    When he was asked that question, what did he  
5 say?

6           A.    Marshal Ecoffey asked the question to John  
7 Graham, did you kill Annie Mae Aquash. He said no.  
8 Immediately the table that we were seated at started  
9 shaking.

10          Q.    Describe that to the best that you can  
11 recall. I mean, you are sitting there and that table  
12 starts shaking. I mean, describe that to the jury.

13          A.    It was actually moving. At first I -- I  
14 checked to see and it was because he was shaking. I  
15 then asked him if he knew who killed Annie Mae Aquash.  
16 The table continued to shake. It was moving.

17          Q.    Did the interview then essentially end?

18          A.    Yes, sir.

19               **MR. JACKLEY:** Pass this witness, Your Honor.

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

21                               **CROSS-EXAMINATION**

22           **BY MR. MURPHY:**

23          Q.    I am going to start, Mr. Pourier, with your  
24 assertion that you asked my client something to the  
25 effect of why would you tie Anna Mae up and take her

1 from Denver to South Dakota.

2 Do you remember that?

3 **A.** Yes, sir.

4 **Q.** And you said my client responded because  
5 Annie Mae wanted to?

6 **A.** Yes.

7 **Q.** Now, we've got Marshal Ecoffey's seven-page  
8 report of that conversation, that interview, correct?

9 **A.** Yes, sir.

10 **Q.** And that statement isn't contained anywhere  
11 in Marshal Ecoffey's report is it?

12 **A.** I'd have to check.

13 Can I see the report?

14 **Q.** Sure.

15 And I am going to point you to one point in  
16 the report where my client allegedly said something  
17 that it was Anna Mae who wanted to.

18 That was in response to a question, why did  
19 you take the back roads, right?

20 **A.** Yes.

21 **Q.** And I want you to read this report -- I want  
22 you to take all the time you need -- and show me any  
23 place where my client allegedly said that Annie Mae  
24 Aquash wanted to be tied up.

25 Okay. Point it out to me.

1           **A.**    What part because --

2           **Q.**    Well, you said that she said she wanted to  
3 get tied up. That's where she said she wanted to get  
4 off at the safe house.

5           **MR. JACKLEY:** Your Honor, I am going to  
6 object. Misstatement of the record.

7           **MR. MURPHY:** I beg to differ.

8           **MR. JACKLEY:** He was referring to a safe  
9 house.

10          **THE COURT:** Let me read the record.

11           My recollection of the officer's statement is  
12 the same as Mr. Murphy's. And that the question was  
13 asked why would Anna Mae want to be tied up and --  
14 or -- tied up and driven to Rapid City or wherever.  
15 And so Mr. Murphy's question of where such a statement  
16 exists in the report is fair cross-examination.

17          **Q.    (BY MR. MURPHY)** Do you want to continue  
18 reading the report?

19          **A.**    No.

20          **Q.**    You would agree, then, in this seven-page  
21 single-spaced statement that Mr. Ecoffey put  
22 together -- which he says he put together shortly  
23 after the interview -- there is no reference at all  
24 whatsoever to my client saying that Annie Mae Aquash  
25 wanted to be tied up?

1           **A.**    No, sir.

2           **Q.**    That's true, correct, it's not in this  
3 report?

4           **A.**    Just in our initial conversation with  
5 Mr. Graham.

6           **Q.**    Sir, it wasn't in your initial -- this report  
7 covers the interview start to finish.

8                    Do you want to read this report?

9                    I am not trying to trick you. You said  
10 minutes ago that when you were out there at that table  
11 in the park that you asked Mr. Graham, why would Annie  
12 Mae Aquash want to be tied up and then taken up to a  
13 safe house.

14                   And I am asking you where in this report it  
15 ever indicates that my client said that Annie Mae said  
16 she was okay with being tied up?

17           **A.**    There is no place in there.

18           **Q.**    There is no place in this report -- there is  
19 no place in this report about my client saying that he  
20 tied her is there?

21           **A.**    No, sir.

22           **Q.**    There is no place in this report that he says  
23 she was tied up, is there?

24           **A.**    No, sir.

25           **Q.**    And this is the same interview you and

1 Ecoffey and Graf travel thousands of miles to do?

2 This one interview, right?

3 A. Yes, sir.

4 Q. And you guys represent three powerful law  
5 enforcement agencies, right?

6 A. Yes, sir.

7 Q. And you got thousands of people at your  
8 disposal, you got equipment, you got money, and not  
9 one of you brings a recorder, right?

10 A. No, sir.

11 Q. It's true, nobody brought a recorder?

12 A. No.

13 Q. Nobody wore a wire?

14 A. No.

15 Q. So had you guys done that, we might actually  
16 know what John Graham said, wouldn't we?

17 A. It's contained in the report.

18 Q. Well, but you just said when Mr. Jackley was  
19 asking you questions that my client said Anna Mae was  
20 okay about being tied up or that she had asked to be  
21 tied up. That's what you said just minutes ago.

22 That's not in here so that one comment is the  
23 only one that didn't make it into the report?

24 A. Well, initially when Marshal Ecoffey brought  
25 up -- when we met with -- at the West Mark, and it

1 was -- there was information -- information earlier  
2 that Annie Mae had been tied up in the basement by  
3 John Graham.

4 Q. Well, I understand that's what Mr. Ecoffey  
5 told Mr. Graham. Mr. Graham in this -- according to  
6 this report never said, well, we did that because  
7 Annie Mae wanted to.

8 A. Well, he never denied it either.

9 Q. Okay. Let's get into that.

10 In this report, you -- or during these two  
11 interviews both at the West Mark when you surprise him  
12 at his place of work and then at the park, you guys  
13 tell him over and over again, he doesn't need to talk  
14 to you, right?

15 A. Yes, sir.

16 Q. You want him to listen to you. That's what  
17 you say?

18 A. Yes, sir.

19 Q. And he says I will agree to listen to you,  
20 right?

21 A. Right.

22 Q. So now you are saying because Ecoffey throws  
23 a bunch of information at him, says we heard this that  
24 and the other thing from all of these people that  
25 because my client didn't say I didn't that, that he's

1 admitting to it?

2 That's your position?

3 **A.** Well, he made statements there.

4 **Q.** Well, he -- Ecoffey, recited ten paragraphs  
5 of accusations to him.

6 You've read this report?

7 **A.** Yes.

8 **Q.** And he doesn't respond statement by  
9 statement, does he?

10 **A.** No.

11 **Q.** In fact, at the very end, he doesn't say  
12 anything at all, does he?

13 **A.** No, sir.

14 **Q.** He starts talking to you once you show him  
15 the picture of his friend with her blood coming out  
16 from the back of her said, right?

17 **A.** Yes.

18 **Q.** And that's at the park?

19 **A.** Yes, sir.

20 **Q.** He didn't make any statements at all to you  
21 out at the West Mark when you surprised him on the job  
22 site?

23 **A.** All he said was yeh when we told him the  
24 information.

25 **Q.** He said yeh, Y-E-H?

1           **A.**    Yeah.

2           **Q.**    And so after ten paragraphs of recitation,  
3 you basically took that that he was admitting  
4 everything that had just been said to him?

5           **A.**    He wasn't denying nothing.

6           **Q.**    All right.

7                    These paragraphs over and over again of  
8 accusations, Ecoffey said, Ecoffey told, Ecoffey  
9 stated --

10                   Mr. Ecoffey wasn't engaging Mr. Graham in a  
11 question and answer session, was he?

12           **A.**    No, sir.

13           **Q.**    He wasn't asking him, we heard this is, is  
14 that true, was he?

15           **A.**    No, sir.

16           **Q.**    He just set out accusation after accusation  
17 and John Graham said he was willing to listen?

18           **A.**    Yes, sir.

19           **Q.**    All right.

20                   Well, what we know my client did respond is  
21 that when you showed him the pictures of Anna Mae  
22 Aquash dead at the bottom of the gulch, he looked  
23 away, his eyes filled with tears, and he said she was  
24 my friend, right?

25           **A.**    Yes.

1           **Q.** Now, regarding this comment about I'm ready  
2 to leave this place, I will probably spend the rest of  
3 my life in jail any way, do you remember that comment?

4           **A.** Yes, sir.

5           **Q.** That's after a couple law enforcement  
6 officers come up to his house, come to his place of  
7 work, then meet him at a park and tell him without a  
8 doubt in their mind they have a case against him,  
9 right?

10          **A.** We told him that the information that we had.

11          **Q.** Well, you guys weren't putting this to him  
12 as, well, we're not really sure what happened.  
13 Ecoffey told him ten paragraphs of things that he said  
14 were facts, right?

15          **A.** He advised him of the information that he had  
16 received.

17          **Q.** And he said that all these other people were  
18 implicating John Graham, right?

19          **A.** Yes.

20          **Q.** So at that point somebody listening to that  
21 might obviously believe that, boy, if these guys are  
22 saying this is true, I might actually spend some time  
23 in jail, right?

24          **A.** A normal innocent man would have responded to  
25 a lot of those questions.

1 Q. Awe.

2 Even though you guys told him in advance you  
3 don't have to talk to us, we just want you to listen?

4 A. It would have been his response as to  
5 denying.

6 Q. Well, what was his initial response -- after  
7 all of that recitation of accusations, what was his  
8 response? His eyes filled up with fears and he said  
9 she was my friend, right?

10 A. Yes, sir.

11 Q. And then you guys asked him, did you do this  
12 and he said no, right?

13 A. Yes.

14 Q. And you said do you know who did this and he  
15 said no, right?

16 A. He verbally said no, but his body language  
17 was different.

18 Q. His body language because he was shaking?

19 A. Yes, sir.

20 Q. Pretty scary to have these kinds of  
21 accusations thrown at you, wouldn't it be?

22 A. Yes, sir.

23 Q. You got no explanation for why none of you  
24 guys, not the FBI, the BIA, the U.S. Marshal Service  
25 all went all the way to Canada without bringing a

1 simple hidden microphone or a tape recorder, do you?

2 **A.** It's a pretty common practice that we usually  
3 took notes and compared our interviews off that.

4 **Q.** You weren't taking notes as he spoke?

5 **A.** Marshal Ecoffey was.

6 **Q.** He said he took the notes afterwards.

7 **A.** Yes. He took them and we prepared --  
8 prepared the interview on our memory and what was  
9 discussed at the time.

10 **Q.** Based on your memory, a memory that  
11 apparently didn't include anything about my client  
12 saying that Annie Mae said she wanted to be tied up,  
13 right?

14 **A.** Yes, sir.

15 **Q.** Because that didn't make it into the report?

16 **A.** Yes, sir.

17 **Q.** What made it into the report was that my  
18 client said I dropped her off at a place safe house,  
19 right?

20 **A.** Yes.

21 **Q.** In a village?

22 **A.** Yes.

23 **Q.** In South Dakota?

24 **A.** Yes.

25 **Q.** That Anna Mae knew where she wanted to get

1 off, right?

2 A. I guess.

3 Q. Well, I don't want you to guess.

4 Would the report help refresh your  
5 recollection, sir?

6 A. Sure.

7 Q. I will ask you to review the bottom  
8 paragraph.

9 A. Yes.

10 Q. Because she wanted to get off there. She  
11 told them which place to drop her off at, right?

12 A. According to him.

13 Q. That's that he told you?

14 A. Yes.

15 Q. So that's the stuff that made it into your  
16 report which was unreported?

17 A. Yes.

18 Q. And it was your common practice not to report  
19 thing because then of course it's your word against a  
20 defendant's, right?

21 A. No, sir.

22 Q. Well, if we had a recording there wouldn't be  
23 a question as to what was said, would there?

24 A. There was no question what was said. It's  
25 contained in the interview.

1           **Q.** Well, there is a question because you already  
2 added something into the report that wasn't there,  
3 right?

4           **A.** No, sir.

5           **Q.** Well, let's go back. When Mr. Jackley asked  
6 questions, you said my client was asked why would  
7 Annie Mae want to be tied up if she was going to go be  
8 taken to a safe house. And you said his answer was,  
9 she wanted it that way, right?

10                   That's a fair summary of what you said with  
11 Mr. Jackley?

12           **A.** It was base --

13           **Q.** I'm just asking you, is that a fair summary  
14 of what you said 15 minutes ago with Mr. Jackley?

15           **A.** Not that she wanted to be tied up.

16           **Q.** What did you say?

17                   You were asked the question very directly by  
18 Mr. Jackley, did it make sense or did you ask  
19 Mr. Graham about his story as to why she would want to  
20 be tied up in Denver if she was going to be taken to a  
21 safe house or something like that. Some question  
22 close to that. And you said his response was, because  
23 Annie Mae wanted it, right?

24                   Do you remember that?

25           **A.** Yes.

1 Q. But that's -- we just agreed that that's  
2 nowhere in this seven-page report, right?

3 A. Yes, sir.

4 Q. So there is a dispute as to what was said  
5 back in 1995, right?

6 A. Ninety-four.

7 Q. Ninety-four?

8 A. Yes, sir.

9 Q. So we're 16 years after the fact, right?

10 A. Yes, sir.

11 Q. So if any of you guys had decided to bring a  
12 recorder, a secret microphone, a body wire, we  
13 wouldn't have -- be having this dispute, right?

14 A. Yes, sir.

15 Q. That's true because the jury could decide for  
16 themselves what was really said, right?

17 A. It's contained in the interview.

18 Q. All right.

19 **MR. MURPHY:** No further questions.

20 Thank you.

21 **THE COURT:** Thank you.

22 **REDIRECT EXAMINATION**

23 **BY MR. JACKLEY:**

24 Q. Mr. Pourier, you and Mr. Murphy went round  
25 and round about what John Graham had indicated Annie

1 Mae wanted. Let me just ask you the question.

2 From the best of your recollection, what did  
3 John Graham indicate to you that Annie Mae Aquash  
4 wanted?

5 **A.** Off at the safe house.

6 **Q.** Right.

7 Not referring to wanting to be tied up, did  
8 Graham mention that?

9 **A.** No.

10 **Q.** You and Murphy did have -- Mr. Murphy did  
11 have a discussion about tying up and whether or not it  
12 existed in your report.

13 Do you recall that discussion?

14 **A.** Yes, sir.

15 **Q.** Do you recall whether or not there is a  
16 reference in your report to John Graham tying Annie  
17 Mae up?

18 **A.** Yes, sir.

19 **Q.** And do you recall what your report indicated  
20 John Graham tied her up with?

21 **A.** A rope.

22 **Q.** Okay.

23 You and Mr. Murphy had a long discussion  
24 about tape recording.

25 Do you recall that?

1           A.    Yes, sir.

2           Q.    You have been an officer for about 25 years?

3           A.    Close to that.  Thirty-four.

4           Q.    I am cheating you then, huh.

5                    Do you record all of your conversations?

6           A.    No, sir.

7           Q.    Were there two witnesses to the conversation  
8 that was had with John Graham?

9           A.    Yes, sir.

10          Q.    Who were those two witnesses?

11          A.    Marshal Ecoffey and myself.

12          Q.    Would a tape recorder have shown what John  
13 Graham's body language was during certain times of the  
14 interview?

15          A.    No, sir.

16          Q.    Would a tape recorder have shown the  
17 cigarette shaking to the mouth?

18          A.    No, sir.

19          Q.    Would a tape recorder have shown tears to the  
20 eyes when photographs were shown?

21          A.    No, sir.

22          Q.    Would a tape recorder have shown a picnic  
23 table shaking?

24          A.    No, sir.

25                   **MR. JACKLEY:**  Pass the witness, Your Honor.

**RECROSS-EXAMINATION**

1  
2 **BY MR. MURPHY:**

3 **Q.** The tape recorder would have told us exactly  
4 what was said, wouldn't it?

5 **A.** Yes, sir.

6 **MR. MURPHY:** Nothing further.

7 **THE COURT:** I'm assuming that's the end.

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

9 **THE COURT:** Thank you, sir.

10 You may step down.

11 (Witness excused.)

12 **MR. JACKLEY:** May I have just a second, Your  
13 Honor?

14 Your Honor, the State of South Dakota rests  
15 its case in chief.

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

17 **MR. MURPHY:** Your Honor, our witnesses are  
18 subpoenaed for tomorrow so we would ask to begin  
19 tomorrow.

20 **THE COURT:** Thank you.

21 Ladies and gentlemen, we'll be in recess for  
22 the evening. The standard admonitions, you will not  
23 discuss this case with anyone including yourselves.  
24 You will not watch the news. You will not read  
25 newspapers about this. And you will not make any

1 opinions on it until you've heard all of the evidence  
2 and go to deliberate.

3 Thank you.

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

7 **MR. MURPHY:** Are we back on the record, Tina?

8 **THE COURT REPORTER:** Yes.

9 **MR. MURPHY:** The state having rested at this  
10 point we would move for a judgment of acquittal  
11 Particularly in regard to the premeditated murder  
12 count. As this court knows, Mr. Looking Cloud is an  
13 accomplice as a matter of law. That requires that the  
14 Court or fact finder disregard his testimony and  
15 consider other evidence independent of that to  
16 determine whether anything corroborates his version of  
17 events.

18 As this court has heard over the last several  
19 days, the only evidence presented in this case about  
20 what happened at the Badlands is the testimony of Arlo  
21 Looking Cloud. There have not been admissions by my  
22 client of such conduct. There have not been any other  
23 witnesses attesting to it. Nor have there been any  
24 forensic evidence linking my client to a weapon or to  
25 the decedent or the bullet. Anything like that.

1           At this point, as a matter of law, the Court  
2 must disregard Mr. Looking cloud's testimony and  
3 consider what else is out there. And I submit to the  
4 Court that on the count of premeditated murder, there  
5 is no evidence from which a rational fact finder could  
6 find beyond a reasonable doubt that the crime of  
7 premeditated murder has occurred.

8           I would also make the same motion in regard  
9 to the other count, the felony murder count, but I  
10 specifically wanted to address the premeditated  
11 murder.

12           Thank you.

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

14           **MR. JACKLEY:** Your Honor, of course the Court  
15 is well aware that in a Rule 29 motion, all facts must  
16 be taken in the light most favorable to the  
17 government. There is sufficient corroboration. That  
18 corroboration, amongst other things, is a bullet, a  
19 dead body, two witnesses that just testified as to  
20 Mr. Graham's statements, as to his reactions,  
21 including, among others, the picnic table shaking.

22           The state has shown through witnesses that  
23 this began in Denver. This began with a phone call to  
24 Mr. Graham's girlfriend. This began with Mr. Graham  
25 tying up Annie Mae Aquash. This court has heard from

1 three witnesses regarding that: Arlo Looking Cloud,  
2 George Palfy, and Angie Begay.

3 This court has further heard from Troy Lynn  
4 about the flanking and taking her away.

5 This court has heard from Candy Hamilton and  
6 what her observations were with respect to what  
7 occurred in Rapid City.

8 There is -- this court has heard from Cleo  
9 Marshall regarding Mr. Graham's activities in Pine  
10 Ridge.

11 There is certainly ample evidence to  
12 demonstrate that Mr. Graham has done this, and  
13 certainly sufficient corroboration to withstand the  
14 Rule 29 motion. And I ask that it be denied, Your  
15 Honor.

16 **MR. MURPHY:** If I may briefly respond, Your  
17 Honor. The state has to provide evidence on each and  
18 every element of the charged offense. Not general  
19 corroboration that a crime occurred. The existence of  
20 a bullet proves nothing.

21 In regard to the specific element that for  
22 premeditated murder the state has the burden of  
23 proving beyond a reasonable doubt that my client  
24 specifically intended to effectuate the death of Anna  
25 Mae Aquash at the time she was killed.

1           Mr. Looking Cloud -- disregard his testimony.  
2   What Cleo Gates said, what people in Denver said, what  
3   people in Rapid City said, what a mutilated bullet  
4   said do not go to that element. They have failed as a  
5   matter of law to corroborate Mr. Looking Cloud's  
6   testimony on the intent element. And therefore, the  
7   premeditated murder should be dismissed.

8           **MR. JACKLEY:** Do you want further response?

9           **THE COURT:** Well, I think the -- I think the  
10   point that has to be addressed is getting down to the  
11   point Mr. Murphy just raised is what evidence is there  
12   to corroborate that Mr. Graham killed her and intended  
13   to kill her other than Arlo Looking Cloud's  
14   statements?

15           **MR. JACKLEY:** Again, viewing the evidence in  
16   a light most favorable to the government as the Court  
17   must, that evidence begins with the tying up in  
18   Denver. It begins with the evidence that several  
19   witnesses have testified as what do we do with  
20   informants. We kill them. They did just that and we  
21   presented that evidence, Your Honor. In a light most  
22   favorable to the government that's precisely what  
23   happened.

24           **THE COURT:** Well, I don't think anybody is  
25   quibbling with the fact that Anna Mae Aquash was

1 killed and was shot; that Anna Mae Aquash was  
2 murdered. There has not been a suggestion of anything  
3 else. I think that was stipulated at the start of the  
4 trial. And that part of the *corpus delicti* is not  
5 even an issue. She died and she was killed and she  
6 was murdered.

7           The question is, was it by Mr. Graham and was  
8 it premeditated. I suspect that, you know, however we  
9 deal with that, but there has to be -- does there not  
10 have to be evidence directly addressing the point of  
11 premeditated murder; that he intended to and did kill  
12 her as opposed to all other players in the universe?

13           **MR. JACKLEY:** That evidence has been shown at  
14 a minimum that he aided and abetted in that  
15 premeditation and killing, Your Honor. At a minimum.  
16 I am going to suggest it demonstrates a lot more than  
17 that.

18           But at a minimum, to survive the Rule 29, it  
19 demonstrates that he aided and abetted in the  
20 premeditated murder of Annie Mae Aquash.

21           **MR. MURPHY:** I would submit to the Court that  
22 Mr. Looking Cloud is the only person that could  
23 corroborate or provide testimony on that point.  
24 Because of all the people that supposedly were  
25 involved in this venture -- we don't have Theda

1 Clarke's testimony. We don't have anybody else's  
2 testimony. It is a situation that rises and falls on  
3 Arlo Looking Cloud.

4 In regard to the premeditated murder. That's  
5 talking about stuff in Denver that may go to the  
6 felony murder; may go to the kidnapping. But we got a  
7 period of time when Ms. Aquash has last contact with  
8 any of the state's witnesses, which as far as we can  
9 guess, is in at Rapid City and would involve  
10 Ms. Hamilton.

11 And then we got a series of events afterwards  
12 that the only person who attested to them, especially  
13 at the crime scene, is Mr. Looking Cloud. And so what  
14 happened there is based on his testimony and there is  
15 nothing that corroborates his testimony.

16 **MR. JACKLEY:** Your Honor, standing alone, the  
17 corroboration here is a bullet in the back of the head  
18 so close that it left powder burns.

19 **THE COURT:** I don't have any problem. I  
20 understand the facts of the case.

21 Maybe I misheard. I thought we allegedly  
22 went to Mr. Marshall's house and then directly to the  
23 scene. Maybe I misheard that.

24 **MR. MURPHY:** There were two intervening  
25 houses alleged and whatnot.

1           **THE COURT:** But there wasn't Rapid City?

2           **MR. MURPHY:** Rapid City was beforehand.

3           **THE COURT:** That was my understanding. I  
4 just wanted to check my memory there.

5           All right. On the basis of aiding and  
6 abetting, which would be sufficient in Count One,  
7 and/or Count Two for that matter, I am going to deny  
8 the motion because I think there is evidence produced  
9 that would allow a jury to reach that conclusion.

10           There does not appear to be, in contest, the  
11 fact that she was murdered by a gun, probably a pistol  
12 of one sort or another. That doesn't happen without  
13 premeditation and circumstances described.

14           The question remaining is can they reach to  
15 Mr. Graham directly as the one who pulled the trigger  
16 or as one who aided and abetted. And at this point, I  
17 cannot say as a matter of law that a jury could not  
18 reach that conclusion. I am not saying that they will  
19 or that they would have to reach that conclusion. I  
20 am simply saying there is sufficient evidence to get  
21 by a motion for directed verdict at this time as.

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

23           8:30?

24           **THE COURT:** Yeah.

25           (Whereupon, the proceedings in this matter  
were then concluded.)

1 STATE OF SOUTH DAKOTA )  
 ) SS. CERTIFICATE  
 2 COUNTY OF PENNINGTON )

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I, TINA RAE PRUSS, Official Court Reporter  
 and Notary Public in and for the County of Pennington,  
 State of South Dakota,

DO HEREBY CERTIFY that the foregoing  
 transcript is a true and accurate transcript of the  
 questions asked, the testimony given, and of the  
 proceedings had.

I FURTHER CERTIFY that I am not of kin or in  
 any way associated with any of the parties to said  
 cause of action, or their counsel; and that I am not  
 interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my  
 hand this 3rd day of May, 2011.

**COPY**

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Tina Rae Pruss  
 Official Court Reporter and  
 Notary Public  
 Pennington County, South Dakota  
 My Commission expires: 10-04-2012