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### Unveiling the Third Force: Toward Transitional Justice in the USA and South Africa, 1973-1994

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# Unveiling the Third Force: Toward Transitional Justice in the USA and South Africa, 1973–1994

James Gump

## COMPARATIVE (COUNTER-)INSURGENCIES

At dawn on 17 April 1973, three single-engine Cherokee Six airplanes approached the village of Wounded Knee on the Pine Ridge Indian Reservation in southwestern South Dakota. Each aircraft was loaded with 700 pounds of food, ready to be dropped to the besieged occupants of the village. Fifty days earlier, approximately 250 supporters of the American Indian Movement (AIM) occupied Wounded Knee, site of the Army's horrific massacre of several hundred Lakota ghost dancers in 1890. Much like the ghost dance crisis of 1890, the Wounded Knee occupation drew federal security forces to South Dakota to quell this latest "uprising" of militant Indians. Bill Zimmerman, who piloted one of the Cherokees involved in the airlift, marveled at the panorama below him on that dawn, observing that Wounded Knee village

was surrounded on all sides by APCs (Armored Personnel Carriers) ... Each of the four roads leading out of the village were blocked, and next to every roadblock were satellite bunkers and sand-bagged trenches. I was stunned. We had flown out of the United States and into a war! It looked like a piece of South Viet Nam, APCs and all, cut out of Indochina and dropped into the middle of South Dakota.<sup>1</sup>

The significance of Zimmerman's eyewitness account is that the scene he describes *did* transpire on the Northern Central Plains rather than South-East Asia. The federal forces arrayed below him were engaged in a counterinsurgency operation

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<sup>1</sup>Zimmerman, *Airlift to Wounded Knee*, 262. Zimmerman and his companions made a successful drop that morning, helping to prolong the occupation for an additional three weeks. For his efforts, Zimmerman was subsequently arrested by the FBI and charged with three separate federal felonies including "conspiracy to commit offenses against the United States." The charges were later dropped.

to neutralize a domestic, not a foreign foe. And the enemy they surrounded was far from ordinary. AIM, founded by 250 Indian activists in 1968, emerged by the early 1970s to become one of America's foremost advocacy groups for Indian rights in the twentieth century. Less enamored with AIM's rhetoric of treaty rights and tribal sovereignty, the federal government cast AIM in a different light. A Senate Judiciary Committee report of the mid-1970s characterized AIM as a "radical subversive organization ... dedicated to the overthrow of [the US] Government."<sup>2</sup> Of additional significance, the battleground occupied by the federal forces constituted no ordinary terrain. Pine Ridge Reservation represented the "homeland" of the Oglala Lakota (Sioux). In the nineteenth century, the Oglala Sioux produced some of the greatest Indian warriors in American history, including Crazy Horse, the personification of Indian resistance to white overrule. However, by the time of the Wounded Knee occupation Pine Ridge was a place of desperation. Mired in poverty, political corruption, and factionalism, Pine Ridge more closely resembled an apartheid-era South African homeland than a region of the USA. The reservation's marginal condition, in turn, enabled the security forces to act with relative impunity. As FBI Assistant Special Agent Norman Zigrossi put it, "[the Lakota] are a conquered nation, and when you're conquered, the people you're conquered by dictate your future."<sup>3</sup>

A decade after the events at Pine Ridge, South Africa faced its own domestic insurrection and responded with a counterinsurgency plan of its own. The government's principal target was the African National Congress (ANC) and its legal affiliate in the 1980s, the United Democratic Front (UDF). The ANC, founded in 1912, was South Africa's most significant liberation movement in the twentieth century. Since its banning in 1960, the ANC's leadership had been jailed, murdered, or forced into exile. Although the popular uprising of the mid-1980s caught it by surprise, Umkhonto we Sizwe (MK), the ANC's guerrilla army in exile, seized the opportunity by launching a "people's war" inside the republic.<sup>4</sup> Faced with township upheaval and an ANC insurgency, the government responded with a vengeance. Defense Minister Magnus Malan told the *Cape Times* in December 1985 that "the South African Defense Force (SADF) will not hesitate to root out terrorists wherever they may be—whether it is in South West Africa, the Northern Transvaal or our residential areas and cities ... Events in our residential areas and even city streets demonstrate that we are dealing with textbook examples of communist inspired terrorism."<sup>5</sup>

<sup>2</sup>Congress, Senate, Committee of the Judiciary, *Revolutionary Activities Within the United States: The American Indian Movement*, 94th Cong., 2nd sess., April 6, 1976, 2–4.

<sup>3</sup>Quoted in Weir and Bergman, "The Killing of Anna Mae Aquash," 51.

<sup>4</sup>See Jeffery, *People's War: New Light on the Struggle for South Africa*. According to Jeffery, the ANC's goal was never to defeat South Africa's security forces on the field of battle but to instead "generate a level of unrest, social turmoil, and economic malaise that in time would put enormous pressure on its adversaries to sue for peace." (xxxiii–iv)

<sup>5</sup>Cited in *Truth and Reconciliation Commission of South Africa Report* (hereafter TRC Report), vol. 2, 273.

Thus, in the latter third of the twentieth century the governments of the USA and South Africa encountered what each characterized as radical domestic insurgencies. Although vastly different in scale—the ANC represented an existential threat to the apartheid state, while despite US government anxieties, AIM posed no such danger except to Federal allies on Indian lands—security officials employed extraordinary measures to neutralize the perceived threat, regardless of the illegality or collateral damage of such actions. The utilization of “third force” techniques emerged as one of the key manifestations of their security strategy. In this essay, third force is defined as “a substantial, organized group of security officials ... intent on perpetuating violence in the service of counter-revolutionary strategy.”<sup>6</sup> Their modus operandi involved the recruitment and deployment of surrogates, proxy forces, informants, provocateurs, vigilantes, and death squads. As the evidence reveals, provocateurs and vigilantes played a key role in the destabilization of AIM. For its principal surrogate, South African security officials focused on the KwaZulu homeland and the Zulu movement Inkatha.<sup>7</sup> Like the Lakota, the Zulu kingdom had been a dominant political force in the nineteenth century, only to be shattered by a military assault in 1879. KwaZulu, the fragmented remnant of that conquest and its colonial aftermath, mirrored the poverty, corruption, and factionalism of Pine Ridge.

As this comparative study demonstrates, by utilizing surrogates, provocateurs, and vigilantes, the security forces in each country—especially the Federal Bureau of Investigation (FBI), South African Police (SAP), and SADF—became accomplices to the criminal political violence that erupted in Pine Ridge, KwaZulu-Natal, and the Transvaal townships during the latter third of the twentieth century. In addition, the implementation of a third force strategy, which provided the cover of plausible deniability, reinforced the culture of impunity within these security agencies. For example, the FBI believed it was “on a righteous mission to destroy AIM and could therefore play by a separate set of rules.” The Bureau’s self-righteousness was coupled with “a real animus and contempt” for AIM and its Indian supporters.<sup>8</sup> One of South Africa’s most notorious covert operatives during this period characterized security culture in this way: “[the security police formed] a culture ... of arrogant exclusiveness, of being above the law, of secrecy, necessity, loyalty ... and special relationships between superiors and subordinates.”<sup>9</sup> In the words of another infamous agent, “[w]hy keep to the Queensberry rules and fight one boxer when you can kick them in the balls and kill three?”<sup>10</sup>

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<sup>6</sup>Ellis, “The Historical Significance of South Africa’s Third Force,” 263.

<sup>7</sup>In addition to Ellis, the best analyzes of South Africa’s third force strategy during this period include Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, chap. 3; Sanders, *Apartheid’s Friends: The Rise and Fall of South Africa’s Secret Service*, chap. 11; Van der Westhuizen, *White Power and the Rise and Fall of the National Party*, chaps. 4–5; and Minnaar, Liebenberg, and Schutte, eds, *The Hidden Hand: Covert Operations in South Africa*.

<sup>8</sup>McKiernan, interview by author, June 28, 2008, Santa Barbara, California. Kevin McKiernan, a photojournalist and documentary filmmaker, covered Pine Ridge for National Public Radio from 1973 to 1976, and was present inside the village during most of the Wounded Knee siege in 1973.

<sup>9</sup>Coetzee, “Vlakplaas and the Murder of Griffiths Mxenge,” in Minnaar et al., *Hidden Hand*, 176.

<sup>10</sup>Cited in Ellis, “South Africa’s Third Force,” 268.

This essay also examines how investigative commissions in the USA and South Africa succeeded, to varying degrees, in unveiling this culture of impunity and in exposing official misconduct. Specifically, it compares the judicial processes employed in each country to hold governments accountable for third force style activities and demonstrates the complexities as well as dangers in carrying out these investigative tasks. In the USA, the Wounded Knee Legal Defense/Offense Committee and the United States Commission on Civil Rights (USCCR) played key roles in exposing FBI malfeasance and in bringing to light the military's illegal deployment in Pine Ridge during the siege at Wounded Knee in 1973. Comparable organizations in South Africa, most notably the Goldstone Commission, successfully unveiled various third force operations of the South African security agencies during the country's transition from apartheid to democracy. All of these efforts exemplify how institutional approaches aimed at truth recovery and accountability, a significant feature of late twentieth-century truth commissions, constitute an important stage in transitional justice.<sup>11</sup>

In both instances, the USA and South Africa deployed a broad range of repression technologies to destabilize AIM and the ANC. In addition to third force techniques, each security establishment also relied on direct assault and strategic misinformation.<sup>12</sup> According to sociologist Charles Tilly, a key factor in the determination to repress social movements is the scale of the movement's action—the number of participants, the geographic range, and the extent of the organization. In Tilly's analysis, the larger a movement's scale the more likely the state will act to repress it.<sup>13</sup> In South Africa, for example, security officials responded vigorously to a nationwide emergency, an insurrection by large segments of the black majority seeking to make urban townships ungovernable. The security response was based in part on historical fears of a *swart gevaar* (black threat or peril) as well as alarm over a perceived communist takeover.

In the USA, however, given the marginal status of many Indian communities during this period, as well as the relative weakness of AIM in comparison to the ANC, the actions of the FBI seem out of proportion to the scale of the threat. Why did the Bureau respond with comparable impunity? Echoing the rationale for Indian subjugations of the past,<sup>14</sup> Joseph Trimbach, who served as the FBI's Special

<sup>11</sup>As a form of transitional justice, truth commissions have evolved since the 1970s with varying levels of success in Latin America, Eastern Europe, and Africa. For South Africa, the Goldstone Commission's fact-finding reports played an important role in the decision to establish a truth commission process beginning in 1995. For the background and analysis of South Africa's Truth and Reconciliation Commission see Desmond Tutu's *No Future Without Forgiveness* in addition to: Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*, Boraine, *A Country Unmasked*, Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* and Wilson, *Politics of Truth and Reconciliation*.

<sup>12</sup>See Carley, "Defining Forms of Successful State Repression of Social Movement Organizations: A Case Study of the FBI's COINTELPRO and the AIM."

<sup>13</sup>Tilly, *From Mobilization to Revolution*, 115.

<sup>14</sup>Richard Slotkin explores the racially charged myth of the "Indian-hater" and "savage war" in American popular culture, which produced a logic that "traps [Americans] in cycles of violence and retribution without limit and beyond all reason." See Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America*, 461–62.

Agent in Charge of the three-state area of Minnesota, North Dakota, and South Dakota from 1973 to 1975, explained that “my fellow agents ... found themselves in a war with militant Native Americans ... [Therefore], we were not interested in ensuring a level battlefield or a fair fight.”<sup>15</sup> Mont Wesley Swearingen, an FBI Special Agent from 1951 to 1977, characterized the agency’s response this way:

Many critics have asked me how I could consciously and willingly violate laws I had sworn to uphold. I was a young overzealous patriot ... who loved his country. I was a dangerous person to have in public service because when there appeared to be a threat to our government, I placed the other agents and myself above the law.<sup>16</sup>

In addition to scale, another key difference between the FBI’s war on AIM and South Africa’s counterinsurgency campaign against the ANC was the overall purpose. The FBI sought to completely suppress AIM and dismantle its leadership. As a result, AIM “was subjected to extreme violence, disrupted internally, and discredited in the eyes of a majority of American citizens.”<sup>17</sup> Nonetheless, a crippled AIM organization still managed to play a pivotal role in the mid-1970s in the foundation of the United Nations’ International Indian Treaty Council (IITC), one of the most important movements for indigenous treaty rights in the modern era.<sup>18</sup>

In contrast to the FBI’s approach, at least some South African bureaucrats sought to weaken and divide the ANC, not destroy it. At the same time that South Africa’s security establishment launched a covert war against the ANC in the mid-1980s, the National Party government opened secret negotiations with Nelson Mandela, hoping to maintain the political upper hand in a future power-sharing arrangement. As the official third force strategy gradually unraveled, the National Party abandoned its efforts to marginalize the ANC, relying instead on direct negotiations that in turn cleared a path for a government of national unity.<sup>19</sup> The eventual ANC election triumph in 1994 propelled Mandela to the presidency of the republic. Mandela, like the IITC, served as a powerful symbol in the struggle for human rights and the transcendence of third force violence.

### ORIGINS OF THE THIRD FORCE

America’s third force strategy toward AIM originated in 1956, when FBI director J. Edgar Hoover launched a covert program known as COINTELPRO (Counterintelligence Program). COINTELPRO, designed to “expose, disrupt, misdirect,

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<sup>15</sup>Trimbach and Trimbach, *American Indian Mafia: An FBI Agent’s True Story About Wounded Knee, Leonard Peltier, and the AIM*, 13, 111.

<sup>16</sup>Cited in Carley, “Defining Forms of Successful State Repression,” 174.

<sup>17</sup>*Ibid.*, 153.

<sup>18</sup>See Miller, “Our Diplomatic Arm’: Intellectual Roots and Early Years of the International Indian Treaty Council” and Lightfoot, “Leading But Not Dominating: How the International Indian Treaty Council Helped Forge International Change at the United Nations.”

<sup>19</sup>See Sparks, *Tomorrow is Another Country: The Inside Story of South Africa’s Road to Change*.

discredit, or otherwise neutralize” targeted groups, focused at first on the Communist Party USA. Shortly thereafter the program expanded to infiltrate, other organizations considered to have politically radical elements, including Martin Luther King Jr.’s Southern Christian Leadership Conference, the Socialist Workers Party, the Black Panthers, and virtually any group associated with the New Left. According to a Senate Select Committee (a.k.a. Church Committee, named after its chairman, Senator Frank Church) report in 1976, the FBI’s COINTELPRO amounted to “a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect national security and deter violence ... Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that.”<sup>20</sup>

Among the techniques used in COINTELPRO’s war against suspected insurgents, the most important included the use of informants and agents provocateurs. Not only could such operatives provide critical intelligence to the FBI, they could also sow seeds of dissension in the ranks of an organization’s leadership. One of the special techniques in this regard was known as “snitch-jacketing,” that is, falsely labeling a group member as a police informant. The FBI’s Chief of the “Racial Intelligence Section” testified before the Church Committee that “labeling someone as an informant” could not be done “haphazardly” because “it is a serious thing.”<sup>21</sup> Other conventional methods included eavesdropping, disinformation, harassment arrests, fabrications of evidence, and assassination.<sup>22</sup> Most of these methods had been used routinely since 1924, the date when J. Edgar Hoover took over as director of the Bureau. However, COINTELPRO elevated covert warfare against domestic groups to an official, systematic level, thus accounting for the secrecy that pervaded the program. According to the Church Committee report, “no one outside the FBI was supposed to know that COINTELPRO existed. Even within the Bureau, the programs were handled on a ‘need-to-know’ basis.”<sup>23</sup>

COINTELPRO’s secrecy ended in 1971. On the evening of 8 March 1971, a group calling itself the Citizen’s Commission to Investigate the FBI, burglarized the FBI field office in Media, Pennsylvania. The classified documents taken revealed a variety of COINTELPRO-related activities directed at the New Left. The Citizen’s Commission passed on the documents to various media outlets, and over the next several weeks the *Washington Post* published summaries that revealed, for

<sup>20</sup>“COINTELPRO: The FBI’s Covert Action Programs Against American Citizens,” cited in <http://www.icdc.com/~paulwolf/cointelpro/churchfinalreportlla.htm>. For other perspectives on COINTELPRO see Jeffreys-Jones, *The FBI: A History*, Churchill and Vander Wall, eds., *The COINTELPRO Papers: Documents from the FBI’s Secret Wars Against Dissent in the United States*; and Churchill and Vander Wall, *Agents of Repression: The FBI’s Secret Wars Against the Black Panther Party and the AIM*.

<sup>21</sup>Church Committee Report.

<sup>22</sup>Churchill and Vander Wall, *Agents of Repression*, 39–53.

<sup>23</sup>Church Committee Report.

the first time, that COINTELPRO existed.<sup>24</sup> In light of these revelations, Hoover officially terminated the centralized COINTELPRO on 27 April 1971. Hoover added the caveat that “in exceptional circumstances where it is considered counterintelligence action is warranted, recommendations should be submitted to the Bureau under the individual case caption to which it pertains. These recommendations will be considered on an individual basis.”<sup>25</sup> As his words suggest, Hoover was not prepared to abandon COINTELPRO entirely. In fact, by 1972 the “Bureau was setting out on its next and ‘greatest’ COINTELPRO ever: the quelling of an ‘Indian uprising’ on the Pine Ridge Sioux Reservation in South Dakota.”<sup>26</sup>

South Africa’s equivalent counterinsurgency doctrine arose in the context of the escalation of liberation struggles throughout southern Africa in the 1970s. With the independence of Angola and Mozambique from Portugal in 1975, the advent of Marxist-oriented governments that could provide sanctuary for the ANC’s MK guerrillas produced an alarming situation for apartheid leaders. At this time, senior officers within the SADF concluded that a “total strategy” was needed to combat the security threat posed to the white-ruled republic. Total Strategy, based on theories of counterinsurgency warfare developed by French and American military analysts, defined South Africa’s role in southern Africa as the final barrier to communist expansion.<sup>27</sup> According to this view, South Africa was facing a “total onslaught” from the Soviet Union, which projected its influence in southern Africa through a variety of revolutionary movements, most notably the ANC. South Africa’s security establishment, led by P.W. Botha<sup>28</sup> and General Magnus Malan,<sup>29</sup> regarded the ANC (and its affiliate after 1983, the UDF) as “the enemy,” against whom any measure could be employed legitimately to prevent southern Africa from descending into revolutionary chaos.<sup>30</sup>

One key tactic employed by the State Security Council (SSC)<sup>31</sup> in this regard involved the use of surrogates—vigilantes, warlords, gangsters, hit squads, auxiliary forces, and agents provocateurs. Surrogates, trained and equipped to engage in all sorts of illegal activities, shifted responsibility away from the security forces and

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<sup>24</sup>Jeffreys-Jones, *The FBI*, 177.

<sup>25</sup>Church Committee Report.

<sup>26</sup>Churchill and Vander Wall, *Agents of Repression*, 99.

<sup>27</sup>Frankel, *Pretoria’s Praetorians: Civil-Military Relations in South Africa*, 65.

<sup>28</sup>Botha served as Defence Minister under Prime Minister John Vorster as well as Prime Minister and State President between 1978 and 1989.

<sup>29</sup>Malan served as chief of the SADF and Defense Minister under Botha. In 1962–63, Malan studied counterinsurgency theory at Fort Leavenworth, Kansas, site of the Command and General Staff College of the US Army.

<sup>30</sup>Selfe, “The State Security Apparatus: Implications for Covert Operations,” 103–5. Also see Van der Westhuizen, *White Power*, chap. 3; and O’Meara, *Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948–1994*, chap. 13. The security forces already had at their disposal a variety of laws, including the Internal Security Act and Public Safety Act, which provided them sweeping powers of arrest, detention, and banning.

<sup>31</sup>The SSC, established by statute in 1972, became in effect, an inner Cabinet during P.W. Botha’s regime. Chaired by the Prime Minister and after 1984 the State President, the SSC consisted of all of the key leaders in security-related departments.

offered them a degree of plausible deniability. The Security Branch of the SAP first exercised a version of this third force strategy in South Africa's so-called border wars in Rhodesia (Zimbabwe) and South-West Africa (Namibia) beginning in the 1960s. In Namibia, the Security Branch established the Koevoet (crowbar) unit, in which SAP officers utilized "turned" African guerrillas, or *askaris*, as their principal shock troops against SWAPO insurgents.<sup>32</sup>

By the mid-1980s, in the context of a nationwide insurrection,<sup>33</sup> many of the police veterans of the border wars returned to South Africa to employ these same counterinsurgency techniques at home. For example, one of the founding members of Koevoet, Eugene de Kock, was drafted into the C1 (later C10) unit of the Security Police based at Vlakplaas.<sup>34</sup> De Kock took over as commander of Vlakplaas in 1985. Founded six years earlier, Vlakplaas enlisted large numbers of *askaris*, many of whom were former members of MK, Poqo (armed wing of the Pan Africanist Congress), and after Namibia's independence in 1990, Koevoet troopers. Under De Kock's command "the C10 unit became a general-purpose death squad," directed by superiors in the Security Branch to torture and murder designated enemies of the republic.<sup>35</sup> The SADF set up similar hit squads among its Special Forces units, including the Civil Cooperation Bureau (CCB), Thirty-two Battalion, and Five Reconnaissance Regiment. All of these covert units in the SAP and SADF received their instructions from the Counter-Revolutionary Information Target Center, known as TREWITS, whose function was to identify targets for elimination.<sup>36</sup> Safely concealed in their amoral universe, members of these special units came to think of "total war" as "war without rules" for which they could never be held accountable.<sup>37</sup>

## DOMESTIC INSURGENCIES

America's domestic insurrection and equivalent third force intervention rose to national prominence at Wounded Knee. In late February 1973, a group of approximately 250 AIM leaders and supporters entered the village of Wounded Knee on the Pine Ridge reservation and declared it "liberated." AIM leadership demanded the government's recognition of the 1868 Fort Laramie Treaty with the Sioux

<sup>32</sup>SWAPO, the South West African People's Organization, launched a liberation struggle against South African forces in South-West Africa (Namibia) in 1966. On the utilization of *askaris*, see Gottschalk, "The Rise and Fall of Apartheid's Death Squads, 1969-93," 242.

<sup>33</sup>The constitutional dispensation of 1983, which excluded the black majority from the national government, gave rise to an insurrection far more widespread than the Soweto uprising of 1976. The government responded with heightened repression, including a partial state of emergency in 1985 and a general state of emergency in 1986.

<sup>34</sup>Vlakplaas is the name of a state-owned farm outside of Pretoria that served as the C1 base.

<sup>35</sup>Ellis, "South Africa's Third Force," 269.

<sup>36</sup>See TRC Report, vol. 2, chap. 2. In 1991 the CCB was officially disbanded, although its personnel were transferred to Military Intelligence's Directorate of Covert Collection (DCC), another clandestine entity.

<sup>37</sup>Ellis, "South Africa's Third Force," 278-79.

Nation, which set apart for the Lakota people, “the absolute and undisturbed use and occupation” of territory that included the Black Hills.<sup>38</sup> Despite its naivete in the art of practical politics, AIM excelled at political theater. For example, during its Trail of Broken Treaties protest in the fall of 1972, a rally organized to highlight historical violations of Indian treaties, AIM supporters occupied the headquarters building of the Bureau of Indian Affairs (BIA) in Washington, DC. The brief occupation resulted in a series of highly publicized negotiations with authorities from the Nixon administration. The BIA takeover also prompted the FBI to intensify its surveillance of AIM.<sup>39</sup> It did so at an historic moment—early the next year, AIM’s seventy-one-day siege on Pine Ridge placed the organization and “treaty rights” in the national media spotlight.

The siege at Wounded Knee arose in the context of a deepening crisis on Pine Ridge Reservation involving Dick Wilson, Chairman of the Oglala Sioux Tribal Government at the time, and a coalition of anti-Wilsonites that included Lakota traditionalists and members of AIM. In reality, the roots of this conflict date back to the earliest years of the reservation, which was established in 1878. Until the 1930s, the Oglala Lakota were ruled directly by the Office of Indian Affairs (which later became the BIA) as the colonial subjects of the USA. In 1936, the advent of tribal government on Pine Ridge under the guidelines of the Indian Reorganization Act (IRA) transformed Lakota governance from direct to indirect rule.<sup>40</sup> In its various manifestations, colonialism had two major effects on the Oglala Sioux: the incessant erosion of the Lakota land base; and the institutionalization of factionalism, pitting white-oriented progressives against Lakota traditionalists in a competition for power and resources.<sup>41</sup>

Since the advent of the IRA government in 1936, the competition for power and resources favored the white-oriented, progressive faction on Pine Ridge. Wilson personified this cohort. He used his position as tribal chairman to reward his family, friends, and supporters with federal jobs, a customary practice among Wilson’s predecessors. However, in the charged atmosphere of the early 1970s, Wilson’s blatant nepotism, combined with his increasing animosity toward AIM, ignited a grassroots movement seeking Wilson’s removal as tribal chairman. The Oglala Sioux Civil Rights Organization (OSCRO), a group led principally by elderly Oglala women, formed in February 1973 to challenge Wilson’s regime. OSCRO called for Wilson’s impeachment and decried Wilson’s decision to bring US Marshals and the FBI to Pine Ridge in early February to protect against AIM’s alleged takeover plans. OSCRO believed that AIM was the solution, not the problem. According to movement leader Ellen Moves Camp, “[w]e decided that

<sup>38</sup>See Smith and Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee*, chaps. 9–12.

<sup>39</sup>Dewing, ed., *The FBI Files on the AIM and Wounded Knee*, vi.

<sup>40</sup>Reinhardt, *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee*, chap. 1.

<sup>41</sup>For probing analyzes of these issues see Reinhardt, *Ruling Pine Ridge*, Robertson, *The Power of the Land: Identity, Ethnicity, and Class Among the Oglala Lakota*, and Biolsi, *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations*.

we did need the American Indian Movement in here because our men were scared ... All of our older people from the reservation helped us make the decision.”<sup>42</sup>

Prompted by OSCRO and traditional Oglala chiefs, AIM made its stand at Wounded Knee village on the night of 27 February 1973. In response, Wilson geared up for a showdown. Wilson turned to his Tribal Police and a vigilante force he assembled with federal funding the previous year. Wilson’s new security unit, known as the Guardians of the Oglala Nation or “Goons” in the popular parlance of the time, was deployed during the siege and over the following three years to terrorize his opponents.<sup>43</sup>

The FBI, which shared intelligence with Goons and supplied them with automatic weapons and ammunition,<sup>44</sup> also became embroiled in the Pine Ridge upheaval. Utilizing COINTELPRO techniques, the FBI placed AIM under the purview of the Extremist Intelligence Section of the Domestic Intelligence Division and actively recruited informants and agents provocateurs to infiltrate and destabilize the organization. One of these infiltrators, Douglass Durham, became AIM’s security officer and AIM leader Dennis Banks’s personal bodyguard. One month after Durham’s cover was blown in March 1975, he was called up to testify before a Senate Subcommittee on Internal Security as the sole witness on AIM. Durham offered lurid allegations of AIM’s violent proclivities and argued that AIM was a Communist-inspired revolutionary organization with ties to international terrorism. Despite Durham’s obvious bias and extremely shady past, the transcript of Durham’s unchallenged testimony was published and widely distributed as a government report entitled *Revolutionary Activities Within the United States: The American Indian Movement*.<sup>45</sup>

During the siege at Wounded Knee in 1973, the Justice Department provided the manpower and the Department of Defense supplied the weaponry and training. The combatants included the FBI, which conducted all of the government’s covert operations, the Special Operations Group of the US Marshals, and BIA police. The Defense Department’s Directorate of Military Support (DOMS) supported these forces with an arsenal that included F-4 Phantom jets, armored personal carriers, M-60 caliber machine guns, M-16 automatic rifles with 100,000 rounds of ammunition, and M-79 grenade launchers. The Pentagon’s role remained secret at the time and was illegal under federal law. It included the deployment of Colonel Volney Warner, chief of staff of the 82nd Airborne Division, and Colonel Jack Potter, deputy chief of staff for logistics of the Sixth Army, donned in civilian attire throughout the siege to disguise their true identity.

<sup>42</sup>Quoted in *Voices from Wounded Knee*, 31.

<sup>43</sup>See Hendricks, *The Unquiet Grave: The FBI and the Struggle for the Soul of Indian Country*, 49–51; and Matthiessen, *In the Spirit of Crazy Horse*, 61.

<sup>44</sup>McKiernan interview.

<sup>45</sup>Senator James Eastland, who chaired the Senate Judiciary Committee, alleged that AIM had ties to Cuba, China, and “a large number of left extremist organizations.” See Congress, *Revolutionary Activities*, 2–3.

Warner and Potter directed operation "Garden Plot," part of the military's national emergency contingency plan.<sup>46</sup>

From the outset, the Pentagon was ambivalent about its role at Wounded Knee. For example, the DOMS staff prepared an intelligence report on 4 March 1973 assessing the situation on Pine Ridge. The report observed that:

Because of its isolated geographical location, the seizure and holding of Wounded Knee poses no threat to the Nation, the State of South Dakota, or the Pine Ridge Reservation itself. However, it is conceded that this act is a source of irritation if not embarrassment to the Administration in general and the Department of Justice in particular.<sup>47</sup>

Influenced by the DOMS' analysis, Colonel Warner supported an approach that would avoid confrontation. He also feared that any type of aggressive assault, under the spotlight of the national media, would bestow martyrdom on the AIM protestors. By favoring restraint at Wounded Knee II, the Pentagon's plan contrasted sharply with that of the FBI. One of Warner's first acts was to reject an FBI request to overrun the reservation with 2,000 regular Army troops followed by an FBI round-up.<sup>48</sup>

In the USA, the government's covert strategy included the deployment of Lakota progressives in a campaign to destabilize AIM and its traditionalist allies. The South African government utilized a similar third force approach, although in contrast to the USA, South African officials allied with Zulu traditionalists to undermine the progressive forces of the UDF/ANC. Deploying black surrogates to strike back at black insurgents held several advantages in the minds of South African strategists. In addition to helping defeat or at least weaken insurgents, such an approach held great potential value as a propaganda tool. As factional conflict escalated the government could characterize it as "black-on-black" violence, thereby justifying the continuation of white minority rule.<sup>49</sup> The growing rivalry between Inkatha and the UDF/ANC in the 1980s provided fertile ground for this third force strategy.

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<sup>46</sup>"Military Involvement During the Wounded Knee Liberation," Wounded Knee Legal Defense/Offense Committee MSS (hereafter WKLDLOC MSS), Box 44.

<sup>47</sup>Frank D. Oblinger, "Concept of Federal Military Support of Wounded Knee Operations," WKLDLOC MSS, Box 44.

<sup>48</sup>"Army Tested Secret Civil Disturbance Plan at Wounded Knee, Memos Show," *New York Times*, December 2, 1975. In the aftermath of the Wounded Knee operation, the FBI issued a report highly critical of the Army's restraining influence during the seventy-one-day siege. The report recommended that, in future, the FBI should 'seize control quickly and take a definite, aggressive stand' in paramilitary endeavors. See "The Special Use of Special Agents of the FBI in a Paramilitary Law Enforcement Operation in the Indian Country," April 24, 1975, cited in Dewing, *FBI Files*, ix-xi.

<sup>49</sup>TRC Report, vol. 3, 187.

Inkatha, founded in 1923 by the Zulu king Solomon, was revived by Mangosuthu Buthelezi in his KwaZulu “homeland” in 1975.<sup>50</sup> Buthelezi’s Inkatha organization claimed to be a “national liberation movement,” but Inkatha’s base remained largely ethnic, regional, and rural. Buthelezi, a one-time member of the ANC, grew increasingly estranged from his compatriots by the late 1970s. ANC “comrades” chided Buthelezi as a sell-out to the apartheid regime. In response, Buthelezi tightened his party apparatus, focused on regional consolidation, and relied increasingly on “blatant and dangerous ethnic political mobilization.”<sup>51</sup> By the mid-1980s, Buthelezi’s animosity toward the ANC escalated into factional violence between Inkatha and the UDF, the ANC’s legal affiliate. Following the unbanning of the ANC in February 1990, the violence intensified, pitting Inkatha supporters against ANC comrades in a bloody civil war, a conflict that now spread from the Natal (KwaZulu-Natal) hinterland to the Transvaal (now Gauteng) townships.<sup>52</sup>

The SSC, seeking to exploit the conflict between the ANC and Inkatha, identified Buthelezi’s organization as an ideal vehicle for the implementation of third force strategy. In late 1985, the SSC opened secret discussions with the Inkatha Central Committee. Both sides determined that the KwaZulu government needed offensive as well as defensive capabilities against the UDF/ANC. The plan that ensued in 1986, known as Operation Marion, led to the recruitment and training of two hundred Inkatha supporters by SADF Special Forces in the Caprivi Strip, Namibia. The “Caprivi trainees,” equipped “to destroy the UDF/ANC,” were deployed throughout KwaZulu-Natal the following year. Caprivi trainee Daluxolo Luthuli later testified before the Truth and Reconciliation Commission (TRC) that during the late 1980s, “there were literally hundreds of incidents where attacks were launched against UDF people, property or homes. It is impossible for me to record the extent of these attacks. The comrades responded by attacking us with equal vigor.”<sup>53</sup>

Following the unbanning of the ANC and announcement of the release of Mandela in February 1990, covert operations associated with Inkatha and other surrogates gathered speed. The activities of Colonel Eugene de Kock provide a well-documented case in point. As commander of Vlakplaas, De Kock supervised

<sup>50</sup>During the apartheid era in South Africa, the National Party government devised a system of co-optive, indirect rule for the rural African homelands, passing the Bantu Authorities Act (1951) and the Promotion of Bantu Self-Government Act (1959). These laws separated the African population into eight ethnic units (later increased to ten). Under the provisions of apartheid legislation, Buthelezi emerged from tribal, to regional, and eventually to territorial authority as the chief minister of KwaZulu, the most fragmented and one of the most impoverished South African homelands, beginning in 1970. See Butler, Rotberg, and Adams, *The Black Homelands of South Africa: The Political and Economic Development of Bophuthatswana and KwaZulu*, 8–81.

<sup>51</sup>Mare, *Brothers Born of Warrior Blood: Politics and Ethnicity in South Africa*, 60.

<sup>52</sup>See Maylam, “The Historical Background to the Natal Violence,” 68–89.

<sup>53</sup>TRC Report, vol. 3, 225. For a detailed analysis of Operation Marion, see Varney, “The Role of the Former State in Political Violence: Operation Marion;” “Report on Front Companies of the SADF and the Training by the SADF of Inkatha Supporters in the Caprivi in 1986,” Goldstone Commission Reports (hereafter GCR), June 1993, 12–13; and Sanders, *Apartheid’s Friends*, chap. 11.

nearly three hundred *askaris* during 1990, deploying his unit to spread mayhem in the Vaal townships and commuter trains on a daily basis. Working with Themba Khoza, chairman of the Inkatha Youth Brigade, De Kock, also started selling guns to the pro-Inkatha hostel-dwellers on the East Rand in July 1990.<sup>54</sup> In 1991, the Vlakplaas unit was renamed C10 and ostensibly reassigned to investigate the weapons trade. Instead, illicit arms transactions escalated. In one instance in the spring of 1993, after De Kock had apparently resigned from the SAP, he supplied Inkatha vigilantes with 182 RPG-7 rockets, 14,400 AK-47 rifles, 112 60 mm high explosive mortars, 1,428 rifle grenades, 98 anti-personnel land mines, 200 shrapnel mines, and 288 hand grenades.<sup>55</sup> Not coincidentally, approximately fourteen thousand people were killed in political violence in South Africa between early February 1990 and the election in 1994, more than in any other period in modern South African history.<sup>56</sup>

### INVESTIGATIVE COMMISSIONS

As territorial creations of comparable forms of indirect rule, KwaZulu and Pine Ridge manifested the tensions, contradictions, and ambiguities of dependence.<sup>57</sup> Consequently, both homelands descended into cauldrons of internal violence in the wake of state-sponsored covert destabilization operations. In both instances, investigative teams gradually exposed this official malfeasance. At significant risk to their own personal safety, these investigators shed light on human rights violations and began the process of bringing their respective governments to account. In addition, their findings exposed the cultures of impunity that undermined the rule of law in both the USA and South Africa.

The USCCR, established by Congress in 1957 to investigate and report on alleged violations of the equal protection standard in the US Constitution, issued a series of caustic commentaries in the mid-1970s regarding the conditions on Pine Ridge. For example, in a report published in 1975, USCCR referred to “a reign of terror [on Pine Ridge] carried out by Dick Wilson’s ‘goon squad,’ who have a habit of ‘stomping hell’ out of people at the slightest provocation.” The report concluded “many of these incidents have never been explained or, in the minds of many residents, even satisfactorily investigated.”<sup>58</sup> The FBI’s failure to thwart crime on Pine Ridge in the mid-1970s, whether perpetrated by Goons or AIM-supporters, was not due to lack of manpower. By 1975, the posting of over thirty agents

<sup>54</sup>Ellis, “South Africa’s Third Force,” 284.

<sup>55</sup>Jeffery, *The Natal Story: 16 Years of Conflict*, 757.

<sup>56</sup>Van der Westhuizen, *White Power*, 199. Van der Westhuizen points out that the spike in conflict following the ANC’s unbanning came only months after Buthelezi requested additional support from the security forces, including the formation of hit squads in KwaZulu; and Ibid

<sup>57</sup>See Marks, *The Ambiguities of Dependence in South Africa: Class, Nationalism, and The State in Twentieth Century Natal* and Reinhardt, *Ruling Pine Ridge*.

<sup>58</sup>Muldrow, “Monitoring of Events Related to the Shooting of Two FBI Agents on the Pine Ridge Reservation.”

in its Rapid City office afforded the bureau the highest concentration of agents per capita in the USA.<sup>59</sup>

As the FBI reinforced its ranks, Pine Ridge degenerated into a crucible of violence.<sup>60</sup> Ethel Merrival, a tribal attorney on Pine Ridge, claimed that residents faced “day-to-day terror in communities where the FBI and police ignore or encourage efforts to injure or kill us. We can only conclude,” Merrival added, “that the federal government has decided to let the goons and the police do anything they want to us.”<sup>61</sup> Mary Crow Dog, who participated in the Wounded Knee occupation, had no doubt about third force involvement:

It came to a point where nobody felt safe anymore, not even in their own homes ... The situation was aggravated by the fact that [AIM] became an object of attention for the FBI’s Cointelpro [project]. AIM was infiltrated by a number of informers and agents provocateurs ... This infiltration, together with the never-ending violence, brought on a general state of paranoia. The agents stirred up mistrust among us until nobody trusted anybody anymore.<sup>62</sup>

Crow Dog’s allegations of FBI harassment and infiltration gained credence during the nine-month Wounded Knee “Leadership Trial” of Dennis Banks and Russell Means held in St. Paul, Minnesota during 1974. Banks and Means were defended by attorneys representing the Wounded Knee Legal Defense/Offense Committee (WKLDOC), which had been established in Rapid City, South Dakota, in March 1973, by seventeen lawyers and legal workers from across the country. Its attorneys included Kenneth Tilsen, who had been inside Wounded Knee and became WKLDOC’s legal director, Mark Lane, author of *Rush to Judgment*, Ramon Roubideaux, who helped negotiate the stand-down at Wounded Knee, and William Kunstler, whose clients had included Martin Luther King, the Berrigan brothers, and the Chicago Seven. Each served *pro bono*. WKLDOC’s investigative team, volunteers who were recruited from across the country, experienced cramped living arrangements, high staff turnover, and the constant threat, both real and imagined, of security breaches.<sup>63</sup>

WKLDOC organized legal defense for those charged with crimes in or about Wounded Knee,<sup>64</sup> gathered testimony from the victims of violence on Pine Ridge, and issued press releases on its findings. Its investigators documented hundreds of cases of harassment and abuse directed at Pine Ridge residents by Goons, BIA

<sup>59</sup>Churchill and Vander Wall, *Agents of Repression*, 175. The Pine Ridge Reservation falls within the jurisdiction of the Rapid City FBI office.

<sup>60</sup>By the mid-1970s, the per capita murder rate on Pine Ridge exceeded that of Detroit, America’s murder capital at the time, by eight times. With a population of 15,000, Pine Ridge Reservation witnessed approximately seventy murders in the mid-1970s. Almost all of the victims were Indians, and most of the crimes remained unresolved and uninvestigated. See Hendricks, *Unquiet Grave*, 170.

<sup>61</sup>WKLDOC MSS, Box 46.

<sup>62</sup>Crow Dog and Erdoes, *Lakota Woman*, 194.

<sup>63</sup>Sayer, *Ghost Dancing the Law: The Wounded Knee Trials*, 45–7.

<sup>64</sup>The FBI compiled more than 316,000 separate investigative file classifications on AIM members connected with the Wounded Knee siege and arrested 562 individuals. Eventually, 185 AIM members were indicted, many on multiple charges. Only fifteen convictions resulted. *Ibid.*, 3.

police, the FBI, and US Marshals. WKLDLOC's legal team, whose work stretched into the 1980s, defended over two hundred cases in what amounted to one of the most exhaustive and complex series of legal proceedings in the annals of US jurisprudence. Despite the fact that a major feature of the government's war on AIM was to destabilize it through an endless round of litigation,<sup>65</sup> WKLDLOC achieved impressive results. WKLDLOC attorneys, supported by their investigative team, earned a 92% acquittal/dismissal rate for their clients on federal cases, "one of the most successful mass defense efforts in history."<sup>66</sup> For its labors, members of WKLDLOC endured FBI infiltration and surveillance as well as threats, harassment, and physical attacks by Wilson's Goons.<sup>67</sup>

WKLDLOC's strategy in *US v. Banks and Means*, according to defense attorney Ken Tilsen, was to demonstrate "that Oglalas, led by their traditional leaders, went to Wounded Knee to make a statement in response to oppressive conditions on Pine Ridge imposed by the tribal government and supported by the BIA and the Justice Department; and ... that the overreaction of federal law enforcement officials at Wounded Knee was representative of the history of mistreatment of Indians in the United States."<sup>68</sup> The WKLDLOC attorneys brought forward witnesses who testified about the tribal government's "reign of terror," the FBI's use of illegal wiretapping during the siege, and the military's unlawful deployment at Wounded Knee. The prosecution's key witness was Pine Ridge resident Louis Moves Camp. Moves Camp, who claimed that he was present at Wounded Knee during most of the seventy-one-day siege, linked Banks and Means to virtually every count against them. According to Moves Camp, both leaders conspired to seize Wounded Knee, stole cash from the Wounded Knee trading post, and manufactured bunkers and Molotov cocktails to take out federal agents. The case collapsed, however, when the defense proved that Moves Camp resided in California during most of the period of the siege. The defense also established that the FBI obtained Moves Camp's testimony in exchange for a deal that dismissed several felony charges against him, including robbery, assault, and rape.<sup>69</sup>

At the conclusion of the nine-month ordeal, Judge Fred Nichol dismissed all charges against Banks and Means. In his statement of dismissal, Nichol castigated the military for its illegal deployment at Wounded Knee. "I was proud to serve in the military in World War II," the judge declared, "but we don't want the military running the civil affairs of this country."<sup>70</sup> Nichol, however, saved his harshest criticism for the FBI. Incensed with the Bureau over its role in tampering with a key prosecution witness, Nichol did not mince words: "What I'm going to say

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<sup>65</sup>In 1974, Colonel Volney Warner told a reporter from the *Sioux Falls Argus Leader* that 'AIM's most militant leaders and followers are under indictment, in jail or warrants are out for their arrest, but the government can win even if no one goes to prison'. Cited in *Ibid.*, 228.

<sup>66</sup>*Ibid.*, 5.

<sup>67</sup>Documented in WKLDLOC MSS, Boxes 24, 46, and 82.

<sup>68</sup>Sayer, *Ghost Dancing the Law*, 105.

<sup>69</sup>*Ibid.*, chaps. 3–7.

<sup>70</sup>"Judge Nichol's Statement of Dismissal," WKLDLOC MSS, Box 126.

about the FBI, I think, is very hard for me to say ... But it's hard for me to believe that the FBI, which I have revered for many years, has fallen to that low an estate."<sup>71</sup> Judge Nichol's opinions were validated in March 1975 when Douglass Durham, who participated in all defense team meetings in 1974 and had tarred AIM with the communist brush, revealed that the FBI had been paying him \$1000 a month to infiltrate AIM.<sup>72</sup>

Meanwhile, as the civil war on Pine Ridge raged on, the FBI intensified its surveillance of AIM. On 26 June 1975, agents Jack Coler and Ron Williams drove on to the Jumping Bull ranch near Oglala, ostensibly to serve arrest warrants to four AIM "dog soldiers." A gun battle ensued, resulting in the deaths of Coler and Williams. Initial press reports by United Press International and Associated Press described the encounter as an "ambush," whereby treacherous Native Americans, ensconced in sophisticated "bunkers," lured the two FBI agents to their deaths. Following these initial stories, the FBI dispatched an "external affairs officer" to Pine Ridge who endorsed these sensational claims. In the following weeks the press corrected itself. "Bunkers" turned out to be root cellars, Coler and Williams possessed no warrants, and the notion of an "ambush" did not square with the evidence.<sup>73</sup>

Nonetheless, based on the deaths of two of its agents, the FBI launched a massive paramilitary assault on Pine Ridge involving 180 SWAT-trained agents. The FBI action terrorized reservation residents, many of who remained neutral in the ongoing struggle between supporters of AIM and Wilsonite sympathizers.<sup>74</sup> A USCCR report, drafted in July 1975, captured the popular sentiment:

The FBI is conducting a full-scale military operation on the reservation. Their presence there has created deep resentment on the part of many of the reservation residents who do not feel that such a procedure would be tolerated in any non-Indian community in the United States. They point out that little has been done to solve the numerous murders on the reservation, but when two white men are killed, 'troops' are brought in from all over the country at a cost of hundreds of thousands of dollars.<sup>75</sup>

Following the largest manhunt in FBI history, the FBI eventually apprehended a suspect in the deaths of Coler and Williams. The Bureau built a case against AIM member Leonard Peltier, who was extradited from Canada to the USA in 1976. During the extradition hearings between the USA and Canada, the FBI provided the Canadian government with two affidavits, signed by Myrtle Poor Bear, which claimed that she had been living with Peltier on the Jumping Bull ranch in 1975 and that she saw him shoot the FBI agents. Poor Bear later testified for the defense at the Peltier trial, pointing out that she had never even met Peltier and only made

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<sup>71</sup>Ibid.

<sup>72</sup>Sayer, *Ghost Dancing the Law*, 207.

<sup>73</sup>Weismann, "About that 'Ambush' at Wounded Knee," 28–31.

<sup>74</sup>Dewing, *Wounded Knee II*, 155.

<sup>75</sup>Muldrow, "Monitoring Events."

her original claims as a result of FBI intimidation.<sup>76</sup> Some months after Peltier's extradition, even his prosecutor admitted that Poor Bear was "incompetent in the utter, utter, utter, ultimate sense of incompetency."<sup>77</sup> Despite this as well as other FBI indiscretions,<sup>78</sup> a jury convicted Peltier on two counts of first-degree murder in Fargo, North Dakota, on 18 April 1977. Peltier was dispatched to federal penitentiary, Leavenworth, Kansas, where he is currently serving two consecutive life sentences.

The violence that raged at Pine Ridge in the 1970s was replicated on a grander scale in KwaZulu-Natal and the Transvaal townships a decade later. By the late 1980s, South Africa had reached a state of "violent equilibrium."<sup>79</sup> Equipped with the most sophisticated security apparatus on the continent, the government could ban, detain, and murder its anti-apartheid opponents, but it could not diminish their spirit of mass resistance. In August 1989, National Party leadership passed from P.W. Botha to F.W. de Klerk. De Klerk, politically conservative, was also a pragmatist and prepared to enter into a more genuine power-sharing arrangement with the ANC.<sup>80</sup> Additionally, De Klerk, unlike Botha, lacked a solid base in South Africa's security establishment. Therefore, the new State President was willing to address the mounting circumstantial evidence that a third force existed within South Africa's military and police. He appointed two successive commissions, headed by Louis Harms and Richard Goldstone, respectively, to investigate these allegations.

The Harms Commission arose in the context of the confessions of Butana Nofemela and Dirk Coetzee, both former members of Vlakplaas, who revealed to journalists in late 1989 that security forces were responsible for "hit squad" murders. In addition, a report that linked the CCB, a covert arm of Military Intelligence, to the murder of anti-apartheid activist Dr David Webster came to light in January 1990. Despite its earnest effort, the Harms Commission was hampered from the outset. Its investigation team consisted of members of the SAP, and its chief counsel, Tim McNally, had previously written an investigative report that exonerated Vlakplaas from any wrongdoing.<sup>81</sup> By later admission, members of the Security Police destroyed evidence, silenced potentially truthful witnesses, and lied repeatedly to Judge Harms.<sup>82</sup> In his final report, Harms concluded that the CCB

<sup>76</sup>Matthiessen, *Spirit of Crazy Horse*, 338–47.

<sup>77</sup>Quoted in Hendricks, *Unquiet Grave*, 266.

<sup>78</sup>See Matthiessen, *Spirit of Crazy Horse*, chaps. 11–3.

<sup>79</sup>Sparks, *The Mind of South Africa*, 360.

<sup>80</sup>On 2 February 1990, De Klerk announced at the opening of Parliament the impending release of Nelson Mandela and the unbanning of the ANC, PAC, and South African Communist Party. Mandela was released on 11 February 1990. In late 1990, multi-party negotiations commenced, culminating in a government of national unity in April 1994. See Sparks, *Tomorrow is Another Country*.

<sup>81</sup>Amnesty International, *South Africa: State of Fear: Security Force Complicity in Torture and Political Killings, 1990–1992*, 12–7.

<sup>82</sup>See the testimony of Joe Mamasela (who was paid handsomely by the SAP to dissemble), Craig Williams, and Eugene de Kock in Pauw, *Into the Heart of Darkness: Confessions of Apartheid's Assassins*, 82, 86; and De Kock, *A Long Night's Damage: Working for the Apartheid State*, 188.

seemed linked to crimes of violence but that “no falsehoods or improbabilities” were found in police evidence and that “no hit squad was established at Vlakplaats [*sic*].” Despite the monumental deception, the Harms Commission performed at least one valuable service. In the words of Vlakplaas commander Eugene de Kock, who testified that “there was never a death squad at Vlakplaas,” the “hearings had revealed to the public the identities of too many people ... and lifted the lid on too many of our activities. The lefties and certain investigative journalists were beginning to smell blood.”<sup>83</sup>

In every respect the Goldstone Commission, appointed by President De Klerk in October 1991, surpassed its predecessor.<sup>84</sup> However, during its first year of activity, the Goldstone Commission struggled because its principal investigation team consisted solely of SAP. With no reliable means at its disposal of investigating the multitude of violent incidents being reported to the Commission, the veil of secrecy surrounding the security forces remained intact. As a result, the Commission issued an interim report in April 1992 that concluded: “the Commission has received no evidence which would suggest that there is a third force.”<sup>85</sup>

Nonetheless, with mounting allegations by the press and the ANC regarding the existence of a third force, and frustrated with its investigative structure, the Goldstone Commission decided to change direction. In October 1992, in a year marked by horrific massacres at Boipatong and Bisho, Goldstone received the green light from De Klerk to set up independent investigation teams. Five investigation units were assembled, which included thirteen members of the SAP, five foreign police officers, and ten practicing attorneys. Goldstone made a personal request for the assistance of SAP Major Frank Dutton, whose professional record impressed the judge.<sup>86</sup> Revitalized by this new structure, the Commission shifted its focus from examining specific incidents of violence to broader inquiries, such as the alleged activities of the security forces in relation to public violence and intimidation. Thus, when a newspaper story appeared in *Die Vrye Weekblad* on 30 October 1992 regarding Joao Cuna, a twenty-nine-year-old Mozambican who claimed that white men forced him to attack the homes of ANC sympathizers, the Commission decided to investigate.<sup>87</sup>

Goldstone entrusted the investigation to Dutton, who headed the Natal team. Goldstone also solicited the support of Colonel Henk Heslinga, a former member of Koevoet.<sup>88</sup> Goldstone’s investigators, following Cuna’s personal lead, tracked down hotel records and a Diners Club receipt that confirmed Cuna’s story.

<sup>83</sup>De Kock, *A Long Night’s Damage*, 189.

<sup>84</sup>Richard J. Goldstone served in South Africa’s most influential courts, including Judge of the Appellate Division of the Supreme Court and Justice of the Constitutional Court. In addition, he served as chief prosecutor of the International Criminal Tribunals for Yugoslavia and Rwanda.

<sup>85</sup>“Second Interim Report,” April 29, 1992, 5, GCR.

<sup>86</sup>Goldstone, *For Humanity: Reflections of a War Crimes Investigator*, 26–34.

<sup>87</sup>“Report on the Investigation Units of the Goldstone Commission,” November 26, 1993, GCR; and Goldstone, *For Humanity*, 32–40.

<sup>88</sup>In a recent interview, Heslinga revealed that he played a double role during this period. According to Heslinga, Police generals ordered him to act as their informant on the Goldstone Commission’s activities. See Potgieter, *Total Onslaught: Apartheid’s Dirty Tricks Exposed*, 250–51.

According to the receipt, the occupants represented a company called Africa Risk Analysis Consultants (ARAC). Through his powers of search and seizure, Goldstone learned from Diners Club that ARAC was the credit card company's largest customer. Following this evidence, Heslinga and attorney Torie Pretorius raided ARAC's headquarters, located in a Pretoria suburb.<sup>89</sup> ARAC, the investigators discovered, was a front for a division of Military Intelligence called the Directorate of Covert Collection (DCC). They also learned that the DCC continued to employ Ferdi Barnard as an informer. Barnard, one of Cuna's white accomplices, was a convicted murderer.<sup>90</sup>

Confirmation that third force operations against the ANC were indeed taking place undermined the government's position, provided impetus to direct negotiations between the National Party and the ANC,<sup>91</sup> and forced De Klerk to take decisive action. The President appointed General Pierre Steyn, head of the South African Air Force, to investigate the Commission's allegations. Steyn's briefing to the President, delivered several weeks later, prompted De Klerk to dismiss twenty-three military officers, including two generals, in December 1992.<sup>92</sup> The Goldstone Commission had delivered a significant blow to the culture of impunity built up by the security forces during the years of apartheid. Even more importantly, "it also opened the way for members of those forces to consider divulging information to the commission."<sup>93</sup>

Indeed, the final and most important of the Goldstone Commission inquiries resulted from the testimony of a disgruntled former member of Vlakplaas. Chappies Klopper, identified in Commission records at the time as "Q," first contacted a senior diplomat in the Danish embassy in Pretoria, who in turn contacted Goldstone in February 1994. In their first meeting, Klopper revealed to Goldstone that his former commanding officer at Vlakplaas, Eugene de Kock, remained actively involved in third force activities. The SAP ostensibly discharged De Kock in April 1993, but he continued to use a false passport to smuggle weapons into South Africa and sell them to Inkatha. Klopper further testified that Vlakplaas had indeed been involved in violence aimed at the destabilization of South Africa since 1989, and that several senior police officers, still serving at the highest levels of the SAP, supervised De Kock's operations.<sup>94</sup>

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<sup>89</sup>Pretorius, interview by author, 22 February 2007, Pretoria, South Africa.

<sup>90</sup>"Report into the Allegations Published by *Vrye Weekblad*: October 30, 1992," May 27, 1993, GCR; and Goldstone, *For Humanity*, 40–5. In 1997, Barnard was imprisoned for life for the murder of anthropology lecturer David Webster.

<sup>91</sup>See Sparks, *Tomorrow is Another Country*, chap. 13.

<sup>92</sup>"Staff Paper Prepared for the Steyn Commission on Alleged Dangerous Activities of SADF Components," December 1992. The author is indebted to Piers Pigou for sharing this report.

<sup>93</sup>Goldstone, *For Humanity*, 46.

<sup>94</sup>*Ibid.*, 50–1; "Interim Report on Criminal Political Violence by Elements within the South African Police, the KwaZulu Police and the Inkatha Freedom Party," March 18, 1994, 1–4, GCR. Klopper identified specifically three police generals who were involved—Krapppies Englbrecht, Basie Smit, and Johan le Roux.

To corroborate Klopper's testimony, Goldstone's staff immediately probed for records in the Department of Home Affairs in Pretoria regarding the use of false passports. Their investigation set off alarm bells in some quarters of the police hierarchy and triggered an official cover-up. For example, major general Krappies Engelbrecht, the then existing head of counter-intelligence of the SAP and identified by Klopper as one of De Kock's supervisors, ordered the destruction of all files pertaining to Inkatha involvement and instigated a search for any information that might be used to blackmail Goldstone. For Goldstone, these actions seemed to validate everything Klopper had told him.<sup>95</sup>

In the following weeks, Goldstone obtained additional information from Klopper as well as from other informants sent to Britain and Denmark under witness protection. He learned, for example, that De Kock received a large quantity of weapons from Koevoet in the late 1980s and transferred a substantial percentage of them to Inkatha; that De Kock and other Vlakplaas operatives, including the *askaris*, left the SAP with substantial pay-offs to keep them quiet; that in February 1994, De Kock, accompanied by major general Engelbrecht, approached the head of ANC Intelligence seeking indemnity; that the Security Police ordered the bombing of Khotso House in Johannesburg, where the offices of the South African Council of Churches and Black Sash, both prominent anti-apartheid organizations, were situated; and that Adriaan Vlok, the then Minister of Law and Order, raised a toast to the police officers responsible for the bombing of Khotso House at a Vlakplaas *braai* (barbeque).<sup>96</sup> "I must confess," Goldstone reflected, "that notwithstanding the criminality already uncovered, I was still shocked by some of the revelations coming to light."<sup>97</sup>

Goldstone's discoveries earned him national as well as international publicity. Six weeks prior to South Africa's first democratic elections, scheduled for 27 April 1994, he appeared at a joint press conference with De Klerk in Pretoria during which the state president announced the suspension of three police generals. However, as a result of his investigative accomplishments, Goldstone placed his own personal safety at significant risk. During the period of these sensitive inquiries, the Commissioner and his wife were the recipients of multiple death threats. Beginning in April 1993, Goldstone obtained 24-hour police protection that continued until mid-1998.<sup>98</sup> The Goldstone Commission had exposed the third force but the force's remnants still lingered in the shadows. Similar third-force side effects haunted Pine Ridge in the wake of the Oglala shoot-out.

<sup>95</sup>Goldstone, *For Humanity*, 50–2; and "Interim Report on Criminal Political Violence," 4–9, GCR.

<sup>96</sup>Goldstone, *For Humanity*, 53; and "Interim Report on Criminal Political Violence," 4–32.

<sup>97</sup>Goldstone, *For Humanity*, 53.

<sup>98</sup>Ibid., 47.

## CONCLUSION

On 24 February 1976, the body of Anna Mae Aquash, a major leader in AIM, was discovered in a gully near the town of Wanblee on the Pine Ridge Reservation.<sup>99</sup> The official report at the time, validated by an FBI agent on the scene, failed to identify the body and found no evidence of foul play. An autopsy performed the next day by a government-appointed pathologist ruled that “Jane Doe” died of exposure. Her hands were severed and dispatched to an FBI lab in Washington DC for identification. On 3 March, shortly after she was buried in an unmarked grave by order of the BIA police, the FBI reported that the deceased’s fingerprints matched those of Anna Mae Aquash. Aquash’s family and friends demanded an exhumation and a second autopsy, which was performed by a pathologist selected by WKLDLOC on 9 March. No sooner had he begun the autopsy, Dr Garry Peterson discovered a lump resembling a bullet in Aquash’s left temple. Turning the body over, Dr Peterson found a hole in the base of Aquash’s skull, surrounded by dried blood and gunpowder. As the second autopsy now clearly revealed, Aquash died as a result of “exposure to a .32-caliber, copper-jacketed bullet.”<sup>100</sup>

Nearly two decades later, a jury in Rapid City, South Dakota, convicted Arlo Looking Cloud, a low-level AIM member, of the murder of Anna Mae Aquash. Prosecution witnesses testified that AIM leaders had orchestrated the killing based on suspicions that Aquash was an FBI informant.<sup>101</sup> Yet, the bizarre circumstances surrounding her identification and autopsy leave many questions unanswered. Even if AIM carried out Aquash’s murder, her death also bears classic features of “snitch-jacketing” as well as an FBI cover-up. In the opinion of investigative journalist Steve Hendricks, both AIM and the FBI are equally blameworthy for her death. AIM may have pulled the trigger, but Aquash was also gunned down, in the words of Hendricks, “because the government of the United States waged an officially sanctioned, covert war on the country’s foremost movement for Indian rights.”<sup>102</sup>

Aquash’s murder, which occurred in the context of the government’s relentless destabilization campaign, symbolizes the decline of AIM. AIM imploded “under the weight of its own internal contradictions and divisions” as well as “a relentless legal assault.”<sup>103</sup> For their part, the FBI and the Pentagon succeeded in dismantling a modern Indian uprising, although they also served as accomplices to conditions of near anarchy on a reservation inhabited by some of the most impoverished people in the USA. Nonetheless, WKLDLOC, along with USCCR, kept the spotlight on governmental misconduct throughout this ordeal. By patiently and painstakingly

<sup>99</sup>Aquash, a Mi’ kmaq from Nova Scotia, participated in the Trail of Broken Treaties event in 1972 as well as the siege at Wounded Knee the following year. She earned great respect among the elders on Pine Ridge for her work in community development. Aquash was also subjected to intensive FBI surveillance after Banks dispatched her to the west coast in 1974 to revive AIM’s California chapter.

<sup>100</sup>Hendricks, *Unquiet Grave*, 7.

<sup>101</sup>Davey, “Member of Indian Movement Is Found Guilty in 1975 Killing.”

<sup>102</sup>*Unquiet Grave*, 360.

<sup>103</sup>Smith and Warrior, *Like a Hurricane*, 269.

representing over two hundred defendants in the Wounded Knee cases, and initiating a dozen civil suits against such entities as Dick Wilson and the FBI, WKLDOC also provided Indian people “a defense with dignity” during a time when racism and poverty conspired to deny justice for many Native Americans.<sup>104</sup>

WKLDOC also sustained AIM’s mission of championing Indian land rights and tribal sovereignty. WKLDOC attorney, Roger Finzel, who had been beaten senseless by Wilson’s Goons in early 1975,<sup>105</sup> said he knew AIM was victorious “when he went to Dick Wilson’s trial for the beating and saw goons in the courthouse reading the old treaties and speaking of their abrogation with the same learned outrage as AIMers.”<sup>106</sup> Before the decade was over, the Court of Claims awarded the Lakota Sioux \$17.5 million plus interest for the government’s violation of the Treaty of 1868. In 1980, the Supreme Court affirmed the Court of Claims ruling and awarded the Sioux \$106 million.<sup>107</sup> The Sioux Nation received the largest settlement in the history of Indian land claims. In the words of attorney Edward Lazarus, “after 100 years, the Sioux people had forced a legal and moral reckoning with their conquerors—and had vindicated their abiding sense of grievance.”<sup>108</sup>

Though beleaguered by the federal assault, AIM also played a significant role in the establishment of the United Nations’ IITC. Founded in June 1974 at the Standing Rock Sioux Reservation in South Dakota, the IITC was conceived of as a global response to treaty and land rights for all indigenous peoples. At that time, AIM activists took the lead in drafting a “Declaration of Continuing Independence” and of seeking membership in the United Nations. In 1977, the IITC became the first indigenous cohort to earn designation as a Non-Governmental Organization with Special Consultative Status in the UN. Continuing its advocacy to the present day, the IITC drafted the *Declaration of Indigenous Rights* in 2007, a forceful defense of indigenous self-determination.<sup>109</sup>

The ANC weathered its ordeal as well when it collected 62% of the national vote in South Africa’s election for a government of national unity in 1994. The ANC victory assured that Nelson Mandela, the international icon for liberation politics, would become the first black president of the republic. Yet, despite the ANC triumph, the transition from apartheid to democracy was tumultuous and the outcome far from inevitable. One of the Goldstone Commission’s key achievements was to keep the peace process alive when negotiations stalled, in particular through the continuation of inquiries that assisted in identifying the causes of the

<sup>104</sup>Northcott, interview by author, May 8, 2007, St. Paul, Minnesota. Karen Northcott is a former investigator for WKLDOC.

<sup>105</sup>The details of this beating may be found in WKLDOC MSS, Box 24.

<sup>106</sup>Hendricks, *Unquiet Grave*, 267.

<sup>107</sup>The Court of Claims also awarded the Sioux \$40 million in 1989 in the 1868 treaty case. To date, Sioux tribal councils have rejected the money judgments, and the awards continue to reside in the Treasury accruing interest.

<sup>108</sup>Lazarus, *Black Hills White Justice: The Sioux Nation versus the United States 1,775 to the Present*, 401. On the IITC see Lightfoot, “Leading But Not Dominating: How the International Indian Treaty Council Helped Forge International Change at the United Nations.”

<sup>109</sup>Miller, “Our Diplomatic Arm,” and Lightfoot, “Leading But Not Dominating.”

violence and in the identification of measures to be taken by the Government and other institutions in preventing future violence.<sup>110</sup> Furthermore, the Goldstone inquiries helped to shatter the unity of the far right, casting some groups deeper into the shadows but sending others on a frantic search for amnesty. In one significant instance, a right-wing security official even decided to join the political process. General Constand Viljoen, a former commander of the SADF, co-founded the Freedom Front party in March 1994. Although a consistent proponent of an independent Afrikaner state, Viljoen and his party nonetheless participated in the April 1994 elections, thus keeping “a significant section of the far right on the constitutional path.”<sup>111</sup>

In the end, by proving that South Africa’s security forces were deeply involved in criminal political violence, the Goldstone Commission laid the groundwork for the TRC. The TRC hearings between 1996 and 2001, along with various criminal trials during the same period, substantiated virtually every allegation put forth in the Goldstone Commission reports.<sup>112</sup> The TRC process also revealed that the security forces were not alone in perpetuating violence during apartheid and the transition, but demonstrated that “covert units of the state and its Inkatha ally were the main aggressors.”<sup>113</sup>

An equivalent truth commission did not convene to collect evidence on the FBI, AIM, and the reign of terror on Pine Ridge in the mid-1970s. The Church Committee might have spearheaded this inquiry, yet its preliminary investigation into these matters was stopped in its tracks following the Oglala shoot-out in June 1975.<sup>114</sup> Nonetheless, WKLD and the USCCR, much like the Goldstone Commission, initiated this investigative endeavor, encountered considerable adversity in doing so, and in the end succeeded in exposing official misconduct. Ultimately, these efforts toward transitional justice rendered a measure of accountability and strengthened the rule of law. “There must be accountability,” Goldstone’s chief investigator observed, “a standard for human rights and social justice. If not, those in power might be tempted to exceed their authority and commit crimes in the name of national security.”<sup>115</sup>

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<sup>110</sup>Du Toit, interview by author, March 9, 2007, The Hague, The Netherlands. J. J. Du Toit is the former counsel and member of the staff of the Goldstone Commission.

<sup>111</sup>Ellis, “South Africa’s Third Force,” 292.

<sup>112</sup>Goldstone, *For Humanity*, 57.

<sup>113</sup>Ellis, “South Africa’s Third Force,” 286. Cf. Jeffery, *People’s War*.

<sup>114</sup>McKiernan interview. The Church Committee was one of several Senate committees during this period investigating the legality of domestic intelligence activities. The work of these committees culminated in the passage of the Foreign Intelligence Surveillance Act in May 1977, which provided judicial and congressional oversight of the government’s covert surveillance operations. According to journalist Tim Weiner, passage of FISA meant that “the FBI’s ability to carry out secret intelligence operations was now governed by rules of law.” See Weiner, *Enemies: A History of the FBI*, 345.

<sup>115</sup>Du Toit interview.

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