LEONARD PELTIER'S PETITION FOR EXECUTIVE CLEMENCY AND/OR COMMUTATION OF SENTENCE
(Meeting with Pardon Attorney and White House Staff Requested)

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Dated: February 17, 2016

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"T]he FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court [the 8th Circuit] decided that these actions were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency filed . . . We as a nation must treat Native Americans more fairly . . . Favorable action by the President in the Leonard Peltier case would be an important step in this regard." -- Eighth Circuit Judge Gerald Heaney's Letter to Senator Daniel Inouye, Chair Senate Committee on Indian Affairs (Apr. 18, 1991).

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"[W]e find that the prosecution withheld evidence from the defense favorable to Peltier, and that had this evidence been available to the defendant it would have allowed him to cross-examine certain government witnesses more effectively…" -- Hon. Gerald Heaney, *United States v. Peltier*, 800 F.2d 772, 775 (8th Cir. 1986).

* * * *

"Much of the government's behavior at the Pine Ridge Reservation and in its prosecution of Mr. Peltier is to be condemned. The government withheld evidence. It intimidated witnesses. These facts are not disputed." -- *Per Curiam* Judges Seymour, Anderson and Brorby, *Peltier v. Booker*, 348 F.3d 888, 896 (10th Cir. 2003).

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"**The use of the affidavits of Myrtle Poor Bear in the extradition proceedings [of Leonard Peltier from Canada to the U.S.] was, to say the least, a clear abuse of the investigative process by the F.B.I.**" -- Hon. Donald Ross, *United States v. Peltier*, 585 F.2d 314, 335 n.18 (8th Cir. 1978).

* * * *

I, LEONARD PELTIER, submit this Petition for Executive Clemency and the commutation of my sentences to the more than 40 years I have now served, to permit me to spend my last years at home on the Turtle Mountain Reservation. I am 71 years old, in poor health and I am one of the oldest prisoners at the USP Coleman 1, a maximum security federal

prison located in Coleman, Florida. To the best of my attempt to reconstruct my term of incarceration, I have spent more than five years of my prison term in solitary confinement.[1] On April 19, 1977, I was convicted by a jury in Fargo North Dakota of the murders of FBI Special Agents Jack R. Coler and Ronald A. Williams, and was sentenced to two consecutive life sentences. I was later sentenced to seven consecutive years for my escape from federal prison and for the possession of a weapon.

I have exhausted all appeals pertaining to my convictions and am next eligible to apply for a full parole hearing in 2024, if I live that long.

The murder convictions arise out of a shoot-out that occurred on the Jumping Bull property in Oglala, on the Pine Ridge Reservation in South Dakota, on June 26, 1975. Along with many other American Indians who were present that day, I fired shots in the direction of men whom I later learned were federal agents. At the end of a period of extended gunfire, three men lay dead: Special Agents Jack R. Coler and Ronald A. Williams, and American Indian Joe Stuntz.

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[1] During periods of solitary confinement, I often spent 23 hours of the day alone in a small cell, without any human interaction. Even in the one hour of release, I had little opportunity to interact with anyone. I was allowed telephone contact on a very limited basis, often restricted to one call per week. Over the years I was placed in solitary confinement for a number of reasons including: medical transfers, pending internal prison investigations, safety concerns, rules infractions and awaiting prison facility transfers.

In the decades since I started serving my sentence, the United Nations Human Rights Committee, the United Nations Committee against Torture and both the current and former United Nations Special Rapporteurs on Torture have concluded that solitary confinement like I experienced may amount to cruel, inhuman, or degrading treatment that violates human rights. While solitary confinement has never been held to be a ***per se*** Eight Amendment violation in the U.S. Courts, Supreme Court Justice Anthony Kennedy recently acknowledged that extended "near-total isolation exact[s] a terrible price;" quoting Dostoyevsky, he said: "The degree of civilization in a society can be judged by entering its prisons." *Davis v Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring).

I. Remorse

I will not re-argue my case. I accept the finality of the judgment of conviction in the federal courts for my role in the June 26, 1975 shootout that led to the deaths of FBI Special Agents Jack R. Coler and Ronald A. Williams.

I do not now, nor have I ever, minimized the pain that those who loved and were loved by Agents Coler and Williams have experienced. I pray that the pain of those left behind by Agents Coler and Williams will be lifted by the passing of time.

I regret that the continuing controversy surrounding my conviction causes the families of those lost to re-live the tragedy of June 26, 1975. I have, through my lawyers, reached out to the families of Special Agents Jack Coler and Ronald Williams.

I also mourn the loss of my good friend, American Indian Joe Stuntz, and the pain that his family continues to endure. I further mourn for the turmoil that was experienced by the Oglala Lakota Nation because of what happened that day.

In like manner, I lament for the pain of my own family, my children who grew to adulthood without their father, and for my grandchildren and great-grandchildren who barely know me.

I did not wake up on June 26 planning to injure or shoot federal agents, and did not gain anything from participating in the incident. I was on the Jumping Bull property to protect its residents, not to cause harm. At the end of the day, three young men lost their lives, many others were injured, families were traumatized, and lives were destroyed.

In my culture, we hold all life sacred. I do not now nor have I ever rejoiced at the loss of lives on June 26, 1975. As I have stated many times before, if I could have prevented this tragedy from occurring, I would have done so.

II. Mitigating Circumstances

A. My Background

My mother was Anishinabe (Ojibwa) and Dakota from the former Fort Totten (now Spirit Lake) Reservation in North Dakota, and my father was three-fourths Ojibwa and one-fourth French, from the Turtle Mountain Reservation, North Dakota.

My relative Shoon-ka-ska, "White Dog," was one of the "Mankato 38" who were hung on December 16, 1862 in Mankato, MN,-- the largest mass hanging in the history of the United States. Along with 303 other Dakota males, White Dog was convicted of various offenses at a military trial that lasted under 5 minutes, at which he was neither allowed legal representation nor permitted to offer a defense.

When I was a small child, I often heard elders speaking about the United States Government's attempts to revoke the tribal status of Indian Nations. The Klamath Nation of Oregon and the Menominee of Wisconsin had their statuses revoked and the elders believed that the Turtle Mountain Band of Chippewa Indians was vulnerable to the same action.

The very bones of our Red Nations are buried in every corner of the United States. The Government's breach of treaties and revocations of the tribal nation status of nations across the country were seen by traditionalists both as disrespectful and as a threat to our existence, as the first inhabitants and stewards of the lands.

At the age of 9, I was forcibly removed from my grandmother's residence --literally ripped from her loving arms -- and was taken to a boarding school run by non-natives. There, the staff attempted to strip us of our Indian culture, language and traditions. We were beaten for crying and for missing our families, and we were not allowed to speak with our family members when we passed each other in the halls -- my little sister and a cousin also were taken to the school.

Although many who attended the boarding school were "de-Indianized," the experience impacted me differently. Instead of rejecting my heritage, I came to embrace the traditional view that we all must respect our homeland -- Turtle Island -- and we must take action to protect and preserve our lands, language and traditions.

B. My Age, Health and Safety Concerns.

I am more than 71 years old, and I suffer from type two diabetes, high blood pressure, a heart condition, bone spurs in my feet, and permanent and constantly painful injuries to my jaw. I suffered a stroke in 1986 that left me virtually blind in one eye.

I am one of the oldest prisoners housed at Coleman 1, a maximum security prison, where there are frequent lock downs and incidents of violence.

Exhibit 1 to this Petition is a memorandum from Dr. Peter Basch that summarizes my current medical records and treatments. I suffer from many health conditions that can be better treated outside of a high security prison like Coleman 1, where I am housed.[2] That medical care will be available to me upon my release, assuming that I overcome my current health crisis.

On January 6, 2016, I was diagnosed with a life threatening condition -- a large and potentially fatal abdominal aortic aneurysm, which may rupture at any time and if it does, will result in my death. Prison doctors have advised me that the urgently required surgery itself carries serious risks, especially because of my age and other health conditions. My legal team is

[2] Some of the documents referenced in this Petition are annexed and marked as Numbered Exhibits ("Ex. ___"). These include a collection of letters of support for the Petition (Ex. 2) and documents relating to my Release Plans (Ex. 3). Among the letters pertaining to my Release Plans are submissions and resolutions from the Oglala Lakota Nation of Pine Ridge, South Dakota and the Turtle Mountain Band of Chippewa Indians in North Dakota. Both Nations have offered me residency, housing and medical care.

attempting to expedite my access to medical care. Coleman 1 is not a medical prison facility and does not have the capacity to treat my condition.

When I was transferred to USP Canaan from USP Lewisburg in 2009, I was brutally attacked by young gang members and was then returned to USP Lewisburg for my safety. I am physically unable to defend myself in a maximum security prison, let alone to threaten anyone with harm.

There are many statements attributed to me, which either I did not say or were taken out of context. I do not harbor malice towards anyone, and when released I will not engage in or incite violence against anyone. The last thing I want to do after spending over 40 years in prison and seeking freedom is to engage in any action that could land me back in jail. I am not a danger to anyone and would like to live my final years peacefully.

C. My Art and Charitable Efforts.

After my involuntary stay in boarding school, I made good on my pledge to myself to support the survival of Native cultures and traditions. Among many other efforts I stood by and with:

- the Western tribes as they struggled to hold on to fishing rights on the Nisqually River and in other traditional waters, at an area now known as "Frank's Landing," named after American Indian activist and recent Presidential Medal of Freedom recipient Billy Frank, Jr.;

- the Lac du Flambeau Chippewa Nation of Wisconsin, as they were confronted by angry protesters who challenged their right to spear fish;

- the Diné, as they took a stand against the strip mining of their sacred lands; and

- the American Indian Movement, when our people were being murdered in towns bordering Reservations, and no one was being held accountable, and law enforcement agencies refused to investigate the deaths.

In addition, I participated in a Native alcohol and drug abuse program, trying to breathe hope into our youth whom at the time, were taking their lives by suicide at twice the national average – a statistic which, unfortunately, is much higher today on the rural reservations across the country.

In my forty years in prison, I have tried to focus my energies on painting. As I have previously described it, we "are denied seeing Mother Earth and enjoying her, so we use some nice pictures for models and change them around … I like to express the beauty of my culture to the world—the colors of powwow, dancers, drummers, and crafts." For me, art is a means of expression and I enjoy sharing the beauty of my culture through my paintings.

To my surprise, people seem to like my paintings and actually have purchased a number of them. My artwork has been displayed all over the world. Attached as Exhibit 4 are a few representative examples of my paintings and a letter concerning them. Some of my paintings are based on or inspired by reference materials that were available to me in prison.

I have given many paintings to my legal defense committee and supporters, and they have used the proceeds of the sales of those works to fund a number of charitable projects that are very important to me. In addition, over the years I have taken advantage of many opportunities to help those in need, including:

- I have long sponsored an annual Christmas drive for clothing and toys for the children and families of Pine Ridge and Turtle Mountain Reservations. I have also sponsored similar drives for Head Start programs and women's centers.
- I work with other federal prisoners to have their works displayed nationally. I have also tried to initiate formal art programs for fellow prisoners.
- In 1992, I helped to establish a scholarship program at New York University for Native American students seeking law degrees.
- I have long served on the Advisory Board for the Rosenberg Fund for Children.

- I collaborated with Dr. Steward Selkin in efforts to plan a restructured health care delivery system on the reservations. A pilot program was initiated on the Rosebud Reservation in order to properly document needs and requirements for delivery and care. The result was the "Leonard Peltier Health Care Reform Package." Substance abuse programs are an important part of this proposal.

- I worked closely with Professor Jeffrey Timmons to establish a job creation/job training program to stimulate reservation economies and promote investments in Native American business enterprises. I also helped to start a youth entrepreneur program which helped reservation youths learn to establish and run their own businesses.

- I helped to establish and fund a Washington State Native American newspaper run by and for Native youth.

- I have sponsored two children through Childreach, one in El Salvador and one in Guatemala.

- I helped to organize an emergency food drive for the people of Pohlo, Mexico in response to the Acteal massacre there.

- I have donated artwork to raise monies for the ACLU, the Trail of Hope (a Native American program dealing with drug and alcohol addiction), World Peace and Prayer Day, the First Nation Student Association, and the Buffalo Trust Fund. I have also donated art to raise monies for books and encyclopedias for libraries on the Pine Ridge Reservation.

- In 1999 and 2000, I helped to facilitate and organize deliveries of several tons of Gerber baby food to various centers on Pine Ridge Reservation.

- After a devastating tornado struck Pine Ridge Reservation several years ago, I donated art to raise funds for desperately needed supplies.

- I have tried consistently to work with younger Native prisoners to teach them of their heritage and advocate for drug and alcohol free lifestyles.

- In March, 2010, I helped to organize an art benefit on behalf of earthquake victims in Haiti.

- I recently agreed to serve as an Art Judge for a competitive Art Challenge for Oglala Lakota youth, which will take place in the Spring of 2016.

I have been widely recognized for my humanitarian works and honored with the following:

- 1986 International Human Rights Prize, Human Rights Commission of Spain;

- 1993 North Star Frederick Douglas Award;

- 2003 Humanist of the Year Award, Federation of Labour (Ontario, Canada);
- 2004 Silver Arrow Award for Lifetime Achievement;
- 2009 First Red Nation Humanitarian Award;
- 2010 Kwame Ture Lifetime Achievement Award;
- 2010 Fighters for Justice Award;
- 2011 First International Human Rights Prize, Mario Benedetti Foundation (Uruguay);
- 2015 Defender of Pachamama (Mother Earth), awarded by President Evo Morales of Bolivia; and
- In 2009, for the sixth consecutive year, I was nominated for the Nobel Peace Prize.

D. Release Plans

The Turtle Mountain and Pine Ridge Reservations both have offered to provide me with housing and access to medical care to address my medical conditions, which require more care than the Bureau of Prisons is able to provide. (*See*, Exhibit 3). I am grateful to those communities for offering to accept me with open arms and support.

I hope to reside on the Turtle Mountain Reservation, where I will spend time getting reacquainted with my family, including my children and grand children who barely know me.

Painting will remain an essential part of my life and I will continue to share my culture and beliefs through this form of expression. (*See* Exhibit 4). I am interested in supporting programs that teach the rising generation about our rich Native heritage and culture.

Of course, after four decades in prison many things have changed and the transition, no doubt, will at times be difficult. Although I used to work as an auto mechanic, cars and technology have substantially changed over the years, and as a result, I will have much to learn in this field and others.

With the support of the many Native communities that have stood by be for so long, however, I am confident that I can and will continue my charitable works and painting, and that I will have the necessary support to make as smooth and peaceful a transition as possible. I will work as hard as I can to give back and to show my gratitude to the many people around the world who have stood beside me for four decades.

If granted Clemency, I will seize the opportunity as a new beginning and a chance to give back in the remaining years of my life.

E. Other Mitigating Factors

There are many circumstances and events that led up to and followed the gunfire of June 26, 1975, which provide essential context and explain my own actions, the actions of my co-defendants and the other American Indians, and the actions of law enforcement agents who were involved in the tragic events of June 26, 1975. The historical context and the chronology of how the events and evidence unfolded illustrate and explain why the controversy over my prosecution and conviction continues 40 years later -- particularly among humanitarians, scholars and the American Indian community.

During the time period, the American Indian Movement (AIM) was misunderstood by federal authorities, whom interpreted its protests about federal action and inaction as a threat to national security.[3] In fact, AIM's goal was to protest and bring attention to, among other things: the poor quality education provided to Indian students; the Bureau of Indian Affairs ("BIA's") funding cuts for already failing native schools; inadequate health care; the mining and takings of

[3] See, October 2, 1972 Airtel, Acting Director, to SAC Albany, "AMERICAN INDIAN MOVEMENT; EXTREMIST MATTERS, EXTREMIST INFORMANTS." (Ex. 5).

sacred lands; continuing violations of Treaties by the U.S. government; and many other avoidable injustices facing Natives across the country.

In some ways, over the four decades that I have been imprisoned, things have improved for the Oglala Lakota and other tribal communities, but the fundamentals of poverty, unemployment, threats to sacred lands and lack of essential services still plague many reservations. The alarming incidents of youth suicides indicate that real and continuing pain still exist throughout Indian Country. This is most evident among the Oglala Lakota Nation on the Pine Ridge Reservation, where residents continue to feel the affects of the 1970s events in the community and still face discrimination in various forms.

I am grateful to President Obama and his Administration for recognizing the important role of America's first peoples, for doing more than any other to begin the process of reconciliation with Indian Country, and for encouraging Native Youth to achieve and seek and pursue leadership opportunities.

I respectfully submit that the circumstances surrounding my case, however, are emblematic of the economic desperation and the worldview of society towards the American Indians in the 1970s -- it was a different time under the leadership of different people and greatly influenced by poverty and society's perceptions of the time. Many who may oppose my release were born decades after the relevant events took place, are not American Indian and never lived through the 1960s and 1970s.

The events of June 26, 1975 and the deaths of Special Agents Coler and Williams occurred in the wake of the 1973 Wounded Knee occupation. It was a very violent time on the Pine Ridge Reservation, the home of the Oglala Lakota Nation. The Reservation was the murder capital of the nation, if not the world.

Some may not look beyond my convictions of "murder in the first degree," to discover that although my case was tried on the theory that I was a "cold blooded murderer" who shot the two FBI Agents at "point blank" range, years later prosecutors retracted that theory of the case, and defended the verdict on a thin "aiding and abetting" theory -- when confronted by the exculpatory ballistics reports which they had withheld from my attorneys at trial, and which were uncovered only through Freedom of Information Act (FOIA) litigation.

My conduct was the same as many other American Indians who were present on the Jumping Bull property on June 26, 1975, and who also fired their weapons. Only three of us were prosecuted – all AIM members. My two co-defendants who went to trial before me were allowed to present evidence of the circumstances surrounding the event, and they were acquitted on the ground of self-defense. I was not allowed to bring that and other relevant information before the jury in my trial (before a different judge), and I was convicted and then sentenced to two consecutive life sentences.

Although exculpatory evidence and evidence of improper government actions discovered by my attorneys over the years did not result in a new trial or a reversal of my conviction in the federal courts, I respectfully submit that the finality of my conviction should not be interpreted as an endorsement *of the means that were employed by the government to achieve the result.*

In 1991, Eighth Circuit Judge Gerald W. Heaney, who sat on two appellate panels that reviewed my case at different stages, wrote to then Senator Daniel K. Inouye of the Senate Committee on Indian Affairs, identifying several factors that he believed should be taken into consideration in an Executive leniency application:

> "First, the United States Government over-reacted at [the 1973 siege of] Wounded Knee. Instead of carefully considering the legitimate grievances of the Native Americans, the response was essentially a military one which culminated in the firefight on June 26, 1975…

> Second, the United States Government must share the responsibility with the Native Americans for the June 26, 1975 firefight. It was an intense one in which both government agents and Native Americans were killed. While the government's role in escalating the conflict into a firefight cannot serve as a legal justification for the killing of the FBI agents, … it can properly be considered as a mitigating circumstance.
>
> Third, the record persuades me that more than one person was involved in the shooting of the FBI agent…
>
> Fourth, the government used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court decided that these actions were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency filed.
>
> Fifth, Leonard Peltier was tried, found guilty and sentenced. He has now served more than 14 years in the federal penitentiary.
>
> *At some point a healing process must begin. We as a nation must treat Native Americans more fairly. To do so, we must recognize their unique culture and their greatest contributions to our nation. Favorable action by the President would be an important step in this regard."* (emphasis added) (Ex. 6).

My Petition urges you, Mr. President, to examine all of the circumstances surrounding my prosecution and conviction, and notwithstanding the anticipated institutional objection, to conclude that after 40 years of imprisonment, justice has been served for the deaths of Special Agents Jack R. Coler and Ronald A. Williams, and that the time is right for law enforcement's and the families' interests to be balanced against important principles of justice, healing and reconciliation with America's first peoples.

III. The Historic Landscape At the Time of My Trial

My case cannot be evaluated without understanding the facts, tensions and struggles of the Oglala Lakota Nation on the Pine Ridge Reservation in the 1970s. Some of the facts and history can be found in the court decisions, but most of the background is missing from those decisions.

A. Pine Ridge Reservation in the 1970s

The Pine Ridge Reservation in South Dakota exceeds 4,500 square miles (roughly the same land mass as that of Connecticut), and at the time had very little infrastructure, no public transportation and only one hospital. By 1973, about 70 percent of those on Pine Ridge were unemployed and the life expectancy was 44 years -- 30 years less than that of white persons. While the BIA and other federal agencies billed American taxpayers over $8,000 a year per Oglala Sioux family, the medium income there was less than $2,000.[4]

The economy and lack of infrastructure were not the only problems faced by the Oglala Lakota Nation. In the 1970s the prevailing worldview of American Indians in the Plains states (and beyond) was one of unapologetic racism and intolerance. The unfortunate apathy of law enforcement for the protection of Native Americans was well-documented by the United States Civil Rights Commission as well as South Dakota's Civil Rights Advisory Committee – both of which authored reports calling for reform – reports that the state's Governor dismissed as "garbage."[5] Repeated requests for evaluation and intervention to improve conditions between Natives and law enforcement went unaddressed for decades.[6]

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[4] Hinds, Lennox, *Illusions of Justice: Human Rights Violations in the United States*. Iowa City: University of Iowa, 1978. pp. 270-271.

[5] "Janklow Calls Perceptions of Civil Rights Violations 'Garbage,' http://indiancountrytodaymedianetwork.com/2000/04/12/janklow-calls-perceptions-civil-rights-violations-garbage-86640; last accessed 11/21/2015.

[6] At the time of the incident the Church Committee, led by Iowa Senator Frank Church was about to launch an investigation into the FBI's relationship and investigation of the American Indian Movement, but that investigation was postponed indefinitely after the events of June 26, 1975.

On July 9, 1975, U.S. Civil Rights (USCR) Specialist William Muldrow issued a report and recommendation after being sent to monitor the FBI's conduct on the Pine Ridge Reservation following the June 26, 1975 incident at Oglala. His recommendation was ignored. (Ex. 7).

On July 24, 1975, U.S. Civil Rights Commissioner Flemming officially asked the United States Attorney General to initiate an investigation into the activities of the FBI in South Dakota. (Ex. 8).

(footnote continued).

This is neither to cast blame nor to justify the deaths that occurred on June 26, 1975, and before, but rather, to explain the context.

B. The 1973 Occupation of Wounded Knee

The basic facts of this event are undisputed; they are a part of American History. In 1973, Native American activists on the Pine Ridge Reservation formed the Oglala Sioux Civil Rights Organization ("OSCRA") to challenge the corrupt leadership of the then-tribal-chairman Dick Wilson. Among many other things, Wilson banned AIM members from speaking at public tribal meetings, allegedly diverted funds to family members, and planned to transfer part of the

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(footnote continued from previous page).

On March 31, 1976, the USCR Regional Director Shirley Witt and Muldrow recommended the Commission renew its request for intervention from the U.S. Attorney General on Pine Ridge Reservation, where the FBI's investigative procedures gave "every appearance of being a full-scale military-type invasion on the reservation." (Ex. 9).

In October 1977, South Dakota's Advisory Committee to the US Commission of Civil Rights issued a report that found great deficits in interactions between law enforcement and Natives and recommended the creation of citizen review boards to handle complaints of police misconduct, increased training and the creation of a statewide database to monitor civilian complaints. (See *Liberty and Justice for All: 1977 Report of the S.D. Advisory Committee to the US Commission on Civil Rights.)* https://www.law.umaryland.edu/marshall/usccr/documents/cr12l61.pdf, last accessed 12/9/15.

In June 1981, the U.S. Commission on Civil Rights issued a comprehensive report on the problems in Indian Country and recommended that DOJ reconstitute an Indian section within the Civil Rights Division. (See *Indian Tribes: A Continuing Quest for Survival.)* http://babel.hathitrust.org/cgi/pt?id=uiug.30112041833440, last accessed 12/9/15.

In March 2000, the South Dakota State Advisory Committee found extreme distrust of the FBI among American Indian communities, with "little to no confidence in the criminal justice system and the belief that the administration of justice at the Federal and State levels is permeated by racism." It further noted "*the expressed feelings of hopelessness and helplessness in Indian Country cannot be overemphasized. There is a longstanding and pervasive belief among many Native Americans that racial discrimination permeates all aspects of life in South Dakota…. [d]espair is not too strong a word to characterize the emotional feelings of many Native Americans who believe they live in a hostile environment"* (emphasis added) The Committee concluded "it is imperative that there be a component within the Civil Rights Division with an exclusive interest in Native American discrimination issues… An Indian civil rights section would be responsive to the unique issues of Indian Country discrimination." The Committee also called for the state to strengthen its hate crimes: "hate crimes prevention legislation needs to be enacted at the State level and strengthened at the Federal level to respond to egregious crimes involving racial bigotry." (See *Native Americans in South Dakota: An Erosion of Confidence in the Justice System)* http://www.usccr.gov/pubs/sac/ sd0300/ main.htm, last accessed 12/9/15.

remaining tribal lands to the National Park Service. Met with resistance to his policies, Chairman Wilson called for help from the FBI, whose agents then joined ranks with Wilson's violent protection squad, the Guardians Of the Oglala Nation ("GOONS")[7], a group funded, in part, by a Bureau of Indian Affairs grant for a "tribal ranger" force.

On February 27, 1973, members of AIM, together with a number of local and traditional Native Americans, began their 71-day occupation of Wounded Knee. The goal was to protest injustices against their tribes, expose corruption on the reservation, and to call attention to ongoing violations of the many treaties tribal communities had entered into with the United States government, and other abuses of and repression against our people.

The Wounded Knee siege escalated, in part, due to the FBI's alliance with the corrupt Wilson Administration and the GOON Squad. FBI SAC Richard Held, head of the Domestic Security Section, was brought in from Chicago, where he previously ran the Bureau's infamous COINTELPRO investigations. By April 21, 1973, the FBI had 158 field and supervisory agents at Wounded Knee.[8]

The siege ended upon a negotiated settlement on May 7, 1973, leaving two AIM members dead, 12 seriously wounded, 12 "missing," and suspected by many of having been killed by tribal Chairman Wilson's GOONS.

The FBI then launched what we later learned was an effort to arrest all AIM members and associates. Just three days before the negotiated settlement, on May 4, 1973, FBI offices across the country were directed to initiate investigations of all AIM leaders, membership and

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[7] The Guardians of the Oglala Lakota Nation called themselves "the GOONS" or "the GOON Squad."

[8] See, 4/21/73 Teletype, SAC Minneapolis to Director, Re: "WOUNDED KNEE," p.4 (Ex. 10).

finances, and to investigate "all AIM members and unaffiliated Indians arrested or involved in the takeover of Wounded Knee." They were further directed to consider them for designation as "key extremist[s]."[9] The FBI's stated goal was to engage all Wounded Knee participants in court proceedings through the summer months in order to "inhibit[] their activities."[10]

C. Means and Banks Trials

Among the hundreds of *unsuccessful* cases initiated by the FBI against AIM members and supporters who participated or assisted in the Wounded Knee occupation, was the trial of AIM leaders Dennis Banks and Russell Means, before federal District Judge Fred Nichol. Means and Banks were charged with over 30 federal offenses that potentially exposed them to over 150 years of imprisonment.

The crux of the government's case revolved around the testimony of former AIM member Louis Moves Camp, who testified about alleged events at Wounded Knee from the beginning of the occupation to its end. During that time period, however, Moves Camp was actually in the state of California, and not at Wounded Knee.[11] When Judge Nichols discovered that FBI agents had testified falsely in his court, that many documents crucial to the defense had been withheld and that altered versions had instead been submitted to defense attorneys by the prosecuting attorneys, the judge took the unprecedented step of impounding all FBI files.

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[9] See, Airtel dated May 4, 1973 from the Acting Director of the FBI, under the topic of "American Indian Activities Extremist Matters" (Ex. 11).

[10] See, Memorandum dated June 25, 1973. from R.F, Bates to Gebhardt regarding "WOUNDED KNEE." *See also*, June 21, 1973, Teletype from Minneapolis to Acting Director regarding "WOUNDED KNEE," p.3 (these related documents are attached together as Ex. 12).

[11] Moves Camp allegedly was involved in criminal activities in other states and agreed to provide the testimony if a Wisconsin prosecutor would drop rape charges pending against him. *See*, Sayer, John William, *Ghost Dancing the Law: The Wounded Knee Trials.* Harvard University Press, 1997.

Ultimately, Judge Nicol dismissed the charges against Means and Banks due to government misconduct, which he concluded was "so aggravated that a dismissal must be entered in the interests of justice." *United States v. Banks*, 383 F. Supp. 389, 397-398 (D.S.D. 1974):

> Although it hurts me deeply, I am forced to the conclusion that **the prosecution in this trial had something other than attaining justice foremost in its mind**... The fact that the incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice. The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution in this case." (emphasis added).

This case and the many other bad faith prosecutions that were brought by the federal government in the post-Wounded Knee years, led to a complete breakdown of any trust whatsoever between American Indian communities and federal law enforcement.

D. The Reign of Terror – Pine Ridge a Murder Capital

During the three years following the Wounded Knee siege -- a period that became known in the Oglala Lakota Nation as the "Reign of Terror"-- Pine Ridge Reservation was the murder capital of the nation, and perhaps the world.[12] According to a South Dakota Civil Rights Task Force report, in the 5-month period preceding the 1975 shooting deaths of FBI Special Agents Coler and Williams, more incidents of violence were reported on the Pine Ridge Reservation than in the rest of the state of South Dakota combined.[13]

Tribal Chairman Wilson's GOONS regularly harassed, beat or otherwise physically abused hundreds of residents affiliated with AIM, AIM allies, and traditional tribal members

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[12] Between March 1, 1973 and March 1, 1976, the per capita murder rate on Pine Ridge was 170 per 100,000. By comparison, Detroit, Michigan (at the time, considered the murder capital of the United States) had a rate of 20.2 per 100,000. Johansen and Maestas, *Wasichu: The Continuing Indian Wars.* 1979, pp 83-84.

[13] March 2000 Report, "*Native Americans In South Dakota: An Erosion of Confidence in the Justice System*" http://www.usccr.gov/pubs/sac/sd0300/ch1.htm, last accessed 12/9/15.

who opposed his actions. More than 50 AIM members and allies died through violence --bodies were found along roadsides or deposited in areas immediately adjacent to the Reservation -- and more than 300 other AIM members or allies were victims of violent assaults. Despite its jurisdiction over major crimes on the reservation, the FBI did not take any significant measure to curb the daily violence of the GOON Squad on the Reservation; instead, the Bureau continued to closely collaborate with the GOON Squad.

As was later reported by the U. S. Civil Rights Commission, the Wounded Knee veterans and other AIM members and associates on Pine Ridge Reservation had "a genuine fear" that the FBI was "out to get them."[14] Years later we learned through government records that:

- On April 24, 1975 the FBI began preparing to conduct "paramilitary operations" on the Pine Ridge Reservation particularly against the AIM.[15]

- By late May 1975, there was a build-up of FBI personnel in and around the Reservation, of mostly SWAT-trained agents.[16]

- FBI Agents falsely reported to supervisors on June 5, 1975 that AIM members had built "bunkers" which "would literally require military assault forces if it were necessary to overcome resistance emanating from the bunkers."[17]

Many of the FBI's inflated threat assessments referred to AIM members as "insurgents," and the supposed "bunkers" which reportedly would require military weaponry to overcome

[14] Report of William Muldrow, U.S. Commission on Civil Rights, Rocky Mountain Regional Office, July 9, 1975, p. 2, (Ex. 7). See, also, Report of the U.S. Commission on Civil Rights, March 31, 1976, p. 4, (Ex. 9).

[15] See, April 24, 1975 Memorandum, Gebhardt to O'Connell, "The Use of Special Agents of the FBI in a Paramilitary Law Enforcement Operation in the Indian Country" (Ex. 13).

[16] See, e.g., May 22, 1975 URGENT FBI Teletype, from SAC (Ex. 14).

[17] 6/5/75 FBI Memorandum to H.N. Basset, as quoted and cited in 7/8/75 FBI Memorandum, H.N. Bassett to Mr. Callahan, "RESMURS; PRESS COVERAGE CLARIFICATION," p. 1 (Ex. 15).

were nothing more than abandoned root cellars, mounds of dirt and/or broken down corrals that were present in the area before and after our arrival.[18]

Through FOIA litigation years later I discovered that by February 25, 1975, the Bureau's field offices were directed to be alert for my presence.[19]

In June of 1975, due to violence and despair, the traditional Lakota Chiefs and Headsman on the Pine Ridge Reservation declared their independence from the corrupt tribal government and asked the AIM for its assistance and protection. Along with fellow AIM members Robert Robideau and Darrelle Butler (who would later become my co-defendants), I responded to the request to help protect the elder leadership of the Lakota. We joined others in an encampment that was set up on the Jumping Bull's property, a few miles from the community of Oglala.

On June 16, 1975, the FBI increased its manpower by ordering additional Special Agents into South Dakota for a temporary 60-day period. This build up and the presence of SWAT units that appeared to be collaborating with Wilson's GOON Squad added to an already very tense situation. In this hostile environment, violent assaults, murders and drive-by shootings were common.

IV. The Events of June 26, 1975 and Subsequent Investigation

A. June 26, 1975

It is against this background of fear and violence -- including the unresolved violent deaths of more than 50 AIM members and the violent assaults of hundreds others -- that the events of June 26, 1975 took place.

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[18] See, U.S. Civil Rights Commission's Muldrow Report dated July 9, 1975, p. 2 (Ex. 6).

[19] See FBI Memorandum dated February 25, 1975 (Ex. 16).

On June 26, 1975, FBI Special Agents Jack Coler and Ronald Williams drove separately onto the Jumping Bull ranch -- private property on the reservation -- apparently seeking to arrest a young Indian man. I heard shooting, grabbed my rifle and ran towards a residence where there were women and children, but quickly ran in another direction because my presence had attracted additional gunfire to the area. By the government's own estimates there were over 40 Natives present, and many were shooting.[20]

Eventually we were surrounded by over 100 armed FBI agents, SWAT team members, BIA police, and the GOON squad. I fled with others, and we dodged sniper fire for several hours as we made our way from the area. I never had the sense that there was any attempt by anyone to apprehend us, only that people were trying to kill us.

At the end of the extensive gunfire, three people lay dead: FBI Special Agent Jack A. Coler, FBI Special Agent Ronald A. Williams, and Native American Joe Stuntz.

In the forty years since June 26, 1975, I have consistently said the following:

> I was present during the tragic shoot-out on the Jumping Bull property in Oglala on June 26, 1975 and along with many others I shot my weapon, returning fire in self-defense.
>
> My actions on June 26, 1975, were no different than those of my co-defendants Robert Robideau and Dino Butler, who were acquitted in a separate trial on the same Indictment before a different judge on grounds of self-defense.
>
> My actions on June 26, 1975, were no different than many other American Indians who discharged their weapons and were not charged with any wrongdoing.
>
> I do not know who fired the first shot that day.
>
> During the gunfire of June 26, 1975, I did not know that the people shooting at American Indians from the two unmarked cars were FBI agents.

[20] See, e.g., 7/5/75 FBI Memorandum, B.H. Cooke to Mr. Gebhardt, "RESMURS", p. 1 (Ex. 17).

> I fled to Canada immediately after the incident because I heard from friends on the Reservation that federal agents were targeting me for prosecution -- I did not believe that I would get a fair trial.
>
> I did not "confess" to intentionally killing FBI Special Agents Jack Coler and/or Ronald Williams at close range in cold blood, as has recently been argued by the government based upon the testimony of the government's cooperating witness in an unrelated criminal case that I've never had the chance to confront or contest.

B. The FBI's Investigative Actions Following the Deaths of Agents Coler and Williams

The gunfire that erupted on June 26, 1975 and the deaths of two Special Agents triggered what we later learned was the FBI's plan for "paramilitary" intervention on the Pine Ridge Reservation. In the days and weeks following the shootings, the Pine Ridge Reservation was swarmed by hundreds of FBI agents. As with Wounded Knee 1973, FBI operations were immediately placed under the command of former COINTELPRO Agent Richard Held, of the Section 1S-1, a domestic security section of the FBI's intelligence division. The investigation was named "RESMURS," for Reservation Murders.

On June 23, 1975, just three days before the gunfire in Oglala, the Senate's Select Committee on Intelligence (the Church Committee) had scheduled hearings to investigate the relationship between the FBI and the AIM, in the wake of the Wounded Knee 1973 occupation and the FBI's intervention. According to an FBI memorandum dated June 27, 1975, (the day after the firefight), the investigation was postponed indefinitely.[21]

In the following weeks, the Director of the FBI became concerned about inconsistent reports that were emerging in the FBI's reports of the incident. Apparently an autopsy report found that Special Agent Williams died from "the first bullet at close range," whereas an FBI teletype dated June 29, 1975 reported that Williams had reported over the FBI radio to fellow

[21] See, FBI Memorandum dated June 27, 1975 (Ex. 18).

agents that he had been hit by a bullet; obviously, both reports could not be accurate. Accordingly, FBI Special Agents were directed by supervisors to quickly assemble at the Rapid City command post, and to "resolve any inconsistencies" in their reports.[22]

Although there were many people involved in the June 26, 1975 gunfire, SAC Richard Held decided early on to focus on charging me with the murders, because I was at the scene and known to the FBI as a person of interest. On July 7, 1975, Held reported to the Director and others that although agents believed that I had been wounded and might be dead, agents were authorized to proceed against me. Held wrote: "even though Peltier might be deceased, much benefit could be obtained from national press showing *the type of individuals the agents faced in battle*." (emphasis added).[23] The following week, agents reported up the line that they were working to develop additional information and confidential informants "to lock Leonard Peltier … into this case."[24]

Immediately after the gunfire, the United States Civil Rights Commission dispatched specialist William Muldrow to observe the events on the reservation. He contemporaneously reported: "The FBI immediately launched a large scale search for the suspected slayers which has involved 100 to 200 combat-clad FBI agents, BIA policemen, SWAT teams, armored cars, helicopters, fixed-wing aircraft and tracking dogs." (Ex.7). According to Muldrow, the aggressive national response to the deaths of the two FBI agents -- in stark contrast to the

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[22] See, FBI memorandum dated June 30, 1975 B.H. Cook to Mr. Gebhardt and others, Re: RESMURS (Ex. 19).

[23] See, FBI Teletype dated July 7, 1975 from SAC Richard Held to Director and others "RESMURS" Daily Report, p. 3-4 (Ex. 20). Agent Held's report indicates that I had "a record" for attempted murder of a police officer. Although an attempted murder charge was pending against me in Wisconsin for a fight at a bar with an off-duty police officer, those charges ultimately were dismissed when the officer's girlfriend testified that the police officer had shown her my photo and boasted he was helping the FBI "catch a big one."

[24] See FBI Teletype dated July 17, 1975, at 2 (Ex. 21).

apparent disregard by the Bureau for the deaths of more than 50 American Indians in the prior two years and the death of American Indian Joe Stuntz in the same incident -- further eroded relations between the FBI and the Lakota community and led many to believe that American Indian lives were viewed by federal authorities as having a lower value. (*Id.)*

Muldrow reported on July 9, 1975, that many of the FBI's statements to the press about the situation and its investigation were "either false, unsubstantiated or directly misleading" and that FBI's response was troublesome. Specifically, he reported:

- warrantless searches of many residences, and FBI and BIA Police acting in an "abusive" and "threatening" manner;
- custodial detentions of people without cause;
- A defense attorney present at the location of one of the FBI's warrantless searches of a residence was physically restrained by the FBI until the conclusion of the search, to prevent him from taking action to stop the search;
- there was a "genuine fear" among AIM members and associates that the FBI was "out to get them" for their participation in the 1973 Wounded Knee occupation[25];
- federal authorities made "patently … false, unsubstantiated or directly misleading" statements to the press about the events and the atmosphere on the reservation – including "highly inflammatory" false or unsubstantiated statements.[26] Among other things:
    - "Bunkers" described by the FBI to the press were, in fact, "aged root cellars;"
    - "Trench fortifications" described by the FBI to the press were, in fact, "non-existent;"

[25] Years later we discovered through government records that AIM members and associates were, indeed, targeted for their participation in Wounded Knee 1973. (Ex. 12).

[26] On June 27, 1975, FBI Public Information Specialist Tom Coll falsely reported to the press that the FBI agents were "lured into an ambush" where they were wounded and "dragged from their cars" before being "riddled" by "15-20 rounds each" from "automatic weapons" as they were "begging for their lives," having been "stripped" as part of their "executions." See, Weisman, Joel E. "*About that 'Ambush' at Wounded Knee,"* Columbia Journalism Review, Sept-Oct 1975. On July 1, 1975, FBI Director Kelley retracted the above reports at a press conference in Los Angeles. (See "News Conference of Clarence M. Kelley, Director, Federal Bureau of Investigation, at Century Plaza Hotel, July 1, 1975.")

- residents felt that if American Indians had the authority to conduct the investigation and were the accusers, then many of the events never would have happened, and also felt that the FBI's action "typifies the unequal treatment often given to Indian people;"

- federal agents had "remarkably little understanding of Indian society," were visibly upset and appeared to be motivated to hold someone accountable, possibly to a flaw.

Muldrow concluded in his report that the complaints of over-reaching coming from the Oglala Lakota community were *"sufficient[ly] credi[ble] to cast doubt on the propriety of the actions of the FBI, and raise questions about their impartiality and focus of their concern."* (Ex. 7). He recommended immediate action to monitor the FBI's response to the deaths of its two agents. That recommendation was ignored.

In July of 1975, United States Civil Rights Commissioner Arthur Fleming formally requested that Attorney General Edward Levi investigate alleged improper activities by the FBI against the AIM on the Pine Ridge reservation and elsewhere.[27] Attorney General Levi never responded.

C. The Butler and Robideau Acquittals

In the summer of 1976, my co-defendants, Darrelle Dean Butler and Robert Robideau, went to trial in Cedar Rapids, Iowa, where our case had been transferred because of the anti-Indian prejudice in South Dakota. At my co-defendants' trial prosecutors argued that Agents Coler and Williams had died at the hands of a "gang of ruthless ambushers." The Government's cooperating witness testified that I had admitted to moving Agents Coler and Williams around the car, into a position where my co-defendants, Robideau and Butler, could "finish them off."[28] The witness further testified that he saw co-defendant Robideau leaving the area with a rifle that

[27] July 24, 1975, Letter, Arthur S. Flemming to Attorney General Edward Levi (Ex. 8).

[28] July 20, 1976 Teletype, ASAC to FBI Director, "RESMURS RE ANALYSIS OF ROBIDEAU AND BUTLER TRIAL" (Ex. 22).

matched shell casings left at the crime scene. In addition, the Government offered the cooperating testimony of Butler's cellmate in jail, who testified that Butler confessed to murdering the agents.

In light of the terror on the Pine Ridge Reservation during the three years preceding June 26, 1975, as well as the history of FBI misconduct in cases involving Indian activists, a jury acquitted my co-defendants Darrelle Butler and Robert Robideau. The Jury Foreman explained after the trial:

> The jury agreed with the defense contention that an atmosphere of fear and violence exists on the reservation, and that the defendants arguably could have been shooting in self-defense. While it was shown that the defendants were firing guns in the direction of the agents, it was held that this was not excessive in the heat of passion.

A teletype dated July 20, 1976, from the FBI's regional ASAC to the FBI Director, outlined the reasons that FBI agents believed the jury had returned a "not guilty" verdict.[29] This report, -- which we recovered years later through FOIA litigation-- contains a roadmap for how the government's theory of the case ultimately shifted in the prosecution of my trial, and further explains why certain actions were taken by government agents (such as transferring the case to another judge, sequestering the jury and other actions). (Ex. 21). Among many other things, the FBI ASAC reported to his superiors:

- The jury foreman told the press that the jury *was not going to convict* unless the government could prove that the defendants *"actually pulled the trigger at close range."*
- The jury foreman told the press that because of the atmosphere of fear and violence on the reservation jurors believed the defendants may have been shooting in *self defense.*

[29] *Id.*

- The trial judge allowed the defense to *offer evidence relating to the FBI's COINTELPRO (Counter Intelligence Program)* and also allowed into evidence the Church Report.[30]

- The FBI was forced to produce all 302s [written reports of witness interviews] authored by the agents who testified at trial.

- The FBI was dissatisfied with the judge's evidentiary rulings throughout the trial.

- The trial judge permitted the defense to enter into evidence FBI teletypes and one "terrorist digest" pertaining to the FBI's activities in the area (and its targeting of AIM).

- Because the jury was not sequestered**,** the FBI believed jurors might have seen some of the press coverage of the case, which was very critical of the government's actions.

By memorandum dated August 1976, FBI officials recommended dropping the charges of the Indictment against my remaining co-defendant, James Eagle, so that *"the weight of the Federal Government could be directed against Leonard Peltier.*[31]*"*

D. My Extradition From Canada on False Affidavits

I was arrested in Canada on February 6, 1976. My extradition was based, in large part, upon the creation of a series of affidavits prepared by FBI Special Agents David Price and

[30] The Church Report, issued by Idaho Senator Frank Church's committee in the 1970s, documents abuses of civil liberties by the FBI and CIA, which targeted domestic political groups and high profile leaders. The FBI's domestic spying program, the Counter Intelligence Program (COINTELPRO)'s directive was, in Director Hoover's words "to expose, disrupt, misdirect, discredit, neutralize or otherwise eliminate" domestic political groups considered by the FBI to be a threat to national security. The hallmarks of the program were infiltration with disruptors, psychological warfare through propaganda and other means, legal harassment and the use of excessive force including warrantless searches, beatings and assignations. The program was exposed through the burglary of an FBI office and the leak of documents to the press in 1971 and was officially discontinued at that time . Although the FBI program officially ended in 1971, as the FBI memoranda attached to this Petition appear to indicate, many of COINTELPRO tactics (and the personnel who led them) continued to be directed towards the AIM. In fact, the Church Committee was scheduled to investigate the FBI's relationship to AIM when this incident occurred in 1975, but that inquiry was postponed after the incident.

[31] 8/10/76 Memorandum, B.H. Cooke to Gallagher, "RESMURS, Contemplated Dismissal of Prosecution of James Theodore Eagle: Continuing Prosecution of Leonard Peltier." (Ex. 23).

William Wood for the signature of Myrtle Poor Bear, which as it turns out, the government knew were false at the time.

The three internally inconsistent Affidavits (set forth in relevant part below) were signed by Myrtle Poor Bear, a Native American woman who I had never met and was who the government later conceded was not on the Jumping Bull property in Oglala at the time of the shootout:

Affidavit 1, dated February 19, 1976 – the Ambush Affidavit

Myrtle Poor Bear swore that:

- she overheard me and other members of the Northwest AIM group planning to lure many FBI Special Agents and state and local law enforcement agents onto the Jumping Bull property to kill them, and planning an escape route through the property;
- the day before the shooting, I told AIM members that FBI Agents Coler and Williams would be coming alone to the Jumping Bull property and planned an ambush, murder and escape; and
- I later confessed to her that I killed the agents, and when I started pulling the trigger I "just couldn't stop." (Ex. 24).

Affidavit 2, dated February 23, 1976 – the Confession to Girlfriend

Myrtle Poor Bear swore that:

- she was my "girlfriend" and that she overheard me planning to ambush and kill Special Agents Coler and Williams, before their arrival;
- she allegedly filled my car with gasoline the day the before the agents arrived, so that I would be prepared for an escape;
- she heard me plan a detailed escape route, going over the hills of the Jumping Bull property; and
- I later confessed to her that I executed the agents at close range allegedly telling her, I "kept pulling the trigger and couldn't stop." (Ex. 25).

Affidavit 3, dated March 31, 1976 – The Eye Witness Account

Myrtle Poor Bear swore that:

- on the day of the shootout she was present on the Jumping Bull property when I announced to all present "they're coming," which she understood to mean that FBI agents were entering the property;

- standing near me on the property, she watched me kill a federal agent who had thrown his handgun on the ground and stated he wanted to surrender, while another agent was lying face down on the ground, in blood;

- she attempted to leave the area but was forced to stay there by someone who held her by her hair, and when she turned around she watched me shoot the FBI agent at close range, and then saw the agent's body fly into the air from the force of the shot; and

- she pat me on the back and we left the area together. (Ex. 26).

On June 18, 1976, the Canadian tribunal granted my extradition, quoting extensively from the Affidavits of Myrtle Poor Bear, a pathologist's report that corroborated her testimony, and a ballistics report that tied a shell casing to a high velocity rifle.[32]

At a hearing at my trial, Poor Bear testified before the judge that she signed the false Affidavits because she was pressured and terrorized by FBI agents. The government objected to the use of her testimony at my trial and the judge did not allow the jury to hear Poor Bear's testimony. Years later, the government conceded that anyone reading the Affidavits would know they were false, Myrtle Poor Bear did not know me, and was not even present in Oglala the time of the shootings.

E. My Trial in Fargo, North Dakota

With three of the four defendants originally accused of the murders out of the picture, the government was left with only one person charged for the murders – me. The government acted

[32] *See* Privitera, John (1983) "Toward a Remedy for International Extradition by Fraud: The Case of Leonard Peltier," *Yale Law & Policy Review*, Vol. 2: Iss. 1, Article 3, for a case study discussing the potential implications of the use of fraudulent affidavits in an extradition proceeding; author suggests the creation of civil remedies.

to change all of the circumstances that it believed contributed to my co-defendants' acquittals — beginning with a change of the presiding judge.[33]

My case was initially assigned to Judge McManus in Cedar Rapids, Iowa, who had presided over my co-defendants' trial. At some point after the acquittals of my co-defendants Butler and Robideau, however, government agents struck an *ex parte* deal to transfer the case to Judge Benson, a federal judge in North Dakota, a former federal prosecutor who was considered (and proved to be) pro government.[34] My attorneys did not know at the time how McManus' removal was accomplished, nor how the case had been transferred to a different district without their knowledge or input.

Prior to my trial in North Dakota, to ensure a sequestered jury the FBI circulated rumors in the press about anticipated "terrorist" attacks by AIM members which, in turn, built tensions in an already anti-Indian environment. The jury was sequestered for the duration of the trial and were transported to the court house in a bus which had its windows taped over. The jury members were escorted by SWAT team members at all times.

At my co-defendants' trial the government had argued that we had "ambushed" the FBI agents, and that gunfire from all angles caused the agents' deaths. At my trial, in contrast, the Government argued that I shot both FBI agents in the head at close range with my own rifle, an AR-15 -- because I allegedly thought the agents were on the Jumping Bull property to arrest me.

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[33] Some of the government's actions that are addressed in this Petition were not objected to by my attorneys during the trial, and as a result, were deemed waived as a basis for reversal of my convictions or in connection with applications for a new trial. Although my attorneys may not have preserved the issues for appellate purposes in the courts, I respectfully submit that the actions occurred and are relevant to this Petition, which asks reviewers to consider all of the factors that led to my conviction.

[34] In 1981, a criminal trial before Judge Paul Benson was overturned due to his charge to the jury, which improperly incorporated a "drunken Indian" stereotype. *United States v Lavallie*, 666 F.2d 1217, 1222 (8th Cir. 1981).

The Government contended that I killed Special Agents Coler and Williams with an AR-15 rifle that allegedly matched a shell casing that was found in the open trunk of Agent Coler's car. Months after the incident, agents recovered an AR-15 rifle from my co-defendant Robideau's burned out car on the Kansas Turnpike. Prosecutors argued that the AR-15 was the weapon that I had used during the gunfire. Agents testified that although the alleged matching shell casing was "missed" in the Bureau's first inspection of the car and the scene, it was found and identified later on in the investigation.

Ballistics Expert Evan Hodge, the head of the FBI's Firearms and Tool Marks Unit, testified at my trial that he had examined the evidence recovered from the scene of the gunfire and concluded there was evidence of only one AR-15 having been used by any American Indian during the firefight. He then linked the .223 shell casing purportedly recovered from the deceased Agent Coler's car trunk to the AR-15 rifle that the government contended was mine. FBI Agent Fred Coward testified that although he never met me before and did not know me, he saw me running from the area near the agents' cars, carrying an AR-15. He testified that he saw this from a distance of "approximately 800 meters" through the scope of his 2x7 rifle.

Prosecutors called the .223 shell casing the "most critical" piece of evidence against me and urged the jury to conclude that the matching shell casing proved that I fired the fatal shots into the heads of the two federal agents – in "cold blood."[35]

Unknown to my attorneys at the time, the FBI and the DOJ had in its possession all along – but withheld -- exculpatory ballistics reports that showed that the .223 shell casing found at the

[35] Trial Judge Benson allowed the government to enter testimony against me pertaining to a robbery charge and an alleged attempted murder of an off-duty police officer. The robbery charge was later dismissed and I was found not guilty of the attempted murder charge, which was brought by an off duty police officer who boasted to his girlfriend that he was helping the FBI "catch a big one."

scene did *not* match the AR-15 rifle the Government recovered and contended was mine. (Ex. 30).

After the prosecution's case, my attorneys attempted to present my defense but frequent discretionary rulings in the prosecution's favor effectively prevented me from raising a defense of self-defense. Further, my attorneys were precluded from challenging the FBI's conduct during the investigation, which in turn, would have allowed my lawyers to more impactfully challenge the integrity of the government's case.

Among many other things, my attorneys were precluded from presenting the testimony of Myrtle Poor Bear about how FBI agents had forced her to sign the false Affidavits that were used to extradite me from Canada. Judge Benson heard Poor Bear's testimony outside the presence of the jury and granted the government's motion to preclude her testimony on the grounds that she was an incompetent witness and, further, because in his opinion her testimony about the FBI's investigative actions would confuse the jury. (Tr. at 4707-4008).[36]

In the trial summation prosecutor Lynn Crooks argued that I had shot Agents Coler and Williams at point blank range:

> "Apparently Special Agent Williams was killed first. He was shot in the face and hand by a bullet ... probably begging for his life, and he was shot. The back of his head was blown off by a high powered rifle... Leonard Peltier then turned, as the evidence indicates, to Jack Coler lying on the ground helpless. *He shoots him in the top of the head. Apparently feeling he hadn't done a good enough job, he shoots him again through the jaw, and his face explodes. No shell even comes out, just explodes. The whole bottom of his chin is blown out by the force of the concussion. Blood splattered against the side of the car."* (emphasis added) (Tr. 4996).

AUSA Lynn Crooks *vouched* for evidence and said to the jury:

[36] The transcript of my trial is referenced herein as "Tr. ___."

"…As I said earlier… strong circumstantial evidence... indicates that Leonard Peltier did in fact fire the fatal shots… *I think that he did, and I think the evidence shows he did…*" (emphasis added)(Tr. 4974).

Crooks explained to the jury how the critical ballistics evidence *proved* that I deliberately murdered the Agents:

"Leonard Peltier was not only the leader of this group, he started the fight, he started the shootings and … *he executed these two human beings at point blank range.* "(emphasis added)(Tr. 4975-76).

"Peltier was firing the AR-15 …really no question at all about that…" (Tr. 4995).

"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, only one AR-15, and who had it? Leonard Peltier. He had it at every point he was seen...*There isn't even any other AR-15 or .223 shells found..."* (emphasis added)(Tr. 4995-96)….

"[P]hysical evidence that says [Leonard Peltier] did it. One shell casing is ejected into the trunk of the agents car which was open, one shell casing, ***perhaps the most important piece of evidence in this case.*** This little, small cartridge is ejected by the killers into the trunk of the car." (emphasis added) (Tr. 4996)….

"We have one shell that falls into a different category, 34-H. You can see by looking at the photograph… it went into the ground because [Agent Coler] was lying on the ground, and the shot came from above and downward; and I think it is a fair assumption that that's the bullet. We know, as I said, that this was a .223 bullet; and we know that it could have been fired from [Leonard Peltier's] gun. … most importantly, *it couldn't have been fired by any other gun which was present that day… at the time of the killings."* (emphasis added) (Tr. 4998)

"We have proved beyond a reasonable doubt that Leonard Peltier was responsible for these senseless, brutal, cowardly murders. We have proved that beyond any doubt. We have proved that he organized and directed this camp, started the fight, fired at the agents again and again from the tree line." (emphasis added) (Tr. 4998).

"Had we proved nothing further, that in itself would have been first degree murder; but in addition, ***we proved that he went down to the bodies and executed these two young men at point blank range.*** Ladies and gentlemen, that's murder in the first degree. The United States respectfully requests that you return a verdict of guilty on both charges of this indictment." (emphasis added) (Tr. 5019).

I was convicted of the murder of Agents Coler and Williams, and sentenced to two consecutive life terms.

V. Post-Trial Proceedings

A. Appeal to the Eighth Circuit

My attorneys filed an immediate appeal of my conviction. The Eighth Circuit affirmed the conviction.

At the appellate argument, Government attorneys effectively conceded that the Poor Bear Affidavits that had been used to extradite me from Canada were fabricated, but argued that proof of the FBI's conduct during the course of the investigation and prosecution was a "collateral" matter unrelated to the murder charges facing me, and was properly excluded by Judge Benson from the jury:

> JUDGE ROSS: But anybody who read those affidavits would know that they contradict each other. And why the FBI and Prosecutor's office continued to extract more to put into the affidavits in hope to get Mr. Peltier back to the United States is beyond my understanding. Because you should have known, and the FBI should have known that you were pressuring the woman to add to her statement.
>
> MR. HULTMAN: Your Honor, I personally was not present at that stage**. I read the affidavits after they had been submitted, so I want this court to know that…**
>
> …I don't in any way excuse what the court just indicated…I have trouble with that myself,… **it was clear to me her story didn't later check out with anything in the record by any other witness in any other way.** So I concluded then, in addition to her incompetence …there was no relevance of any kind. Absolutely not one scintilla of any evidence of any kind that had anything to do with this case.
>
> And it was then that I personally made the decision that [Myrtle Poor Bear] was no [trial] witness… because she was incompetent in the utter, utter, utter ultimate sense of incompetency … But, secondly as Judge Ross, you are indicating… **when I then tested those statements once they came to me and that was after they had gone to Canada**, and I had a chance to look at them and tested them with all of the record, all of the witnesses, there was not one scintilla that showed Myrtle Poor Bear was there, knew anything, did anything, et cetera. And so, it is for those two reasons that I believe the court, very realistically, and very fairly, and in the total interest of justice determined for the reasons that the court then gave, that Myrtle Poor Bear's testimony would go totally to a collateral matter, even if it were a collateral matter with some relevancy.

> JUDGE ROSS: But can't you see, Mr. Hultman, what happened happened in such a way that it gives some credence to the claim of the… Indian people that **the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada…. And if they are willing to do that, they must be willing to fabricate other evidence.** And it's no wonder that they are unhappy and disbelieve the things that happened in our courts when things like this happen… **We have an obligation to them, not only to treat them fairly, but not give the appearance of manufacturing evidence by interrogating incompetent witnesses.**
>
> MR. HULTMAN: Your Honor, I agree wholeheartedly, and I certainly have no quarrel with that,… I certainly accept what the court has just said in totality, and I agree with it one hundred percent.
>
> JUDGE ROSS: Was [Myrtle Poor Bear in Oglala] at the time [of the shootout]?
>
> MR. HULTMAN: No, she was not. **I don't think there is any question on the part of anybody, there is not one scintilla of evidence that indicates [she has any knowledge of] the events.** (emphasis added) (Ex. 27).

The Eighth Circuit stated in the opinion affirming the conviction, "[t]he use of affidavits of Myrtle Poor Bear in the extradition proceedings was, to say the least, a clear abuse of the investigative process by the FBI." The Court further wrote that "the evidence against Leonard Peltier was primarily circumstantial" and the *"strongest evidence"* included the critical ballistics proof of the matching .223 shell casing. On February 11, 1979 the Supreme Court denied certiorari.[37] *United States v. Peltier*, 585 F.2d 314 at 319-20 (8th Cir. 1978), *cert. denied*, 440 U.S. 945 (1979).

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[37] Although prosecutor Hultman stated twice to the Circuit Court that he had ***no* knowledge** of the three Poor Bear Affidavits until **after** they were submitted to the Canadian Court for extradition, a memorandum dated May 10, 1979 authored by Deputy Assistant Attorney General Robert Kuech, reported that Mr. Hultman and others reviewed all three of the Poor Bear Affidavits **before** those Affidavits were filed in the Canadian courts. (Ex. 28).

Offering yet another inconsistent explanation about the Poor Bear Affidavits, before the House Judiciary Committee's Civil and Constitutional Rights subcommittee on April 2, 1981, an FBI representative testified that the prosecutor did not call Poor Bear as a government witness at my trial because she appeared too emotional to withstand cross-examination. He further attributed Poor Bear's recantation to her supposed fear of retribution from the AIM. Either the FBI representative did not know that AUSA Hultman had already conceded that the Poor Bear *(footnote continued).*

B. FOIA Documents Provide Exculpatory Evidence

During my trial, the FBI produced approximately 3,500 documents and claimed that these were all the documents in existence pertaining to my case. In 1981, through a FOIA request, my attorneys discovered that some 12,000 documents had been withheld; 6,000 documents were subsequently produced.

Among the records produced through FOIA was a teletype dated October 2, 1975, which reflected that the ballistics testimony of FBI expert Evan Hodge -- the evidence that the government and the Eighth Circuit considered "the strongest evidence" against me -- *was false.* Specifically, an October 2, 1975 teletype,-- which was signed off on by ballistics witness Evan Hodge -- reported that laboratory tests conclusively established that the .223-caliber casing found at the scene of the shootout and the AR-15 were ***not*** a match. The report concluded that the shell had markings from *"a different firing pin than that in [the] rifle used at [the] RESMURS scene."* (emphasis added). Further, an October 31, 1975, Teletype stated that "none of the ammo" components at the scene could be associated with my alleged weapon. The FBI ballistic reports and related communications are attached as Exhibit 30 to this Petition.

We also discovered through FOIA litigation that FBI agents, prosecutors and Judge Benson had met several times *ex parte* to discuss my case (prior to the transfer and during the pendency of my case).

(footnote continued from previous page).
Affidavits were patently false, or did not think that the Constitutional Rights subcommittee would read the transcript of the appellate argument before the Eighth Circuit Court of Appeals. (Ex. 29).

C. Habeas Proceedings

1. First *Habeas*

On April 11, 1982, I filed a Petition for a Writ of Habeas Corpus before trial Judge Paul Benson in federal court in Fargo, North Dakota, based on newly discovered documents that showed that the government had withheld exculpatory evidence from my attorneys, and knowingly presented false expert ballistics testimony at trial. I further challenged the Government's knowing use of false affidavits from Myrtle Poor Bear to obtain my extradition from Canada, and asked the Court to direct the FBI to produce the 6,000 remaining records that it continued to withhold. My attorneys asked Judge Benson to recuse himself on my motions – based on disparaging extrajudicial derogatory comments he had made about me.

On December 30, 1982, Judge Paul Benson declined to recuse himself and denied the motion to order the FBI to release to the additional 6,000 documents pertaining to my case. On December 31, 1982 (as amended January 3, 1983), Judge Benson denied my Motion for a new trial.

I appealed to the Eighth Circuit Court of Appeals. Oral arguments were heard in October 1983, and on April 4, 1984, the Eighth Circuit remanded the case to the District Court for an evidentiary hearing to determine if I was entitled to a new trial on the basis of the withheld FBI ballistics evidence, specifically the exculpatory FBI ballistics teletype of October 2, 1975, (Ex. 30), which had been withheld from my attorneys at trial. [38]

[38] Among the FOIA documents produced after my trial was a Teletype that showed that FBI agents were directed by prosecutors *not to produce Jencks Act material (witness statements and laboratory reports) to the defense* at my trial. See, April 10, 1976 Teletype from ASAC, Rapid City to the Director of the FBI, titled "RESMURS: MAKING AVAILABLE NOTES AND RELATED WRITINGS OF LAB, IDENT, AND OTHER EXPERTS AS A JENCKS ACT REQUIREMENT (TITLE 18, SECTION 3500)" (Ex. 31).

The evidentiary hearing began on October 1, 1984, in Bismarck, ND, before Judge Benson. At my trial, FBI Ballistics Expert Evan Hodge had testified that he had been unable to perform the "best test" -- a "firing pin test" -- to see if shell casings found near Agent Coler's car were fired by my alleged AR-15 rifle, because the rifle had been damaged in a fire; instead, he had conducted an extractor mark test which resulted in the conclusion that casing could not excluded as coming from the AR-15. (Tr. at 3173-3241, 3243-3401). Confronted with the FBI teletypes discovered through FOIA that showed that the FBI laboratory *had in fact* conducted the firing pin test and *had in fact* concluded definitively that the critical shell casing which prosecutors argued proved that I had discharged my weapon at close range *was not* fired by my alleged AR-15 rifle -- (Ex. 30) -- Hodge recanted his trial testimony. On May 22, 1985, Judge Benson denied my request for a new trial,[39] and I appealed to the Eighth Circuit.

On October 15, 1985, the Eighth Circuit held oral argument on my appeal. At this point, the government abandoned its primary trial theory that I had shot the agents at close range and, instead, defended my conviction on a thin "aiding and abetting" theory – for the first time, prosecutors admitted that without the critical ballistics proof they were unable to "prove who shot those agents." The following discussion took place between the Eight Circuit Judges and prosecutor Lynne Crooks, the prosecutor who delivered the summation at my trial:

> JUDGE HEANEY: …this would have been an entirely different case, both in terms of the manner in which it was presented to the jury and the sentence that the judge imposed, if the only evidence that you have was that Leonard Peltier was participating on the periphery in the fire fight and the agents got killed. Now that would have been an entirely different case… I don't think this would have been the same case at all.
>
> MR. CROOKS: …But we can't prove who shot [Agents Coler and Williams] … But I certainly am arguing that *insofar as the United States was*

[39] *United States v. Peltier,* 609 F. Supp. 1143, 1152 (D.N.D. 1985).

> *concerned this case was tried on an aiding and abetting type of theory. It was argued that way. It was tried that way*.
>
> JUDGE HEANEY: Aiding and abetting Robideau and Butler?
>
> MR. CROOKS: *Aiding and abetting whoever did the final shooting. Perhaps aiding and abetting himself.* [40] And hopefully the jury would believe that in effect he did it all… We were afraid that the jury would not feel there was enough evidence to find that he was the one —necessarily. (Emphasis added) (Ex. 32).

As Mr. Crooks explained, even with the shell casing the government's evidence on who actually shot the FBI agents was "sketchy."

> MR. CROOKS: The case was basically tried with the assumption that we would maybe not convince all those jurors that he was the one that pulled the trigger down by the bodies. Because as I've outlined in my brief the evidence is sketchy — even with that shell casing the evidence is sketchy on that subject…. (Ex. 32).

On September 11, 1986, the Eighth Circuit upheld my convictions upon its strict interpretation of the *Bagley* standard for a new trial. See, *United States v. Bagley*, 478 U.S. 667, 1985. Although the court declined to set aside my conviction, it was critical of the government's actions:

> We could have resolved this issue without great difficulty if the government had presented the case against Peltier on the theory that he was an aider and abettor… ***But this is not the government's theory. Its theory, accepted by the jury and the judge, was that Peltier killed the two FBI agents at point-blank range with the Wichita AR-15.*** Under this theory, the ballistics evidence, particularly as that evidence relates to a. 223 shell casing, allegedly extracted from the Wichita AR-15 and found in agent Coler's car, is critical.[41] (emphasis added)

Further, the court found that the government "withheld evidence from the defense favorable to Peltier," which cast a "strong doubt" on the government's case and that had this

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[40] I have been advised by my attorneys that the law provides that a person cannot aid and abet "himself." The Indictment did not charge me or my co-defendants with a conspiracy.

[41] *United States v. Peltier*, 800 F.2d 772, 775 (8th Cir. 1986).

other evidence been brought forth, there was "a possibility that a jury would have acquitted Leonard Peltier."[42]

Discussing the significance of the shell casing, which allegedly was discovered later on in the FBI's investigation and which prosecutors argued in summations to the jury was *the most critical piece of evidence* in the case, the Circuit Court stated:

> There are only two alternatives...to the government's contention that the .223 casing was ejected into the trunk of Coler's car when the Wichita AR-15 was fired at the agents. One alternative is that the .223 casing was planted in the trunk of Coler's car either before its discovery by the investigating agents or by the agents who reported its discovery. The other alternative is that a non-matching casing was originally found in the trunk and sent to the FBI laboratory, only to be replaced by a matching casing when the importance of a match to the Wichita AR-15 became evident... ***We recognize that there is evidence in this record of improper conduct on the part of some FBI agents, but we are reluctant to impute even further improprieties to them***. (emphasis added)

The Eighth Circuit further stated that contrary to the Government's theory and Agent Hodge's testimony at trial, there must have been more than one AR-15 in the area at the time of the shoot-out, and that the FBI's ballistics expert had provided false testimony regarding why the exculpatory report was withheld.[43] Circuit Judge Gerald Heaney, one of the judges on the reviewing appellate panel, later called the FBI's conduct in connection with the ballistics report a "disgrace" and said that this was "the toughest decision [he] ever had to make in twenty-two years on the bench."[44]

On October 30, 1986, I filed a Petition for a Rehearing *en banc*, and the Court denied that Petition in December. My Petition for a Writ of Certiorari was denied by the U.S. Supreme Court on October 5 1987.

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42 *Id.* at 775, 779.

43 *Id.* at 775.

44 *West 57th Street*, CBS News broadcast, April 29, 1992.

2. Second *Habeas*

I brought a second Habeas Corpus Petition alleging, in part, that the government had misled the jury concerning my role in the shoot-out, and concealed evidence concerning the Wichita AR-15 and of the presence of more than one AR-15 at the scene. I also alleged that the government failed to present evidence sufficient to support its "direct shooting" theory and could not now change to an "aiding and abetting" theory to sustain the conviction. In October 1991, an evidentiary hearing related to the defense Motion for a new trial was held in Bismarck, ND.

On December 30, 1991, Judge Benson denied the Petition.

I filed another appeal and at the November 9, 1992, oral argument before the United States Court of Appeal for the Eighth Circuit, prosecutor Lynne Crooks acknowledged that:

> MR. CROOKS: We had a murder. We had numerous shooters… But we did not know, quote unquote, who "shot" the [FBI] agents.
>
> JUDGE FRIEDMAN: When you say 'we did not know,' what do you mean by 'know?'
>
> MR. CROOKS: …We did not have any direct evidence that one individual, as opposed to another one pulled the trigger… And did the coup-de-grace. (Ex. 33).

On July 7, 1993, the Eighth Circuit Court again denied my appeal.[45]

D. Parole Proceedings

I became eligible for parole on December 21, 1986. The U.S. Parole Commission conducted the first full parole hearing on my case on December 14, 1993 and a decision was rendered on February 1, 1994. That Commission's decision ordered me to continue to a 15-year Reconsideration Hearing in 2008. The decision was affirmed and the reasons modified on April 22, 1994.

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[45] *Peltier v. Henman*, 997 F.2d 461 (8th Cir. 1993).

For my December 11, 1995, interim parole hearing, Parole Examiner Samuel R. Robertson recommended that the Commission re-examine the facts and issue a decision outside of the guidelines, but the Commissioners rejected that recommendation. A different Hearing Examiner denied re-examination on March 18, 1996, and the Commissioners affirmed that decision on July 12, 1996.

My next Parole Reconsideration Hearing was conducted on July 28, 2009. Although representatives of the victim's families said they would not oppose my parole if I were to apologize and demonstrate remorse, Assistant U.S. Attorney Drew Wrigley appeared to oppose my release. On August 20, 2009, the Commission ordered me to continue to a 15-year Reconsideration Hearing in July 2024 when, if I survive, I will have reached nearly the age of 80 years. The full Commission affirmed this decision on February 24, 2010.

VI. CONCLUSION

A. My Conduct in Prison.

I am not a violent man.

In 1979, after the Eight Circuit affirmed my conviction, I learned that a fellow inmate at the Lompoc Federal Prison was told that he would be released on parole and would receive medical care if he killed me. When I learned of this plot, with the assistance of other inmates, I planned an escape from the prison. One of the inmates who helped me was shot and another escaped. I received a sentence of seven additional years for the escape and possession of a weapon.

For nearly four decades, with the exception of a minor wrestling incident in 1987 (in which I was not the aggressor) and an incident in my cell at USP Lewisburg, in 2011, I have not been involved in or charged with violent behavior. In 2011, a guard entered my cell, which until a few weeks before the incident I shared with another inmate. The guard found a loose wire

hanging from the light fixture in the cell, touched the wire and received an electrical shock and filed an "assault" charge against me.

In the late 1970s, a BOP psychologist Linda W. Kettlehut found me to be nonviolent, and submitted a March 9, 2000 letter in support of my parole.

I have served forty years in prison: primarily in high security prisons; and many years in solitary confinement for one reason or another, including medical concerns, transfers, internal prison investigations, efforts to ensure my safety and for minor infractions.[46]

B. Relief Requested

As set forth at the beginning of this Petition, I am deeply remorseful about the deaths that occurred on June 26, 1975 and the pain that all impacted have endured. There are, however, many mitigating factors that led up to the events of that day, which influenced the actions of all persons involved.

The era was a tumultuous time period for American Indians, and although the improprieties detailed in this Petition were not significant enough to disturb the jury's verdict in the 1970s courts, they are even more significant when viewed collectively and through today's lens of ethics and modern notions of fundamental fairness. As a result, scholars, humanitarians and Nobel Laureates around the world continue to support my efforts for release and for reconciliation.

Accordingly, I respectfully urge you, Mr. President, to evaluate my case through today's lens and worldview, and notwithstanding the anticipated institutional objections, to conclude that

[46] Based on the diminished life expectancy resulting from imprisonment, the US Sentencing Commission defines a life sentence as 470 months, or just over 39 years. Based on the median aged at sentencing (25 years) the life expectancy for a person in the general federal prison population is 64. I have spent many years in solitary confinement, have been in jail almost 40 years and am 71 years old. http:/www.ussc.gov/Data and Statistics/Federal_Sentencing_Statistics / Quarterly Sentencing _Updates/USSC 2012_3rd_Quarter_ Report.pdf.

after 40 years of imprisonment, justice has been served for the deaths of Special Agents Jack R. Coler and Ronald A. Williams, and that the time is right for law enforcement's and the families' interests to be balanced against important principles of justice, healing and reconciliation with America's first peoples.

If you decide *not* to grant me Executive Clemency, then I respectfully ask you to consider arranging for my transfer to a Federal Correctional Institution ("FCI") closer to my family in the Dakotas. The Oxford Wisconsin FCI, for example, would allow me to spend my final years in a relatively safe institution that would make it possible for my children and grandchildren to visit.

In addition, I respectfully urge you to unseal the thousands of withheld and redacted records pertaining to my case. Thousands of documents remain unproduced, and others were produced in heavily redacted format for reasons of "national security" or other reasons that likely are no longer relevant today, forty years later. I respectfully urge you include in the production of records, witness statements and the grand jury testimony and colloquy – if a transcript or stenotype record still exists -- so that I can have an opportunity to review the complete records related to my case.

Thank you for considering my Petition for Executive Clemency.