

The Case of Leonard Peltier

Statement of Fact

By Attorney Jennifer Harbury

"Amnesty International considers Leonard Peltier to be a political prisoner whose avenues of redress have long been exhausted.... Amnesty International recognizes that a retrial is no longer a feasible option and believes that Leonard Peltier should be immediately and unconditionally released."

Amnesty International, April 6, 1999

"I have been reading in Leonard Peltier's book, and about an hour ago I spoke with him He is a remarkable person and the depth of his spirituality shows I would hope that the campaign to have him freed will succeed. I certainly support it very passionately Because it is a blot on the judicial system of this country that ought to be corrected as quickly as possible."

Archbishop Desmond Tutu, April 18, 1999

"(Regarding FBI use of falsified testimony) I have nothing on my conscience at all."

U.S. Prosecutor Lynn Crooks

We, the members and supporters of the Leonard Peltier Defense Committee, wish to express our grave concerns with regard to the denial of justice and due process to Mr. Leonard Peltier, and his ongoing detention at Leavenworth Penitentiary. Mr. Peltier has been incarcerated for twenty three years, despite the clear indications of misconduct, including the falsification of evidence, by various U.S. officials which lead to his conviction, as set forth below. He is now fifty four years of age and his health is beginning to deteriorate. We are therefore asking for your most urgent attention to this situation.

The facts of this case have long been the subject of intensive investigation and documentation. We wish to set forth the following summary for your convenience :

(1) On February 27, 1973, members of the American Indian Movement , or AIM, together with a number of local and traditional Native Americans began their seventy two day occupation of Wounded Knee. Their goal was to protest injustices against their tribes, violations of the many treaties, and current abuses and repression against their people. The United States government responded with a military style assault against the protesters. In the end, various officials promised hearings on local conditions and treaty violations. These hearings were never convened.

(2) Throughout the next three years, long referred to by local Native Americans as the "reign of Terror, the FBI carried out intensive local surveillance, as well as the repeated arrests, harassment and bad faith legal proceedings against AIM leaders and supporters. The FBI also closely collaborated with and supported the local tribal chairperson, Dick Wilson, and his selected vigilantes, the "Guardians of the Oglala nation, or quite literally, the "GOONS. Mr. Wilson was notorious for his corruption and abuse of power.

During this "Reign of Terror, some sixty-four local Native Americans were murdered. Three hundred were harassed beaten or otherwise abused. Virtually all of the victims were either affiliated with AIM or their allies, the traditional tribe members. The FBI had jurisdiction to investigate major crimes, and in fact the FBI to civilian ratio during this time frame was extraordinarily high. Yet these deaths were never adequately investigated and no prosecutions were brought.

Meanwhile, in the years after Wounded Knee, federal officials made 562 arrests of local residents, all AIM supporters or traditionalists. Only 15 of these ever lead to a conviction. Of those, five were against local supporters who had brought food into Wounded Knee during the occupation.

(3) After Wounded Knee, both Dennis Banks and Russell Means were brought to trial. The prosecution presented the testimony of a Mr. Moves Camp. This testimony was shown to be pure fabrication, with serious implications of FBI misconduct. The judge dismissed the case, declaring that "the waters of justice have been polluted. (383 F. Supp., pp.397-8). The jurors asked the U.S. Attorney General not to appeal the case. (New York Times 26 Sept. 1974, pg.55).

(4) In May of 1975 the FBI began a sizable build up of its agents, mostly SWAT members, on the reservation. In June 1974 SWAT teams from numerous divisions were designated for special assignment at Pine Ridge. Yet the politically related murder rate climbed. A June 1975 FBI memo referred to the potential need for military assault forces to deal with AIM members. Needless to say, tensions were running extremely high on all sides.

(5) On June 26, 1975 two FBI agents, Mr. Jack Coler and Mr. Ron Williams, entered the Jumping Bull Ranch, private property. They allegedly sought to arrest a young Native American man they believed they had seen riding in a red pick up truck. A large number of AIM supporters were camping on the property at the time. A shoot out began, trapping a family with small children in the cross fire. The more than thirty men, women and children present were surrounded by over 150 FBI agents, SWAT team members, BIA police and local posse members, and barely escaped through a hail of bullets. When the gun fight ended, a Native American named Joe Stuntz lay dead. His killing was never investigated. FBI agents Coler and Williams were also dead. They had been wounded in the gun fight and then shot point blank through the head by a still unidentified assailant.

(6) Clearly the killings of Mr. Stuntz and the two agents under such conditions represents a tragedy for all three the men and their families. However, it is equally clear that an

unfair trial and the 23 year imprisonment of an innocent man is also a great tragedy. More critically, such a situation endangers the most basic tenets of our system of justice. Official vengeance can never be allowed to replace the due process of the law.

(7) As noted by Judge Heaney of the Court of Appeals of the Eighth Circuit, in his 1991 letter to Senator Inouye, "The United States government overreacted at Wounded Knee. Instead of carefully considering the legitimate grievances of the Native Americans, the response was essentially a military one which culminated in the deadly firefight on June 26, 1975 The United States government must share responsibility with the Native Americans for the ... firefight ... the government's role can properly be considered a mitigating circumstance. Judge Heaney, in this letter, recommended clemency/commutation of sentence for Mr. Peltier as part of the healing process.

(8) Mr. Leonard Peltier was one of several high level AIM leaders present during the shoot out. Murder charges were brought against him, as well as his two friends and colleagues, Dino Butler and Bob Robideau, who had been present throughout the incident. Butler and Robideau stood trial separately from Leonard Peltier, who had fled to Canada, convinced he would never receive a fair trial in the United States. At the trial of Butler and Robideau a key prosecution witness, Mr. Draper, admitted that he had been threatened by the FBI and as a result had changed his testimony upon the agents, instructions, so as to support the government's position . There were other strong indications of misconduct as well. The jury found both men not guilty. They found that there was no evidence to link the defendants to the fatal shots. Moreover, the exchange of gun fire from a distance was deemed to have constituted an act of self defense.

(9) Mr. Leonard Peltier was extradited from Canada on the basis of an affidavit signed by a Myrtle Poor Bear, a local Native American woman known to have serious mental problems. She claimed to have been Mr. Peltier's girl friend at the time, and to have been present during the shoot out, and to have witnessed the murders. In fact she did not know Mr. Peltier, nor was she present at the time of the shooting. She later confessed she had given the false statement after being pressured and terrorized by FBI agents, one of whom had also been involved in the falsification of Mr. Moves Camp's testimony earlier. Myrtle Poor Bear sought to testify in this regards at Leonard Peltier,s trial. The judge barred her testimony on the grounds of mental incompetence. Nothing was done with regards to the illegal extradition. (Myrtle Poor Bear had also been forced to sign a similar affidavit against yet another local Native American named Dick Marshall. Again she claimed to have been his girl friend, and linked him to a separate murder. This too she recanted.)

(10) No known witnesses exist as to the actual shooting of the FBI agents Coler and Williams. Three young men testified to seeing Peltier, Robideau and Butler near the crime scene, after the agents, deaths. More importantly, all three witnesses had been

seriously threatened and intimidated by FBI agents. Not surprisingly, their testimonies were often self contradictory.

(11) Critical ballistic information was withheld from the defense team, making a fair trial impossible. Portions of this information were later obtained through the Freedom of Information Act litigation. Moreover, other key information was improperly ruled inadmissible. Specifically, at the trial, the FBI ballistic expert, Evan Hodge, testified that he had conducted an extractor mark test, and compared Leonard Peltier's AR-15 rifle with the .223 bullet casing found near the agents, car, and found them to match. Hodge based his testimony on a test performed in February 1976, some six months after receiving the casing and over four months after receiving the gun alleged to have been Mr. Peltier's. However, an FBI ballistic report showed that Mr. Hodge had tested the cartridges far earlier, in October 1975, and found that none of them matched the weapon alleged to be Mr. Peltier's. At trial, however, defense counsel was not permitted to tell the jury that the test showing that the gun and the casing were incompatible was performed first, and that the test "finding that the rifle and casing matched, was in fact performed much later as the prosecution put together its case.

More importantly, Mr. Hodge also testified at the trial that a firing pin test is a highly conclusive test in comparison to the extractor test, which is far less conclusive. He stated that due to fire damage to the rifle, the more precise type of test could not be carried out. He also stated that during the October testing, he had not yet examined the critical casing found near the agents, car. Later, documents obtained through the Freedom of Information Act showed that the October 1975 ballistic testing was in fact based on the more precise firing pin test, and that the results had been negative. However, the Freedom of Information Act files also included FBI documents stressing the urgency for testing the key casing at once, thus contradicting Mr. Hodge's claim that he had simply not gotten around to testing the key casing until six months after it was received. In short, the fatal bullet did not come from Leonard Peltier's weapon. The jury never heard about any of these crucial issues.

(12) Equally disturbing are the numerous discrepancies regarding the key vehicle in the case. Agents Williams and Coler had radioed that they were chasing a red pick up truck, which they believed was transporting a suspect. The chase led to the Jumping Bull Ranch and the fatal shoot out. At trial however, the evidence had changed to describe a red and white van, quite a different vehicle, and which not coincidentally was more easily linked to Mr. Peltier.

(13) The Court, at Mr. Peltier's murder trial, did not permit the jury to learn of the FBI's pattern and practice of using false affidavits and of intimidating witnesses in related cases. The jury was thus unable to properly evaluate the prosecution witnesses' testimony. In the trials of other AIM leaders, such evidence had been admitted.

(14) There was not witness testimony that Leonard Peltier actually shot the two FBI agents. There is no witness testimony that placed Mr. Peltier near the crime scene before the murders occurred. Those witnesses placing Peltier, Robideau and Butler near the

crime scene at any time were coerced and intimidated by the FBI. There is no forensic evidence as to the exact type of rifle used to commit the murders. Several different weapons present in the area during the shoot out could have caused the fatal injuries. There was more than one AR-15 in the area at the time of the shoot out. The AR-15 rifle claimed to be Mr. Peltier's was found to be incompatible with the bullet casing near the agents' car. Although other bullets were fired at the crime scene, no other casings or evidence about them were offered by the Prosecutor's office. In short there is no reasonable evidence that Mr. Peltier committed the murders. Instead there is very strong evidence of FBI misconduct.

(15) Some 6,000 FBI documents are still being withheld in their entirety from Mr. Leonard Peltier, as are some 5,000 partial documents. There is clearly no current reason to fear national security risks, or the disruption of ongoing investigations. Moreover, based on the critical nature of those documents which have been disclosed, such as the ballistic tests reports, it is reasonable to conclude that the remaining files would contain evidence that would help to establish Mr. Peltier's innocence. This situation violates his rights to access to the courts and to a fair trial.

(16) At the Peltier trial the Prosecutor claimed in summation that we proved that he went down to the bodies and executed those two young men at point blank range At the appellate hearing, the government attorney conceded "We had a murder, we had numerous shooters, we do not know who specifically fired what killing shots...we do not know, quote unquote, who shot the agents.

(17) At the murder trial the Prosecutor, referring to the murder weapon, stated that "There is only one AR-15 in the group. There is no testimony concerning any other AR-15 at Tent City or at the crime scene or anywhere else in the area Mr. Peltier's lawyers later filed a habeas corpus petition, claiming that the government had misled the jury by concealing evidence of other AR-15 rifles, and thus other potential murder weapons, at the crime scene. The same prosecuting attorney, before the Eighth Circuit Court in 1992, claimed that " ...I think its simply a misstatement of the trial that there was no evidence presented and it was suppressed as to other AR-15s at the scene

(18) Mr. Peltier has now served more than 23 years in prison. During this time he has suffered a stroke which left him partially blind in one eye. He now has a seriously debilitating jaw condition which leaves him unable to chew properly and causes consistent pain and headaches. The prison medical facilities cannot properly treat this condition, and two prison surgeries have only worsened matters.

(19) Mr. Peltier has served time for a significantly longer period of time than normally would be served before a grant of parole in similar cases. Yet the United States Parole Commission has made it clear that parole will not even be considered until the year 2008, some six years after the date Congress has set for abolition of the Parole Board. No adequate reason has been given for such arbitrary and discriminatory treatment. Instead, the Parole Commission stated the denial was based upon Mr. Peltier's participation in the "premeditated and cold blooded execution of these two officers." Yet, as noted, there is

no evidence that Mr. Peltier ever fired the fatal shots. This has been admitted by the government attorneys themselves. Yet various FBI agents, together with Prosecutor Crooks, were present to personally oppose Mr. Peltier's parole.

The only evidence against Mr. Peltier is the fact that he was present at the Jumping Bull ranch during the fatal shoot out. There were more than thirty others there that day as well. Yet Mr. Peltier is the only one who was ever sentenced and imprisoned. The FBI and other officials clearly singled out Leonard Peltier as a scapegoat, and forced him to pay the collective price for the killings which occurred, despite the lack of evidence against him. Personalized vengeance of this kind in U.S. officials cannot be tolerated.

Eight years ago, Federal Judge Heaney of the Court of Appeals of the Eighth Circuit, had written to U.S. Senator Inouye, supporting clemency/commutation of sentence for Leonard Peltier. "At some point a healing process begins. We as a nation must treat Native Americans more fairly.

(22) Disturbingly, the FBI has also been implicated in similar instances of grave misconduct in parallel cases. By way of example, Mr. Geronimo Pratt has only recently been released from prison after serving some 27 years for a crime he did not commit. It has been established that key evidence against him was falsified by the FBI. Mr. Pratt was a leader in the Black Panther party. It is now a matter of public record that the FBI COINTELPRO program considered such minority organizations to constitute a threat to domestic security, and routinely engaged in improper, unethical, and sometimes unlawful actions against them.

(23) Numerous internationally recognized human rights organizations, including Amnesty International, and civil rights leaders have called for the immediate and unconditional release of Leonard Peltier. Some of these statements are attached to this summary for your convenience.

(24) Based on all of the above, we seek your immediate intervention in this case. Our concepts of justice and good government require that such tragic errors of the past be set straight. We ask that you act to secure Mr. Leonard Peltier's prompt and unconditional release from prison, either by urging President Clinton to immediately grant clemency to Mr. Peltier, or in the alternative, by fully and properly supervising and advising the work of the U.S. Parole Commission with regards to this case. Past errors by U.S. officials are difficult to redress and much suffering has occurred. Leonard Peltier is no longer young, and his youth cannot be returned to him. Yet he still wishes to serve his people and contribute to his society. We ask that he be allowed to do so with freedom and dignity.

Thank you for your time and attention to this most urgent matter.

Help to Free An Innocent Man - Demand Justice Today!
FREE PELTIER!

