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JUDICIAL REFLECTIONS UPON THE 1973 UPRISING AT WOUNDED KNEE

*Ronald J. Bacigal**

In December 1890, at Wounded Knee, South Dakota, a small Indian band of 120 men, and 230 women and children surrendered to the U. S. Seventh Cavalry. The only resistance to the surrender came from a single warrior who protested against giving up his expensive new Winchester rifle. As the soldiers struggled with the warrior a shot rang out and the Indians began to flee. Four large Hotchkiss guns, strategically placed on nearby hills, opened fire on the fleeing band. When the shooting stopped, as many as 300 of the original 350 men, women and children were dead.¹

In the spring of 1973, a band of disgruntled American Indians transformed the quiet hamlet of Wounded Knee into a tense battleground reminiscent of the Indian wars of yesteryear. By doing so, they brought into startling focus a belief that their voices could be heard in this land only through the use of violence.²

This year marks the 15th anniversary of the take-over of the settlement at Wounded Knee, South Dakota. The "Indian Problem," so apparent in 1973, has faded into the recesses of the nation's consciousness. Lest we forget, or assume that problems no longer exist, a reexamination of the Wounded Knee incident serves to bring the concerns of 1973 back into focus. This essay presents a view of Wounded Knee from the perspective of federal district judge Robert R. Merhige, Jr., who was part of a judicial task force sent to South Dakota in 1973. Viewing Wounded Knee from the perspective of a trial judge discloses the social forces underlying Wounded Knee and also provides insights into the role of a trial judge in politically sensitive cases.

At the Supreme Court level, from Chief Justice John Marshall to recent nominee Robert Bork, the personality of and judicial philosophy of Supreme Court Justices attracts national attention. In contrast to Supreme Court Justices, trial judges often labor in virtual obscurity. Such obscurity results from the public's tendency to identify the federal judiciary with the justices of the Supreme Court while dismissing the district (trial) judges as third string players whose errors can always be reversed by the appellate courts. This general lack of interest in the trial courts helps obscure the fact that:

United States district judges do damnably important business in our nation. Their decisions affect how we make and spend our money, where our children attend school, our neighborhood living patterns, the quality of the environment around us, how the big national corporations conduct their affairs, how our society punishes its violent and its white-collar criminals."³

Perhaps the ultimate embodiment of a trial judge's power to alter social conditions rests in the personage of Robert R. Merhige, Jr. Judge Merhige is one of this nation's most respected trial judges and a forthcoming biography⁴ recounts his involvement in a number of high visibility trials. Throughout his twenty years on the federal bench, Judge Merhige has left his personal imprint on landmark cases such as the Dalkon Shield/A. H. Robins bankruptcy proceeding,⁵ the Westinghouse Uranium case involving \$2 billion in damages,⁶ and the Kepone pollution case in which Merhige imposed the largest recorded fine under federal anti-pollution laws.⁷ He has also been involved in litigation surrounding the impeachment of President Nixon,⁸ the fatal confrontation between the Ku Klux Klan, Nazis and Communists in Greensboro, North Carolina,⁹ and a school integration case which split the U. S. Supreme Court in a four-to-four vote.¹⁰ No other trial judge, state or federal, has been at the center of so many controversial cases, cases which cut to the heart of many weighty issues in America in the last few decades.

Although Judge Merhige has been involved in some of the most famous cases of the last two decades, he regards the litigation surrounding Wounded Knee as among the most significant of his experiences. The turbulent litigation placed him in the midst of the dramatic conflict between Native Americans and the American "system." As a representative of the judicial system, Judge Merhige's candid reflections¹¹ upon Wounded Knee reveal a participant's perspective of a dramatic incident in this nation's history.

THE BACKGROUND OF THE CASE

Judge Merhige served as part of a federal task force sent to South Dakota to handle the backlog of cases arising from the widespread Indian disturbances of 1973. The Judge confesses that he went to South Dakota with a rather unsophisticated view of American Indians, expecting to find a docile people dressed in turquoise jewelry, beads and feathers. He further assumed that there were obvious parallels between the Indian protests of the 1970s and the Civil Rights and Black awareness movements of the late 1960s. Movements with which Judge Merhige had an intimate familiarity due to his school integration decisions.

Upon his arrival in South Dakota, the Judge discovered that the American Indian Movement (AIM) was a radical organization which did not welcome comparisons with traditional Civil Rights groups. AIM viewed the Civil Rights movement as a Blacks versus Whites struggle taking place within "the system," a system that had nothing to do with Indians. Founded in 1968, AIM immediately adopted a more confrontational stance than that

utilized by Black leaders. From November 1969 until June 1970, AIM participated in the occupation of the abandoned federal penitentiary on Alcatraz Island in San Francisco Bay. The occupation was based upon a long forgotten law that provided American Indians with first claim to any "surplus" federal land. AIM militantly pursued this reclamation policy by following the Alcatraz occupation with the takeover of an abandoned Coast Guard station on the Great Lakes. AIM established a camp at Mount Rushmore as a symbol of Indian claims to the Black Hills while also sponsoring a demonstration to transform Thanksgiving Day into a National Day of Mourning at Plymouth, Massachusetts. Perhaps the most dramatic manifestation of AIM's radical posture was its official symbol—an American flag flown upside-down. The inverted flag is an international distress signal for people in trouble, and AIM asserted that Indians were in trouble and badly needed help.

Of the 1.4 million Native Americans nationwide, 861,000 live in or near 276 reservations scattered across 31 states. On most reservations unemployment stands at about 60 percent. Wounded Knee and the Pine Ridge Indian Reservation are home to 19,000 members of the Sioux tribe. The reservation is situated in a remote, mostly barren prairie in southwest South Dakota. Unemployment varies seasonally from 73 percent to 85 percent, and suicide is a major problem. The depressed conditions on the reservation proved to be fertile grounds for AIM's militancy.

Just prior to the occupation of Wounded Knee, AIM attracted national publicity for its sponsorship of the Trail of Broken Treaties march on Washington. A four-mile-long procession of Indians crossed the country to arrive in the District of Columbia on November 3, 1972, just before the Presidential election day. The marchers peacefully submitted a twenty point proposal for improving U.S.-Indian relations, but when negotiations broke down, the Washington Headquarters of the Bureau of Indian Affairs was occupied in a violent confrontation. Although no criminal prosecutions followed the occupation, the F.B.I.'s counter-intelligence section shifted its attention from the Black Panthers onto AIM. The F.B.I. made a strategic decision to ignore the Washington marchers while preparing for future confrontations in the more favorable forum of South Dakota. South Dakota was perceived as harboring strong resentment against Indians, and most importantly, it was a state far removed from the "liberal" eastern press which traditionally sympathized with Indians.

During the winter of 1973, a number of minor skirmishes broke out between the F.B.I. and AIM in South Dakota. The atmosphere of violent

confrontation gradually escalated until there was a dramatic incident involving the beating and murder of Raymond Yellow Thunder, an Oglala from the Pine Ridge reservation. When Yellow Thunder's suspected murderers were charged with the lesser crime of manslaughter, his irate relatives turned to AIM for the justice they felt they could not obtain from the white man's court. AIM precipitated a major incident at the Custor courthouse in January 1973 when Indian demonstrators were teargassed and beaten, while two police cars were overturned and set on fire. In the first outbreak of violence between the white man and Indians since the massacre at Wounded Knee in 1890, the abandoned Chamber of Commerce building next to the Custor courthouse was burned to the ground.

Following the Custor courthouse riot, the U.S. Attorney General assigned sixty-five additional federal marshals to South Dakota's Pine Ridge reservation. AIM welcomed this opportunity for confrontation, hoping that militancy and publicity could accomplish what traditional patience and stoicism had not. At a meeting with tribal elders, AIM received instructions to "take your brothers and go to Wounded Knee and make your stand there."¹² On February, 28, 1973 AIM took over the quiet hamlet of Wounded Knee as a gesture of protest and issued a public challenge to the federal government to negotiate Indian demands, or to repeat the Wounded Knee slaughter of 1890. The gauntlet was thrown down by three prominent leaders of AIM: Dennis Banks, a full blooded Chippewa and ex-convict who was one of the founders of the Indian rights movement; Russell Means, a young Oglala who had joined AIM in 1970; and Leonard Crow Dog, a medicine man who was the first spiritual leader to endorse AIM. Means and Crow Dog would eventually appear in Judge Merhige's court.

The day after the occupation, Wounded Knee was surrounded by the F.B.I., the U.S. Marshal Service, and the Bureau of Indian Affairs (BIA) police. This paramilitary force came equipped with helicopters, armored personnel carriers, M-16s, and 133,000 rounds of ammunition. The Chief of Staff of the 82nd Airborne was brought in to determine whether U.S. troops should be committed to an assault upon Wounded Knee. The Brigadier General advised against the use of military personnel, but remained on the scene as an advisor. The heavily armed assault force postponed a full scale attack on Wounded Knee because of the possible presence of hostages. The shopkeepers and residents of the Wounded Knee settlement were initially detained as hostages by AIM, but were subsequently given the option to depart. A number of the former hostages volunteered to remain at Wounded Knee, ostensibly to prevent the slaughter of AIM leaders. Unable to

determine the true status of these "hostages," the government forces dug in and began a seventy-one day siege.

The siege proceeded at an uneven pace as minor skirmishes took place for weeks, until the government finally lost patience with the stalemate. On March 26, the last phone line into Wounded Knee was cut and the last news team was ordered to leave by federal officials. A few hours later heavy fire descended on the village. The planned assault was aborted when a U.S. marshal was seriously wounded and a week later a tentative agreement was worked out for a cease fire. A delegation led by Means and Crow Dog submitted to arrest, posted bond, and went to Washington for discussions. The government, however, refused to negotiate until the occupiers of Wounded Knee were disarmed. Crow Dog returned to Wounded Knee and another major skirmish occurred on April 26.

The stalemate was finally broken a week later when a letter from Washington was delivered to Wounded Knee. White House representatives agreed to meet with the protestors on the condition that the occupiers of Wounded Knee lay down their arms. AIM leaders accepted the White House offer after concluding that the occupation had accomplished its purpose of focusing maximum attention upon the violation of Indian rights. Prolonging the occupation did not appear likely to hold the attention of a national press that had been drawn off by the scent of Watergate. In a terse news release, Dennis Banks conceded that AIM's job here is done. On May 9, 1973, the protestors left Wounded Knee. Crow Dog, one of the last to depart, was dramatically placed in chains and flown away in a helicopter. After seventy-one days the siege of Wounded Knee was over.

THE TRIALS OF THE PROTESTORS

Five hundred Indians were charged by the F.B.I. in connection with the Wounded Knee occupation, and one hundred eighty-five Indians were subsequently indicted by federal grand juries on charges of arson, theft, assault, and interfering with federal officers. The showcase trial of Dennis Banks and Russell Means became a symbolic confrontation between AIM and the U.S. government when the defense portrayed Banks and Means as political prisoners, while the prosecution characterized them as common criminals who had invaded, terrorized and looted a helpless community. Attorney William Kunstler who had built his reputation on the defense of political protestors, represented Russell Means. Dennis Banks was represented by attorney Mark Lane who had gained notoriety for his independent investigation of President John F. Kennedy's assassination. Federal District

Judge Frederick J. Nichol initially encountered problems with the flamboyant defense counsel, threatening them with contempt of court on several occasions. As the trial continued, however, the judge turned his wrath on the prosecutors.

The government had grudgingly complied with the court's discovery orders, leading Judge Nichol to suspect that important evidence was being withheld. The Judge ordered President Nixon to turn over any White House tapes dealing with the occupation of Wounded Knee, and instructed the F.B.I. to produce all of its files. Judge Nichol was shocked to discover that the Bureau had 315,000 separate files (some were hundreds of pages long) on the occupation of Wounded Knee. "If this government falls," the Judge observed, "it won't be because of subversion. It will topple under the weight of its own paperwork."¹³ The F.B.I.'s investigation of Wounded Knee proved to be the most expensive investigation in the agency's history. Oddly enough, the second most expensive investigation involved the shooting incident between the Ku Klux Klan, Nazis and Communists in Greensboro, N.C.¹⁴ The trial judge in that case was Robert R. Merhige, Jr.

Throughout the trial of the Wounded Knee protestors, the prosecution employed questionable tactics, including the use of two crucial witnesses who were found to offer perjured testimony. In a dramatic conclusion to the 7 and ½ month-old trial, Judge Nichol dismissed all charges and issued a scathing one-hour lecture on the government's "sordid and misleading" conduct:

I am forced to conclude that the prosecution acted in bad faith at various times throughout the course of the trial and was seeking convictions at the expense of justice. . . . In deciding this motion I have taken into consideration the prosecution's conduct throughout the entire trial. The fact that incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice. The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution in this case.¹⁵

Having lost the showcase trial of Russell Means and Dennis Banks, the federal government instituted a policy of attrition by filing numerous minor charges against the leaders of AIM. The federal government strengthened its investigative and prosecuting teams on the Pine Ridge reservation while arranging for the transfer of additional federal judges to help with the backlog of cases. (Some two hundred Indian cases were awaiting trial.) Judge Merhige was assigned to Pierre, South Dakota, and presided over one of six minor trials awaiting Russell Means. The Judge quickly dismissed a

breach of the peace charge that arose from an incident at a country club which refused to serve Means and other Indians. The evidence presented reminded Judge Merhige of scenes from old John Wayne movies—a lot of barroom bravado, wild swinging, table smashing—but not much real damage. The Judge chastised the prosecutor for bringing a federal judge all the way from Virginia to try such “petty police-court cases.”

Judge Merhige was more favorably disposed to the government’s position in a trial involving an assault charge against the medicine man Leonard Crow Dog. Even before the judge’s arrival in South Dakota, Crow Dog had not fared well in the federal courts. After the dramatic acquittal of Means and Banks, Crow Dog became the only leader of AIM to be convicted on charges directly related to Wounded Knee. When he appeared before Judge Merhige, Crow Dog was already on probation for his role in the Wounded Knee occupation. During this probationary period Crow Dog allegedly assaulted a white trespasser, an offense which drew a five-year sentence from Judge Merhige. The imposition of Judge Merhige’s sentence triggered the almost automatic revocation of Crow Dog’s probation. Judge Merhige was thus singled out as being directly responsible for ensuring that Crow Dog became the only one of the AIM leaders who ever spent a day in prison on charges directly related to Wounded Knee. One commentator referred to the Court’s sentence as “grotesque”¹⁶, and a principle witness in the case later wrote to Judge Merhige that he regretted having accused Crow Dog whom he now characterized as a holy man, peacemaker, and healer who should be released.

Judge Merhige justifies Crow Dog’s five-year sentence by pointing to the aggravating circumstances of the assault. The victim of the assault was a young hitchhiker who appeared at Crow Dog’s camp to pay homage to the Indian leader. The hitchhiker was given a warm welcome and the men of the camp assembled to discuss Indian affairs while sharing liquor and marijuana. The evening took an ugly turn when the guest allegedly insulted Crow Dog’s wife. The hitchhiker was beaten, stripped naked, put out in the South Dakota winter at 2 a.m., and given a five-minute headstart. The hitchhiker eluded his pursuers but lost several toes to frostbite. Crow Dog initially pled guilty to the assault charge, but changed his mind and asked for a jury trial. The jury convicted Crow Dog, and while Judge Merhige pondered an appropriate sentence, Crow Dog requested that a lengthy pre-sentence report be prepared. The judge granted the request, but explained that he was returning to Richmond, thus another federal judge would have to impose sentence when the report was ready. Back in Richmond, Judge Merhige was

notified that Crow Dog demanded to be sentenced by Merhige. The judge agreed, so long as Crow Dog could be brought to Richmond for the sentencing.

As Judge Merhige prepared for what he regarded as a routine sentencing hearing, a flood of protests were filed with the court. The world press had given considerable attention to Wounded Knee, and there were reports that AIM leaders had conferred with representatives of China, Czechoslovakia and the Soviet Union. To his surprise, the judge received a large number of angry letters from the international community. A group of Indian supporters journeyed to Richmond for the sentencing hearing, and Judge Merhige found himself an unwitting participant in a public demonstration. On the morning of the sentencing, the judge emerged from a local store to find himself in the midst of a large crowd marching toward the federal courthouse. When he asked what all the fuss was about, he was told: "We're going down to the court to free Crow Dog. Are you with us?" Judge Merhige mumbled that "It sounds like a good idea. I'm generally in favor of freedom." A somewhat befuddled Judge Merhige found himself swept along with the crowd until they reached the courthouse. The protestors turned left to set up their demonstration, while the judge turned right into a back door of the courthouse. Donning his robes and ascending the bench, Judge Merhige could hear the demonstrators beating on Tom Toms outside the window. He also thought he saw some puzzled looks among the courtroom spectators as a glimpse of recognition crossed their faces. On the evening news, the television film showed the judge in the front ranks of the marching protestors. Fortunately, only a few personal friends recognized Judge Merhige's face among the crowd.

Judge Merhige regarded the assault charge as a very serious offense and imposed the maximum five-year sentence on Crow Dog. He subsequently reduced the sentence when the probation officer reported that Crow Dog, who followed the traditional Indian life style, had become totally disoriented by prison life. Crow Dog became convinced that prison officials planned to perform a lobotomy upon him. Feeling great sympathy for Crow Dog, the judge concluded that justice would be better served by sending the medicine man back to the reservation to serve a probationary period.

While Judge Merhige defends the legality of Crow Dog's sentence, the judge prefers to focus upon Crow Dog and the other Indian defendants as being fascinating individuals who taught him a personal lesson about Native Americans. "It's all very well to read of Indians in Richmond," Judge Merhige acknowledges, "but in Pierre I had first hand contact with a

physically beautiful, gracefully athletic people.” The judge was particularly intrigued by Indian names which he found to be colorful and full of meaning. Like many Easterners, Judge Merhige knew of Indians only from popular fiction which generally accorded all Indians dramatic names like Soaring Hawk and Flying Eagle. In real life, the judge encountered “many names less elegant but no less descriptive. I remember names like Robert Wolf Guts, Steve Holy Elk Face, Jr., and my two favorites—Dorothy Brings Him Back and Melvin Forgets Nothing.”

Behind the colorful names, Judge Merhige found the American Indians to be a very religious people. He sentenced one defendant who responded with a courtroom prayer that the judge felt was like a lovely poem. The more religious Indians refused to swear on a Bible, but agreed to pledge their veracity on a peace pipe. A medicine man explained that swearing on the sacred pipe was originally part of a purification ceremony that had deep religious significance:

“In filling a pipe, all space (represented by the offerings to the powers of the six directions) and all things (represented by the grains of tobacco) are contracted within a single point (the bowl or heart of the pipe) so that the pipe contains, or really *is*, the universe. But since the pipe is the universe, it is also man, and the one who fills a pipe should identify himself with it, thus not only establishing the center of the universe but also his own center; he so ‘expands’ that the six directions of space are actually brought within himself. It is by this ‘expansion’ that man ceases to be a part, a fragment, and becomes whole or holy; he shatters the illusion of separateness.”¹⁷

The peace pipe became a powerful symbol in the courtroom as Crow Dog ceremoniously placed the pipe on the defense table at the start of each day’s proceedings. The court clerk was caught up in the lore of the peace pipe and feared for Judge Merhige’s safety. He cautioned the judge: “Judge, every time you move or shift in your chair, Crow Dog moves that pipe to keep it pointed directly at you. I think he’s putting the whammy on you.” When the first Indian witness asked to swear on the peace pipe, the clerk casually walked over to the defense table to pick up the pipe. As the clerk approached the defense table, Crow Dog arose slowly and announced in a menacing voice: “White man may not touch peace pipe.” The clerk spun around and scurried back behind Judge Merhige’s bench. Crow Dog, however, explained that no threat was intended. As a religious symbol, the pipe could only be touched by Indians.

Leonard Crow Dog’s father, himself a medicine man, attended his son’s trial. Judge Merhige found the elder Crow Dog to be “one of the most beautiful men I have ever seen. He was seventy-five and you could just see the

character on his face.” The judge learned that medicine men such as Crow Dog were particularly hostile to the white man’s religion and to the treatment they had received from Christian missionaries. Because the Crow Dog family persevered in the traditional Indian religion, they felt that they were the victims of religious persecution. According to Crow Dog, the Christian missionaries consorted with the BIA police to drive the family out of the reservation during a blizzard—an experience that Leonard Crow Dog’s infant brother did not survive. Leonard’s sister was allegedly beaten by BIA police and left in a field where she died from exposure. His eighteen-year-old nephew had been killed in a shooting “accident” while in the company of a BIA policeman. Crow Dog’s father saw Wounded Knee as a rebellion against Judeo-Christian theological concepts and summed up his family’s view of the white man’s religion: “When the missionaries arrived they had only the Book and we had the land, now we have the Book and they have the land.”

CONCLUSIONS

Reflecting upon the general treatment of Indians, Judge Merhige admits that he was unable to separate the good guys from the bad guys in the controversial Wounded Knee affair. “There were wild accusations on both sides,” he remembers.

I had one trial involving an Indian woman who had been a leader in the occupation of Wounded Knee. After the pretrial hearing I released her on her own recognizance and she immediately went underground. The government complained that I had released her because I was too soft on the Indians, while AIM contended that she was actually an F.B.I. informant whom I had released on orders from the government.

The judge subsequently learned that the woman was romantically involved with an AIM member who the government suspected of masterminding the assassination of two F.B.I. agents on the Pine Ridge reservation. The woman led the authorities on a wild chase that received considerable media attention. At one point the woman and her lover were reported to be trapped in Marlon Brando’s trailer. The woman eluded capture until her body was found on the reservation with two bullets through her head. The mystery of her status as a loyal AIM member or F.B.I. spy was never resolved.

The dramatic incidents surrounding the occupation of Wounded Knee focused worldwide attention on the broad and still unresolved issue of justice between the red man and the white man. Judge Merhige uses a term from the 1960s—a consciousness raising experience—to describe his reaction to Wounded Knee. “When I went to South Dakota,” he confesses, “I didn’t have enough knowledge to have any opinions or feelings. When I left, I had

great sympathy for the plight of the Indians. They had been neglected for years and years and years. They had not been treated fairly.” He explains that, as a judge, “All I could do was to ensure that they were treated fairly in the courtroom. But, as a citizen, I feel that we owe the Indians something in terms of better education and living conditions.”

What Judge Merhige ultimately took away from Wounded Knee was not any cosmic resolution of the “Indian Problem,” but a personal awareness of the Indian way of life. His most vivid memory of the Indian trials is of a Lutheran minister who told of a visit from a medicine man when the minister was ill. The medicine man did not visit for the purpose of curing the minister. The medicine man came in an ecumenical sense, to give what spiritual benefits he could. The minister confessed that he never felt closer to God. Remembering the ecumenical nature of his own father, Judge Merhige agreed with the minister that “It’s remarkable to feel that deeply, to make you feel that close to God, no matter by what method.”

ENDNOTES

*Copyright © 1988. All rights reserved, Ronald J. Bacigal. Professor of Law, University of Richmond; B.A. 1964, Concord College; LL.B. 1967, Washington & Lee. This article is excerpted from a forthcoming biography which pays tribute to Judge Merhige and provides a look behind the scenes of his landmark decisions.

¹D. Brown, BURY MY HEART AT WOUNDED KNEE 49 (1970).

²Northcutt, Prologue to the first edition of the AMERICAN INDIAN LAW REVIEW (1973).

³Goulder, THE BENCH WARMERS (1974).

⁴For other accounts of Judge Merhige’s cases, *see infra* notes 7 & 10.

⁵*See*, McCallister, *Trying Times, Trying Cases*, 74 A.B.A. JOURNAL 48 (Jan. 1988).

⁶*See*, Stewart, THE PARTNERS (1983).

⁷*See*, Bacigal & Bacigal, *Criminal Prosecutions in Environmental Law: A Study of the “Kepone” Case*, 12 COLUMBIA J. ENVIRONMENTAL L. 291, 312 (1987).

⁸*See*, *United States v. Mitchell*, 551 F.2d 1252 (D.C. Cir. 1976); *United States v. Ehrlichman*, 546 F.2d 910 (D.C. Cir. 1976).

⁹*See*, *Waller v. Butkovich*, 605 F. Supp. 1137 (M.D. N.C. 1985).

¹⁰See, Bacigal & Bacigal, *A Case Study of the Federal Judiciary's Role in Court-ordered Busing*, 3 J. LAW & POLITICS 693, 723 (1987).

¹¹Unless otherwise noted, all quotations are from interviews with the Honorable Robert R. Merhige, Jr., conducted in Richmond, Virginia throughout 1985-88.

¹²P. Matthiessen, *IN THE SPIRIT OF CRAZY HORSE* 66 (1983).

¹³*Id.* at 90.

¹⁴See, *Waller v. Butkovich*, 605 F. Supp. 1137 (M.D.N.C. 1985).

¹⁵Matthiessen, *supra* note 12, at 99.

¹⁶Matthiessen, *supra* note 12, at 234.

¹⁷THE SACRED PIPE: Black Elk's Account of the Seven Rite of Oglala Sioux, 21 (J.E. Brow, ed. 1981).