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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA, CR 08-50079-02-LLP  
  
PLAINTIFF, APRIL 15, 16, 2010  
VS. RAPID CITY, SOUTH DAKOTA  
  
VINE RICHARD MARSHALL, a/k/a,  
RICHARD VINE MARSHALL, a/k/a  
DICK MARSHALL,  
  
DEFENDANT.

\* \* \* \* \*  
PARTIAL TRANSCRIPT OF JURY TRIAL  
TESTIMONY OF ARLO LOOKING CLOUD  
  
BEFORE THE HONORABLE LAWRENCE L. PIERSOL,  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: ROBERT MANDEL, ESQ.  
Assistant United States Attorney  
District of South Dakota  
#201 Federal Building  
515 Ninth Street  
Rapid City, South Dakota 57701  
  
ROD OSWALD, ESQ.  
State of South Dakota  
Office of Attorney General  
Assistant Attorney General  
2046 Samco Road  
Rapid City, South Dakota 57709  
  
FOR THE DEFENDANT: DANA HANNA, ESQ.  
Attorney at Law  
P.O. Box 3080  
Rapid City, South Dakota 57709

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

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COURT REPORTER: JUDITH M. THOMPSON, R.P.R.  
Official Court Reporter  
909 St. Joseph Street  
Suite 505  
Rapid City, South Dakota 57701

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 THE COURT: Bring in the jury, please.

2 (Following proceedings in the presence of the  
3 jury.)

4 THE COURT: Bring in the next witness.

5 MR. MANDEL: United States calls Fritz Arlo  
6 Looking Cloud, Your Honor.

7 FRITZ ARLO LOOKING CLOUD, GOVERNMENT'S WITNESS, SWORN

8 **DIRECT EXAMINATION**

9 BY MR. MANDEL:

10 Q. Sir, would you state your name, please?

11 A. My name is Arlo Looking Cloud.

12 Q. Is your name actually Fritz Arlo Looking Cloud?

13 A. Yes, sir.

14 Q. You don't normally go by Fritz, do you?

15 A. No, sir.

16 Q. Sir, where are you currently residing?

17 A. Meade County Jail.

18 Q. Serving a sentence based on your conviction in this  
19 same matter?

20 A. Yes, sir.

21 Q. You have been transferred up to Meade County Jail so  
22 you could testify here today, is that correct?

23 A. Yes, sir, I am.

24 Q. How long have you been incarcerated, sir?

25 A. Close to eight years.

1 Q. How old are you today?

2 A. 57.

3 Q. Do you prefer to have me call you Mr. Looking Cloud or  
4 Arlo?

5 A. Arlo would be fine, sir.

6 Q. We know each other, right?

7 A. Yes.

8 Q. Arlo, let me start out, where were you born?

9 A. I was born in Denver, Colorado.

10 Q. And have you lived there part of your life?

11 A. Yes, sir, I have.

12 Q. Have you also lived on Pine Ridge Reservation part of  
13 your life?

14 A. Yes, sir.

15 Q. Are you an enrolled Lakota Sioux from the Pine Ridge  
16 Reservation?

17 A. Lakotas.

18 Q. Could you kind of tell us how long you lived in Denver  
19 after you were born? In other words, how long did you stay  
20 there before you came up to Pine Ridge?

21 A. Six months.

22 Q. So you were still an infant you came back up to Pine  
23 Ridge?

24 A. Yes, sir.

25 Q. How long did you stay up on the ridge?

1 A. 1968.

2 Q. Did you go to school up there?

3 A. Yes, sir, I did.

4 Q. Do you remember where you went to school?

5 A. Went to Holy Rosery at Kyle.

6 Q. Then you said in '68 you moved?

7 A. Yes, sir, I did.

8 Q. Where did you go to at that time?

9 A. I went down to New Mexico; Santa Fe.

10 Q. How long were you there?

11 A. Four years.

12 Q. So we are up to '72 now. Where did you go then?

13 A. I came back to Colorado.

14 Q. How long were you in Colorado at that point?

15 A. Until now.

16 Q. You permanently moved there at that point?

17 A. Right.

18 Q. You still came back to the reservation up here on  
19 occasion when you were moved there, right?

20 A. Yes, sir, I do.

21 Q. But your residence was down there in Denver?

22 A. Yes.

23 Q. When you were down there, did you know an individual  
24 by the name of Troy Lynn Yellow Wood?

25 A. Yes.

1 Q. How did you come in to contact with her?

2 A. In '72.

3 Q. Do you remember where you met her or how?

4 A. On the street.

5 Q. Just happened to run in to her?

6 A. Yes.

7 Q. Did you become a friend of hers?

8 A. Yes.

9 Q. Did she have a house where a lot of people would get  
10 together on kind of a regular basis?

11 A. Yes.

12 Q. Do you know where that was?

13 A. Yes, I do.

14 Q. Where was it, sir?

15 A. It was in north Denver on Pecos.

16 Q. Would you come over there frequently?

17 A. Yes.

18 Q. Did a lot of people come over there as well?

19 A. Yes.

20 Q. At that time were you familiar with the organization  
21 known as the American Indian Movement?

22 A. Yes.

23 Q. That's commonly referred to as AIM, right?

24 A. Yes, sir.

25 Q. Do you know, was Troy Lynn involved with AIM?

1 A. Yes.

2 Q. Were a lot of the people who came to her house  
3 involved as well?

4 A. Yes.

5 Q. Sir, do you remember a time that you came there in the  
6 latter part of 1975 when an individual by the name of Anna  
7 Mae Aquash was there?

8 A. Yes.

9 Q. Can you start by telling us -- well, on that date when  
10 did you come to her house? What time of day?

11 A. In the evening.

12 Q. Okay. Arlo, you don't want to get too close to the  
13 microphone; that's making it hard for the court reporter to  
14 hear. It was already dark out?

15 A. Yes.

16 Q. Okay. Why did you come to her house that particular  
17 night?

18 A. I was looking for a friend of mind.

19 Q. Who were you looking for?

20 A. Joe Morgan.

21 Q. Was he kind of a buddy of yours?

22 A. Yes.

23 Q. Did you guys go out and party together some?

24 A. Yes. Yes, sir, we did.

25 Q. Was that kind of what you had in mind that evening?

1 A. Yes, sir, I did.

2 Q. Now, as to the date do you remember when that was?

3 A. It would have to be around somewhere around 27th of  
4 November; 27th, 28th, November.

5 Q. What happened when you arrived at the house? Did you  
6 go in?

7 A. No, sir, I didn't. I knocked on the door. Troy Lynn  
8 came to the door, came outside.

9 Q. Is that the back door or front door?

10 A. Back door.

11 Q. Is that kind of where people normally came in?

12 A. Yes.

13 Q. Did Troy Lynn talk to you when she came outside?

14 A. She told me to wait.

15 Q. To wait for Joe Morgan?

16 A. No, Joe Morgan was not there. She told me to wait.

17 Q. She didn't tell you why?

18 A. No, she never said.

19 Q. So you are waiting outside her place?

20 A. Yes, sir.

21 Q. Was it cold that night, do you remember?

22 A. I don't recall, sir.

23 Q. What happened next?

24 A. Theda came out. She went back in and Theda came out.

25 Q. Is Theda somebody else that you knew?



1 A. Yes, I do.

2 Q. How long had you known her?

3 A. Maybe two years.

4 Q. Did you also meet her down in Denver then?

5 A. Yes, sir.

6 Q. What happened when Theda came out?

7 A. She asked me if I was doing anything.

8 Q. Excuse me. She asked you if you were what?

9 A. If I was doing anything.

10 Q. If you were busy. What did you tell her?

11 A. I was not doing anything; looking for Joe Morgan.

12 Q. Did Theda propose anything to you?

13 A. Yes. She asked me if I could drive to Rapid City and  
14 repeat back in a day.

15 Q. Was it unusual to you that she was asking you to do  
16 this?

17 A. No.

18 Q. Why not?

19 A. I've driven for her many a time.

20 Q. Were you in school or anything at that time?

21 A. No.

22 Q. So you agreed to do it?

23 A. Yes.

24 Q. Do you remember what happened then?

25 A. We go inside her kitchen and we go down to the

1 basement.

2 Q. When you walk into her house, was there a staircase  
3 going up and a staircase going down where you come in?

4 A. Yes, yes.

5 Q. The staircase going up went to the kitchen?

6 A. Yes.

7 Q. One going down went to the basement?

8 A. Yes.

9 Q. Was there kind of little landing there between them?

10 MR. HANNA: Object to leading.

11 THE COURT: Sustained.

12 Q. (BY MR. MANDEL) So what happened after you got in,  
13 sir?

14 A. Well, we go down to the basement and she tells me to  
15 wait. So I waited.

16 Q. Was anyone else down in the basement?

17 A. Yes.

18 Q. Who was down there?

19 A. It was John Boy; and there was a lady sleeping on the  
20 couch, or a bed.

21 Q. John Boy was John Boy Patton?

22 A. Yes.

23 Q. Did you also know him as John Boy Graham?

24 A. Yes.

25 Q. Do you know who the lady was sleeping on the couch?

1 A. At the time I did not know either person. I did not  
2 know -- I have never met them; I have never heard of them.

3 Q. So you walked in. They were both strangers to you?

4 A. Yes, sir.

5 Q. Did you later find out who she was?

6 A. Yes, sir, I did.

7 Q. Who did you find out she was? Who was she?

8 A. Anna Mae, Anna Mae Aquash.

9 Q. Sir, after you got down in the basement with her and  
10 John Boy, did anyone else come down?

11 A. Just Theda. Theda and Troy Lynn came down.

12 Q. What happened next?

13 A. Well, we waited a while and Troy brought some coffee  
14 down. And I think that was it.

15 Q. You just sat down there drinking coffee?

16 A. Yeah. Maybe about 10 or 15 minutes.

17 Q. Was Anna Mae awake?

18 A. No. No, sir.

19 Q. She was sleeping?

20 A. Right.

21 Q. So you were drinking coffee. Was John Boy?

22 A. I guess he was standing around.

23 Q. What happened then?

24 A. Well, I wait for Theda. And Theda comes down and she  
25 says, "We are ready to go," you know. "We are ready to

1 go."

2 Q. You understood that to mean going where?

3 A. Rapid City here, I guess.

4 Q. What took place then?

5 A. Well, we leave; get in the car and we come here.

6 Q. Did somebody wake Anna Mae up?

7 A. Yes.

8 Q. Who did that?

9 A. John Boy.

10 Q. Was anything done with Anna Mae at that point?

11 A. No. We all leave.

12 Q. Was she tied up at that point?

13 A. Yes.

14 Q. Who did that?

15 A. John Boy. Well, Theda wanted to ask Troy Lynn to get  
16 a rope; and I don't know who got the rope, but she was  
17 eventually tied; her hands were tied.

18 Q. Do you remember if they were tied in front or in back?

19 A. I don't recall. But I think it was in the front.

20 Q. Now, Theda's car was just parked out in back there  
21 somewhere?

22 A. Yes, in the parking lot.

23 Q. Do you remember was her car a hatch back or station  
24 wagon?

25 A. Station wagon.

1 Q. It was square in the back?

2 A. Yes, sir.

3 Q. Do you remember how the window opened up?

4 A. No. I think the back kind of swung up like a hatch  
5 back.

6 Q. Like the door and the window?

7 A. Right.

8 Q. Was Anna Mae placed in that vehicle?

9 A. Yes.

10 Q. Who did that?

11 A. John Boy did.

12 Q. Did the three of you then get in the vehicle?

13 A. Yes.

14 Q. Who was driving?

15 A. I was.

16 Q. Where was Theda?

17 A. On the passenger side.

18 Q. Was John Boy in the back seat then?

19 A. Yes, sir.

20 Q. Do you remember where you went to from there?

21 A. We came here Rapid City.

22 Q. Do you remember about what time you left Denver?

23 A. It was in the evening. I can't remember what time it  
24 was.

25 Q. Did you drive all night to get here from Denver?

1 A. Yes, sir.

2 Q. Did you stop for gas or food or anything on the way  
3 that you recall?

4 A. No, sir; no, I don't recall.

5 Q. Do you recall any conversations on the way? I will  
6 start with this: did Anna Mae say anything?

7 A. No.

8 Q. What about Theda?

9 A. She might have been; somewhere along the line I think  
10 we switched drivers and Theda got in front on the driver's  
11 side, and John Boy got on passenger, and I got in the back.

12 Q. When you made it to Rapid City, do you know what time  
13 of day it was?

14 A. No, I do not recall.

15 Q. Was it light out yet?

16 A. No, sir.

17 Q. So it was dark the whole time you drove here?

18 A. Yes.

19 Q. When you got to Rapid City, sir, where did you go?

20 A. We went to a vacant apartment.

21 MR. MANDEL: May I approach, Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. MANDEL) Sir, I have placed Exhibit 13 in  
24 front of you. I will ask you: do you recognize that as  
25 being the apartment you went to?

1 A. I do not recall, but it do look somewhat like it,  
2 yeah.

3 Q. Let me ask you this, then.

4 A. It's been a while.

5 Q. At some point were you up by those apartments with Bob  
6 Ecoffey?

7 A. I do not recall anything with Bob Ecoffey.

8 Q. You don't recall anyone taking picture up there?

9 A. No.

10 Q. All right. Do you know whose apartment it was?

11 A. No, sir.

12 Q. How did you guys get into it?

13 A. Theda had a key.

14 Q. When you went into the apartment, what was it like?  
15 Was it furnished, people living there? What was it?

16 A. It was empty. It was no furniture or nothing.

17 Q. After you got there, what took place? Let me start  
18 with this: Where did Anna Mae go? Where was she put?

19 A. She was placed in a room; might have been on top  
20 stairs; let's see.

21 Q. It kind of has a main floor, an upstairs and a  
22 basement?

23 A. I do not recall no basement, but there was two floors,  
24 yes.

25 Q. So she was placed in a room. Did anybody stay with

1 her in the room?

2 A. Yes, John Boy did.

3 Q. Did you and Theda do anything at that point?

4 A. Well, we went across the street to another apartment  
5 and we got some food and came back to the apartment.

6 Q. It was an apartment like the same complex?

7 A. Yes, across the street; straight across.

8 Q. Okay. What happened then after you came back with the  
9 food?

10 A. I go to a room and Theda.

11 Q. Well, I probably asked this wrong. Did you guys eat  
12 when they came back with the food? Did you have a meal?

13 A. I don't recall, but we must have.

14 Q. So you don't remember eating; you don't remember the  
15 meal?

16 A. No.

17 Q. When you were there, did Theda give you something?

18 A. Yes. She asked me if I was hung over or hanging over.  
19 I replied, "Yes." She gave me two pills.

20 Q. Do you know what they were?

21 A. No, but I was assuming they were aspirin, or Tylenol,  
22 or whatever.

23 Q. Did you know Theda was a nurse?

24 A. Yes.

25 Q. So you felt comfortable taking something from her?



1 A. Yes, sir.

2 Q. After you took those pills, sir, did you go to sleep?

3 A. Yes, I did.

4 Q. Do you know how long you slept?

5 A. Not very long. Took me a while to get to sleep, so  
6 before I went to sleep, I have to use the restroom.

7 Q. Do you remember about when it was when you woke up  
8 again?

9 A. Probably getting towards the morning; dawn.

10 Q. Towards the next morning?

11 A. The same morning. I don't recall, really I can't, but  
12 I would assume it would be the same morning.

13 Q. Okay. So maybe towards noon or something is what you  
14 are saying?

15 MR. HANNA: Object to leading.

16 THE COURT: Sustained.

17 Q. (BY MR. MANDEL) I am trying to find out about what  
18 time you think it was, sir. Do you know?

19 A. I don't recall; I don't recall at all.

20 Q. Was Theda's car still there at the apartment?

21 A. Well, you know, I went to use the bathroom sometime; I  
22 don't recall when; but I have to use the restroom. And on  
23 my way to the restroom, I heard --

24 MR. HANNA: Judge, I object.

25 Q. We are not going to get into that right now, Arlo

1 okay? Did Theda come back to the house at some point?

2 A. Yes.

3 Q. Let me ask you this, sir: did you leave the house  
4 during the day?

5 A. Yes, I did. In the afternoon sometime, sometime in  
6 the afternoon when she asked me to go get some gas that  
7 we'd be leaving.

8 Q. Theda was there at the house with you at that time?

9 A. Yes.

10 Q. Do you know, was Anna Mae there at that time?

11 A. I don't recall, but she gave me the money to go get  
12 some gas.

13 Q. Theda did?

14 A. Right; and the keys.

15 Q. Again, do you know what time of day that was, sir?

16 A. It would be in the evening; evening.

17 Q. It was it already dark yet?

18 A. I don't recall, but might have been dusk.

19 Q. When you got the money, what did you do, sir?

20 A. I went and I got some gas. And I had a friend that  
21 lived down the street there, maybe 10 blocks, and I go  
22 visit him.

23 Q. What was his name?

24 A. Tony Red Cloud.

25 Q. He had a house down that same street?

1 A. Yes, an apartment.

2 Q. What did you do over at Tony's?

3 A. We had a visit and I ate. I had dinner with him.

4 Q. Do you know how long you were there?

5 A. Maybe half-hour.

6 Q. What did you do next?

7 A. I go back to the apartment.

8 Q. When you got in the apartment -- first of all, was it  
9 dark at that point?

10 A. Yes, sir.

11 Q. Who was present at that time?

12 A. I'm sorry?

13 Q. Who was present? Who was there?

14 A. I don't recall, but I think the same; the four of us.

15 Q. Was Theda there when you showed up?

16 A. Yes.

17 Q. Did she have any words with you?

18 A. Yes.

19 Q. What did that refer to?

20 A. She wanted -- she was upset and she wanted to know  
21 where I went, and who I talked to, what I had done, you  
22 know; why I took so long.

23 Q. She was mad?

24 A. Yes.

25 Q. Did you understand why?

1 A. Because I took so long.

2 Q. What happened then?

3 A. We leave.

4 Q. The four of you?

5 A. Yes.

6 Q. Where was Anna Mae riding in the car this time?

7 A. She was in the back.

8 Q. Do you recall, was she tied up at that time?

9 A. At that time I do not recall, no, sir.

10 Q. Who drove from there in Rapid City?

11 A. I did; I drove.

12 Q. Who else was in front?

13 A. Theda.

14 Q. Was John Boy in back?

15 A. Yes.

16 Q. When you left there, do you remember what roads you  
17 took?

18 A. We took road that goes through Scenic; and we go to  
19 Sharps. And Theda drives after that; we switch drivers.  
20 Again in the back seat, and Theda drives, and John Boy gets  
21 in the passenger side.

22 Q. So you were then in the back seat?

23 A. Yes.

24 MR. MANDEL: May I approach, Your Honor?

25 THE COURT: You may.

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 Q. (BY MR. MANDEL) I am showing you Exhibit No. 22. Do  
2 you recognize that as a map of this area?

3 A. Yes.

4 Q. Are you able to see the roads you drove on on that  
5 map?

6 A. Yes. I see Sharps Corner right here.

7 Q. Okay.

8 MR. MANDEL: Your Honor, I'd offer Exhibit 22 at  
9 this time.

10 MR. HANNA: No objection.

11 THE COURT: Exhibit 22 is received.

12 MR. MANDEL: If I may publish it, Your Honor?

13 THE COURT: You may.

14 Q. (BY MR. MANDEL) Arlo, if you can take a look on your  
15 screen on your right there. First of all, sir, you said  
16 you took Highway 44 down to Scenic?

17 A. Right, 27.

18 Q. Use your finger on it to show the route you went. You  
19 came down 44, then to Scenic, then down to Sharps Corner?

20 A. Yes, sir.

21 Q. Where did you go from Sharps Corner?

22 A. From there, Sharps Corner, Theda drove from there.

23 Q. Where did you drive to?

24 A. Evidently she drove to Rosebud because that's where I  
25 woke up.

1 Q. You weren't paying attention what roads at that point?

2 A. No, sir, I wasn't.

3 Q. Did you go to sleep in back?

4 A. Yes, sir, I did.

5 Q. Look at the map up there again. Arlo, in the lower  
6 right-hand corner of this little box that says, "Bill  
7 Means," do you see that little blue box?

8 A. Yes, I do see it.

9 Q. Do you know where you went to on Rosebud?

10 A. I did not know at the time, but it would have --

11 MR. HANNA: Objection; asked and answered.

12 THE COURT: Well, ask your next question. The  
13 answer so far stands.

14 Q. (BY MR. MANDEL) At the time you didn't know where on  
15 the Rosebud it was?

16 A. Yes.

17 Q. Did you know that it was on the Rosebud Reservation?

18 A. No, I did not.

19 Q. Did you even know that it was on the reservation?

20 A. No.

21 Q. Was there anything you noted in the area where you  
22 stopped, anything unusual, structures, or anything like  
23 that?

24 A. There were lights; there was some lights like a  
25 building and like a hospital.

1 Q. A hospital?

2 A. Yes. Looked like -- I don't recall, but somehow I  
3 assumed it was a hospital.

4 Q. Did you later find out where it was that you had gone  
5 to?

6 A. Yes.

7 Q. I am not asking you where, but I am asking you: how  
8 did you find out?

9 A. I don't recall.

10 Q. Was it something you learned in your own case?

11 A. Yes.

12 Q. Where did you stop out there?

13 A. We stopped at a house.

14 Q. What happened when you got to the house?

15 A. When we got to the house, Theda went in inside the  
16 house and she came out maybe 10 minutes -- 5 or 10 minutes  
17 and she grabbed John Boy and they both went inside the  
18 house. And she asked me to stand in the back of the Pinto.

19 Q. Did she say why she wanted to you stand in the back?

20 A. No, she didn't tell me why. But she just said, "Stand  
21 right here."

22 Q. Did you have an understanding of why you were told to  
23 stand back there?

24 A. Now I do.

25 Q. You say now you do?

1 A. Yes.

2 Q. Did you at the time?

3 A. No.

4 Q. What do you now think was the reason you were asked to  
5 stand there?

6 A. To guard.

7 Q. To guard?

8 A. To stand there right.

9 Q. Keep her from leaving?

10 A. I guess, yes. I presume.

11 Q. Do you recall any conversations that you and Anna Mae  
12 would have had?

13 A. No, I never had no conversations with Anna Mae.

14 Q. How long were you standing out there?

15 A. Maybe 10 -- 5 or 10 minutes.

16 Q. Then what happened?

17 A. And they both come out. And I asked to use the  
18 restroom.

19 Q. Restroom in the house?

20 A. Yes, sir.

21 Q. What took place then?

22 A. And Theda took me to the house and she knocked on the  
23 door.

24 Q. Do you recall who answered the door?

25 A. It was Charlie Abourezk.



1 Q. You said Charlie Abourezk?

2 A. Yes, sir.

3 Q. How did you know him?

4 A. I knew him before. And Theda asked me if I knew him.

5 Q. Is there anything unusual about his appearance that  
6 helped you identify him?

7 A. He was like -- he was almost Caucasian.

8 Q. Do you recall if he was short or tall?

9 A. He was tall.

10 Q. Where did you see him before?

11 A. I seen him around, yes, I have. Whenever they have  
12 AIM rallies, whatever, for that sort.

13 Q. Up on Pine Ridge, or down in Denver, or where?

14 A. In Pine Ridge, Rapid City.

15 Q. What happened after he came to the door?

16 A. Well, he takes me to the bathroom and I use the  
17 bathroom.

18 Q. Then what?

19 A. And then I leave. I walk out.

20 Q. Did you talk to him at all while you were there?

21 A. No, sir, I didn't.

22 Q. Did you observe any other people in the house while  
23 you were there?

24 A. There was some people sleeping on the floor. And all  
25 I seen was like real light blond hair facing the other way.

1 Q. A male or female?

2 A. Female.

3 Q. Did you know who that was?

4 A. No, sir, I don't.

5 Q. Anything else that you saw?

6 A. No.

7 Q. Were there people still up in the house?

8 A. No, sir, just Charlie Abourezk.

9 Q. Is it possible they were up? I mean, Theda and John  
10 Boy had just come up, right?

11 A. Yes.

12 Q. Was it possible people were up in another part of the  
13 house?

14 A. It's possible, yes.

15 Q. But you didn't see them?

16 A. No.

17 Q. So what happened then? You left the house, you said?

18 A. Yes, we left the house. And Theda is driving. I  
19 might have drove for a little while, but I can't remember.

20 Q. Did you even know what road you were on at that point?

21 MR. MANDEL: I will ask the clerk to put the map  
22 up again.

23 A. 18.

24 Q. You guys got on to Highway 18 and started traveling  
25 west?

1 MR. HANNA: Objection; leading.

2 THE COURT: Overruled.

3 Q. What direction were you traveling, Arlo?

4 A. West.

5 Q. Where were you going to?

6 A. I did not know at the time, but we ended up in Allen.

7 Q. Do you remember what route you took to get to Allen?

8 A. 18.

9 Q. All the way until the cutoff?

10 A. Yes, sir.

11 Q. Then were you still driving the whole time?

12 A. Theda was. We switched drivers.

13 Q. Let me ask you: on this ride, did you make any stops?

14 A. No, we didn't.

15 Q. You went straight through from Rosebud to Allen?

16 A. Yes.

17 MR. HANNA: Objection, Judge. He hasn't  
18 testified Rosebud.

19 THE COURT: Sustained.

20 MR. HANNA: Move to strike.

21 THE COURT: Granted. Ask your next question.

22 Q. (BY MR. MANDEL) Can you see on the map where Allen  
23 is located? Did you take the road that comes off of 18 to  
24 go up to Allen?

25 A. Yes, we did. Off 18 going north.

1 Q. Arlo, I don't know how you got those arrows on there.  
2 They just came up that way, correct?

3 A. Correct.

4 Q. What happened when you got to Allen?

5 A. We go to Mr. Marshall's residence.

6 Q. Did you know Dick Marshall?

7 A. Yes, sir.

8 Q. I will ask you: do you see him seated in the  
9 courtroom today?

10 A. Yes.

11 Q. Can you describe where he is seated and what he's  
12 wearing, sir?

13 A. He's sitting beside the bald man right there.

14 Q. What is he wearing?

15 A. Blue checkered shirt; blue and white.

16 MR. MANDEL: Your Honor, I ask the record  
17 indicate the witness has identified the defendant.

18 THE COURT: It may.

19 Q. (BY MR. MANDEL) Did all of you come to the door of  
20 the house there?

21 A. Yes.

22 Q. Do you recall who answered the door?

23 A. No, I don't recall.

24 Q. Do you recall what time of day it was?

25 A. It was at night.

1 Q. Do you know about what time of night?

2 A. No. Maybe 11:00, midnight.

3 Q. So late in the evening?

4 A. Yes.

5 Q. Did the four of you go into the house?

6 A. Yes.

7 Q. Do you recall what took place then, sir?

8 A. Theda goes into a bedroom and the three of us, we stay  
9 out in the living room.

10 Q. Was anyone else present at the house?

11 A. There was a lady with us standing out in the living  
12 room.

13 Q. Did you know her?

14 A. I don't know her personally, or I have never really  
15 had no conversations with her before, but I believe I seen  
16 her around; I am not sure.

17 Q. How long was Theda in the bedroom with Dick?

18 A. Maybe about 5, 5 minutes; 5 or 10 minutes.

19 Q. Then what happened next?

20 A. And she calls us in, John Boy and I. She calls us  
21 into the bedroom where they were at.

22 Q. Now, when you guys went into the bedroom, were Anna  
23 Mae and this lady there at the house?

24 A. In the living room; they were in the living room.

25 Q. Do you recall them eating or drinking anything?

1 A. No. I do not recall.

2 Q. What happened when you went into the bedroom?

3 A. I see Mr. Marshall on the bed sitting on the bed and  
4 Theda beside her -- I mean, beside him; and John Boy and I  
5 sat on the side against the wall.

6 Q. Was there any discussion that took place?

7 A. No, no discussion.

8 MR. HANNA: Objection; asked and answered.

9 THE COURT: You can ask your next question.

10 Q. There was no discussion that took place, what happened  
11 next?

12 A. He hands a note or a piece of paper -- I assume it's a  
13 note -- and I don't recall if he passed it back to Theda  
14 and Theda handed it to John Boy or handed the note or the  
15 piece of paper to John Boy; I don't recall which, but John  
16 Boy ends up with it, then he passes it on to me. Then I  
17 give it back to Theda.

18 Q. Do you ever look at what the note said?

19 A. No, sir, I did not. I don't know what it said. I  
20 don't know.

21 Q. Was there any discussion that took place at that  
22 point?

23 A. No.

24 Q. What then happened?

25 A. And then Dick Marshall -- there's a night stand beside

1 the bed and he reached in one of the drawers, opens it, and  
2 he brings out a box; he opens the box and there's a pistol  
3 in there.

4 Q. How big was the box?

5 A. It wasn't very big.

6 Q. Just big enough to hold the pistol?

7 A. Yes.

8 Q. Do you recall what the pistol looked like?

9 A. It was silver with a brown handle.

10 Q. Do you know the difference between a revolver and an  
11 automatic?

12 A. Yes, sir, I do.

13 Q. Do you recall which it was?

14 A. It was a revolver.

15 Q. Do you remember the color of the box?

16 A. I believe it was red.

17 Q. What happened then?

18 A. And he hands the pistol to Theda.

19 Q. In the box or just by itself?

20 A. By itself.

21 Q. Is there anything else that happened?

22 A. He reaches inside and he gets the box and a box of  
23 shells.

24 Q. About how big a box was that?

25 A. Not very big. It wasn't very big.

1 Q. Can you show it with your hands about how long?

2 A. Maybe about that long; maybe about that big.

3 Q. That was also given to Theda?

4 A. Yes.

5 Q. Do you know what she did with those two things, where  
6 she put them?

7 A. No, but I assume it's in her pocket in her coat  
8 pocket.

9 Q. What happened next?

10 A. We leave; same four.

11 Q. Anna Mae is put in the back again?

12 A. Yes.

13 Q. Where is Theda?

14 A. Theda is on the passenger side and I am driving.

15 Q. I take it John Boy is in the back seat?

16 A. Yes, sir.

17 Q. Where do you head to at that point?

18 A. We go towards Wanblee.

19 Q. Did you go make any stops?

20 A. Yes. Along the way we were running out of gas and I  
21 stopped at my grandmother's house.

22 MR. MANDEL: I'll ask the clerk to put up the map  
23 again, please.

24 A. From Allen we take this route. Before we get to Kyle  
25 there's another road that connects with two; and we get on



1 two and go down to the housing, Potato Creek Housing. And  
2 that's where (pause).

3 Q. That's where your grandmother lives?

4 A. Yes.

5 Q. Is that another kind of cluster home housing area?

6 A. Yes, sir, it is.

7 Q. And how did she have gas there at her house?

8 A. Her car; she has a car, my aunt.

9 Q. Did you guys siphon some off with her permission, or  
10 what?

11 A. Yes, I did.

12 Q. Back then -- I know this was a long time ago -- was  
13 there anyplace to get gas at night in that part of the  
14 woods?

15 A. No, sir.

16 Q. So if you needed gas, did you have to get it from  
17 someone like that?

18 A. Yes.

19 Q. From Potato Creek, where did you go to next?

20 A. We proceed on to Wanblee.

21 Q. That's just east of Potato Creek?

22 A. Yes.

23 Q. About how far away timewise?

24 A. Not very far.

25 Q. Did you make any other stops on the way to Wanblee?

1 A. Well, on the way to Wanblee we passed the junction,  
2 that Interior junction, and as we passed the junction we  
3 see a red light in back of us; a flashing red light.

4 Q. Arlo, is that Interior junction where the road east  
5 out of Potato Creek hits Highway 44?

6 A. Yes, it is.

7 Q. All right. Then tell us what happened there?

8 A. Well, the police car, it was a flashing red light and  
9 there was a police car behind us mile or two, maybe. We  
10 could see the red light, flashing red light.

11 Q. So were you speeding?

12 A. No, sir, but Theda tells me slow down anyway, you  
13 know.

14 Q. Did she tell you anything else?

15 A. No, but she hands me the gun. She said, "Here," so I  
16 get the gun and I put it underneath the seat.

17 Q. What did you think about that?

18 A. I was mostly concentrating on the red light, the car.  
19 I don't know, I really can't recall, but the red light was  
20 on my mind, if I was speeding.

21 Q. So you put that gun under your seat?

22 A. Yes.

23 Q. What happened then?

24 A. And next thing we know the police car, the cop car,  
25 heads west -- north, north, sorry. North on 44 going

1 towards Interior.

2 Q. So it wasn't trying to stop you guys?

3 A. No.

4 Q. Just kind of a coincidence?

5 A. Yes.

6 Q. What happened then?

7 A. And Theda asked for the gun back.

8 Q. That strike you odd at all?

9 A. No.

10 Q. Did you give her the gun back?

11 A. Yes.

12 Q. Then what happened next?

13 A. And next I go down to Wanblee. And just before I get  
14 to Wanblee, there's a house. And she wants me to pull into  
15 the house. We pull into the house and -- well, I can't  
16 remember. But, anyway, we switch drivers.

17 Q. Sorry, you said what?

18 A. After that house, after we pulled into that house, she  
19 goes to check the house, but no one was home. So come back  
20 out and she wants to drive. So we switch drivers again.

21 Q. Still right outside of Wanblee?

22 A. Right.

23 Q. Then what?

24 A. I get in back, Theda is driving, and John Boy is on  
25 the passenger side.

1 Q. Where did you go?

2 A. We go to another house inside Wanblee. And again, no  
3 one was home. So we leave.

4 Q. Nobody answered the door at either place?

5 A. No.

6 Q. Wanblee is a small town, right?

7 A. Yes.

8 Q. Was there anybody up and out and about that you  
9 remember at that time in Wanblee?

10 A. No.

11 Q. What happened then?

12 A. Then we leave. We leave and we are going north.

13 Q. Do you remember how -- the road out of Wanblee I guess  
14 goes east in one direction, then south and west in the  
15 other direction, does that look right to you?

16 A. Right. We go east up to the junction and we go  
17 towards Kadoka.

18 Q. Junction at Highway 73?

19 A. Yes, 73.

20 Q. Then you took a left turn north to Kadoka, you said?

21 A. Yes, sir.

22 Q. Then what happened?

23 A. I go to sleep, and I wake up when she turns around.  
24 She stops, she turns around. Actually, she makes another  
25 turn, then she goes north again, and she goes south again,

1 she turns around again, then she stops.

2 Q. So she stopped, she went south, she went north again,  
3 went south again, then finally stopped going north?

4 A. Yes.

5 Q. You know about where that was?

6 A. No.

7 Q. You know was that still on the reservation though?

8 A. Yes.

9 Q. Was it in an area where there are some Badlands  
10 formations?

11 A. Yes.

12 Q. Which side of the road did she stop on, left or right?

13 A. On the west side.

14 Q. West side?

15 A. Yes, and we are facing south.

16 Q. Was she right next to the road where she stopped, or  
17 did she pull off a ways, or do you remember?

18 A. I don't recall.

19 Q. What happened then?

20 A. John Boy gets off, goes in the back, gets her out, and  
21 they start to walk towards the ditch.

22 Q. Towards what?

23 A. Towards off the road.

24 Q. In what direction?

25 A. West.

1 Q. Then what?

2 A. And then Theda tells me go with him.

3 Q. Did she say why?

4 A. No.

5 Q. Did you go with them?

6 A. Yes.

7 Q. How far did the three of you go?

8 A. They were already ahead of me, both of them.

9 Q. How far ahead?

10 A. I don't recall, but it would have to be maybe from  
11 here to the middle of the wall there.

12 Q. Did you kind of try and catch up with them?

13 MR. HANNA: Excuse me, Judge. Could the record  
14 reflect a certain amount of feet when he's saying toward  
15 the wall there. 30 feet, perhaps?

16 A. Perhaps; maybe middle of the wall.

17 THE COURT: Why don't you ask the distance.

18 Q. Do you know what the distance would have been in feet?

19 A. I can't tell feet, but maybe about halfway to that  
20 wall, the distance. But, yeah.

21 MR. HANNA: Distance of about 30 feet?

22 A. 30 feet, maybe.

23 THE COURT: You have the opportunity to  
24 cross-examine. Ask your next question.

25 Q. (BY MR. MANDEL) What took place next, sir?

1 A. And then he shoots her.

2 Q. John Boy shot Anna Mae?

3 A. Yes.

4 Q. How did he shoot her?

5 A. With a pistol.

6 Q. Did he shoot her any particular place?

7 A. In the head.

8 Q. Front or back?

9 A. In the back.

10 Q. Do you remember where?

11 A. No.

12 Q. Do you remember what happened after she was shot?

13 A. She went over; I don't see her no more. She's not  
14 laying on the ground.

15 Q. Was there kind of a ledge there?

16 A. Yes.

17 Q. Did she go off that ledge?

18 A. She must have. I don't know there was a ledge there  
19 until I get over there.

20 Q. Do you know if she was pushed or got there from being  
21 shot?

22 A. Probably from being shot.

23 Q. What happened then, sir?

24 A. Then I asked for the gun and I fired the rest of the  
25 rounds.

1 Q. Why did you do that?

2 A. I was afraid might shoot me next.

3 Q. Where did you fire the rounds?

4 A. I don't really recall. Just west.

5 Q. Was the pistol you shot the same pistol that you got  
6 at Dick Marshall's?

7 A. Yes.

8 Q. Do you remember how many shots you took with it?

9 A. No.

10 Q. Did you shoot it until it clicked?

11 A. Yes.

12 Q. What happened then?

13 A. And then we leave.

14 Q. Go back to the car?

15 A. Yes.

16 Q. Who drove?

17 A. Theda was driving.

18 Q. Where were you?

19 A. In the back seat.

20 Q. John Boy was in front?

21 A. Yes.

22 Q. What was said?

23 A. Nothing was said.

24 Q. You guys go out -- take someone out in the Badlands  
25 there, gets shot in the back of the head, and you don't say



1 a word?

2 A. Nothing was said to me.

3 Q. Was anything said at any point?

4 A. They had discussions themselves. I was never included  
5 whatever they said.

6 Q. What happened then?

7 A. We get to a bridge and they want to put the gun in the  
8 bridge -- under the bridge.

9 Q. Where was that bridge relative to where you stopped?

10 A. It was a ways back on close to below Potato Creek  
11 Housing.

12 Q. Which housing?

13 A. Potato Creek.

14 Q. You headed back past through Wanblee?

15 A. Right.

16 Q. Was this bridge between Wanblee and Potato Creek  
17 somewhere?

18 A. Yes.

19 Q. Was it light out at that point?

20 A. Yes.

21 Q. What was done with the gun?

22 A. It was put in a pillow case and we buried it  
23 underneath the bridge.

24 Q. Right next to the post, or away from it, or where?

25 A. Under the bridge.

1 Q. Was it in a spot that you'd be able to find later?

2 A. Yes.

3 Q. Then what?

4 A. I have no idea. Against the wall on the bridge;

5 anyone could have found it.

6 Q. Did you get back in the car at that point?

7 A. Yes.

8 Q. Was anything said?

9 A. No, nothing was said until we got gas; we ran out of  
10 gas on 18.

11 Q. How did you -- okay. You were between Wanblee and  
12 Potato Creek. Where did you go from there? Did you go to  
13 Kyle, or --?

14 A. Yes. We went back the same way through Allen, and on  
15 over to 18, and on 18 we are going west towards Batesland  
16 and we run out of gas.

17 Q. Okay. Batesland is kind of right on that county line  
18 on the left there for Shannon County?

19 A. Right.

20 Q. Okay. Was there a gas station in Batesland or what  
21 did you do?

22 A. Yes. But a gas truck gave us some gas before we get  
23 into Batesland.

24 Q. Like a gas delivery truck?

25 A. Right.

1 Q. He just stopped and helped you guys out?

2 A. Right.

3 Q. Then did he just give you a gallon or something?

4 A. Yes. I don't recall how much he gave us, but gave us  
5 some gas.

6 Q. Did you then go buy some gas, too?

7 A. Yes.

8 Q. Where was that?

9 A. In Batesland.

10 Q. What happened from there?

11 A. From there we come back to Denver.

12 Q. Just drove straight back down?

13 A. Yes.

14 Q. Stop for food or anything on the way?

15 A. I don't recall.

16 Q. Was there any discussion on the way?

17 A. After we leave Batesland, Theda says, "If anyone says  
18 anything, tell them that I did it." That she did it.

19 Q. She said, "If anyone says anything tell them that I  
20 did it?"

21 A. Yes.

22 Q. What did you understand that to mean?

23 A. That she shot her.

24 Q. She was going to take the blame?

25 A. Yes.

1 Q. Any other discussion on the way back to Denver?

2 A. No.

3 Q. Where did you go when you got down there?

4 A. Back to Denver.

5 Q. Who got out first?

6 A. She dropped John Boy and I at Angie Begay's residence.

7 I did not know John Boy was living with Angie Begay at the

8 time.

9 Q. Did you know Angie, though?

10 A. Yes.

11 Q. Did you go in there or what?

12 A. Yes. I stayed the night.

13 Q. Do you remember what time of day it was when you got

14 there?

15 A. No, I don't recall.

16 Q. You guys talk about what had happened at all?

17 A. No.

18 Q. What did you think about it?

19 A. I started tripping. Kind of blew my mind, you know.

20 Freaked me out. Blew my mind. I don't know.

21 Q. Did you do anything?

22 A. No.

23 Q. Were you scared of getting in trouble with law

24 enforcement?

25 A. I was afraid of everyone. I could not trust anyone.

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(605) 348-8610 FAX (605) 343-6842

1 Even to this day, I don't trust no one.

2 Q. Did you see Theda after that?

3 A. Not right away, but years some time later I did see  
4 her.

5 Q. Did you ever talk to her about it?

6 A. No.

7 Q. Did you see John Boy after that?

8 A. No. He was around Denver for a little while after  
9 that, but just for a little while. And at one point Sioux  
10 Black asked me to help her drive and drive John Boy south,  
11 she said. That's all she said, "South." So we leave.

12 Q. Is that Sioux Woman Black?

13 A. Yes.

14 Q. She spells Sioux like Sioux Indian, S-i-o-u-x?

15 A. Yes, sir.

16 Q. What happened?

17 A. So we get in the car. Sioux is driving, and I am on  
18 the passenger side, and John Boy is in the back seat. And  
19 we are going south from Denver and we get to Colorado  
20 Springs and --

21 Q. Did you know where you were going to?

22 A. All she told me was south; we are going south; we are  
23 taking John Boy south. And we get to Colorado Springs I  
24 want to get out. I change my mind. I said, "I want to get  
25 out. My son is coming back and I want to get out." But

JUDITH M. THOMPSON

(605) 348-8610 FAX (605) 343-6842

1 she didn't want to stop. So finally I opened the door and  
2 so she said, "Okay, okay." She pulls over to the side and  
3 I get off. I cross the interstate to the station, the last  
4 gas station, and I don't see them again.

5 Q. Is there something you were afraid of at that time?

6 A. Yes.

7 Q. What?

8 A. Figured they were taking me for a ride next.

9 Q. You mean take you for a ride that you wouldn't be  
10 coming back from?

11 A. Right.

12 Q. Did they say anything to you?

13 A. No.

14 Q. That was kind of just your feeling from it?

15 A. Yes.

16 Q. How was Sioux Black involved in any of this?

17 A. She's a sister of Troy Lynn. Good friend, sister;  
18 they have always been pretty close. Angie Begay is a  
19 pretty type people; all this group there.

20 Q. So after this happened, you stayed in Denver, right?

21 A. Yes.

22 Q. Did this stay on your mind?

23 A. Pardon?

24 Q. Did this whole incident stay on your mind? Did it  
25 keep bothering you?

1 MR. HANNA: Objection to leading.

2 THE COURT: Overruled.

3 A. I just could not trust anyone anymore.

4 Q. Why couldn't you trust anyone?

5 A. Just couldn't.

6 Q. Just because of this incident?

7 A. Yes.

8 Q. At that time were you doing a lot of drinking, Arlo?

9 A. Yes.

10 Q. Were you taking drugs?

11 A. Yes.

12 Q. Did you get in trouble with the law?

13 A. Yes.

14 Q. Frequently?

15 A. I don't know; probably, yeah.

16 Q. Were you married?

17 A. I was, but not anymore.

18 Q. When did you get married?

19 A. Legally married in 1996.

20 Q. Okay. At that time weren't you hooked up with  
21 someone?

22 A. Yes. My fiancée -- my son was two years old. That's  
23 how I remember the birth date; his birthday was on the  
24 29th, November 29, and my fiancée and my son were going to  
25 their mother-in-law's in Scottsbluff. And I stayed behind

1 so I can party and drink; drink one more time before I  
2 settle down. And that morning to drink one more time cost  
3 me my time and my marriage and my life is a nightmare.

4 Q. When you were living with this woman down there, did  
5 you guys have a house?

6 A. Yes, we had an apartment that was right below Troy  
7 Lynn's. Right across the field there was a field, an empty  
8 lot.

9 Q. When did the two of you break up?

10 A. It was sometime after that.

11 Q. Same year, or --?

12 A. Might have been a year after; year or two.

13 Q. Did you still have a place to live down in Denver?

14 A. I moved down to Florida. I ended up in Florida.

15 Q. How long were you down there?

16 A. Maybe a year or little over a year.

17 Q. Did the time ever come when somebody came to you and  
18 started talking to you about this case?

19 A. In 1994.

20 Q. How did that happen, sir?

21 A. I was in jail at the time.

22 Q. Do you remember what for?

23 A. It was for traffic and (pause).

24 Q. Who came and talked to you?

25 A. Robert Ecoffey and Abe Alonzo.



1 Q. Did you know Robert Ecoffey from up on Pine Ridge at  
2 all?

3 A. No, but I had in common with his brother Hoaky Ecoffey  
4 and his goon squad. They jumped me in Rushville and I  
5 remember the Ecoffey name there.

6 Q. That was back in the '70s, or something?

7 A. Yes, 1973.

8 Q. Did you know Abe Alonzo?

9 A. No. First time was in 1994.

10 Q. What happened then?

11 A. I got ahold of my lawyer. I had a family attorney  
12 that my father knew and he'd been helping with my family  
13 since I was 18. And our family attorney knew this criminal  
14 attorney; his name is Mr. Mulvihill. And so I got in  
15 contact with Mr. Mulvihill and he came to see me.

16 Q. What made you decide to do that? Was that because of  
17 this case or because of your traffic deal or what?

18 MR. HANNA: Objection; leading.

19 THE COURT: Overruled.

20 A. I don't recall.

21 Q. (BY MR. MANDEL) What happened when you got in touch  
22 with Mr. Mulvihill?

23 A. We had a discussion and we talked about -- wanted to  
24 know what I wanted if I wanted to talk to the FBI along  
25 with a marshal.

1 Q. Did you agree to do that?

2 A. Yes, I did.

3 Q. Do you remember how that took place? I will start  
4 with: do you remember where?

5 A. It happened in -- took place at the Federal Building  
6 in Denver.

7 Q. Who was there, just as best you recall? If you don't  
8 recall, I understand.

9 A. There was Mr. Robert Ecoffey; I don't believe Abe  
10 Alonzo was there; I think he waited out in the hall or in  
11 the hallway. But Robert Ecoffey and maybe several FBI  
12 agents.

13 Q. Was Mr. Mulvihill there?

14 A. Yes.

15 Q. Do you remember, was anyone from U.S. Attorney's  
16 office there?

17 A. I don't recall.

18 Q. Okay. What took place?

19 A. They had a proffer that was signed by Karen Schreier  
20 and I believe it was Holder.

21 Q. Could it be Holmes?

22 A. Might be Holmes, yes. I don't recall the name.

23 MR. HANNA: Objection to the leading.

24 THE COURT: Sustained as to Holmes; the Holmes  
25 part is a stricken. Ask your next question.

1 Q. (BY MR. MANDEL) What was the agreement that you  
2 remember?

3 A. I don't recall the specifics. I don't recall.

4 Q. Did you agree to talk about what happened?

5 A. Yes.

6 Q. Did they interview you about that?

7 A. Yes, they did.

8 Q. When you told them about what happened, did you tell  
9 them everything?

10 A. No.

11 Q. What didn't you tell them about?

12 A. Allen, Marshall, Mr. Marshall, Charlie Abourezk.

13 Q. Why didn't you tell them about those things?

14 A. I was fearful for my family. I didn't trust no one  
15 and I didn't want my family getting hurt; my father, my  
16 family.

17 Q. Were you in fear of these individuals?

18 A. Yes.

19 Q. Both of the ones you named?

20 A. Yes.

21 Q. Were you in fear of other individuals as well?

22 A. Yes.

23 Q. Can you tell us who?

24 A. I did not trust anyone: the government, police,  
25 detectives, anyone. I did not trust anyone anymore.

1 Q. Were you afraid that talking about that would put you  
2 at risk?

3 A. Yes.

4 MR. HANNA: Objection; leading.

5 THE COURT: Sustained. It may be stricken. Ask  
6 your next question.

7 Q. (BY MR. MANDEL) Had you be threatened by anyone?

8 A. There had been an attempt on my life; there had been  
9 attempt on my life.

10 Q. Going back to '94, had you been threatened by anyone  
11 at that time?

12 A. They weren't really blatant threats, but kind of  
13 something like innuendoes.

14 Q. Innuendoes?

15 A. Somewhat to that, yeah. I did receive that from  
16 everyone that was involved, I mean, wanted to be part of  
17 this. I have see one form of threat or another.

18 Q. After you told them about this, did you get out of  
19 jail?

20 A. I have never been out of jail, no.

21 Q. In 1994?

22 A. 1994 -- I got out of jail in 1996. I was put in  
23 prison, in federal prison, and without no charge. I was in  
24 El Reno, Oklahoma, in maximum security at the time, it was  
25 maximum. And I was placed there and I had to protect

1 myself there. And my attorney finally got ahold of my  
2 attorney, Mr. Mulvihill, and he asked me what I was doing  
3 in maximum security federal prison. So I said, "I have no  
4 idea why I am here. I don't know why. I haven't been  
5 charged. Haven't been no charges, nothing." So he spoke  
6 to the U.S. Attorney and the U.S. Attorney -- so I got a  
7 hold of him next day; he said call me back the next day, so  
8 I called the back the next day. I said okay. The U.S.  
9 Attorney will be bringing you back to Colorado. I said,  
10 "Okay." I have to protect myself while I was in there.

11 Q. Do you know a guy who worked for the Marshal Service  
12 named Ricky Ianucci?

13 A. Yes.

14 Q. You knew Bob Ecoffey was the United States Marshal up  
15 here in South Dakota at that time?

16 A. I did not know he was a marshal.

17 Q. Did a time come when were you transported up to South  
18 Dakota to go around to the various scenes involved in this  
19 case?

20 A. Yes.

21 Q. How did you come up here to South Dakota?

22 A. After I got back from El Reno, they put me in Castle  
23 Rock County Jail under another name. They gave me another  
24 name. They put me in Castle Rock. And my aunt used to  
25 come see me so she could verify the name, name they gave

1 me. One day Ecoffey comes up and gives me some clothes and  
2 he wants me to go with him, and without having giving me a  
3 chance to consult with my attorney. I don't know if he  
4 ever did or not. He never told me.

5 Q. So how did you come up to South Dakota at that time?

6 A. At that time Ianucci and Ecoffey put me in a car and  
7 they transport me.

8 Q. Do you remember what date this was?

9 A. I don't recall, but along the way they talk about this  
10 Ianucci being on the force in Philadelphia. It was like a  
11 special unit where they take people out, right; certain  
12 criminals, or whatever. They kill me so they won't have to  
13 bother going through the court system. So Ecoffey asked  
14 him: Alonzo wants to know what it takes to be on this  
15 special team. And Ianucci tells him you have to have nine  
16 certified kills, nine killings to be on this team. So he  
17 looks at me and said, "Well, you know, make a break for it.  
18 You can run. I have got a good shot at you."

19 Q. Think he was trying to scare you?

20 A. They have been doing this to me for a long time. Many  
21 people.

22 Q. When you got up to South Dakota here, where did you  
23 guys go?

24 A. Pennington County Jail.

25 Q. They put you there for the night?

1 A. Yes.

2 Q. Did you go somewhere the next morning?

3 A. Yes.

4 Q. Where did you go to?

5 A. They take me to the spot, to the place.

6 Q. The place where Anna Mae was killed?

7 A. Yes.

8 Q. Were you able to recognize it?

9 A. No, sir, I did not recognize it.

10 Q. Did they know where it was because of where the body  
11 had been found?

12 A. Yes.

13 Q. When they took you out there and showed it to you, did  
14 it refresh your memory? Were you able to recall the  
15 terrain at that time?

16 A. No, sir.

17 Q. Did you go anyplace else with them?

18 A. No.

19 Q. That was the only location you went to?

20 A. We might have gone to the apartment. I don't recall,  
21 though.

22 Q. You are talking about up to Knollwood apartment there?

23 A. Yes.

24 Q. Mr. Looking Cloud, you are currently serving a life  
25 sentence at the present time, is that correct?

1 A. That's correct.

2 Q. And you remember I was one of the prosecutors on your  
3 case, don't you?

4 A. That's right, that's right.

5 Q. Back when you were charged, you wouldn't agree to  
6 cooperate, would you?

7 A. No, sir, I would not cooperate.

8 Q. But you changed your mind, is that correct?

9 A. Yes, sir.

10 Q. Sir, why did you change your mind?

11 A. There have been many untruths; they let the truth lie  
12 on the ground. A lot of misinformation. And I believe the  
13 truth.

14 Q. Sir, did you testify truthfully here today?

15 A. Yes, sir, I have.

16 Q. Do you recall, was there any promise made to you as to  
17 what you get if you came in and testified?

18 A. No, sir, there was no promises.

19 Q. To be honest, you'd like something good to happen,  
20 right?

21 A. Yes, naturally.

22 Q. But no promises have been made?

23 A. No, sir.

24 MR. MANDEL: No further questions, Your Honor.

25 THE COURT: We will take a 15-minute recess at



1 this time.

2 (Recess taken.)

3 THE COURT: Bring in the jury, please.

4 (Following proceedings in the presence of the  
5 jury.)

6 THE COURT: Please be seated. You may proceed.

7 **CROSS-EXAMINATION**

8 BY MR. HANNA:

9 Q. Mr. Looking Cloud, I am Danna Hanna. You just told  
10 Mr. Marshall -- excuse me -- Mr. Mandel and the Court and  
11 the jury that you testified truthfully, is that right?

12 A. Yes, sir.

13 Q. And have you testified truthfully about everything or  
14 just some things?

15 A. Everything.

16 Q. Okay. It's your testimony that you got out of jail in  
17 1996, right?

18 A. Yes.

19 Q. In Denver. And Bob Ecoffey, United States Marshall  
20 Ianucci, and Abe Alonzo picked you up in custody in Denver?

21 A. Yes.

22 Q. That was in 1995, wasn't it?

23 A. In Castle Rock, yes.

24 Q. And they drove you to the scene of the crime in South  
25 Dakota from Colorado?

1 A. Yes.

2 Q. And during the course of that conversation, you  
3 heard -- and was it the three of them in the car with you  
4 or just was it Alonzo, Ecoffey and Ianucci in the car with  
5 you?

6 A. I don't recall, but I believe so.

7 Q. And you recall United States Deputy Marshal -- you  
8 recall Rick Ianucci saying to you or to the others that he  
9 was a member of some law enforcement murder squad?

10 A. Yes.

11 Q. And as a member of this murder squad, they would take  
12 out criminals who they didn't want to have to go through  
13 the criminal justice system?

14 A. Yes.

15 Q. And by take out they meant murder, is that correct,  
16 what you understood them to be talking about?

17 A. From what I understand, yes.

18 Q. And you heard Ianucci tell Alonzo and Ecoffey that in  
19 order to be on this police murder squad, one had to have  
20 nine kills?

21 A. Yes, just to Abe Alonzo.

22 Q. Ianucci said that to Abe Alonzo?

23 A. Yes.

24 Q. Abe Alonzo being Detective Abe Alonzo of the Denver  
25 Police Department, right?

1 A. Yes.

2 Q. And Detective Alonzo then told you, "Why don't you  
3 make a run for it and see if he can take you out," or words  
4 to that effect?

5 A. Words to that effect. If you can run, if you want to  
6 run.

7 Q. And at some point -- that was in 1995, right?

8 A. Yes.

9 Q. And in 1996, law enforcement picked you up and took  
10 you to a federal penitentiary in Oklahoma?

11 A. Yes.

12 Q. Nobody told you what the charges were?

13 A. Yes.

14 Q. And they put you in a maximum security prison?

15 A. Yes.

16 Q. In a federal penitentiary in Oklahoma, right?

17 A. Right.

18 Q. Didn't take you in front of a judge?

19 A. No.

20 Q. To this day do you have any idea why they took you to  
21 a maximum security prison without ever seeing a judge or  
22 telling why they were picking you up?

23 A. No.

24 Q. Nobody has ever told you. How long were you in this  
25 maximum security prison in El Reno, Oklahoma?

1 A. I don't really remember, but it was a while.

2 Q. A month, a year?

3 A. Two or three months.

4 Q. In this time you were held incommunicado by the  
5 federal government, is that right?

6 A. Somewhat, yes.

7 Q. Nobody ever told you why you were sent immediately to  
8 a federal prison rather than going to a court? Nobody ever  
9 told you that at any time in three months?

10 A. That's right.

11 Q. Now, you were asked by Mr. Mandel whether you got in  
12 some trouble after you returned to Colorado after Anna Mae  
13 Aquash was murdered. Do you recall that?

14 A. Yes.

15 Q. You said something about you were arrested; sometimes  
16 you had some cases, right?

17 A. Right.

18 Q. As a matter of fact, you have been a defendant in 41  
19 criminal cases in Colorado alone, correct?

20 A. Yes.

21 Q. That's right, isn't it?

22 A. That's right.

23 Q. Done time in prison in Colorado, haven't you?

24 A. Yes, sir.

25 Q. Did you do some time in Florida, too?

1 A. Yes, I did.

2 Q. How long were you in prison in Florida?

3 A. Six months.

4 Q. Wasn't that an aggravated assault charge?

5 A. Yes.

6 Q. Possession of a firearm?

7 A. Yes.

8 Q. Now, today you don't even remember or know -- didn't  
9 you testify that when you went to this house where you say  
10 you saw Charlie Abourezk that you don't even know now if  
11 that was on the Rosebud Reservation, is that right?

12 A. I don't recall.

13 Q. So you don't recall whether that was in Rosebud or on  
14 the Rosebud Reservation or even where it was, is that your  
15 testimony?

16 A. I don't recall, but I think I do remember something,  
17 but I do recall something that made me remember it was  
18 Rosebud.

19 Q. You recall something, but you don't remember what you  
20 recalled?

21 A. Exactly.

22 Q. Now, you remembered it was a building in the distance  
23 that you now think was a hospital, is that right?

24 A. Yes.

25 Q. Somebody told you it was a hospital, right?

1 A. Yes.

2 Q. In 2003, you remembered the house you stopped at was  
3 in Rosebud, South Dakota, correct? When you spoke to  
4 Robert Ecoffey after you were arrested on March 27, 2003,  
5 you told him and Detective Alonzo that you stopped outside  
6 of a house in Rosebud, right?

7 A. I don't recall.

8 Q. You recall seeing a video at your trial of your  
9 conversation with Detective Alonzo and Robert Ecoffey,  
10 don't you?

11 A. I don't recall too much. I have been in the USP  
12 system past since 2003, 2004.

13 Q. You have been in the -- I'm sorry?

14 THE COURT: Counsel, remember, let the witness  
15 finish answering the question because the court reporter  
16 can't take down two people talking at one time.

17 Q. Please, if I cut you off, please finish your answer.

18 A. I don't recall.

19 Q. You just said you don't recall Exhibit No. 45 in your  
20 trial here six years ago when they played a video of you  
21 making a statement answering questions to Robert Ecoffey?  
22 You don't remember that being played at your trial?

23 A. There was a video; I remember they showed a video,  
24 yes.

25 Q. And do you recall that in that video you told Robert

1 Ecoffey that you, and Theda Clarke, and John Boy, with Anna  
2 Mae in the car, stopped in Rosebud?

3 A. Yes.

4 Q. And do you recall saying in 2003 that you all drove  
5 from Rapid City, South Dakota, through the Pine Ridge  
6 Indian Reservation to Rosebud, South Dakota?

7 A. Yes.

8 Q. And didn't you tell Detective Alonzo and Ecoffey that  
9 after Theda Clarke and John Graham came out of that house  
10 in Rosebud, you all drove directly up to the spot in the  
11 Badlands where Anna Mae Aquash was murdered?

12 A. Yes.

13 Q. That's what you said in 2003, wasn't it?

14 A. Yes.

15 Q. You recall a conversation you had in the year 2000  
16 with Kamook Banks and Troy Lynn Yellow Wood when you got  
17 out of jail in the middle of December 2000?

18 A. Yes.

19 Q. And you and Kamook Banks and Troy Lynn spent about six  
20 hours together, didn't you, after you got out of jail?

21 A. Must have been about six hours; I don't recall.

22 Q. You do know now that that conversation was recorded by  
23 Kamook Banks, don't you?

24 A. At the time I didn't.

25 Q. I know that. I am asking you --

1 A. A lot of things I don't recall at the time. But later  
2 on I find out that we was in Rosebud and, you know, later  
3 on I find all this out.

4 Q. The question I asked you is: you now know that Kamook  
5 Banks was secretly recording your conversation with her  
6 that you had in December of 2000 in the presence of Troy  
7 Lynn Yellow Wood?

8 A. I didn't know she was recording this.

9 Q. I know that. My question is: you now know that was  
10 recorded?

11 A. Yes, I do.

12 Q. In fact, you have listened to the tape, haven't you?

13 A. I have not listened to the tapes, but I have looked at  
14 the transcript.

15 Q. Okay. So you read the transcript that was made of  
16 what you said and Troy Lynn said and Kamook Banks said in  
17 that conversation back in Denver in December of 2000,  
18 right?

19 A. Yes.

20 Q. In that conversation you said to Kamook Banks that you  
21 all drove from Rapid City to Rosebud, South Dakota, through  
22 the Pine Ridge Reservation to Rosebud, South Dakota, right?

23 A. Yes.

24 Q. And you told Kamook Banks in Rosebud, South Dakota,  
25 the car was parked outside of the house and you and Anna



1 Mae stayed in the car while John Graham and Theda went into  
2 the house. Isn't that what you told Kamook Banks in  
3 December 2000?

4 A. No.

5 Q. Isn't that what you told Kamook Banks in December  
6 2000? Did you say and did she say these words on the 16th  
7 of December in the year 2000? Kamook.

8 MR. MANDEL: Page?

9 MR. HANNA: Page 94.

10 Q. Kamook Banks. Question: Did you go down the  
11 interstate, maybe? By the way, excuse me. Question: Did  
12 you go down the interstate, maybe? Pause.

13 Troy Lynn. Or did you go the back way?

14 Looking Cloud. No, we went through Pine Ridge.

15 Kamook Banks. Question to you. From Rapid City  
16 to --

17 Looking Cloud. Yeah.

18 Kamook Banks. Pine Ridge. Did you guys stop in  
19 Pine Ridge?

20 Your answer: No. I think.

21 Kamook Banks. Question to you. Did you go  
22 straight then to -- over to Rosebud to Bill Means' house?

23 Your answer. I don't even know where Bill Means  
24 lives. I don't know which house it was.

25 Kamook Banks to you. But it was in Rose -- you

1 went to Rosebud, though?

2 Looking Cloud answers. Yes. Is that what you  
3 said and were those words said to you on December 16, 2000  
4 in Denver.

5 A. Yes. We went through Pine Ridge Reservation on our  
6 way to Rosebud.

7 Q. The question I asked you was: isn't that what you  
8 said to Kamook Banks when she was secretly recording you on  
9 December 16, 2000?

10 A. I don't recall, but I looked at the transcript once or  
11 twice.

12 Q. You are not denying you said that back then to her,  
13 are you?

14 A. I don't deny that she was there.

15 Q. Even though this has been recorded, right?

16 A. Yes. I would like to hear the recording.

17 Q. Do you remember in 1988 in Denver going to a concert  
18 at which John Trudell and Midnight Oil performed?

19 A. Yes.

20 Q. You went with Troy Lynn Yellow Wood, right?

21 A. Troy Lynn Yellow Wood and another lady, one of her  
22 friends; I can't remember her name right at the moment.

23 Q. Afterwards you all had, that is, you and Troy Lynn had  
24 a conversation with John Trudell, right?

25 A. Yes.

1 Q. John Trudell was a respected national spokesman for  
2 the Native American Movement in the early 1970s, wasn't he?

3 A. I don't know about respected; but, yes, he was a  
4 chairman.

5 Q. He was a national spokesman for the Native American  
6 Movement in the 1970s, wasn't he?

7 A. I don't know; but, yes, probably.

8 Q. And you talked to him about what had happened to Anna  
9 Mae Aquash when you talked to him back in 1988, didn't you?

10 A. No, I did not say a word to him.

11 Q. You didn't say anything at all to John Trudell about  
12 what happened to Anna Mae Aquash?

13 A. That's right.

14 Q. Didn't you tell John Trudell?

15 MR. MANDEL: I object to this on the grounds of  
16 hearsay. This is a statement of John Trudell, not the  
17 witness.

18 MR. HANNA: I am laying foundation for a prior  
19 inconsistent statement.

20 THE COURT: We have an objection outstanding.

21 MR. HANNA: I misunderstood you. I thought you  
22 said overruled, Judge. May we approach?

23 THE COURT: No, not yet. Sustained on foundation  
24 grounds.

25 Q. (BY MR. HANNA) In your conversation that was

1 recorded between yourself and -- strike that. You had  
2 been -- in December 1975 you had been to Rosebud many  
3 times, hadn't you, before that particular night?

4 A. I don't recall.

5 Q. Do you recall telling Kamook Banks in your recorded  
6 conversation December 16, 2000, that you had been to  
7 Rosebud many times; the town of Rosebud?

8 A. Yes.

9 Q. Mr. Looking Cloud, 33 years ago, one winter morning  
10 around dawn you, and John Graham and Anna Mae Aquash were  
11 in a field in the Badlands, correct?

12 A. I don't believe it was a field. But, yes.

13 Q. Out there in that field you handed John Graham a .32  
14 caliber handgun, didn't you?

15 A. No, sir.

16 Q. You handed John Graham a .32 caliber handgun and you  
17 nodded at Anna Mae Aquash, didn't you?

18 A. No, sir.

19 Q. John Graham shot her in the head while you watched,  
20 right?

21 A. Yes.

22 Q. Now, are you -- in 1994 were you very familiar with  
23 handguns? Have you had a lot of experience with handguns;  
24 knew one from the other?

25 A. No.

1 Q. But when you talked to the investigating federal  
2 officers at the United States Attorney's office in Denver  
3 on November 17, 1994, in the presence of your attorney and  
4 Special Agent Graff and others, you told them it was a .32  
5 caliber handgun that killed Anna Mae Aquash, didn't you?

6 A. Yes.

7 Q. You knew it was a .32 caliber handgun because it was  
8 your .32 caliber handgun, isn't that true?

9 A. No.

10 Q. Now, sir, you know a man named Richard Two Elk?

11 A. Yes, I do.

12 Q. You knew him from back in the Denver AIM days in the  
13 early '70s, right?

14 A. Yes.

15 Q. And in 1994, after he first started being questioned  
16 about what happened to Anna Mae Aquash by law enforcement,  
17 you called Two Elk to ask him his advice, didn't you?

18 A. I called him.

19 Q. You called him?

20 A. Yes.

21 Q. To discuss the fact that the law was asking you  
22 questions, right?

23 A. I asked him, yes.

24 Q. And between 1994 and 2003 when you were arrested, you  
25 had several conversations with Richard Two Elk, didn't you?

1 A. Not about the case.

2 Q. You did discuss the case with him on occasion, didn't  
3 you?

4 A. No.

5 Q. Sir, from 1994 to 2003, didn't you tell your old  
6 friend Richard Two Elk that when you all got out to that  
7 field in the Badlands and got out of the car you, John Boy,  
8 and Anna Mae Aquash, you handed a gun to John Boy Patton?

9 A. No.

10 Q. And didn't you tell Richard Two Elk that you handed a  
11 gun to John Patton, John Boy, and that you nodded at Anna  
12 Mae as you did so?

13 A. No, I didn't.

14 Q. And that he then shot her with the gun that you had  
15 given him. Did you say that to Richard Two Elk?

16 A. No, I didn't.

17 Q. Didn't you say it to Richard Two Elk on at least half  
18 a dozen occasions in conversations between 1994 and 2003?

19 A. No, I never said no such thing.

20 Q. You were there in 2004 and you heard Richard Two Elk  
21 testify, didn't you?

22 A. Yes, I did.

23 Q. And he was sitting where you are sitting right now,  
24 isn't that true?

25 A. That's true.

1 Q. And you heard him testify as a government witness in  
2 that case, correct?

3 A. Correct.

4 Q. And in answer to questions from the federal prosecutor  
5 Richard Two Elk -- you heard Richard Two Elk testify that  
6 you had told him you gave John Boy the gun that he used to  
7 shoot Anna Mae Aquash. You heard him say that, didn't you?

8 A. Yes, I heard him say that.

9 Q. And you knew that was very important evidence in your  
10 case, correct?

11 A. Yes.

12 Q. You knew that if the jury accepted that testimony,  
13 then it proves that you intentionally intended to help  
14 murder Anna Mae Aquash?

15 A. No.

16 Q. You knew that that was what was being argued though,  
17 correct?

18 A. My attorney advised me not to say anything.

19 Q. I didn't ask what your attorney said. I am asking  
20 you: you knew at the time in '04.

21 A. I mean, yeah, whenever the trial was; '03, right?

22 Q. Trial was -- you are right. Excuse me. 2003.

23 A. Right.

24 Q. You were arrested in 2003 and you were tried in 2004,  
25 right?

1 A. Right.

2 Q. In 2004, six years ago, you heard Two Elk testify that  
3 you admitted to him that you provided the murder weapon to  
4 John Graham moments before she died?

5 A. I never said nothing like that to Richard Two Elk.

6 Q. But that's what he testified in the trial, correct?

7 A. That's correct.

8 Q. And you knew that that testimony was very bad for you,  
9 right?

10 A. Yes.

11 Q. And so four years into your life sentence you decided  
12 that it was important for you when you testify in this case  
13 to put that gun in somebody else's hand, right?

14 A. No.

15 Q. You filed an appeal that was decided by the Eighth  
16 Circuit Court of Appeals in 2005, right?

17 A. Yes.

18 Q. And basically your primary argument in that appeal was  
19 that the evidence was insufficient to prove that you  
20 knowingly sought to help kill Anna Mae Aquash, right?

21 A. I never gone through the appeal; I never seen, I never  
22 talked to him Mr. Gilbert about the appeal. I have no idea  
23 what he wrote.

24 Q. You know you lost your appeal.

25 A. He never consulted me on the appeal. We have never



1 gone through it; I have no idea.

2 Q. You don't even know if your appeal has been --

3 A. I do know that that it was affirmed.

4 Q. The conviction was affirmed your life sentence was  
5 affirmed, right?

6 A. Yes.

7 Q. Now you read that opinion by Eighth Circuit, haven't  
8 you?

9 A. I read it once, yes.

10 Q. Okay. And you know that the Eighth Circuit decided  
11 that the testimony of Two Elk that you handed the gun to  
12 John Graham proved your intentional specific intent to help  
13 kill Anna Mae Aquash, right?

14 MR. MANDEL: Your Honor, I object. This is  
15 seeking a legal opinion from this witness.

16 THE COURT: Sustained.

17 Q. (BY MR. HANNA) Now, you have a pending motion to set  
18 aside your conviction, correct?

19 A. I don't know, sir.

20 Q. Mr. Looking Cloud, you have two attorneys representing  
21 you right now, don't you?

22 A. Yes.

23 Q. And one of them is Barry Bachrach from Boston,  
24 correct?

25 A. Yes.

1 Q. He's in the courtroom today, isn't he?

2 A. Yes.

3 Q. Point him out for us.

4 A. Right there.

5 Q. Which one is Mr. Bachrach? Would you describe what  
6 he's wearing, what row he is sitting in?

7 A. Blue shirt, black suit.

8 Q. Is that Mr. Bachrach sitting in the front row, is that  
9 right?

10 A. That's right.

11 Q. And is it your claim that no, you don't know whether  
12 or not you have a pending motion to set aside your  
13 conviction?

14 A. I may have, yes.

15 Q. You may have?

16 A. Yes.

17 Q. You know you have, right?

18 A. I was never been -- I don't know. I really don't  
19 know.

20 Q. Tell me, is it your -- did you have a gun when you  
21 left Denver that day when you all took Anna Mae Aquash to  
22 the Troy Lynn house?

23 A. No.

24 Q. You know Theda regularly carried a gun in her car,  
25 don't you?

1 A. She might, yes.

2 Q. In fact, in 2008 you knew that in 2008 when you spoke  
3 to federal investigators about what happened to Anna Mae  
4 Aquash in Rapid City, you told them Theda Clarke always  
5 carried a gun, right?

6 A. I don't recall.

7 Q. You came from federal prison in Pollock, Louisiana, in  
8 August and you spoke to federal investigators here in Rapid  
9 City on August the 19, 2008, didn't you?

10 A. Yes.

11 Q. And when you were telling them your account of being  
12 in Richard Marshall's bedroom and seeing Theda Clarke get a  
13 gun from him, didn't you tell them you didn't think  
14 anything about it because Theda Clarke always had guns?

15 A. Yes.

16 Q. That's what you told them on that day, right?

17 A. Right.

18 Q. How about John Boy; did John Boy regularly carry a  
19 gun, too?

20 A. I never met John Boy; I never heard of him. That was  
21 the first time I ever came across.

22 Q. I'm sorry I interrupted. You never heard -- you never  
23 saw John Boy Graham?

24 A. I assumed they were both traveling together.

25 Q. You never saw John Boy Graham before the day you

1 walked over to Anna Mae Aquash -- excuse me -- Troy Lynn  
2 Yellow Wood's house and saw Anna Mae Aquash for the first  
3 time, is that right?

4 A. That's right. That was my first time.

5 Q. You knew Angie Begay, didn't you?

6 A. Yes.

7 Q. You were pretty good friends with Angie Begay?

8 A. I knew her, yes.

9 Q. You saw her sometimes over there at Troy Lynn's house?

10 A. Right.

11 Q. You often visited Troy Lynn, right?

12 A. Not often.

13 Q. But you never saw John Boy Graham over at Troy Lynn's  
14 place or any place else?

15 A. No.

16 Q. And isn't it true you and John Boy and Angie used to  
17 hang out together?

18 A. No.

19 Q. Isn't it true that you and John Boy knew each other in  
20 Denver; used to party together?

21 A. No.

22 Q. The first time you ever saw John Boy Graham was when  
23 you walked into the basement at Troy Lynn Yellow Wood's  
24 house, is that right?

25 A. That's right.

1 Q. So did you see a gun at Troy Lynn Yellow Wood's house?

2 A. No.

3 Q. Did you see a gun on anybody's possession between  
4 Denver and Rapid City?

5 A. No.

6 Q. Did you see a gun in anybody's possession at any time  
7 before you reached Allen, South Dakota?

8 A. No.

9 Q. Is it your testimony, sir, that the first time you saw  
10 a gun or became aware that anybody had a gun was at Richard  
11 Marshall's house in Allen, South Dakota?

12 A. Yes.

13 Q. Now, when you did your proffer session in front of  
14 federal authorities in December -- November 17, 1994, they  
15 asked you when was the first time you saw a gun, right?  
16 You remember discussing that general topic?

17 A. I don't recall.

18 Q. You do know that that proffer session was  
19 tape-recorded, correct?

20 A. Yes.

21 Q. And you have read the transcript of that proffer  
22 session, haven't you?

23 A. Yes.

24 Q. Now, you say did you tell the truth when you spoke to  
25 those agents on November 17, 1994, at your proffer session

1 at the United States Attorney's office?

2 A. To the questions, yes.

3 Q. You answered every question truthfully?

4 A. I don't recall.

5 Q. Well, let me ask you if you recall this: Special  
6 Agent Jim Graff of the FBI was there, wasn't he?

7 A. I don't know him.

8 Q. Well, you do remember the FBI Agent asking you?

9 A. There were a few -- several FBI agents.

10 Q. Did one of them ask you this question and did you give  
11 this answer? "I will kind of ask it again. With regard to  
12 the gun, Arlo, you have already stated to us that you know  
13 that John Boy obviously had it. That he shot her with it.  
14 But when was it -- I am trying to find out when it was that  
15 you first noticed that he had this gun or that you became  
16 aware of the gun, or that anybody had the gun."

17 And did you give this answer to that question?

18 "When we was out on the road there, when we was on that  
19 road that morning." Were you asked that question and did  
20 you give that answer on November 17?

21 A. I do not recall.

22 Q. Were you then asked this question by Agent Graff and  
23 did you give this answer? "Okay. Was it before you got to  
24 that house where John and Theda got out or do you  
25 remember?"

1                   Your answer. "I think it might have been, yeah."

2                   Were you asked that question and did you give that answer?

3                   A.     I don't recall.

4                   Q.     Were you then asked this question by Agent Graff and  
5                   did you give this answer? "Where was it that you saw the  
6                   gun? Was it in the car?"

7                   Your answer. "Yeah."

8                   Q.     Was that the question and that answer?

9                   A.     I don't recall.

10                  Q.     In fact, you saw a handgun. Were you asked this  
11                  question by Agent Graff in that conversation? "Okay. I  
12                  want to go over again how it was that you knew it was a .32  
13                  caliber revolver. You have said it was silver and you said  
14                  you knew it was a revolver rather than a pistol because it  
15                  had the round chamber."

16                  You say, "Yes." It's not recordable if you nod.  
17                  Yes or no. Then Ecoffey came in and said, "Didn't you say  
18                  earlier that John Boy told you it was a .32?"

19                  Your answer, "Uh-Huh, yeah." Were those  
20                  questions asked of you and did you give that answer?

21                  A.     I don't recall.

22                  Q.     Did John Graham tell you that the gun was a .32?

23                  A.     No.

24                  Q.     Now, according to what you told the jury here today  
25                  you saw -- you had a -- after John Graham shot Anna Mae

1 Aquash he handed the gun to you, right?

2 A. I asked for it, yes.

3 Q. You asked for the gun and he handed the gun to you,  
4 right?

5 A. Right.

6 Q. He was returning your gun to you that you had just  
7 handed to him, isn't that right?

8 A. No.

9 Q. Isn't that why John Graham gave you the handgun after  
10 he shot Anna Mae Aquash in the head?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Did he ever tell you it was a .32?

15 A. No.

16 Q. So you had that handgun in your hand just long enough  
17 to fire it off five times, then you gave it back to John  
18 Graham, is that your testimony?

19 A. Yes.

20 Q. And you were not at all familiar with handguns in  
21 December of 1975, is that right?

22 A. Yes.

23 Q. Yet you knew that it was a .32 caliber pistol when you  
24 spoke to federal officers on November 17, 1994, right?

25 A. Yes.



1 Q. Did you ever go to Theda Clarke's bar up in  
2 Keenesburg?

3 A. Yes.

4 Q. And you knew that she kept a gun in the bar, didn't  
5 you?

6 A. No.

7 Q. So your testimony is the first time you saw a gun was  
8 at Richard Marshall's house, right?

9 A. Yes.

10 Q. And the next time you saw a gun a police officer with  
11 flashing red lights was behind you on Highway 44 as you  
12 were heading out to Wanblee and Theda Clarke then gave you  
13 a gun?

14 A. Yes.

15 Q. And the next time you saw a gun was when John Boy  
16 Graham pulled one out and shot Anna Mae Aquash with it,  
17 right?

18 A. That's right.

19 Q. Now, when you were driving along heading toward  
20 Wanblee on 44 just before you all stopped by that field,  
21 and you saw a police car behind you with red flashing  
22 lights, Anna Mae Aquash was in the back of that hatch back,  
23 right?

24 A. Yes.

25 Q. And she was tied up at that time?

1 A. I don't recall.

2 Q. She was in the back; was she sitting up, laying down,  
3 or what?

4 A. I don't know.

5 Q. She was in the back of the hatch back, right?

6 A. Yes.

7 Q. When you saw these flashing lights, were you  
8 concentrating on that police officer, is that right?

9 A. That's right.

10 Q. You were worried maybe you were speeding, correct?

11 A. Yes.

12 Q. And were you also worried that if he pulled you over,  
13 there was a kidnap victim in the back of your car?

14 A. I don't know; probably.

15 Q. You were probably worried about if you got pulled over  
16 by a police officer?

17 A. I don't know.

18 Q. Sorry?

19 A. I don't recall.

20 Q. You don't recall whether you were worried about that?

21 A. Yes, I was mostly on the red light.

22 Q. And you were mostly concentrating on the red light  
23 because were you afraid that police officer might pull you  
24 over, right?

25 A. Yes.

1 Q. And if he pulled you over he would probably notice  
2 there was a woman in the trunk or in the back hatch back  
3 space, right?

4 A. Right.

5 Q. You were worried she might say something like,  
6 "Officer, these people are going to kill me," right?

7 A. No.

8 Q. You weren't at all worried about what Anna Mae Aquash  
9 might say if a police officer behind you pulled you over?

10 A. I don't know.

11 Q. You knew, didn't you, that you helped kidnap a woman  
12 in Denver a couple of days earlier?

13 A. All my business was to drive from Denver to Rapid  
14 City.

15 Q. You knew you helped take her out of that house against  
16 her will, didn't you?

17 A. She just -- she went; she walked.

18 Q. She walked with her hands tied together, didn't she?

19 A. Yes.

20 Q. So that gave you some indication that she was going  
21 against her will, correct?

22 A. Yes, I would assume, yes.

23 Q. And you knew enough about the law to know that when  
24 you take somebody from one place to another against their  
25 will, that is a crime called kidnapping, right?

1 A. Yes.

2 Q. So you knew that if that cop pulled you over, you  
3 could go to prison, right?

4 A. That was not on my mind.

5 Q. It was not on your mind. Were you afraid of getting a  
6 speeding ticket?

7 A. No.

8 Q. You were afraid that if that cop pulled you over, the  
9 three of you were all guilty of, one, harboring a federal  
10 fugitive; and two, kidnapping, right?

11 A. I don't know.

12 Q. At the time when Theda Clarke handed you that gun, you  
13 knew that was for the purpose of using it on the police  
14 officer if he pulled you over, correct?

15 A. No.

16 Q. She didn't say anything other than, "Take this Arlo,"  
17 huh?

18 A. Yes.

19 Q. After the police officer turned up toward Interior,  
20 you handed the gun back to Theda Clarke?

21 A. She asked for the gun back.

22 Q. At no time did you ever see Theda Clarke or anybody  
23 else load a gun, did you?

24 A. No.

25 Q. At no time did you ever see Theda Clarke give a gun to

1 John Graham, did you?

2 A. I think they were both in the front.

3 Q. Both in front. My question was: you did not see  
4 Theda Clarke give a gun to John Boy Graham, did you?

5 A. No.

6 Q. So the first time that you became aware that John Boy  
7 Graham had a gun is when he pulled it out and shot Anna Mae  
8 Aquash in the head with it?

9 A. Yes.

10 Q. And until that -- and that came as big surprise to  
11 you, didn't it?

12 A. Yes.

13 Q. You had no idea -- is it your testimony you had no  
14 idea that John Graham or Anna Mae Aquash meant to kill --  
15 excuse me -- John Graham or Theda Clarke meant to kill Anna  
16 Mae Aquash?

17 A. Yes.

18 Q. You had no idea that was going to happen, is that  
19 right?

20 A. That's right.

21 Q. Nobody -- what did you think you were doing out there  
22 in that field when the sun was rising that morning?

23 A. We were going to scare her, or something.

24 Q. Scare her or something. So if you had no idea -- so  
25 you had no intent to help anybody kill Anna Mae Aquash, is

1 that right?

2 A. That's right.

3 Q. So you are innocent of the murder that you were  
4 convicted of; is that what you are telling the jury?

5 A. I had a wrongful conviction.

6 Q. You had a wrongful conviction because you had no  
7 intent to kill Anna Mae Aquash, is that right?

8 A. That's right.

9 Q. Have you told that to the federal prosecutors that you  
10 are innocent, that you had no intent to kill Anna Mae  
11 Aquash?

12 A. I said that to many people and I am innocent.

13 Q. I didn't ask you that. At any time between when you  
14 were brought back to Rapid City from Pollock, Louisiana,  
15 and spoke to federal prosecutors on August 19, 2008, until  
16 today, did you tell Mr. Mandel that you had no intent to  
17 kill Anna Mae Aquash or help get her killed?

18 A. I answered his questions truthfully.

19 Q. No. My question was: did you ever tell Mr. Mandel  
20 that you had no intent to help kill Anna Mae Aquash?

21 A. I never said no such thing, I don't think.

22 Q. You don't think?

23 A. But I said I was innocent.

24 Q. You said you were innocent?

25 A. I may have said I was innocent.

1 Q. May have said you were innocent. So you have never  
2 admitted to Mr. Mandel or anybody from the government that  
3 you intentionally helped murder Anna Mae Aquash, have you?

4 A. Yes. No one has ever mentioned that anyone was going  
5 to get killed; not to me no one ever said anything.

6 Q. And you have told that to Mr. Mandel and the  
7 government?

8 A. I told that to many people.

9 Q. Including Mr. Mandel and the government, yes?

10 A. Yes.

11 Q. They knew before you came in here that's what your  
12 testimony is going to be, right?

13 A. Yes.

14 Q. Now, when you did your proffer session November 17,  
15 1994, you did not say anything about stopping at Richard  
16 Marshall's house, did you?

17 A. Yes.

18 Q. Yes you did say something about Richard Marshall or no  
19 you did not?

20 A. No, I did not.

21 Q. You did not say anything about stopping in Allen, did  
22 you?

23 A. No.

24 Q. You did not say anything about anybody getting Theda  
25 Clarke a gun, did you?

1 A. I'm sorry, I didn't hear.

2 Q. I will repeat it. On November 17, 1994, when you were  
3 first questioned in your proffer session with the United  
4 States Attorney's office, you never said anything about  
5 anybody giving Theda Clarke a gun or Theda Clarke getting a  
6 gun from anybody, did you?

7 A. Yes, I never said anything.

8 Q. Then they questioned you -- federal officers  
9 questioned you again around a few months later like in  
10 January 1995, right? Do you recall? Let me ask you this  
11 question. I will give you some more details. Somewhere  
12 around -- this would be after your proffer session a couple  
13 months or month later, didn't you and your attorney,  
14 Mr. Mulvihill, again meet with you and Detective Abe Alonzo  
15 of the Denver Police Department and United States -- and  
16 Rick Ianucci, and didn't you again basically go through  
17 what happened to Anna Mae Aquash?

18 A. I don't recall, no.

19 Q. You didn't. Do you recall whether or not you never  
20 said anything at all the second time you were questioned by  
21 police in detail about this and made statements about  
22 either Richard Marshall, or stopping in Allen, or anybody  
23 giving Theda Clarke a gun?

24 A. That's right.

25 Q. You never said anything about that, did you?



1 A. No.

2 Q. Actually, the first time they spoke to you, Detective  
3 Alonzo and Mr. Ecoffey spoke to you in the Denver jail on  
4 September 6, 1994, they asked -- they told you, "We know  
5 you are involved in the Anna Mae Aquash murder and you  
6 should cooperate and tell us what happened," right?

7 A. Yes.

8 Q. At that time you said, "I have never met Anna Mae  
9 Aquash," didn't you?

10 A. Yes.

11 Q. You said, "I don't know anything about Anna Mae Aquash  
12 or how she died," right?

13 A. Right.

14 Q. And you said, "I was in Florida at the time," right?

15 A. Right.

16 Q. Then they caught you in a lie, correct? As a matter  
17 of fact, didn't they show you a police report showing that  
18 you were in Denver around Troy Lynn's house in December of  
19 1975, do you recall?

20 A. I recall I lost a lot of ID.

21 Q. And they showed you a police report showing that you  
22 were near -- the cop had talked to you near the Irving  
23 residence on or around December 13, 1975, and they knew  
24 they caught you in a lie, right?

25 A. I don't recall.

1 Q. Then Detective Alonzo told you that you had some  
2 pending charges and if you should decide to cooperate and  
3 tell what happened, that he might be able to work something  
4 out with the district attorney, right?

5 A. Right.

6 Q. Those charges weren't traffic charges, were they, that  
7 you were in on?

8 A. No.

9 Q. They were assault on a police officer, correct?

10 A. Correct.

11 Q. It was a felony assault on a police officer that you  
12 were facing?

13 A. That's correct.

14 Q. So you and Mr. Mulvihill got together and in the hopes  
15 of getting that case dismissed you went in and talked to  
16 federal agents on November 17, 1994, right?

17 A. Right.

18 Q. In fact that -- I'm sorry?

19 A. That's correct.

20 Q. In fact, that felony charge of assaulting a police  
21 officer was in fact dismissed, correct?

22 A. I don't recall.

23 Q. You don't recall going to prison for assaulting a  
24 police officer, do you?

25 A. No.

1 Q. Now, the third time that you spoke to federal  
2 investigators about Anna Mae Aquash was on July 25, 1995,  
3 when United States Marshal Robert Ecoffey, Deputy United  
4 States Marshal Rick Ianucci, and Detective Abe Alonzo took  
5 you from Rapid City to the Pine Ridge Indian Reservation,  
6 is that right?

7 A. Right.

8 Q. And out to the spot where you saw Anna Mae Aquash  
9 murdered, correct?

10 A. Correct.

11 Q. And didn't you -- did you tell them where they had  
12 gone -- where you all had gone back in 1975 with Anna Mae?

13 A. They took me. I don't remember where it was.

14 Q. So they were taking you out to various places; you did  
15 not take them or direct them, is that your testimony?

16 A. That's correct.

17 Q. Didn't you tell them that the United States Marshal  
18 Ianucci, Abe Alonzo, and United States Marshal Ecoffey,  
19 that from Rapid City you drove down through Sharps Corner  
20 on the reservation, and onto Kyle, South Dakota; and from  
21 Kyle, South Dakota, you went to Potato Creek Housing area  
22 where you ran out of gas, so you stopped at the Ethyl Black  
23 Crow residence, and then you went to Wanblee and drove to  
24 the junction of Highway 44 and 73, then you went up to the  
25 spot where Anna Mae Aquash got killed?

JUDITH M. THOMPSON

(605) 348-8610 FAX (605) 343-6842

1 A. I don't recall.

2 Q. You recall -- you say after you left Allen you went up  
3 to Potato Creek Housing out in -- not too far from Allen,  
4 right? Potato Creek is a little community not too far from  
5 Allen on the Pine Ridge Reservation, right?

6 A. Right.

7 Q. And your grandmother Ethyl Black Crow lived there,  
8 right?

9 A. Right.

10 Q. You stopped there and you got her permission to siphon  
11 some gas, right?

12 A. Right.

13 Q. So you got your grandmother up after midnight and  
14 asked her if you could siphon some gas?

15 A. Yes.

16 Q. Did she ask you about the woman that was in the back  
17 of the hatch back and what she was doing there?

18 A. No.

19 Q. Now, when you, and John Boy, and Anna Mae Aquash were  
20 in that field in the last few minutes of her life, it was  
21 going right around dawn, wasn't it?

22 A. Yes.

23 Q. Sky was just getting blue over the Badlands, right?

24 A. Right.

25 Q. So that was probably around 7:00 o'clock in the

1 morning, right? 6:00 or 7:00 o'clock in the morning,  
2 right?

3 A. Right.

4 Q. And you told the jury you stopped in Allen, South  
5 Dakota around 11:30, around midnight?

6 A. Right.

7 Q. So what did you all do for those six hours between the  
8 time you left Allen and killed Anna Mae Aquash an hour  
9 later -- six hours later?

10 A. I don't recall.

11 Q. You just drive around, cruise around South Dakota?

12 A. I don't recall.

13 Q. I presume -- isn't it true after you left Rosebud it  
14 took you about one hour to get out to the Badlands?

15 A. Was that a question? I'm sorry.

16 Q. Yes, it is, sir.

17 A. What was it?

18 Q. My question is: after you left that house where Theda  
19 Clarke and John Boy Graham went in there, you all drove to  
20 directly up to the Badlands in a journey that took about  
21 one hour, right?

22 A. No. We went to Allen.

23 Q. You went to Allen around 11:00 o'clock or so at night,  
24 11:30, sometime around midnight, before midnight?

25 A. It might have been somewhere around there; I don't

1 recall what time. I don't know.

2 Q. You know that it makes no sense at all that you were  
3 there --

4 A. You don't know; you can't tell time, you know. No one  
5 is asking for what time it is.

6 Q. You told the jury around 11:30, didn't you?

7 A. Yes, and that's what I read. There's what I read in  
8 the Cleo Marshall -- that's what she said. I assume it's  
9 11:30.

10 Q. So your testimony is tailored after other things after  
11 other things other people have said that you read about in  
12 trial, right?

13 A. No. Just the time on Cleo's.

14 Q. Well, in 2003 -- when you arrested on March 27, 2003,  
15 that was two days after your 50th birthday, right?

16 A. That's right.

17 Q. And Mr. Ecoffey asked you what happened and you went  
18 through a story about taking her out of Troy Lynn's house,  
19 driving to Rapid City, from Rapid City driving to Rosebud,  
20 and from Rosebud up to the Badlands where she was killed.  
21 That's what you told him in summary, right?

22 A. Right.

23 Q. And when he got done with that, near the end of that  
24 questioning were you asked this question and did you give  
25 this answer?

1 MR. MANDEL: Page, counsel.

2 THE COURT: Well, we are going to go into recess  
3 for the evening. And remember I told you don't talk to  
4 each other about the case. Don't do research on the case;  
5 don't read papers or listen to the news. Leave your notes  
6 here. Nobody is going to look at them. Keep an open mind  
7 until all the evidence is in and I give you final  
8 instructions on the case and only then should you go back  
9 in the jury room, then you will talk to each other about  
10 the case. Then you will decide the case, not before.  
11 Thank you. We will be in recess until 9 o'clock tomorrow  
12 morning.

13 (Court adjourned 5:10 p.m.)

14 (April 16, 2010.)

15 THE COURT: Bring in the jury please.

16 (Following proceedings in the presence of the  
17 jury.)

18 THE COURT: Please be seated. Good morning. I  
19 am very sorry that we wound up keeping you back in the jury  
20 room, but something came up this morning that court had to  
21 deal with on the case. We had to take that time before we  
22 could start proceeding with more evidence this morning.

23 Go ahead. Call Mr. Looking cloud back to the  
24 stand. He's there. All right. You may continue with your  
25 cross-examination.

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 MR. HANNA: Thank you, Your Honor.

2 Q. (BY MR. HANNA) Mr. Looking Cloud, I am going to hand  
3 you a copy of what's been marked Exhibit 232 for  
4 identification?

5 MR. HANNA: May I approach the witness, Your  
6 Honor?

7 THE COURT: You may.

8 Q. I'll ask you to take a look at this and tell me if you  
9 recognize it.

10 (Witness reading document.)

11 Q. Do you recognize that document, sir?

12 A. Yes.

13 Q. Isn't that a copy of a motion to set aside your  
14 conviction for murder?

15 A. It's a motion under 25 USC 2255.

16 Q. It's signed by you, isn't it?

17 A. Yes.

18 Q. Thank you.

19 MR. HANNA: Your Honor, I would offer 232 into  
20 evidence.

21 MR. MANDEL: Your Honor, I object to it as being  
22 a collateral document that would be inappropriate to accept  
23 into evidence.

24 THE COURT: Let me see it.

25 A. It was denied.



1 THE COURT: Beg your pardon?

2 A. I believe it was denied, I think.

3 MR. HANNA: Move strike his answer as not  
4 responsive to any question.

5 THE COURT: There's no outstanding question at  
6 the time so that will be stricken. There's no question  
7 pending. I will take this under advisement.

8 Q. (BY MR. HANNA) You do recall now that you signed a  
9 document asking the Court to set aside your conviction on  
10 the grounds of ineffective assistance of counsel and  
11 governmental misconduct, correct?

12 A. Rephrase the question, please. May I look at the  
13 document again, please?

14 (Court handing the witness the document.)

15 Q. You recall now, don't you, that you filed a motion to  
16 set aside your conviction and sentence on the grounds of  
17 ineffective assistance of counsel and governmental  
18 misconduct, didn't you?

19 A. Yes.

20 Q. And the in fact you signed that, didn't you?

21 A. Yes.

22 Q. It was something you prepared in prison with the help  
23 of some paralegal or someone in prison, right?

24 A. Myself.

25 Q. You did it yourself. Are you something of a jail

1 house lawyer, too?

2 A. No.

3 Q. You are familiar with legal matters as a result of  
4 your various experiences with the criminal justice system,  
5 is that correct?

6 A. Yes.

7 Q. And you are aware that that case is still pending,  
8 isn't it? That motion is still pending?

9 A. I believe it's out there somewhere.

10 Q. Okay. Now, since you first spoke to federal  
11 authorities about this matter on August -- since you spoke  
12 to federal authorities about what you say happened in 1975,  
13 on August 19, 2008, you have always been accompanied by  
14 your attorney, Barry Bachrach, of Boston, Massachusetts,  
15 whenever you spoke to Mr. Mandel or anyone from the  
16 government, isn't that true?

17 A. Yes.

18 Q. Okay. Now, if you recall yesterday afternoon just  
19 before we broke I was asking you questions. I was starting  
20 to ask you questions about statements you had made to  
21 Detective Abe Alonzo of the Denver Police Department and  
22 United States Marshal Robert Ecoffey of South Dakota on the  
23 day that you were arrested on March 27, 2003. On that --  
24 after you got arrested you were asked questions and  
25 answers, weren't you?

1 A. Yes.

2 Q. And were you asked these questions and did you give  
3 these answers to Detective Alonzo and specifically to  
4 Robert Ecoffey on the day you were arrested in 2003 by  
5 Marshal Ecoffey. "Question. Okay. Well, let me see.  
6 Well, let me -- since Arlo, I know for a fact that on your  
7 way from Rapid City you made another stop and that you  
8 stopped at you stopped in Allen, South Dakota; and that you  
9 stopped at Dick Marshall and Cleo Marshall's house. Do you  
10 remember stopping there?"

11 Your answer was, "No." Were you asked that  
12 question and did you give that answer?

13 A. Yes.

14 Q. Were you asked this question and did you give this  
15 answer? "Okay. You don't remember stopping there?"

16 Your answer. "No." Were you asked that question  
17 and did you give that answer at that time?

18 A. Yes.

19 Q. Were you then asked this question and did you then  
20 give this answer? "And I know -- I know for a fact that  
21 you stopped there because Dick and Cleo -- because both  
22 Dick and Cleo are telling me that you John Boy and Theda  
23 stopped there and that you had Anna Mae and somebody had a  
24 note. And that you went in, you went into their house.  
25 You knocked on the door. They answered the door. You went

1 into the house and that point in time Theda said, 'Hey, we  
2 brought some baggage we got to take there.' And at that  
3 time she had a note from someone. That you John Boy and  
4 her went into the bedroom with Dick Marshall and Cleo  
5 stayed. Cleo stayed sitting on the couch with Anna Mae and  
6 you guys went in there. You had a conversation about this  
7 note. You wanted to leave -- you wanted to leave Anna Mae  
8 there. But Dick and Cleo said, no, that you couldn't leave  
9 her there. Do you remember that happening?"

10 What is -- your answer was -- your answer then,  
11 "No, I don't remember that part. I don't know." Were you  
12 asked that question and did you give that answer?

13 A. Yes.

14 Q. Were you then asked this question and did you give  
15 this answer? Question by Ecoffey. "Do you know a Dick  
16 Marshall?"

17 "Answer: I -- yeah, I met him." Were you asked  
18 that question and did you give that answer?

19 A. Yes.

20 Q. Were you asked this question and did you give this  
21 answer? "Question: You met Dick. How about his wife,  
22 Cleo?"

23 Your answer, "Yeah, but not -- maybe once." Were  
24 you asked that question and did you give that answer?

25 A. Yes.

1 Q. Were you asked this question and did you give this  
2 answer? Question by Ecoffey. "Do you remember stopping at  
3 their house?"

4 Your answer, "No." Were you asked that question  
5 and did you give that answer?

6 A. Yes.

7 Q. Were you asked this question and did you give this  
8 answer? "Question: Do you remember going into the bedroom  
9 with them and Theda having a conversation with Dick about  
10 keeping her there?"

11 Your answer, "No." Were you asked that question  
12 and did you give that answer?

13 A. Yes.

14 Q. Did he then ask you, "She had a note from someone?"

15 Your answer was, "Huh-Uh." Was that your answer  
16 to Mr. Ecoffey on 2003?

17 A. That's correct.

18 Q. Were you then asked this question by Marshal Ecoffey  
19 and did you then give this answer? "Question: I want you  
20 to think about this real hard, Arlo, because this is what  
21 they are telling me. This is coming from Cleo. She said  
22 she sat out there. She said you fed -- she fed you guys.  
23 She said she gave Anna Mae a change of clothes. She said  
24 you went in. She says you -- you, John Boy, Theda, and  
25 Dick went into the bedroom and had a conversation, and then

1 Dick came out and told her she said they want to keep --  
2 they want to keep her here; they want us to keep her here.  
3 They had a note from somebody. They wanted her to take  
4 care of this baggage. Cleo said, 'No, we got kids here.  
5 We are not going to get involved.' So then Dick went back  
6 into the bedroom, you guys came out, and she fed Anna Mae  
7 some soup and she changed clothes. You guys came out.  
8 Then you took her and you left again. Do you remember  
9 stopping there?"

10 Your answer, "No. I don't remember." Were you  
11 asked that question and did you then give that answer?

12 A. Yes.

13 Q. Did you then respond to this statement by Ecoffey in  
14 this manner? Question by Ecoffey. "You need -- I need you  
15 to be -- I need you to be truthful, Arlo."

16 Your answer was, "I don't remember right now. I  
17 don't remember that. I thought we just went straight to  
18 Rosebud." Is that what you told Ecoffey on the day you  
19 were arrested in 2003?

20 A. Yes.

21 Q. Your testimony to the jury is Theda Clarke over at  
22 Troy Lynn Yellow Wood's residence just asked you if you  
23 would drive them to Denver and turn around and come back,  
24 right? Just drive?

25 A. That's correct.

1 Q. You knew that Theda wanted you to drive because  
2 somebody suspected Anna Mae Aquash of being an informant  
3 for the government, correct?

4 A. Correct.

5 Q. So it wasn't just drive, it was take an informer, a  
6 suspected informer to Rapid City so she could be  
7 questioned, right?

8 A. Right.

9 Q. There was certainly no talk, at least at that time  
10 about: we are going to take her to South Dakota and kill  
11 her, was there?

12 A. There was no mention of any killing.

13 Q. Okay. But you did know that the woman you were taking  
14 to Rapid City was being taken there against her will,  
15 didn't you?

16 A. Yes.

17 Q. Because somebody in Rapid City wanted to question her  
18 about whether or not she was an informant, correct?

19 A. Correct.

20 Q. And you were there to guard her and keep her  
21 controlled, right?

22 A. No.

23 Q. When you were at that house, empty apartment in Rapid  
24 City, you were told not to let anybody come in or come out  
25 of that apartment, right?

1 A. No.

2 Q. No. Okay. You weren't there to help guard her or  
3 control her in any way?

4 A. No.

5 Q. What about when were you outside of that house with  
6 Theda Clarke, and John Boy Graham went in, you knew you  
7 were there to keep her from escaping, didn't you?

8 A. I was asleep.

9 Q. You were asleep when Theda Clarke and John Boy Graham  
10 went into a house while you and Anna Mae Aquash were  
11 outside?

12 A. I'm sorry, rephrase that question. Is this in Rapid  
13 City or?

14 Q. No, sir. I am talking about sometime after you left  
15 Rapid City and you parked outside of a house that you think  
16 was near a hospital you say you stood outside the car, Anna  
17 Mae was inside the car, Theda Clarke and John Boy went into  
18 a house. That's what I am talking about.

19 A. Right.

20 Q. So my question is: when they went into that house and  
21 you were outside, you say outside the car, you knew that  
22 your job was to make sure she did not run away, right, or  
23 escape?

24 A. Yes.

25 Q. You knew that, right?



1 A. I didn't know it, but she told me to stand right in  
2 back of the car.

3 Q. And every other time you've spoken about this prior to  
4 2008, you have told police that you were actually in the  
5 car with her, right?

6 A. No.

7 Q. You didn't say that to Ecoffey in 2003 when you were  
8 arrested?

9 A. No.

10 Q. You didn't tell John Trudell that you were in the car  
11 with her?

12 A. No.

13 Q. You did not tell John Trudell in 1988 that she was  
14 begging you to let her go?

15 A. No.

16 Q. In fact, was she begging to you let her go?

17 A. No, sir.

18 Q. Was she saying, "Arlo, they are inside there deciding  
19 my fate?"

20 A. No.

21 Q. Did she say, "They are probably going to have you do  
22 the killing?"

23 A. No.

24 Q. Didn't she say, "Just let me go?"

25 A. No, sir; never had a conversation with her.

1 Q. You never had a conversation with her?

2 A. No, sir.

3 Q. At any time did you?

4 A. At no time did I ever have a conversation with Ms.  
5 Pictou.

6 Q. In fact, you never heard her say anything, did you?

7 A. I have never heard her saying anything.

8 Q. Okay. So from the first time you saw her was at Troy  
9 Lynn Yellow Wood's residence on Pecos Street and you saw  
10 her being tied up, right?

11 A. Yes, I did.

12 Q. And any time while she was being tied up or any other  
13 time while you were in her presence at Troy Lynn's house,  
14 did that lady say anything at all?

15 A. No.

16 Q. She was absolutely silent while she was being  
17 kidnapped, is that right?

18 A. That's right.

19 Q. And after she was taken, tied up, and put in the back  
20 of a hatch back, in the back of a Pinto automobile and  
21 driven from Denver, Colorado, to Rapid City, South Dakota,  
22 she never said a single word on that journey, is that your  
23 testimony?

24 A. That's correct.

25 Q. So it takes about six hours, more or less, doesn't it,

1 to drive from Denver to Rapid City?

2 A. Eight or nine.

3 Q. Eight or nine. During that eight or nine hours that  
4 kidnap victim in the back of your car never uttered a word,  
5 is that correct?

6 A. That's correct.

7 Q. And when you were at that house or that apartment in  
8 Rapid City, South Dakota, for at least one night, at least  
9 one day, she never spoke a word that you heard her say, is  
10 that right?

11 A. Not to me, sir.

12 Q. Not to you or not to anybody, correct? You never  
13 heard her say anything to anybody, is that your testimony?

14 A. She have might have spoke to John Boy because they  
15 were in the room together.

16 Q. But while you were in Rapid City you never heard Anna  
17 Mae Aquash utter a single word, is that your testimony?

18 A. Not that I know; not that I recall.

19 Q. By the time you kidnapped her in Denver and drove her  
20 to Rapid City, not once did she ever say, "What's going to  
21 happen? Why are you doing this? I am not the person, I am  
22 innocent." She never said anything like that at any time  
23 from Denver to the time you all left Rapid City, is that  
24 right?

25 A. That's right.

1 Q. She was totally silent, in your presence, anyway?

2 A. Exactly.

3 Q. And after you left Rapid City -- after you left Rapid  
4 City at any time between the time you left Rapid City and  
5 the time someone shot her in the head in a field in the  
6 Badlands did you ever hear Anna Mae Aquash utter a word?

7 A. I heard her -- sounded like she was praying in her  
8 language; that was the last -- that was the only time.

9 Q. She was up there on that hill and she was praying  
10 Micmac, is that right? Praying in what sounded like Indian  
11 language you did not understand, right?

12 A. Yes.

13 Q. But between the time you took her from Rapid City to  
14 the time somebody shot her up in the Badlands, you never  
15 heard that woman utter a word or a sentence in the English  
16 language, is that your testimony?

17 A. That's correct.

18 Q. She went -- she was kidnapped, driven across three  
19 states, and went to her death without uttering a word, is  
20 that right?

21 A. Not to me, sir.

22 Q. Not in your presence, is that what your testimony?

23 A. Not in my presence.

24 MR. HANNA: Judge, we have marked -- we offer  
25 into evidence Exhibit 201 which is a videotape of an

1 interview of Fritz Arlo Looking Cloud on the day he was  
2 arrested March 27, 2003.

3 THE COURT: Any objection?

4 MR. MANDEL: No, Your Honor.

5 THE COURT: Exhibit is received.

6 MR. HANNA: Your Honor, I have provided the clerk  
7 with government's transcript of this. May I have  
8 permission to hand it out to the jury?

9 THE COURT: Just a moment, because there's an  
10 instruction I have to give before the transcript is given  
11 to the jury.

12 I told you will that I would give you some  
13 instructions during the course of the trial, which I have  
14 already done, and this is another one. As you heard,  
15 there's an accurate transcript of a recording that you are  
16 about to hear. The transcript undertakes to identify the  
17 speakers engaged in the conversation. You are permitted to  
18 have the transcript for the limited purpose of helping you  
19 follow the conversation and listen to the tape-recording  
20 and also to help you keep track and speakers. Differences  
21 in meaning between what you hear in the recording and read  
22 in the transcript may be caused by such things as  
23 inflection of a speaker's voice. It is what you hear,  
24 however, not what you read that is the evidence. You are  
25 specifically instructed that whether the transcript

1 correctly or incorrectly reflects the conversation or the  
2 identity of the speaker is entirely for you to decide based  
3 upon what you heard here about the preparation of the  
4 transcript and upon your own examination of the transcript  
5 in relation to what you hear on the tape-recording. If you  
6 decide the transcript in any respect is incorrect or  
7 unreliable, disregard it to that extent. All right. You  
8 may give copies out.

9 MR. HANNA: I should probably advise the Court  
10 there is a scroll transcript on the video itself.

11 THE COURT: I want Mr. Looking Cloud to have a  
12 copy also.

13 (Exhibit 201 is playing.)

14 Q. (BY MR. HANNA) Mr. Looking Cloud, that video we just  
15 saw was an exhibit that was played in your trial, wasn't  
16 it?

17 A. Yes.

18 Q. And after you were convicted, you got a transcript as  
19 part of the record in your case that you have read between  
20 your trial and now, haven't you?

21 A. Yes.

22 Q. And you heard Robert Ecoffey telling you, "We know for  
23 a fact that you stopped in Allen," and went through various  
24 details. You also heard him say that in your video, right?

25 A. Right.

1 Q. And you also heard him say that Richard Marshall -- he  
2 knew that because Richard Marshall and Cleo Marshall had  
3 told him that. You heard him say that on that video?

4 A. Yes.

5 Q. So you thought Richard Marshall had been talking about  
6 you to federal authorities, right?

7 A. Yes.

8 Q. In street jargon you thought that Dick Marshall had  
9 ratted you out, correct?

10 A. No; I don't know.

11 Q. You heard Ecoffey telling you Richard Marshall and  
12 Cleo Marshall told me these things happened. You heard him  
13 say that, right?

14 A. Right.

15 Q. So do you know whether he was telling you the truth or  
16 not?

17 A. Who was telling me the truth?

18 Q. Ecoffey when he told you Dick Marshall and Cleo  
19 Marshall are both telling me you stopped at the house,  
20 there was a note, you all asked if --

21 A. If I knew the truth.

22 Q. Do you know now whether or not Ecoffey was telling you  
23 the truth about Richard Marshall saying those things?

24 A. Yes.

25 Q. He wasn't, was he?

1 A. He was telling the truth, yes.

2 Q. You believe that to this day, right?

3 A. Yes.

4 Q. And of course, you had -- you believed you got  
5 immunity for cooperating with the government back in 1994  
6 on this case, didn't you?

7 A. To a certain extent I believe.

8 Q. In any case, did you believe that you were being  
9 arrested because Dick Marshall and Cleo Marshall had given  
10 information about you stopping up at their house with Anna  
11 Mae Aquash?

12 A. No.

13 Q. Was that part of your reason for naming Dick Marshall  
14 as the guy who provided the murder weapon for the first  
15 time in August 19, 2008?

16 A. I believe that came from perjured testimony from Mr.  
17 Richard Two Elk.

18 Q. That wasn't the question I asked. The question I  
19 asked was: when you accused Dick Marshall of giving a gun  
20 to Theda Clarke when you spoke to South Dakota law  
21 enforcement officials four years into your federal prison  
22 sentence, when you did that, you believed that Dick  
23 Marshall had ratted you out to the federal authorities?

24 A. No.

25 Q. You didn't like it when you thought about Richard



1 Marshall telling federal authorities that you had stopped  
2 off at his house with Anna Mae Aquash in 1975 and that you  
3 had asked them to keep her there; you didn't like knowing  
4 that, did you?

5 A. No.

6 Q. You know Troy Lynn Yellow Wood, right?

7 A. Yes.

8 Q. One time at least, you and Troy Lynn Yellow Wood were  
9 close friends, isn't that true?

10 A. That's true.

11 Q. And Troy Lynn Yellow Wood visited you when you were a  
12 prisoner here on trial in your trial 2004, didn't she --

13 A. That's true.

14 Q. -- in jail over at Pennington County Jail, right?

15 A. That's right.

16 Q. And she visited you -- when she visited you she was  
17 with her -- with your aunt Martha Featherman, true?

18 A. True.

19 Q. You are very close to your aunt Martha, aren't you,  
20 Mr. Looking Cloud?

21 A. Yes.

22 Q. You would never lie to her, would you?

23 A. Yes.

24 Q. Yes you would or no you wouldn't lie to her?

25 A. I would not lie to her.

1 Q. You would not lie to your aunt Martha Featherman.  
2 Isn't she a sister to one of your parents?

3 A. My father.

4 Q. Okay. She is the closest thing you have to a mother  
5 in life, right?

6 A. Yes.

7 Q. And when you were visiting with Troy Lynn Yellow Wood  
8 and your aunt Martha Featherman in the Pennington County  
9 Jail in 2004, didn't Troy Lynn ask you, "What is Cleo Gates  
10 doing over around the courthouse at your trial?"

11 A. I don't recall.

12 Q. Didn't you say to your aunt Martha Featherman and Troy  
13 Lynn, "They are trying to say we stopped in Allen, but I  
14 don't remember anything about that?"

15 A. I don't recall.

16 Q. You don't recall whether you said that to Troy Lynn or  
17 not?

18 A. I don't recall.

19 Q. Now, when you left Denver, you believed your job was  
20 to take her, Anna Mae, that is, to Rapid City and drop her  
21 off someplace, turn around and come back, correct?

22 A. That's correct.

23 Q. And when you got to Rapid City and she was taken to an  
24 empty apartment, you thought your mission was accomplished,  
25 right?

1 A. That's right.

2 Q. You thought you were done?

3 A. That's right.

4 Q. So you were done with what you signed on to do,  
5 correct?

6 A. Correct.

7 Q. And it was then time to relax and party a little bit,  
8 right?

9 A. That's correct.

10 Q. And you went over to Tony Red Cloud, your friend's  
11 house, right?

12 A. Yes.

13 Q. And you relaxed and partied a little bit with Tony,  
14 right?

15 A. No.

16 Q. You drank with Tony, didn't you?

17 A. No.

18 Q. In fact, you stayed out all night with Theda's car  
19 while you got drunk with Tony Red Cloud, isn't that true?

20 A. No.

21 Q. That's why she was mad when you came back the next  
22 day, right?

23 A. No.

24 Q. You are saying to the jury she was mad because it took  
25 you half-hour to go gas up and come back and that's why she

1 was mad at you?

2 A. Yes.

3 Q. You have a cousin name Lucy Bull Bear, don't you?

4 A. Yes.

5 Q. You are close to her, too, aren't you?

6 A. Yes.

7 Q. You'd never lie to her, would you?

8 A. That's correct.

9 Q. Now, Lucy Bull Bear visited you at the Pennington  
10 County Jail in 2004 when you were on trial, correct?

11 A. Correct.

12 Q. When she did, she was with a person named Janis  
13 Schmidt, isn't that true?

14 A. That's true.

15 Q. Janis Schmidt is a non-Indian lady, white lady, who  
16 was a writer for a newspaper, a local newspaper, on Pine  
17 Ridge, correct?

18 A. I believe she was a writer, but I don't --.

19 Q. And you spoke to her and Lucy Bull Bear and didn't you  
20 tell Janis Schmidt and Lucy Bull Bear that you had no  
21 recollection of stopping off in Allen because you were  
22 drunk?

23 A. No.

24 Q. Didn't you tell Janis Schmidt and Lucy Bull Bear that  
25 when you got to Rapid City and dropped off Anna Mae Aquash

1 you thought it was all done and your job was over. You  
2 told them that, didn't you?

3 A. I don't recall.

4 Q. Didn't you tell Janis Schmidt and Lucy Bull Bear that  
5 after you dropped off Anna Mae someplace, you went over --  
6 you thought the whole thing was done, and you went over to  
7 your friend Tony Red Cloud's and you and he got drunk that  
8 night?

9 A. No.

10 Q. Didn't you tell them you stayed out all night?

11 A. No.

12 Q. And that when you came back the next day, Theda was  
13 furious?

14 A. No.

15 Q. And that when you left Rapid City you were still  
16 intoxicated?

17 A. No.

18 Q. And that's why you had no recollection of anything  
19 that might have happened at the Allen house of Richard and  
20 Cleo Marshall; isn't that what you told them in jail?

21 A. No.

22 Q. Now, it is true that when you were 22 years old back  
23 in 1975, you had a very serious drinking habit, didn't you?  
24 Let me put it this way: you drank a lot, didn't you?

25 A. Yes.

1 Q. And when you went over to Troy Lynn Yellow Wood's that  
2 day, you had been drunk for days, isn't that true?

3 A. I was drunk the night before.

4 Q. You had been drinking for days, though, hadn't you?

5 A. No.

6 Q. You remember the first time you spoke to law  
7 enforcement officers in Denver in 1994, November 17, 1994,  
8 at the United States Attorney's office in Denver?

9 A. Yes.

10 Q. And were you asked this question and did you give this  
11 answer at the very early part of your interview. Robert  
12 Ecoffey asked you at page 1859 of discovery. "First, tell  
13 us in your own words and after you get done telling us the  
14 story, if we have any questions, or anything, we will go  
15 ahead and ask you questions for any clarification. Okay?  
16 So if you want, Arlo, if you just want to just go ahead and  
17 start how you -- how you first -- who contacted you and  
18 when."

19 And the first thing you said was, "Nobody  
20 contacted me. I was drinking for a few days there. I went  
21 up to see -- I went up to Pecos to Troy Lynn's house  
22 because I knew a guy, Joe Morgan. Want to go party, or  
23 something, go drink some more, or something." Isn't that  
24 what you said when you were interviewed the first time by  
25 law enforcement in 1994?

1 A. I don't recall, but I do recall going over there  
2 drinking.

3 Q. You wanted to -- and when you drank, you didn't drink  
4 to relax, you drank to get drunk, right?

5 A. Yes.

6 Q. So that was your goal when you went over to Troy  
7 Lynn's house?

8 A. Yes.

9 Q. Now, back in those days you drank about every day,  
10 right?

11 A. Yes.

12 Q. And when you got involved in this kidnapping, you  
13 continued to drink, didn't you?

14 A. No.

15 Q. Is it your testimony to the jury from the time you  
16 left Denver until the time Anna Mae Aquash was killed you  
17 never had a single drink of alcohol of any kind?

18 A. That's correct.

19 Q. So despite the fact you had serious alcohol problems  
20 when you were involved in something that put you under a  
21 whole lot of pressure you suddenly went cold turkey and  
22 stopped drinking alcohol, is that right?

23 A. That's right.

24 Q. Even when you thought the whole thing was done and you  
25 wanted to go relax and party a little bit in Rapid City,

1 you didn't have any drinks at all, is that right?

2 A. That's correct.

3 Q. Now, you have acquired a taste for other drugs other  
4 than alcohol, haven't you. You have acquired a taste and  
5 frequently used and abused illegal drugs, haven't you?

6 A. Yes.

7 Q. Heroin being your favorite, is that correct?

8 A. No.

9 Q. What was your favorite drug of choice of 1975 until  
10 the time you were arrested in 2003?

11 A. Mescaline.

12 Q. Mescaline, a mind-altering hallucinogenic drug similar  
13 to LSD, correct?

14 A. Correct.

15 Q. You also liked to do LSD, too, didn't you?

16 A. Yes.

17 Q. And you also did a lot of methamphetamine, too,  
18 correct?

19 A. Yes.

20 Q. And you have done a lot of heroin, too, haven't you?

21 A. On occasion.

22 Q. And while you're consuming these drugs, you never gave  
23 up your abuse of alcohol either, did you?

24 A. No.

25 Q. So you liked to do drugs like mescaline,



1 methamphetamine, heroin, in conjunction with alcohol, true?

2 A. That's true.

3 Q. Now, do these drugs, including alcohol, do they help  
4 your memory, help you remember things, or do they impair  
5 your memory and your ability to remember things, in your  
6 judgment?

7 A. I was -- there was no memory.

8 Q. There was no memory?

9 A. It was a trip.

10 Q. It was a trip? I'm sorry, could you repeat your  
11 answer? My question to you, sir, is: do you think all  
12 these drugs and alcohol helped you remember things later on  
13 or did they impair, did they hurt your ability to remember  
14 things later on?

15 A. I remember a lot of things.

16 Q. But you've woken up in jail without having any memory  
17 of how you got there, haven't you?

18 A. No.

19 Q. Have you ever had an alcohol blackout?

20 A. Yes.

21 Q. Okay. You just wake up you don't know what happened  
22 the night before, right?

23 A. Right.

24 Q. And it's also true, isn't it, that many, probably if  
25 not every time you got arrested, most of the time you got

1 arrested you were drunk or under the influence of drugs or  
2 both at the time you did whatever you did to get arrested,  
3 right?

4 A. Right.

5 Q. But this time when you do a kidnapping that results in  
6 a murder, you didn't touch a drop of alcohol, is that  
7 right?

8 A. That's right.

9 Q. You didn't do any drugs, smoke any marijuana, do any  
10 LSD, or anything like that, right?

11 A. That's right.

12 Q. You wanted a clear head for this kidnapping, is that  
13 right?

14 A. Whenever I was with Theda, I never touched no alcohol.

15 Q. Theda drank too, didn't she?

16 A. I wouldn't know.

17 Q. You don't know?

18 A. No.

19 Q. You were with Theda a lot, weren't you?

20 A. Yes.

21 Q. She owned a bar, didn't she?

22 A. Yes.

23 Q. You hung out at that bar, didn't you, in Keenesburg?

24 A. On occasion I visit.

25 Q. Okay. Now, that video we just saw, that was the first

1 time -- well, let me start again. That video that we just  
2 saw, other than the time when Abe Alonzo and Mr. Ecoffey  
3 and Ianucci took you from Colorado in custody out to the  
4 place where Anna Mae Aquash was killed, other than that one  
5 time, that video, your statement to the police there, is  
6 the only time you have talked to police or law enforcement  
7 about Anna Mae Aquash without having a lawyer sitting next  
8 to you, right?

9 A. Right.

10 Q. Now, actually as we just saw in the video, you did  
11 tell Ecoffey that you were sitting in the car with Anna Mae  
12 Aquash outside that house in Rosebud with Theda and John  
13 Boy went in the house. That's what you told them on March  
14 27, 2003, correct?

15 A. I don't recall.

16 Q. You sat here and 15 minutes ago you watched a video,  
17 didn't you? My question to you is: that's what was on the  
18 video; you say to Ecoffey, "I sat in the car with Anna Mae  
19 outside that house in Rosebud."

20 A. Well, when she walked in, John Boy and I stayed out in  
21 the car and then when she come back out and got John Boy,  
22 when they both went in, she told me to stand outside.

23 Q. That isn't what you said in 2003, was it?

24 A. Well, I probably never went in with Ecoffey because I  
25 never trusted Ecoffey or Abe Alonzo.

1 Q. Have you told people that Abe Alonzo gave you heroin  
2 and alcohol?

3 A. He -- Abe Alonzo has on many occasions given me money.

4 COURT REPORTER: Don't get so close to the  
5 microphone and please restate your answer.

6 Q. I didn't ask you that. Has he ever given you heroin?

7 A. No, he's never give me no heroin.

8 Q. Ever given you alcohol?

9 A. No.

10 Q. Haven't you told people that: Abe Alonzo gave me  
11 alcohol and drugs?

12 A. What other people have written -- I don't know what  
13 other people have written; there's a lot of things that  
14 people of wrote which I have never said.

15 Q. I am asking you: did you tell somebody?

16 A. No, I didn't. No, I did not.

17 Q. Now, my question to you was -- I am not asking you  
18 what happened outside that house in Rosebud. I am asking  
19 you: didn't you tell Alonzo on the day you were arrested  
20 that you were sitting in the car with Anna Mae Aquash?

21 A. No.

22 Q. You didn't? Okay. Was that somebody else we just  
23 saw on that video or was that you?

24 A. That was I.

25 Q. Now, when you were arrested on March 27, 2003, you

1 didn't mention the name Charlie Abourezk, did you?

2 A. No.

3 Q. Is that because you were afraid of Charlie Abourezk in  
4 2003?

5 A. Yes.

6 Q. Charlie Abourezk, attorney at law in Rapid City, South  
7 Dakota; that's the guy you were afraid of in 2003, is that  
8 right?

9 A. That's right; that's correct.

10 Q. You were afraid -- and you were sitting there  
11 thinking: I don't want to say anything about Charlie  
12 Abourezk because he can hurt me or do something to me, is  
13 that right?

14 A. That's right.

15 Q. And you were thinking about that in 2003 when they  
16 were asking you questions, is that right?

17 A. That's correct.

18 Q. Charlie Abourezk, son of a United States Senator from  
19 the State of South Dakota, that's the Charlie Abourezk we  
20 are talking about, right?

21 A. That's correct.

22 Q. What did you think Charlie Abourezk was going to do to  
23 you?

24 A. He's well-connected with all the AIM leadership and,  
25 of course, a lot of members.

1 Q. In 2003 this was going through your head, is that  
2 right, when you were talking to these guys?

3 A. I knew.

4 Q. Sometimes Anna Mae Aquash was tied up and sometimes  
5 she wasn't, isn't that right?

6 A. That's right.

7 Q. You guys took -- untied her sometime after she left  
8 Denver, didn't you, when you were driving her to Rapid City  
9 or was she tied up the entire eight hours?

10 A. I do not recall.

11 Q. She wasn't tied up when you brought her into the  
12 Marshall house, was she?

13 A. I do not recall.

14 Q. You are not telling the jury she was tied up when you  
15 all brought her to the Marshall house, are you?

16 A. I don't recall.

17 Q. You know a significant part of this trial is about  
18 what you can and cannot recall, right? Your memory is at  
19 issue here. You understand that, right?

20 A. Right.

21 Q. Now, in 2003 when you spoke to Ecoffey, you could not  
22 recall the caliber of the gun that was used to kill Anna  
23 Mae Aquash, right?

24 A. That's right.

25 Q. You told him you didn't know what caliber gun killed

1 Anna Mae Aquash, right?

2 A. Correct.

3 Q. In 1994 you remembered though, didn't you, when you --

4 A. Yes.

5 Q. You knew in 1994 when you talked to Ecoffey for the  
6 first time that that was a .32 caliber pistol that murdered  
7 Anna Mae Aquash, right?

8 A. Yes.

9 Q. You forgot that sometime between 1994 and the time  
10 that you were talking to Ecoffey in 2003, is that right?

11 A. I did not forget.

12 Q. You just lied to him when he asked you, "Do you know  
13 what kind of caliber gun it was?"

14 A. I just didn't say.

15 Q. Actually you said, "I don't know what kind of caliber  
16 it was," didn't you?

17 A. Yes.

18 Q. And that was a lie, correct?

19 A. Yes.

20 Q. So you did lie to Ecoffey, right?

21 A. Yes.

22 Q. Okay. And in fact in the course of your experiences  
23 in criminal justice system you have frequently lied to law  
24 enforcement officers, haven't you?

25 A. Yes.

1 Q. You feel, don't you, that the government and its  
2 agents are lawyers lied to you when you got charged with  
3 the murder of Anna Mae Aquash, right?

4 A. My case has always and I feel that it was mishandled.

5 Q. Okay. You are -- after you were convicted here in  
6 this courtroom in 2004, on October 19, 2004, you were  
7 called by the United States Government to testify in a  
8 grand jury here in Rapid City, right?

9 A. That's correct.

10 Q. And Mr. Mandel asked you questions at that time,  
11 right?

12 A. Right.

13 Q. And you told Mr. Mandel and the grand jury you were  
14 innocent, right?

15 A. That's correct.

16 Q. And you told them that you had been granted immunity  
17 since 1994, you don't know what happened. In 1994 all we  
18 wanted you as was a witness. In '94 they gave you a paper  
19 and if you cooperated -- and you have been cooperating  
20 since 1994 and you didn't know why you were convicted of  
21 murder. And you said, "The government, they don't honor  
22 their own agreements," right? That's what you said?

23 A. That's correct.

24 Q. You believed that, didn't you, the government did not  
25 treat you fairly, right?



1 A. That's correct.

2 Q. They made agreements with you that they violated,  
3 right?

4 A. Yes.

5 Q. That you thought they had given you immunity and then  
6 they turn around and arrested you and convicted you for  
7 murder. You thought that was a violation of what they  
8 promised you, right?

9 A. That's correct.

10 Q. In fact, you said something to Mr. Mandel, "I don't  
11 understand the agreements that you all made with me and  
12 didn't keep." That's what you said to him in front of the  
13 grand jury, right?

14 A. I did not say that in front of the grand jury.

15 Q. Well, everything -- well, were you asked this question  
16 by Mr. Mandel and did you give this answer? "Are you  
17 willing to answer questions here today, sir?"

18 And you said, "I think I'd like a little bit of  
19 time to think about this because the agreements you all  
20 made with me, you guys never followed through and I  
21 cooperated since 1994." Isn't that what you said in front  
22 of the grand jury.

23 A. No.

24 Q. That's not what you said? Do you remember what you  
25 said in front of the grand jury?

1 A. I remember saying that I would like to speak to my  
2 attorney up in Colorado, Mr. Mulvihill.

3 Q. Were you asked this question and did you say that in  
4 front of grand jury and to Mr. Mandel? Quote, "And  
5 immunity that was offered me by the FBI, now I want to know  
6 what's up with that. I don't know what the deal was with  
7 that. The FBI made a deal."

8 A. I don't recall.

9 Q. In any case, that is the way you felt after your  
10 conviction in 2004, right?

11 A. I believe my case was mishandled.

12 Q. Now --

13 THE COURT: We are going to have our noon recess  
14 now. We will be in recess until 1:00 o'clock. Don't talk  
15 to each other about the case until you have heard all the  
16 evidence.

17 Please stand for the jury.

18 (Noon recess.)

19 THE COURT: Bring in the jury, please.

20 (Following proceedings in the presence of the  
21 jury.)

22 THE COURT: You may continue.

23 Q. (BY MR. HANNA) Mr. Looking Cloud, it's accurate to  
24 say, isn't it, that certainly after you were convicted and  
25 sentenced to life in prison you felt the government had

1       unfairly used you, correct?

2       A.     Correct.

3       Q.     And so you didn't feel bad if you could use the  
4       government to get out of prison, right?

5       A.     Yes.

6       Q.     And they had lied to you; you didn't feel bad if you  
7       lied to them to get out of prison, right?

8       A.     No.

9       Q.     You told the jury that the government has never made  
10      you any promises, is that right?

11      A.     That's correct.

12      Q.     Back in 1994, when you did your proffer session in  
13      Denver, weren't you told by the FBI agent that if you said  
14      that you had helped tie up Anna Mae Aquash you would not be  
15      charged for that. Did they tell you that?

16      A.     Yes.

17      Q.     Now, in fact, in 1994, after Detective Alonzo told you  
18      that you might be able to get your charge of felony assault  
19      on a police officer dismissed if you came in with your  
20      attorney and told him what you knew about the death of Anna  
21      Mae Aquash, right?

22      A.     Right.

23      Q.     And you consulted with your attorney, correct,  
24      Mr. Mulvihill?

25      A.     That's correct.

1 Q. And on November 3, 1994, you and your attorney entered  
2 into an agreement with the government whereby if you gave a  
3 complete -- a truthful and complete summary of all facts  
4 about which you are aware concerning your knowledge of the  
5 death of Anna Mae Aquash, they would consider whether or  
6 not they wanted to make a deal with you whereby you would  
7 be a witness against other people, correct?

8 A. Correct.

9 Q. They didn't promise you a deal; they didn't say, "We  
10 will use you as a witness," did they, at that time?

11 A. I don't understand.

12 Q. Okay. They told you that they'd think about whether  
13 or not they wanted to offer you a deal for whereby you  
14 would be a witness and cooperate and testify against  
15 somebody; they'd think about it?

16 A. I don't understand you.

17 Q. All right. You promised to tell them the truth,  
18 right?

19 A. No promises.

20 Q. Didn't you promise to tell them the truth?

21 A. Yes.

22 Q. And your attorney got a letter that basically set out  
23 the terms of the agreement, right? Let me show you what  
24 has been marked Defendant's Exhibit 202.

25 MR. HANNA: May I, Your Honor?

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 THE COURT: You may.

2 Q. (BY MR. HANNA) Please review that.

3 A. Thank you.

4 Q. You have reviewed that; you recognize that?

5 A. Yes.

6 Q. That's a letter that was written by the United States  
7 Attorney to your attorney setting forth the terms of the  
8 proffer agreement -- proffer you would make to them,  
9 correct?

10 A. That's correct.

11 Q. Thank you.

12 MR. HANNA: I offer Exhibit 202 into evidence.

13 MR. MANDEL: No objection, Your Honor.

14 THE COURT: Exhibit 202 is received.

15 Q. (BY MR. HANNA) And before you went into this proffer  
16 session and were interviewed, you, of course, talked with  
17 your attorney Henry Mulvihill of Denver, correct?

18 A. That's correct.

19 Q. And on November 17, 1994, when you spoke to Marshal  
20 Ecoffey and others, James Graff of the FBI -- you knew that  
21 in order for the government to convict you of murder they  
22 would have to prove that you knew Anna Mae Aquash was going  
23 to be murdered and that you intentionally helped murder  
24 her, didn't you?

25 A. No.

1 Q. Didn't you know that mental intent is part of the  
2 crime of murder at that time?

3 A. No.

4 Q. You know it now, don't you?

5 A. No.

6 Q. You don't know that after going through a trial?

7 A. No.

8 Q. Isn't that -- wasn't that your whole defense in your  
9 trial you didn't know she was going to be murdered?

10 A. I don't recall.

11 Q. You don't recall that happening in your trial. Okay.  
12 In 2000 -- excuse me -- November 17, 1994, you went to the  
13 office of United States Attorney in Denver with your  
14 attorney, Henry Mulvihill, right?

15 A. That's right.

16 Q. And Special Agent Jim Graff of the FBI, Robert  
17 Ecoffey, and others asked you questions and you gave  
18 answers, right?

19 A. Yes.

20 Q. And that was recorded, wasn't it?

21 A. I assume it was, yes.

22 MR. HANNA: Your Honor, at this time I offer into  
23 evidence tape-recordings marked 219, Exhibit 219.

24 THE COURT: Any objection?

25 MR. MANDEL: No, Your Honor.

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 THE COURT: 219 is received.

2 MR. HANNA: I would ask that our legal technical  
3 assistant be able to play that for the jury, Your Honor.  
4 We have provided a transcript also.

5 THE COURT: Very well.

6 Members of the jury, once again I am going to  
7 remind up as I did with regard to the last transcript,  
8 which this is the type of transcript of which you are about  
9 to listen to, that transcript undertakes to identify the  
10 speakers and engage in the conversations. You are  
11 permitted to have the transcript for a limited purpose of  
12 helping follow the conversation as you listen to and watch  
13 the video. Also, to help you keep track of the speakers.  
14 Differences in meaning between what you hear and see and  
15 read in the transcript may be caused by such things as the  
16 inflections of a speaker's voice. It is what you hear,  
17 however, not what you read that is the evidence. You are  
18 specifically instructed whether the transcript correctly or  
19 incorrectly reflects the conversation or the identity of  
20 the speakers is entirely for you to decide based on what  
21 you have heard and seen here about the preparation of the  
22 transcript, and upon your own examination of the  
23 transcript, in relation to what you hear and see on the  
24 video recording. If you decide that the transcript is any  
25 respect incorrect and unreliable, you should disregard it

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842

1 to that extent. You may proceed.

2 (The tape, Exhibit 219, is playing.)

3 MR. HANNA: Judge, can we have a break here?

4 THE COURT: Beg your pardon?

5 MR. HANNA: We are having a technical problem.

6 We need to take a brief break to get it straightened out.

7 THE COURT: Very well. We will be in recess for  
8 10 minutes, hopefully. Don't talk about the case.

9 (Recess taken.)

10 THE COURT: We all know it's not a perfect world.

11 And my understanding is that the technical person for the  
12 defense has this same material on the program apparently  
13 called Trial Director, which is an MP3 file, correct?

14 MS. ANDERSON-MILLER: Correct.

15 THE COURT: Does government object to playing  
16 that even though the CD will be what's put in evidence?

17 MR. MANDEL: As long as it's the same we don't  
18 object, Your Honor.

19 THE COURT: It's been represented to me by  
20 their technical person as well as by defense counsel that  
21 it's the same information, same voices, everything, is that  
22 correct?

23 MR. HANNA: Yes.

24 THE COURT: Do you need a moment to make sure  
25 that your Trial Director plays through this?

JUDITH M. THOMPSON  
(605) 348-8610 FAX (605) 343-6842



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MS. ANDERSON-MILLER: I would like a moment.

THE COURT: Let's take a moment before we get the jury in.

(Off the record.)

1 MR. HANNA: I respectfully ask we try this one  
2 more time. If it stops --

3 THE COURT: Look, I have ruled. You can't play  
4 it so you will to have cross-examine from the transcript.

5 MR. HANNA: It is in evidence. I will seek to  
6 get everything worked out and produce it for the jury  
7 later. I don't need to cross-examine the witness about it,  
8 if that's all right.

9 THE COURT: Well, yes, it is in evidence. So you  
10 can proceed and use it for cross-examination.

11 Now the court reporter needs a little bit of time  
12 for technical reason, too, before we proceed.

13 THE COURT: Bring in the jury, please.

14 (Following proceedings in the presence of the  
15 jury.)

16 THE COURT: Please be seated. Well, it appears  
17 we couldn't overcome the technical problems so we are going  
18 to move on. It's in evidence anyway, so you can go ahead.

19 MR. HANNA: The jury should give the transcripts  
20 back because they won't be needing them.

21 THE COURT: Right. You can gather them up.

22 Q. (BY MR. HANNA) Sir, sometime after you returned to  
23 Denver after Anna Mae Aquash was murdered, you returned to  
24 South Dakota to try to recover the gun, isn't that correct?

25 A. Yes.

1 Q. When did you return to South Dakota to try to recover  
2 the gun, Mr. Looking Cloud?

3 A. I don't recall, but it was sometime maybe -- I can't  
4 recall.

5 Q. Perhaps a year later, is that right?

6 A. Maybe, yes.

7 Q. Maybe more, maybe less, right?

8 A. Yes.

9 Q. Why did you come back to look for the gun to try to  
10 get the gun back?

11 A. I was staying on a little -- I lived on top of the  
12 hill and the bridge was right below the village, the  
13 village of Potato Creek.

14 Q. The testimony is that you were back in South Dakota  
15 for a while and while were you in South Dakota you decided  
16 to try to recover the gun that had killed Anna Mae Aquash,  
17 is that right?

18 A. Yes, see if it was still there.

19 Q. And you went back to that bridge, correct?

20 A. That's correct.

21 Q. That's a bridge over by Potato Creek?

22 A. Right below the hill.

23 Q. By Potato Creek on the Pine Ridge Reservation, right?

24 A. That's right.

25 Q. And you remember where that gun had been buried,

1 correct?

2 A. Not the exact spot, no.

3 Q. You remembered the bridge, though, right?

4 A. Yes.

5 Q. You remembered it was buried under the bridge, right?

6 A. Right.

7 Q. And when you -- you personally helped to bury it back  
8 then in 1975, didn't you?

9 A. Yes.

10 Q. And it was buried in a pillow case, wasn't it?

11 A. Yes.

12 Q. And of course, it was buried because you didn't want  
13 it turning up as an exhibit in a trial some day, correct?

14 A. I assume, yes.

15 Q. You didn't want it to connect you to the crime, right?

16 A. No.

17 Q. You went to try to find the gun because you were  
18 afraid that if the gun was recovered, it might connect you  
19 will to the crime some how, right?

20 A. No.

21 Q. Isn't it true that after you got that back to Denver  
22 you started thinking about what would happen if somebody  
23 found that gun?

24 A. No.

25 Q. And isn't it true that when you buried that gun in the

1 pillow case, didn't you wipe your fingerprints off before  
2 you buried it?

3 A. John Boy and I both wiped our fingerprints and wiped  
4 the gun off.

5 Q. So before you buried the gun underneath the bridge,  
6 you wiped or did your best to wipe your fingerprints off as  
7 well as whatever fingerprints were on there, right?

8 A. Yes.

9 Q. But of course, later on you started wondering that  
10 maybe there was still fingerprints on there, right?

11 A. No.

12 Q. Isn't that one of the reasons you went back to that  
13 bridge and tried to find that gun?

14 A. No.

15 Q. Now, you know that guns have serial numbers on them,  
16 don't you?

17 A. Yes.

18 Q. And you knew that back in the '70s, whenever it was,  
19 that you went back to find that gun, correct?

20 A. Correct.

21 Q. And weren't you afraid that somebody happened to find  
22 that gun with its serial number on it and with any possible  
23 fingerprints that might be on it, could prove that you  
24 participated in the murder?

25 A. No.

1 Q. You just wanted to get that gun for your private  
2 collection or perhaps for a souvenir?

3 A. No.

4 Q. You wanted it because you were afraid that it could be  
5 used as evidence against you, correct?

6 A. No.

7 Q. Why did you go try to get the gun?

8 A. I was on top of the hill in the village.

9 Q. So you just didn't have anything better to do that  
10 day?

11 A. Correct.

12 Q. That was the only reason you went down to try to  
13 recover the murder weapon that killed Anna Mae?

14 A. Yes, ma'am; yes, sir.

15 Q. When you were first -- we have established that when  
16 you went to Rapid City -- from Denver to Rapid City, took  
17 Anna Mae Aquash from Denver to Rapid City, your  
18 understanding was you were just going drop her off here and  
19 you are going back to Denver, right?

20 A. Correct.

21 MR. MANDEL: Your Honor, objected to as  
22 cumulative.

23 THE COURT: Sustained.

24 Q. (BY MR. HANNA) When you were in Rapid City and Theda  
25 Clarke was angry at you and she told you, "We are going to

1 go someplace else now," right?

2 A. Yes.

3 Q. And you thought -- you had thought you were going to  
4 go back to Rapid City up to that point, right?

5 A. From Rapid City back to Rapid City?

6 Q. Thank you. Rapid City to Denver you thought you were  
7 going to go from Rapid City to Denver, back to Denver,  
8 right?

9 A. I don't recall, no, I don't.

10 Q. When you -- she told you in Rapid City that you were  
11 going someplace else; that was not part of the plan, was  
12 it, the original plan?

13 A. I don't recall.

14 Q. Do you recall whether you asked her why are we going  
15 to drive down to someplace else other than go back to  
16 Denver?

17 A. I'm sorry, I don't recall.

18 Q. Do you recall whether when John Boy Graham shot Anna  
19 Mae Aquash whether you said, "Hey, John Boy, why did you do  
20 that," or something like that?

21 MR. MANDEL: Again, objected to as cumulative,  
22 Your Honor.

23 MR. HANNA: I didn't ask that question.

24 THE COURT: I don't want argument between  
25 counsel. Overruled.

1 Q. (BY MR. HANNA) My question was: when you saw John  
2 Graham shoot Anna Mae Aquash, did you say anything to him  
3 like, "John Boy, why did you shoot that woman?"

4 A. What was your first question? There was never know  
5 question. There was no answer. There was no exchange, no  
6 exchange of conversation of whatsoever.

7 Q. When Mr. Mandel asked you what was your reaction when  
8 you saw John Graham shoot Anna Mae Aquash, your answer was  
9 words to the effect of, "I freaked out, man. It blew my  
10 mind. I was -- it was -- I was tripping." Remember your  
11 testimony yesterday to that effect?

12 A. If it's on paper I would like to see what you have  
13 there, you know.

14 Q. It made an impression on you, didn't it, when you saw  
15 somebody suddenly shoot Anna Mae Aquash?

16 A. Is that on paper? Can I see it?

17 MR. HANNA: Judge, could you direct the witness  
18 to answer the question?

19 THE COURT: Just answer the question.

20 A. What was the question?

21 Q. (BY MR. HANNA) It made an impression upon you when  
22 John Graham shot Anna Mae Aquash in front of you, didn't  
23 it?

24 A. What kind of impression are you referring to?

25 Q. Did you freak out, were you tripping, did it blow your



1 mind?

2 A. Yes, sir, it did.

3 Q. Did it have an effect so as you asked him, "What did  
4 you do that for, John?"

5 A. If that is on paper, I'd like to see.

6 MR. HANNA: Direct the witness to answer the  
7 question, Your Honor.

8 THE COURT: Read the question back.

9 (The pending question was read by the reporter.)

10 A. I never said no such thing.

11 Q. (BY MR. HANNA) You didn't say anything at all to  
12 John Boy Graham after he suddenly shot Anna Mae Aquash in  
13 the head, right?

14 A. That's right.

15 Q. When you parked outside of a house somewhere near a  
16 hospital where you previously said was Rosebud, did you say  
17 to Theda Clarke, "Where you going, Theda," or words to that  
18 effect when she walked into the house?

19 A. If that's on paper I'd like to see it.

20 Q. I am not saying you said that. I am asking you  
21 whether you said that.

22 A. No.

23 Q. You didn't ask her anything at all about why we are  
24 here or what you are doing, is that right?

25 A. If that's on paper, I'd like to see it.

1 Q. My question is: when you were driving west -- excuse  
2 me -- when you were driving east into South Dakota after  
3 leaving Rapid City when you stopped outside of a house in  
4 Rosebud when you drove to the Marshall house and went in,  
5 when you then drove up into the Badlands, at any point in  
6 time did you ask Theda Clarke anything about: what are we  
7 doing; why are we doing these things; what's going on;  
8 anything like that?

9 A. No.

10 Q. Now, weren't you afraid to be picked up by the police  
11 at some point when you are driving through South Dakota?

12 A. No.

13 Q. You had kidnapped a woman; she was in the back of the  
14 car; you weren't afraid if you got pulled over by a police  
15 officer you might get arrested?

16 A. No.

17 Q. So you were not the least -- were you curious as to  
18 what was going on at any point before Anna Mae Aquash was  
19 shot out in the Badlands as to why you were there?

20 A. No.

21 Q. You were not curious? Were you not curious?

22 A. No.

23 Q. Now, your decision to cooperate and testify against  
24 others in this case was influenced by your desire to get  
25 out of prison, wasn't it?

1 A. No.

2 Q. Isn't it true that you hoped that if you testified for  
3 the government against Richard Marshall or anybody else you  
4 might get out of federal prison?

5 A. The truth.

6 Q. My question is: you hoped to get out of federal  
7 prison --

8 A. No.

9 Q. You were perfectly fine, all right with being in  
10 federal prison?

11 A. No one is.

12 Q. You wanted to get out of prison when you came here to  
13 South Dakota in August of 2008, didn't you?

14 A. Just the truth.

15 Q. Didn't you want to get out of prison when you came  
16 here in 2008?

17 MR. MANDEL: Your Honor, I object to this again  
18 as asked and answered.

19 THE COURT: One more time after that, that's it.  
20 One more time. Question stands. Objection is overruled.

21 Q. (BY MR. HANNA) When Mr. Mandel was asking you  
22 questions he said you hoped to get a benefit, or words to  
23 that effect, is that right?

24 A. That's right.

25 Q. What benefit do you expect to get -- one of the

1 benefits you hope to get is to get out of jail and prison,  
2 isn't it?

3 A. The truth.

4 Q. That's not an answer.

5 MR. HANNA: I move to strike as it's not  
6 responsive to my question.

7 THE COURT: Denied.

8 Q. You are eligible for parole after 10 years of being in  
9 custody, isn't that right?

10 A. The BOP -- the BOP has no written, nothing written  
11 that I would be eligible for parole in 10 years.

12 Q. You believe you are eligible for parole in 10 years  
13 after you have done 10 years of a sentence, is that right?

14 A. The Bureau of Prisons does not acknowledge.

15 Q. Yes or no, please.

16 A. No.

17 Q. You don't believe that. Isn't it true that you expect  
18 to get out of prison before 10 years, right?

19 A. No.

20 Q. You are aware, aren't you, that we have subpoenaed  
21 recordings of your telephone conversations from jail?

22 A. Yes.

23 Q. Now, you got held in jail in Sturgis and in Deadwood,  
24 right?

25 A. And Sioux Falls, the hole?

1 Q. Isn't it true that you spoke to a lady named Johanna  
2 who asked you whether or not you expect to get a benefit  
3 from your cooperation and testimony; and didn't you tell  
4 her that's what it's been all about since the beginning?

5 A. I do not recall.

6 Q. Do you recall speaking to your friend, Mindy, and she  
7 asked you: I read somewhere that you eligible for parole  
8 in 10 years, is that right?

9 A. I do not recall.

10 Q. And you said, "That's the way it's supposed to be but  
11 something has changed; I can't talk about it on the phone.  
12 I will talk about it when I see you"?

13 A. I don't recall.

14 Q. Right now you do expect to get out of jail soon as a  
15 result of your cooperation for the government here, don't  
16 you?

17 A. The truth.

18 Q. What about the truth?

19 A. I am only here for the truth.

20 Q. You are also here to get out of prison, aren't you?

21 A. If it happens.

22 Q. You want that to happen, don't you?

23 A. Of course.

24 Q. In fact, it's already happened, hasn't it? You are  
25 not in prison; you haven't been in prison since August of

1 2008, have you?

2 A. I have been in prison. I have been in Sioux Falls  
3 prison in the hole.

4 Q. After you first gave your story to the government on  
5 August 19, 2008, you have never spent a night behind the  
6 walls of a federal penitentiary, have you?

7 A. I have been inside state prison.

8 Q. You were in prison, state prison, for a matter of  
9 weeks?

10 A. Months.

11 Q. But most of the time you have been in jail in Meade  
12 County and Lawrence County, right?

13 A. I have spent four months in Sioux Falls State Prison.

14 Q. Okay. Since you --

15 A. Five months, I think; I believe.

16 Q. Since August 2008, the rest of the time you have been  
17 housed in county jails here in South Dakota, right?

18 A. That's correct.

19 Q. Now, before you spoke to the government on August 19,  
20 2008, you were living in the federal penitentiary in  
21 Pollock, Louisiana, weren't you?

22 A. That's correct.

23 Q. And that is a dangerous place to live, isn't it?

24 A. Yes.

25 Q. And in the year preceding your agreeing to go

1 cooperate, about nine people got murdered in that prison,  
2 didn't they?

3 A. Yes.

4 Q. People in Pollock get beat up or stabbed every week or  
5 day; it's a frequent occurrence, isn't it?

6 A. That's correct.

7 Q. And there are an awful lot of dangerous prison gangs  
8 in Pollock, aren't there?

9 A. Yes.

10 Q. Mexican Mafia, Arian Brotherhood, Latin Kings, Bloods,  
11 Cripts, white supremacy gangs like the Arian Brotherhood,  
12 right?

13 A. That's correct.

14 Q. Are you in a prison gang?

15 A. No.

16 Q. So you are all alone in there, right, in terms of  
17 protection?

18 A. Yes.

19 Q. But you can handle it because you are not afraid, are  
20 you?

21 A. No.

22 Q. Now, it's a lot more comfortable for you -- isn't it a  
23 lot safer over in the jail in Sturgis than it is in the  
24 penitentiary in Louisiana, isn't it?

25 A. No.

1 Q. It's not safer for you -- it's not -- let me ask you  
2 this: it's not more comfortable for you in jail here in  
3 South Dakota than it would be back in Pollock, Louisiana?

4 A. In some aspects it is.

5 Q. One aspect is your relatives and friends can visit you  
6 up here, right?

7 A. Yes.

8 Q. And they do, don't they?

9 A. Yes.

10 Q. That's a whole lot better than being stranded down in  
11 Louisiana without any relatives or friends to visit you,  
12 isn't it?

13 A. Yes.

14 Q. You get to watch TV all day or whenever you want to up  
15 here in South Dakota, don't you?

16 A. Yes.

17 Q. So you have already benefited greatly by your  
18 agreement to testify and cooperate with the government,  
19 haven't you?

20 A. No, but it's all the delays.

21 Q. It's been uncomfortable for you with all the delays?

22 A. Not been very comfortable.

23 Q. And the alternative would have been you would be  
24 serving a life sentence in Pollock or some other  
25 penitentiary?



1 A. That's right.

2 Q. Now, when you speak on the telephone in prison or from  
3 South Dakota jails, that's another benefit you get from  
4 living up here in county jail as opposed to Pollock: you  
5 can have phone cards and call people all the time, can't  
6 you?

7 A. I can in prison.

8 Q. You can here in South Dakota, right?

9 A. I can also in prison, yes.

10 Q. Now, when you make phone calls from jail here in South  
11 Dakota, every phone call begins with an announcement  
12 advising you and whoever else is on the line that these  
13 calls are monitored, are subject to monitoring and  
14 recording, correct?

15 A. That's correct.

16 Q. And so you know that somebody could be listening  
17 either then or some time later to your conversation, right?

18 A. That's correct.

19 Q. So you were somewhat careful about what you say on the  
20 telephone about your case, et cetera, right?

21 A. That's correct.

22 Q. Sometimes you speak Lakota to other Lakota speakers  
23 thinking that non-Lakota speakers will not understand what  
24 you are saying, correct?

25 A. No.

1 Q. Haven't you actually told people in Lakota, "When I  
2 speak Indian they don't know what I am saying in Lakota?"

3 A. Yes. Other inmates don't understand.

4 Q. You have a friend who is a male in the Denver area and  
5 he speaks to you sometimes; his phone number ends in 1080.  
6 Didn't you say to that person -- first of all, let me ask  
7 you this: didn't you say to that person, "Wagleen  
8 apinktay?"

9 A. Sorry, I don't understand.

10 Q. Does the word wagleen apinktay mean I am getting out  
11 in Lakota?

12 A. I may have, yes.

13 Q. You may have told somebody you are getting out in  
14 Lakota, right?

15 A. Yes, I may have.

16 Q. In fact, didn't you say to one of your friends, "It  
17 looks like I am getting out pretty soon. I may show up at  
18 your door."

19 And he said to you, "We can get drunk and smoke  
20 some payje."

21 A. Is that yes or no?

22 Q. That's what I am asking you.

23 A. Yes.

24 Q. Okay.

25 THE COURT: All right. Now, listen, this is a

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(605) 348-8610 FAX (605) 343-6842

1 serious matter. Lots of things are at stake there. I  
2 don't want anymore participation from the audience. If we  
3 do, I will clear the courtroom. Proceed.

4 Q. (BY MR. HANNA) Payje is Lakota for grass, right, and  
5 slang for marijuana, correct?

6 A. That's correct.

7 Q. Are you aware that if the government chooses to, after  
8 your participation in this trial and in any others related  
9 to this crime, that they can move the Court to resentence  
10 you?

11 A. Yes.

12 Q. In other words, they could ask the Court to set aside  
13 your life sentence and give you something less, correct?

14 A. Correct.

15 Q. You would very much like to have that happen, wouldn't  
16 you?

17 A. Yes.

18 Q. Now, when Anna Mae Aquash was up on that hill in that  
19 field, she started to pray. John Boy Graham -- she started  
20 to pray, right?

21 A. Yes.

22 Q. She started to pray out loud, correct?

23 A. I heard what seemed like praying in her language. I  
24 could not understand. And she was standing; she was never  
25 kneeling; she was never kneeling and begging.

1 Q. I didn't ask you whether she was kneeling. I asked  
2 you whether she was praying?

3 A. Yes, she was praying.

4 Q. And you could hear her praying, right?

5 A. Yes.

6 Q. Seemed to be praying because of her emotionalism at  
7 the time, right, and way she was looking up into the sky?

8 A. I can't remember if she was looking up in the sky.

9 Q. Why do you think she was praying?

10 A. Maybe she knew what was going to happen.

11 Q. Maybe she knew. Did you think maybe she knew what was  
12 going to happen when John guy Graham put a gun to her head?

13 A. Yes.

14 Q. He put a gun to her head and then she started praying,  
15 right?

16 A. I don't know how it came about, but he shot her.

17 Q. While she was praying, right?

18 A. Yes.

19 Q. You are right next to them when that happened,  
20 correct?

21 A. I was not right next to him.

22 Q. You were about from where you are over to where that  
23 door is, is that your testimony?

24 A. Maybe from here to where you are standing.

25 Q. 20 feet or so?

1 A. Yes.

2 Q. And she fell, didn't she?

3 A. Yes.

4 Q. And you didn't say anything at all, did you?

5 A. No.

6 Q. You got in the car, buried the gun, and you drove back  
7 to Denver, right?

8 A. Yes.

9 Q. And that night you stayed at the apartment where John  
10 Boy Graham lived and with Angie Begay, right?

11 A. Yes.

12 Q. You weren't afraid he was going to shoot you, were  
13 you?

14 A. Not after he handed me the gun.

15 Q. You handed the gun back to him, didn't you? Isn't  
16 that what you told the jury?

17 A. That's right.

18 Q. Mr. Looking Cloud, what is your real name? Is it  
19 Fritz Arlo Looking Cloud?

20 A. Could be.

21 Q. Your legal name is Fritz Arlo Looking Cloud, isn't it?

22 A. Yes.

23 Q. At various times when you have been arrested by the  
24 police, have you also told them your name is Roger Frank  
25 Bear, Leon Brewer, Steve Cloud, Jessie Cloud, Jessie Iron

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1 Owl, Jessie Iron Shell, Steven Randall, and Jerry Spider?

2 A. Yes.

3 Q. So you have lied to police officers about things as  
4 basic as your name on many, many occasions, haven't you?

5 A. Yes.

6 MR. HANNA: No other questions.

7 THE COURT: We will take a 15-minute recess now  
8 and then come back. Please stand for the jury.

9 (Recess taken.)

10 THE COURT: Bring in the jury, please.

11 (Following proceedings in the presence of the  
12 jury.)

13 THE COURT: Proceed.

14 MR. MANDEL: I believe the marshals are bringing  
15 him in, Your Honor.

16 THE COURT: Very well.

17 **REDIRECT EXAMINATION**

18 BY MR. MANDEL:

19 Q. Mr. Looking Cloud, you have been up there a long time,  
20 haven't you?

21 A. Yes, sir.

22 Q. I will try and keep this brief. When you were first  
23 debriefed in 1994, you didn't make any mention of being at  
24 Dick Marshall's in Allen, did you?

25 A. There was no mention.

1 Q. And the same thing is true in 2003, wasn't it?

2 A. Yes.

3 Q. I want to go back to 1975, sir. At the time you went  
4 to the defendant's house in Allen, did you know him at that  
5 time?

6 A. Yes.

7 Q. Did you also know of him at that time; his reputation,  
8 that is?

9 A. Yes.

10 Q. Were you afraid of him?

11 A. Yes.

12 Q. Can you tell us why, sir?

13 MR. HANNA: There's evidence in the record.

14 THE COURT: Just a moment. I am going to give the  
15 jury a limiting instruction before any answer is given to  
16 this question. You recall other times I have given you  
17 instructions that have been during the course of the trial.  
18 This is a limiting instruction which means it limits the  
19 use that you can make of certain evidence and it's going to  
20 limit the use that you make of whatever answer Mr. Looking  
21 Cloud makes to this question. The evidence of some act or  
22 reputation by Dick Marshall is allowed into evidence at  
23 this point only for a very limited purpose. That is, only  
24 to show why Arlo Looking Cloud claims he was afraid of  
25 Mr. Marshall and that was why he did not tell law

JUDITH M. THOMPSON

(605) 348-8610 FAX (605) 343-6842

1 enforcement of going to Dick Marshall's home in Allen,  
2 South Dakota. It can be used only for that purpose and not  
3 for any other purpose. You can ask the question.

4 Q. (BY MR. MANDEL) Arlo, why are you afraid of him?

5 A. He was Russell Means' enforcer and he would confess to  
6 a murder and he was released.

7 MR. HANNA: Objection; move to strike; move for a  
8 mistrial; move for an instruction.

9 THE COURT: I have given a limiting instruction.  
10 The objection is overruled. Ask your next question.

11 MR. HANNA: I made a motion for mistrial as well.

12 THE COURT: We will take that up out of the  
13 presence of the jury.

14 MR. HANNA: Yes, sir.

15 Q. (BY MR. MANDEL) When you say he was Russell Means'  
16 enforcer, what did you understand that to mean, sir?

17 MR. HANNA: Objection.

18 THE COURT: We will have hearing out of the  
19 presence of the jury. Ladies and gentlemen of the jury, we  
20 are going to have a short hearing out of your presence.  
21 Please stand for the jury.

22 (Following proceedings out of the presence of the  
23 jury.)

24 THE COURT: Please be seated.

25 (Following proceedings in the presence of the



1 jury.)

2 THE COURT: I am going to give the jury another  
3 limiting instruction with regard to how you consider  
4 evidence you just heard.

5 What Arlo Looking Cloud claims as his two bases  
6 for fear of Dick Marshall is his subjective state of mind.  
7 Mr. Looking Cloud is testifying as to what he believes to  
8 be the basis for him being afraid of Dick Marshall. You  
9 must not assume that the things Mr. Looking Cloud relied  
10 upon were true, as that is not the issue under the limiting  
11 instruction on the very limited use you could make of the  
12 testimony you have heard just before the recess. Both  
13 bases for Mr. Looking Cloud's fear are simply what he  
14 thought, whether those things he believed were in fact true  
15 or not. You must not assume that what Mr. Looking Cloud  
16 believed to be a factual basis for his fear was true;  
17 instead, you must determine whether his subjective claim of  
18 fear of Dick Marshall was true and the reason did he not  
19 tell law enforcement of going to Dick Marshall's house in  
20 Allen, South Dakota. You may proceed.

21 MR. MANDEL: Thank you, Your Honor.

22 Q. (BY MR. MANDEL) Arlo, in 2008, did you make a  
23 decision to come forward and cooperate with the United  
24 States?

25 A. Yes.

1 Q. Who did you come forward to first regarding the  
2 details of what you knew?

3 A. My attorney, Barry Bachrach.

4 Q. Do you recall about when that was?

5 A. In April, I am not sure, '07, '08.

6 Q. Arlo, what made you change your mind at that point?

7 A. There were too many lies out there.

8 Q. Was it your feeling that you wanted to set the record  
9 straight in some fashion?

10 MR. HANNA: Objection; leading.

11 THE COURT: Yes. Overruled.

12 A. Yes, the truth.

13 Q. (BY MR. MANDEL) When you explained it to  
14 Mr. Bachrach, did he then get in touch with the United  
15 States to have you debriefed?

16 A. Yes.

17 Q. And what you laid out at that time is essentially the  
18 same thing that you explained here today on your direct  
19 examination?

20 A. Yes.

21 Q. You understand the seriousness of this proceeding,  
22 don't you?

23 A. Yes, I do.

24 Q. Did anyone ever ask you or seek from you or suggest to  
25 you that there was some interest regarding Richard

1 Marshall?

2 A. I don't understand.

3 Q. Did somebody ask you to testify as to what you  
4 testified to here today?

5 A. (No response.)

6 Q. Did somebody try to put words in your mouth?

7 A. No.

8 Q. Is what you testified here to today the truth?

9 A. Yes.

10 MR. MANDEL: No further questions, Your Honor.

11 **RE-CROSS-EXAMINATION**

12 BY MR. HANNA:

13 Q. Mr. Looking Cloud, you just couldn't wait to bring  
14 Russell Means' name into this trial, could you?

15 MR. MANDEL: Your Honor, can we approach?

16 THE COURT: Yes, you may.

17 (Bench conference on the record.)

18 MR. MANDEL: Your Honor, am I precluded from  
19 discussing this?

20 THE COURT: Not now.

21 MR. MANDEL: My only question.

22 (Bench conference concluded.).

23 Q. (BY MR. HANNA) I will repeat my question. You just  
24 could not wait to bring Russell Means' name into this  
25 trial, could you?

1 A. No, ma'am -- sir.

2 Q. You have been sitting in your jail cell, in your  
3 prison cell figuring out how you were going to get Russell  
4 Means' name into this trial and get a little pay back,  
5 right?

6 A. No.

7 Q. Now you got away with murder for 28 years, didn't you,  
8 until you were arrested in 2003?

9 A. No.

10 Q. Nobody arrested you for Anna Mae Aquash's murder until  
11 2003, right?

12 A. I did not kill no one.

13 Q. You recall you were a free man in 1999. Nobody had  
14 arrested you in 1999 for Anna Mae Aquash's murder, had  
15 they?

16 A. No.

17 Q. And Russell Means gave a press conference in Denver  
18 naming you publically as one of the killers and kidnappers  
19 of Anna Mae Aquash, didn't he?

20 A. I don't know. I never heard of it until later.

21 Q. Yeah, you heard about it at some point, didn't you,  
22 before you came in here?

23 A. At some point, yes.

24 Q. Uh-huh. And you knew that Russell Means called the  
25 press conference in Denver where he named you, Theda

1 Clarke, and John Boy Graham as the people who kidnapped and  
2 murdered Anna Mae Aquash, right?

3 A. I don't know that he mentioned any names; but, yes, he  
4 did. I recall that he did.

5 Q. Somebody told you somewhere along the line that  
6 Russell Means had a press conference and gave your name?

7 A. That's right.

8 Q. Right?

9 A. Right.

10 Q. And that caught a lot of attention; brought a lot of  
11 attention to the case, didn't it?

12 A. I have no idea.

13 Q. You did get arrested about four years later for  
14 murder, didn't you?

15 A. Yes.

16 Q. And you mentioned today -- maybe it was yesterday --  
17 but you said that of the so-called national leaders of AIM,  
18 Russell Means, Dennis Banks, Vernon and Clyde Bellecourt,  
19 the only one you knew any is Vernon Bellecourt, right?

20 A. Yes.

21 Q. In fact, you told Kamook Banks Vernon Bellecourt gave  
22 you acid and marijuana back in the day, right?

23 A. I do not recall.

24 Q. You do know Vernon Bellecourt?

25 A. Yes, I do.

1 Q. And Vernon Bellecourt was basically the guy who put  
2 together Denver AIM, right?

3 A. Yes.

4 Q. Vernon Bellecourt's and people he's associated with  
5 helped you pay for your attorneys in this case?

6 A. No.

7 Q. Your attorney, Terry Gilbert, who did your appeal from  
8 Cleveland, who paid for him?

9 A. I have no idea.

10 Q. You don't know who paid for your attorney, is that  
11 right?

12 A. That's correct.

13 Q. Somebody paid him, but you don't know who it is,  
14 right?

15 A. Yes.

16 Q. Who is picking up Barry Bachrach's -- from Boston --  
17 fees and expenses?

18 A. My family.

19 Q. Now, at that conference, that press conference, were  
20 you aware that Russell Means also named Vernon and Clyde  
21 Bellecourt as the people inside the house in Rosebud who  
22 participated in the decision and made the decision to  
23 murder Anna Mae Aquash?

24 A. I do not know what his statement was.

25 Q. You do know that Vernon Bellecourt, the person who you

1 knew, was named as one of the people who gave the order to  
2 kill Anna Mae Aquash?

3 A. I was not at his conference, whatever it was.

4 Q. Didn't somebody mention that to you at some point  
5 before you testified here today?

6 A. No.

7 Q. Now, when you debriefed after you have decided you  
8 wanted to clear everything up in 2008, you went there with  
9 your attorney, Barry Bachrach from Boston, and you told  
10 them basically pretty much the story you told the jury  
11 here, right?

12 A. Yes.

13 Q. And at that time neither -- well, the people who were  
14 there were Marty Jackley, United States Attorney for South  
15 Dakota, right? He was one of them?

16 A. Yes.

17 Q. Robert Mandel, Assistant United States Attorney for  
18 South Dakota, right?

19 A. Yes.

20 Q. And Special Agent Michael McRoden of the FBI is  
21 sitting here at this counsel table, right?

22 A. Yes.

23 Q. And you told them about Theda Clarke getting a gun  
24 from Richard Marshall, right?

25 A. That's correct.

1 Q. And not one of them asked you anything at all about  
2 how come you haven't said this at any time in the last many  
3 years in which you have been speaking to law enforcement?

4 A. Dick Marshall was released after.

5 Q. I am asking you a question.

6 MR. HANNA: Move to strike, Your Honor.

7 THE COURT: Disregard the answer.

8 Q. Answer the question that I put to you. The question I  
9 put to you is: not one of those men asked you why you were  
10 telling a new story that you never told before, did they?

11 A. I don't know.

12 Q. You know this: on 2008, August 19, you didn't say  
13 anything about: Dick -- I was afraid to say anything about  
14 Dick Marshall; that's why I didn't say anything.

15 A. No.

16 Q. You didn't say anything about that when you were  
17 talking to them August 19, 2008, did you?

18 A. I'm sorry?

19 Q. You didn't say anything about: I was afraid of Dick  
20 Marshall in 1994, 1995 and 2003 and that's why I never said  
21 that before?

22 A. I do not recall.

23 Q. You don't recall. You don't recall anybody asking --  
24 even asking you how come you are telling us a different  
25 story; nobody even asked you that question, did they?



1 A. I don't recall.

2 Q. And you did not say, "You know, I have been so afraid  
3 all these years of Dick Marshall so that's why I didn't say  
4 anything?"

5 A. I believe I did at one point.

6 Q. It's not reflected -- you know it's not reflected in  
7 any report?

8 A. I'd like to see the reports.

9 Q. You want to try to remember what you said before?

10 A. Exactly.

11 Q. It's hard to keep a story straight when you are always  
12 having to remember what you said before, isn't it?

13 A. I know the truth.

14 Q. You never mentioned anything at all about: I didn't  
15 say this before because Dick Marshall was an enforcer for  
16 Russell Means, did you?

17 A. I never said before, but I did say it in '08.

18 Q. You never said that in '08 to the United States  
19 Attorney when they questioned you?

20 A. I believe I did.

21 Q. When you were testifying in the grand jury -- you  
22 testified in two grand juries since August 19, 2008, right?

23 A. Correct.

24 Q. You testified in a grand jury the next day on August  
25 20, 2008, right?

1 A. That's right.

2 Q. You didn't say anything then about: I am telling you  
3 a different story now because I was afraid of Dick Marshall  
4 all those years, did you?

5 A. No, I was never asked, but I did give the truth.

6 Q. Now, in 1994, that was 19 years after what happened in  
7 1975, right?

8 A. Right.

9 Q. Now, by the way, the last time since 1975 when you  
10 went to Allen, South Dakota one night with Anna Mae Aquash  
11 the next time you saw Dick Marshall was yesterday in this  
12 courtroom, right?

13 A. Correct.

14 Q. And so 19 years after you last saw Dick Marshall in  
15 1975 and you talked to investigators in 1994, you were  
16 still afraid of Dick Marshall, is that right?

17 A. I knew of him because he'd been paroled after he  
18 confessed after seven years.

19 Q. You knew that Richard Marshall --

20 A. He was out, yes.

21 Q. You knew that Richard Marshall was convicted after a  
22 trial for shooting a man in a bar in 1975, right?

23 A. That's right.

24 Q. Now, in 1994 and in 1995 and in 2003, you had done  
25 time in prison, right?

1 A. In 2003, yes.

2 Q. You had been surrounded by rough and dangerous men,  
3 right?

4 A. Correct.

5 Q. And today you told us when you are in prison you are  
6 not afraid of the Arian Brotherhood, you are not afraid of  
7 the Latin Kings, you are not afraid of the Mexican Mafia,  
8 you are not afraid of the Bloods and the Cripts, but you  
9 were afraid of Richard Marshall and Charlie Abourezk,  
10 right?

11 A. Correct.

12 MR. HANNA: No other questions.

13 A. When I --

14 MR. HANNA: No other questions. You are done.

15 MR. MANDEL: Your Honor, I ask if we can approach  
16 again before I start?

17 THE COURT: You may.

18 (Bench conference on the record.)

19 **FURTHER REDIRECT EXAMINATION**

20 BY MR. MANDEL:

21 Q. Arlo, I want to go back again to 1975 when you were at  
22 Richard Marshall's house.

23 MR. HANNA: I object.

24 MR. MANDEL: There was an objection, Your Honor.

25 THE COURT: I didn't hear it.

1 MR. HANNA: Object; beyond the scope.

2 THE COURT: I think it's proper indirect; we will  
3 see, though. I am going to overrule it. I think it's  
4 preparatory; if it's not, it will be apparent it's not.  
5 Overruled.

6 Q. (BY MR. MANDEL) Were you fearful of Mr. Marshall at  
7 that time?

8 A. No.

9 Q. You were at his house; you were not fearful?

10 A. No.

11 Q. Were you aware of his reputation?

12 MR. HANNA: Objection.

13 THE COURT: Overruled.

14 A. Yes.

15 Q. (BY MR. MANDEL) What did you understand that to be,  
16 sir?

17 MR. HANNA: Objection.

18 THE COURT: Overruled.

19 A. As an enforcer.

20 Q. (BY MR. MANDEL) You said earlier, for Russell Means?

21 A. Yes, sir.

22 Q. Well, when you say that, what do you mean by that?

23 A. He was Russell Means' gun man.

24 MR. HANNA: Objection; move for a mistrial.

25 THE COURT: Overruled. Once again, keep in mind

1 this isn't being received as I just told you for whether or  
2 not this is true or not, this is just what Mr. Looking  
3 Cloud believed -- claims to believed as the basis for his  
4 claim of fear of Mr. Marshall. Overruled, with that  
5 limiting instruction.

6 Q. (BY MR. MANDEL) Why did you believe that, sir?

7 MR. HANNA: Objection.

8 A. It's been common knowledge in the named community.

9 THE COURT: Just a moment. Overruled. Now, the  
10 answer is partially in, granted, answer is stricken.  
11 Disregard the answer and ask your next question.

12 Q. (BY MR. MANDEL) I didn't even hear the answer.

13 THE COURT: You don't have to worry about it  
14 because I struck it.

15 MR. MANDEL: I am not sure what I'm going to ask.

16 Q. (BY MR. MANDEL) Were you aware of a murder at that  
17 time?

18 A. I'm sorry, the question?

19 Q. I said, were you aware of a murder that had taken  
20 place at that time?

21 A. Yes.

22 Q. What murder was that, sir?

23 A. The one in Scenic.

24 Q. Do you remember the victim's name?

25 A. Martin Montileaux.

1 MR. HANNA: Objection; irrelevant.

2 THE COURT: Overruled.

3 Q. (BY MR. MANDEL) Go ahead.

4 A. Martin Montileaux.

5 Q. Was he a relation of yours?

6 A. No.

7 Q. Were you aware of charges being filed against  
8 Mr. Marshall in that case?

9 A. Yes.

10 Q. Did that have any effect at that time in 1975 knowing  
11 that?

12 A. Yes.

13 Q. What was the effect, sir?

14 A. I was being array (sic). I didn't really know what  
15 to think.

16 Q. I couldn't hear that.

17 A. I was array (sic).

18 COURT REPORTER: You were what?

19 A. I really didn't trust anyone.

20 Q. You heard counsel for the defense ask you about your  
21 awareness of the conviction in that case?

22 A. Yes. I know that he confessed to the murder and he  
23 was released right after he confessed.

24 Q. But he was first convicted of it, was he not?

25 A. Yes.

1 Q. Did that have an effect regarding your -- the fact --  
2 let me start over again. As we talked about before, you  
3 were interviewed by law enforcement in 1994 in Denver,  
4 correct?

5 A. Yes.

6 Q. Did you at that time reveal that you had been to Mr.  
7 Marshall's house in 1975?

8 A. No.

9 Q. Why not?

10 A. He was released from prison and my family -- I was  
11 fearful for my family.

12 Q. Where does your family live, sir?

13 A. My family is all over.

14 Q. Do you have family members that live on Pine Ridge?

15 A. Yes.

16 Q. In terms of closer family members, how many, sir,  
17 approximately?

18 A. I can't say really. 500, maybe.

19 Q. You live on the reservation; there's a lot of people  
20 you feel you are related to?

21 A. Yes.

22 Q. How about your immediate family or grandparents,  
23 things like that, how many are we talking about?

24 A. I don't know. 50, maybe. I don't know. But I was  
25 worried for my father, yes.

1 Q. Your father was kind of at the top?

2 A. My father used to travel a lot and he was with a  
3 treaty conference, so that placed him in close contact with  
4 a lot of people that were within the movement.

5 Q. In 2003, you were arrested on the charges you were  
6 ultimately convicted of, correct?

7 A. Correct.

8 Q. And you saw the video today of your interview at that  
9 time, correct?

10 A. Correct.

11 Q. At that time you didn't reveal that you had been to  
12 Richard Marshall's house in Allen, did you?

13 A. No.

14 Q. Again, I will ask you why not?

15 MR. HANNA: Objection; asked and answered.

16 THE COURT: Overruled.

17 Q. (BY MR. MANDEL) Go ahead, Arlo.

18 A. I was fearful for my family, my father.

19 Q. Fearful of who?

20 A. '94, yes.

21 Q. Who were you fearful of, sir?

22 A. My father -- Dick Marshall.

23 MR. MANDEL: Your Honor, I have no further  
24 questions.

25 THE COURT: Redirect.



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**FURTHER RECROSS-EXAMINATION**

BY MR. HANNA:

Q. Your father's name is John Looking Cloud, right?

A. Yes.

Q. What year did he die?

A. 2001.

Q. Two years before you spoke to police officers on 2003, right?

A. Yes.

MR. HANNA: No other questions.

THE COURT: Anything further?

MR. MANDEL: No, Your Honor.

THE COURT: Thank you. You may step down. Call your next witness.

(End of partial transcript.)

I N D E X

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