

**ETHICS COMPLAINT:
REQUEST FOR INVESTIGATION**

TO: United States Attorney General Janet Reno
The United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530

CC: Office of Professional Responsibility
The United States Department of Justice, Room 4304
950 Pennsylvania Ave. N.W.
Washington, D.C.

CC: White House Office of Legal Counsel
White House
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

CC: FBI
Office of Professional Responsibility
935 Pennsylvania Ave. N.W.
Washington, D.C. 20535

FROM: Jennifer Harbury, Attorney at Law
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**RE: OFFICIAL MISCONDUCT IN CASE OF MR. LEONARD PELTIER
AND THE MATTER OF PINE RIDGE RESERVATION**

June 26, 2000

Dear Ms. Reno:

I am writing to ask that the Department of Justice initiate and carry out a thorough investigation of the actions and statements of various FBI officers, United States Attorneys and related government agents, officials, and personnel involved in the case of Mr. Leonard Peltier. The conduct in question, both past and current, continues to raise grave concerns regarding the validity of Mr. Peltier's original conviction as well as the possibility of any full and fair consideration of his requests for parole and/or clemency. As a member of Mr. Peltier's legal team, I have been both shocked and saddened by what I have learned about this case. While we can and will continue to address the legal and constitutional issues raised, I believe that the time has come for an in depth evaluation of the official conduct described below in light of the universal principles of ethics and professional responsibility applicable to United States officials.

As the Department of Justice is very much aware, Mr. Peltier is a Native American leader who has been incarcerated for twenty four years, following his highly controversial conviction for the 1975 murder of two FBI agents. Despite disturbing evidence of official misconduct, including the coercion of witnesses, the intentional use of false testimonies, and the concealment of a ballistics test reflecting his innocence, Mr. Peltier has been denied a new trial. This denial was based upon a stringent and debatable reading of the "Bagley standard," and Judge Heaney, of the original appellate panel, has since written in support of clemency for Mr. Peltier. The United States Attorney has admitted on several occasions that no one knows who fired the fatal shots. Mr. Robert Robideau and Mr. Darrell Butler, the two adults with Mr. Peltier during the firefight were

long ago acquitted in a separate trial. Mr. Peltier is now long overdue for parole, despite his excellent record, and his long term humanitarian work from behind bars. His health is now beginning to deteriorate. Time is thus of the essence in achieving justice in this tragic case. Yet, as discussed below, I fear that the current and improper conduct of various officials may well make this an impossible goal.

I emphasize, at the outset, my deepest sympathy and respect for the families of Mr. Ron Williams and Mr. Jack Coler. Having lost my own husband in Guatemala under difficult circumstances, I can understand their pain, although I cannot ease it. Grief for a loved one knows no political boundaries, and all loss of life, especially of those so young, is tragic. I also fully comprehend the difficult and dangerous nature of law enforcement work, and the FBI's legitimate interests in protecting the lives of their agents. Nonetheless, our laws and constitution make very clear the parameters and limits of all official conduct under these circumstances. The United States government had available one and only one permissible course of action to take in response to the deaths of their agents. Specifically, U.S. officials could fully and vigorously investigate the case within the limits of the law, and then bring their suspect to a full and fair trial. If and only if the court or jury found the accused to be guilty beyond a reasonable doubt, could any form of punishment be meted out. It was not for the FBI or other officials to set these stringent standards aside and engage in the near equivalent of vigilante conduct. The United States is ill served when our system of justice is corrupted or obstructed for the purpose of obtaining revenge.

As discussed below, it is abundantly clear that the Bagley standard notwithstanding, Mr. Peltier has never received a fair trial. A hearing based on coerced and intimidated witnesses, substantially altered testimonies, false information, and concealed exculpatory ballistics reports cannot constitute a fair trial under any definition. These conditions give rise to grave doubts as to Mr. Peltier's guilt in the eyes of many highly reasonable and responsible persons. This situation makes his continued incarceration unconscionable as well as unconstitutional. We note, for example, the current position in favor of Mr. Peltier's immediate release, of such human rights leaders as Amnesty International, the Archbishop Desmond Tutu, Nobel Laureate Rigoberta Menchu, the National Council of Churches, the Kennedy Memorial Center for Human Rights, and so many others.

Given this situation, many of us have been highly disturbed by a number of public statements and actions by various FBI officers during the last year. These officials have publicly announced that their goal is to block the release of Mr. Peltier, whether through parole or clemency. I must question, at the outset, the propriety of members of the Justice Department engaging in such a public campaign. Parole and clemency decisions are largely determined at various branches of the Justice Department and neutrality and fairness in the handling of such matters must be above reproach. Having members of one branch of the Department engaged in vigorous lobbying on these matters certainly raises serious questions. However, I leave this issue to your offices. Far more important is the fact that many of the statements are false, intentionally misleading, or omit highly relevant information with the intent of deceiving the reader. Still other statements are highly emotional and dramatic, if not near hysterical, in nature. These constant declarations are clearly intended to disinform the public and create an atmosphere of fear and confusion, all with the goal of depriving Mr. Peltier of a fair and reasoned consideration of his legal requests for parole and clemency. Such conduct comes close to a verbal lynching in many instances. As such, these actions cannot be tolerated, either by our legal and constitutional provisions, or by our standards of ethics and professional responsibility for officers of the United States.

For these reasons I am writing to ask for an urgent and in depth investigation of the ethical and professional misconduct of all involved Justice Department officials, including officers from the FBI as well as the U.S. Attorney's office. I ask that this investigation begin with the over all conduct of affairs on Pine Ridge Reservation from 1973 through 1975, include the entire investigation and judicial process in the case of Mr. Leonard Peltier, and focus as well on the current actions and public statements by various public officials involved in the current FBI campaign to block parole and or clemency for Mr. Peltier. Given the emotional nature of this case,

and the long history of misconduct by the FBI in these matters, together with the complete lack of review or correction of these egregious matters, I also ask that this be handled directly by your offices, and that the FBI internal review offices be recused.

In closing, I note that a great deal of information remains concealed in FBI and other official files. It is neither available to the public or to Mr. Peltier or his attorneys. I can thus only give you the facts and information available to me, together with my conclusions, on good faith information and belief. I must leave the full fact finding to your investigation. Lastly, I note that this case has endured for twenty five years. I will therefore not attempt to cite specific regulations and provisions. After speaking with your various offices, it appears that certain universal principles of ethics and professional responsibility are applicable to all of your offices. I have tried to define my complaints on this basis. Specifically, I presume here, that all officials of the United States Department of Justice are and always have been bound by the following basic principles:

- I. All such officers are obliged to respect and obey the laws and constitution of the United States.
- II. All such officers are prohibited from engaging in any form of discrimination based upon race, religion or political opinion, association or belief.
- III. All such officers are prohibited from condoning, assisting or encouraging unlawful actions in any way.
- IV. All such officers are prohibited from improperly using or donating government property, including ammunition.
- V. All such officers are to avoid even the appearance of impropriety in carrying out their duties.
- VI. Regardless of personal beliefs and goals, all such Justice officers must be committed to the presentation of the truth, the whole truth and nothing but the truth in any legal investigation and proceeding.
- VII. All such Justice Department officers are prohibited from making false or misleading public declarations with the goal of depriving any person of the full and fair consideration of any legal right.
- VIII. All such officers must refrain from any conduct unbecoming to a representative of the United States government.

I. CONDUCT OF THE FBI ON PINE RIDGE RESERVATION, 1973-1976

A. BACKGROUND:

After the 1973 siege at Wounded Knee South Dakota, the Native Americans residing on Pine Ridge Reservation endured what is now referred to as the "Reign of Terror," and which lasted from 1973 through 1976. During that grim three year period, 64 Native people were murdered, all of them American Indian Movement, or "AIM" supporters or members or their friends and relatives. Still more were threatened, intimidated, injured and harassed. It appears clear that the majority of the violence was being carried out by a vigilante group organized and operated by Mr. Dick Wilson, then the Tribal Chairperson. This group, known as the Guardians of the Oglala Nation, or literally the "goons," was quite open about its activities. I enclose a recent statement by veteran journalist Kevin McKiernan as well as some of his film footage. As noted in these materials, the vigilantes had a close and friendly relationship to the FBI. Although there was a massive FBI presence on the reservation during this time period, the officers ignored illegal and

often violent goon roadblocks and even calls for protection from residents under attack by goons, as occurred in the town of Wanblee. As admitted by goon leader Duane Brewer in the enclosed film footage, the FBI officials shared intelligence with the vigilantes about AIM activities, ignored their illegal possession of highly dangerous weapons, and even gave them ammunition on one if not more occasions. Mr. Brewer specifically mentions receiving armor piercing ammunition.

Meanwhile, there was no serious investigation of the 64 murders, let alone the other related acts of violence by the goon members. Virtually all of these cases have gone unresolved, with no charges brought and no time served. The FBI officials did, however, find the time and resources to file numerous charges against AIM leaders and supporters. Few had sufficient basis to result in convictions. In some cases, the courts rebuked the FBI officers involved for tampering with witness testimonies and similar misconduct. I would refer you to the 1974 trial of Mr. Dennis Banks in which the court dismissed the case, writing that "the waters of justice have been polluted." With regards to other FBI abuses, I would refer your attention to the enclosed letter by Mr. Bill Muldrow, a former investigator for the United States Commission on Civil Rights.

B. DISCRIMINATION AND NON-NEUTRALITY:

It would seem clear enough that the FBI officials present or responsible for planning and carrying out operations on Pine Ridge Reservation, engaged in highly discriminatory and non-neutral conduct. Specifically:

1. In investigating criminal conduct and in pressing for indictments and trials, the FBI heavily discriminated against AIM leaders, members, and supporters as well as their friends and family members. While numerous charges were brought against these people, far more serious crimes committed by the goons, or vigilantes, were simply ignored, if not openly condoned, by the FBI officers. Thus FBI investigations and de facto sanctions were applied in a discriminatory fashion, on the basis of political, religious and cultural beliefs, expression, and associations. (It is important to note that the traditionalist Lakotas of Pine Ridge were aligned with the AIM people, and suffered heavily as a result.)
2. The FBI officers also discriminated in the provision of their protective services. While the GOON members were free to engage in shooting sprees and unlawful roadblocks, the AIM members and traditionalists were forced to live under the most repressive and terrifying of conditions. Not only did the FBI officials present fail and refuse to offer any protection by investigating these crimes and indicting or arresting the perpetrators in order to end such abuses; these officers instead often openly condoned such conduct and at times collaborated by sharing information and, on information and belief, equipment. This discrimination was based upon political, religious and cultural beliefs and affiliations.
3. As noted in the enclosed letter of Mr. Bill Muldrow, the FBI officials on Pine Ridge engaged in abusive and at times illegal tactics, including knocking down doors at remote farmhouses without a warrant and other frightening measures. It would be shocking, and indeed without precedent, for such tactics to be widely utilized in a white, urban neighborhood in the United States. The overall conduct of affairs on Pine Ridge during this time period shows a clear pattern of racial discrimination.
4. We fully understand the tragic nature of the deaths of FBI Agents Ron Williams and Jack Coler, and the need for the FBI to protect the lives of their agents. However, we note that 64 Native people were killed in a three year period, and that no serious investigations or prosecutions were ever initiated or carried out. There are many who state that far more than 64 Native lives were lost, and indeed many others did suffer repression and attacks. The completely inadequate response to the loss of so many Native lives can only lead to the conclusion that in the eyes of the FBI, two white lives far outweigh 64 Natives one. In short, a conclusion that racial discrimination in the extreme existed and still exists, is unavoidable.

C. IMPROPRIETY: ABUSE OF POWER

1. As noted above, Mr. Muldrow's report states that FBI agents were acting in highly inappropriate, and probably illegal conduct with respect to their tactics in making arrests and entering and searching homes across Pine Ridge Reservation. There are other reports as well. I note for example, the fact that various officers entered the home of the Jumping Bull family after the fatal shootout, and fired bullets into the family photographs on the walls, including photographs of persons who had served in Vietnam. In short, these officials acted with great impropriety over a long period of time. I urge a full investigation of these matters.

2. More disturbing still is the appearance, and probably the reality, of FBI collaboration with the goons, a vigilante group carrying out serious criminal acts of great brutality. As noted in the enclosed materials, FBI officers often drove around illegal goon roadblocks, either ignoring them or worse yet, shaking hands and joking with the vigilantes themselves. Information about AIM was shared with the goons, and there is at least one admission that ammunition was received from the FBI on one occasion. Most crucially, by condoning goon crimes, and failing to press for indictments or arrests, these FBI agents and officials in fact protected and contributed to three years of criminal and violent actions against the residents of Pine Ridge. This has more than the appearance of impropriety, and warrants a thorough investigation.

3. There are many indications as well that the FBI officers at Pine Ridge knowingly presented false testimonies or coerced and intimidated witnesses, and took other inappropriate steps, in order to obtain desired convictions of AIM leaders, members and supporters. I note the harsh language of Judge Nichols, who presided over the criminal trials of Dennis Banks and Russell Means for their role in the Wounded Knee occupation: "It's hard for me to believe.. that the FBI, which I have revered for so long, has stooped so low." (Cited in "In the Spirit of Crazy Horse, by Peter Matthiessen, pg. 98, Penguin Books, 1991). I note similarly, the language of Judge Heaney of the Eighth Circuit Court of Appeals during a 1991 "60 Minutes" interview with Mr. Steve Kroft, in which the Judge referred to certain conduct by the FBI in Mr. Peltier's trial as a "disgrace." As discussed below, the FBI had intentionally terrorized and coerced a Ms. Myrtle Poor Bear into signing a false affidavit against Mr. Peltier in order to obtain his extradition from Canada. They also concealed a critical ballistics test from the defense during Mr. Peltier's trial. We strongly urge that your office look into these and other acts of obstruction and distortion of the justice system, which took place during the criminal proceedings against various AIM members and leaders during this time period.

D. IMPROPER USE OF GOVERNMENT MATERIALS AND PROPERTY

1. As discussed above, Mr. Duane Brewer has admitted to receiving ammunition from the FBI on at least one occasion during the Reign of Terror. Although such transactions were kept secret, the overall conduct of affairs during that time period strongly suggests that this would not have been an isolated occurrence. I ask that the misuse of government property be thoroughly investigated.

II. MISCONDUCT DURING PELTIER TRIAL: THE FBI AND U.S. ATTORNEYS

A. BACKGROUND

The criminal proceedings against Leonard Peltier have long been denounced by human rights leaders world wide for the gross acts of official misconduct and obstruction and distortion of justice which occurred. The acts complained of include the following matters:

After the tragic shoot out at the Jumping Bull ranch, Leonard Peltier fled to Canada, convinced that he would never receive a fair trial. He was extradited on the basis of an affidavit signed by a Pine Ridge woman named Myrtle Poor Bear, who claimed that she was Mr. Peltier's girl friend and had witnessed the killings. (Ominously, she also testified in the separate prosecution of a different AIM member, claiming that she was that man's girl friend and could confirm that murder.) On the basis of her testimony, Mr. Peltier was arrested and extradited to the United States. Ms. Poor Bear then admitted to the Judge that she had in fact never met Mr. Peltier, and had not been on the ranch the day of the shooting at all. I realize that Ann McLellan, the current Minister of Justice in Canada, has declared that the extradition proceedings were legal and not dependent upon the false affidavit. However, this position is inaccurate. I enclose the statement of Mr. Warren Allmand on this issue. Mr. Allmand was the Canadian Minister of Indian Affairs early on during the Peltier scandal, and later, as a Member of Parliament reviewed and evaluated the case for the then Minister of Justice, Allan Rock.

Although Ms. Poor Bear, as noted, informed the trial judge of what had occurred, the extradition order was not vacated, nor was she allowed to testify to the jury about FBI coercion. Sadly, this left the jury unable to properly evaluate the testimonies of the three teenagers who were forced to take the stand against Mr. Peltier. All three had also been heavily coerced and intimidated by the FBI.

More startling still is the matter of the withheld ballistic test. FBI ballistics expert Evan Hodge testified at the trial that Mr. Peltier's alleged rifle had been damaged in a fire, making the most precise test, the firing pin test, impossible to perform on a bullet casing found near the bodies of the two agents. Instead he stated he had performed a less accurate test, the extractor test, and found the casing to be compatible with the weapon. This testimony was obviously highly damaging. Long after the trial, Mr. Peltier's attorneys obtained some but not all of the FBI files through a Freedom of Information Act suit. In the records they discovered Mr. Hodge's own report on the firing pin test performed soon after the shoot out. He had indeed been able to perform this test, and had found that the weapon and casing did not match. Although he tried to explain this report by stating that he had not tested the casing in question at the time, this is not a credible response. The casing in question was the only bullet of proper caliber found anywhere near the agents' bodies, and the FBI had rushed it to their laboratories for testing.

Lastly, it must be noted that the FBI officials had always stated that Agents Williams and Coler had radioed out that they were pursuing a red pick up truck that day, and that the occupants of the truck had gotten out of their vehicle and were shooting at them. Mr. Clarence Kelly referred to this vehicle at an early press conference. This was the testimony given at the Robideau-Butler trial. FBI Agent Adams testified in this regard at the trial of Mr. Robideau and Mr. Butler as well, confirming that he had seen the red pick up truck escape from the ranch shortly after the shootings. Yet this description changed at Mr. Peltier's trial, where it was claimed that the agents had been pursuing a red and white van, a very different vehicle. This new description matched the vehicle Mr. Peltier had sometimes borrowed, allowing the prosecutor to declare that the agents had pursued Mr. Peltier onto the ranch that day, and that he had led them into an ambush. At Mr. Peltier's trial various FBI related witnesses claimed to have "forgotten" just what they had heard the agents say over their radio that day, and Agent Adams changed his testimony, denying that he had seen the pick up escape just after the fatal shots were fired.

There were many other improper actions taken during Mr. Peltier's trial. Procedurally, those listed above are the most significant. However, it must be also noted that the FBI agents in Fargo intentionally created an atmosphere of fear and tension in the town, convincing resident and jurors alike that they were in danger of physical harm from violent AIM members. This too, prejudiced the jury and improperly impacted Mr. Peltier's right to a fair trial.

Although the Assistant United States Attorney Lynn Crooks now admits that no one knows who actually pulled the trigger and fired the fatal, close range shots at the two agents, both FBI

officials and persons from the U.S. Attorney's offices continue to block Mr. Peltier's parole as well as his clemency petition by insisting that he is a cold blooded killer.

B. FBI MISCONDUCT:

1. The coercion and intimidation of Ms. Murtle Poor Bear by various FBI agents was clearly unethical. Because she was forced to sign a false affidavit, such misconduct was also unlawful.
2. The intentional presentation of a false affidavit to the courts of law in the United States and Canada in order to procure Mr. Peltier's extradition was clearly unethical as well as unlawful. Ms. Poor Bear's final affidavit was the basis of such extradition. I refer you to Mr. Allmand's statements.
3. Similarly, reports indicate FBI officers improperly harassed, intimidated, and coerced Mike Anderson, Norman Brown and "Wish" (Wilford) Draper, the three adolescents who were forced to testify at the trial. The legal rights of these youths, all under the age of twenty one, were not respected. The claims of coercion are supported by the internal contradictions and changing testimonies they gave. It appears that the FBI presented false or distorted testimonies obtained through improper methods to the U.S. attorneys for use in the courts of law. This is hardly appropriate for United States officials.
4. We ask that you fully investigate the conduct of Mr. Evans Hodge, the FBI ballistic expert who testified at the trial of Mr. Peltier. His claim that he had not tested the critical casing during the first round of testing is not credible. If you find, upon a detailed investigation that Mr. Hodge's denial is false, his testimony would constitute unethical conduct at the very least.
5. We ask that you fully investigate the abrupt and substantive change in the FBI description of the vehicle pursued onto the Jumping Bull Ranch by the two agents on the day of the firefight. I would urge that the manipulation of the FBI officers' own testimonies and statements presents clearly unethical conduct.
6. We also ask that you investigate FBI officers' actions that created an improper atmosphere of fear and distrust of Native people, especially AIM members, amongst the general population as well as the jury pool throughout the trial. Such intentional actions helped to deprive Mr. Peltier of a fair trial, and constitutes unethical conduct.

C. U.S. ATTORNEY MISCONDUCT:

1. The utilization of false testimony given by Myrtle Poor Bear in the extradition proceedings was highly improper. Given the blatantly changing contents of Ms. Poor Bear's three affidavits, together with the then recent history of FBI misconduct in related cases, it is highly unlikely that the officers of the U.S. Attorneys office were truly unaware that a false statement was being used in an international legal proceeding. We ask that this matter be thoroughly investigated. If intentional, such conduct was unethical as well as unlawful. Moreover, Mr. Crooks' public statement, during a 1991 interview with Steve Kroft for "60 Minutes," that he has no qualms or misgivings about the affidavit gives the grave appearance of impropriety by a United States official.
2. The concealment of the firing pin test performed by the FBI ballistics expert Evans Hodge would constitute both a legal violation as well as an act of unethical conduct. Despite the claims

of Mr. Crooks on "60 Minutes", it is clear that this report was never given to the defense. We ask for your full investigation into this matter.

3. Given the Myrtle Poor Bear debacle, the prosecution team should have been extremely vigilant in protecting all other state witnesses. This was particularly true in light of other cases of similar FBI misconduct in the prosecution of AIM members during this era. Given that the three adolescents who testified at the trial contradicted their own previous testimonies, as well as each other's, and that two refused, on certain occasions, to swear on the sacred pipe as to the truth of their statements, it would seem apparent that the prosecutors knew or should have known that coercion and intimidation had occurred. Yet there was no investigation, and no protection. The tainted testimonies were utilized as if fully credible. Basing his personal opinion upon such tainted evidence Mr. Crooks continues to publicly denounce Mr. Peltier as a violent murderer. We ask for your full investigation into the facts of this situation.

4. As with any attorneys aware that their proffered witness is making a false statement the prosecutors should have taken appropriate remedial steps when their witnesses altered previous statements about the vehicle pursued by the two agents, and the escape of that vehicle just afterwards.

5. Zealous representation is acceptable in our legal system. However, we note that the prosecution team at the trial, was or should have been, fully aware of the concealed ballistic test, as well as the coercion and intimidation of Ms. Poor Bear, the clear signs of intimidation in changing stories of the teenaged witnesses, and the altered description of the pursued vehicle. Mr. Lynn Crooks has since conceded, on several occasions, that no one knows who actually pulled the trigger and fired the fatal, close range shots that day. Given this situation, we ask that the Prosecution closing argument at trial be carefully reviewed, for excess of zeal amounting to intentional and unfair prejudice, and the presentation of a claimed factual situation known to be either unsubstantiated or untrue.

III. POST TRIAL CONDUCT OF U.S. OFFICIALS

A. BACKGROUND

While we recognize the right to free speech of all persons living within the United States, it is clear that reasonable limits do exist, depending on time, place and circumstance. In the context of this case, we would urge that United States officials are prohibited by both legal and ethical considerations, from intentionally creating public confusion and fear in order to deprive Mr. Peltier of the fair consideration of his request for parole and or clemency. Specifically, our government officials should not intentionally or negligently disinform or mislead the public, either through the dissemination of false information, or by the omission of key information with the intent to disinform. Moreover, the official use of hysterical, inflammatory or unnecessary and highly prejudicial statements is unbecoming to any officer and gives the appearance of impropriety. For these reasons, we request a full investigation on the following statements and actions, together with corrective actions.

B. INAPPROPRIATE AND DECEPTIVE STATEMENTS BY FBI OFFICERS

November 1999, during efforts by a number of Mr. Peltier's supporters to disseminate information and increase public awareness about his case, the Federal Bureau of Investigations Agents Association placed a large paid ad in the Washington Post. This advertisement, as discussed below, contains a number of inappropriate, inaccurate, and deceptive statements intended to mislead the public and obstruct Mr. Peltier's full and fair consideration of his parole and clemency requests. Similar public statements have since been made by FBI agents Bruce Gebhart and David Williams, as well as the organizers of a recent web site. Copies of these statements are enclosed. We ask that the following deceptive statements and omissions, be examined and

evaluated under those standards applicable to officers of the United States, particularly those in the Justice system.

1. The third paragraph of this ad states as fact that Mr. Peltier was in the vehicle pursued onto the Jumping Bull Ranch the day of the tragic shoot out, and that he and the other passengers abruptly stopped their vehicle and began firing at the FBI agents. As noted above, there is abundant evidence that the original description of the vehicle pursued by the agents that day was quite different from the van sometimes used by Mr. Peltier. The FBI personnel and officers listening to the radio transmissions later reported that the agents had been following a red pick up truck. Agent Adams saw a red pick up truck escape from the ranch just after the deaths of the agents occurred. Clarence Kelley referred to the pick up truck. At the Butler-Robideau trial it was still a red pick up truck. By the time of Mr. Peltier's trial the vehicle abruptly changed into a red and white van. Agent Adams and others no longer recalled key facts, and a heavily and rather obviously coerced witness gave convenient testimony. This testimony was contradicted by the other witnesses and has little credibility indeed in light of all of the facts and circumstances which have since come to light. Mr. Peltier has always insisted that he was already on the ranch when the shooting broke out.

In short, there is no untainted evidence to establish that Mr. Peltier was pursued onto the ranch, or that the pursued vehicle was the red and white van he sometimes drove. I urge that it is improper for officers of the United States Justice Department to cite their own tainted evidence as proof that Mr. Peltier was in the vehicle. To make such a flat assertion of "fact" without reference to the conflicting and contradictory information, is prejudicial and deceptive.

Similar statements and omissions were made by Agent Gebhart and Agent Williams on this issue.

2. In the fifth paragraph of the paid ad, the FBI agents write "Three shots were fired from Peltier's rifle. . .Williams, kneeling, was shot in the face... Coler, still unconscious, was shot twice in the head at close range...." It is important to note here that U.S. Attorney Lynn Crooks has stated on several instances that no one knows who in fact fired those close range fatal shots. This admission was inevitable, in light of the clear language of Mr. Hodge's ballistics report stating that the bullet casing was simply incompatible with the weapon claimed to be Mr. Peltier's. The agents responsible for composing this ad knew or should have known about these matters. The highly inflammatory language is intended to disinform and confuse the public, to cover up for former FBI misconduct, and to deprive Mr. Peltier of a fair hearing and consideration of his legal claims. Serious legal and ethical questions are raised by this language.

Agents Gebhart and Williams make similar improper statements regarding the firing of the fatal bullets.

3. I ask that the statement in paragraph six of the paid ad be fully investigated. It is claimed that Mr. Color and Mr. Williams had only fired five shots, while the AIM members fired 125 rounds at them. From the record, it appears that several of the weapons belonging to the agents were taken by persons fleeing the ranch and were only recovered long afterwards by the FBI. The weapons may have been fired, reloaded and fired several times again since that day. I understand that the casings recovered at the crime scene did not account for all of the shots fired. How then, is it known, how many rounds were fired on that particular day, and by which person? The witness accounts also suggest that the agents in fact fired more rounds than five. I request a written response to this question.

4. This paid ad also states as fact a number of instances in which Mr. Peltier has alleged carried out violent actions. Many of these cited instances are highly suspect, and appear to be but one more example of governmental distortion of the evidence against Mr. Peltier. We ask for an investigation of these matters. By way of illustration, we note the claim of Canadian Officer Golden Doll that Mr. Peltier stated that he would have blown the arresting Canadian officers "out of their shoes." It is significant that such a violent statement was not included in Mr. Golden Doll's

report at the time of the arrest or even during the extradition hearings. Mr. Golden Doll made no mention of this alleged statement until Mr. Peltier's trial nearly one year later. Given the repeated instances of FBI coercion of witnesses and use of tainted witnesses in other AIM cases, this late statement is highly suspect. It is improper and unbecoming for an officer of the United States to now present this statement as a fact, while never mentioning the surrounding circumstances. Such use of the Golden Doll testimony and similar matters certainly gives the appearance of impropriety, suggesting as it does that the FBI is willing and eager to use tainted testimony to once again foreclose Mr. Peltier's right to a fair hearing.

Agent Williams makes similar declarations in his statement.

5. The ad also oversimplifies the judicial history of this case in an inappropriate manner. Noting that Mr. Peltier lost his appeals, the ad states that there are no new facts. The old facts have not changed and Peltier is guilty as charged." Again, this statement, together with its serious omissions, is highly deceptive and therefore improper. As noted throughout this memorandum, there are indeed many new facts, including but not limited to the discovery of the concealed ballistics test, and the revelations of coercion by various witnesses. Meanwhile thousands of FBI documents remain concealed. The accurate version of the judicial history is that Mr. Peltier was denied a new trial despite the new information, as a result of the strict Bagley standard set by the courts in previous opinions. Judge Heaney, who denied the new trial, has also written to support clemency for Mr. Peltier.

6. The ad also claims that Mr. Peltier "openly states he feels no guilt or remorse or even regret for the murders." Once again this statement is intentionally inaccurate, inflammatory and self serving. Mr. Peltier has in fact on a number of occasions stated that he regrets the loss of life, and the pain caused to the agents' loved ones, even as he maintains that he is not the one who committed the killings. The FBI statements in this ad places Mr. Peltier in the untenable position of either admitting to a crime he did not commit, or else being vilified as remorseless brute. As the Archbishop Desmond Tutu has protested, "the whole point is that the man says he is innocent." Our concepts of due process do not permit this form of manipulation by government officials.

Agent Williams makes a similar declaration in his statement.

7. Lastly, one of the final paragraphs states that "Leonard Peltier is a vicious, violent and cowardly criminal who hides behind legitimate Native American issues. Leonard Peltier was never a leader in the Native American community. He is simply a brutish thug and murderer with no respect or regard for human life." Given the issues raised throughout this document, it would seem that such statements, on their face, would be highly inappropriate for U.S. officials in the justice system. Not only are they intentionally geared to promote fear and confusion, they once again omit key facts. The FBI and other officials have long recognized Mr. Peltier as an AIM leader, as is reflected in their own investigation files and other statements. More importantly, Mr. Peltier has enormous support from many Native American communities. I am enclosing some sample petitions, resolutions and similar materials for your convenience.

B. "MARIN VOICE" EDITORIAL OF SPECIAL AGENT BRUCE GEBHART

Once again, we respect Mr. Gebhart's First Amendment Rights. However, we must protest the dissemination of false or misleading information by a United States official, with the intent to deprive Mr. Peltier of a fair and unbiased hearing on the issues of parole or clemency. Mr. Gebhart's editorial, much like the paid ad described above, contains many distortions, misleading statements, and omissions. In addition to those discussed above are the following:

1. Mr. Gebhart makes much of Mr. Peltier's alleged violent past, and notes that at the time of the firefight, Mr. Peltier was wanted for the attempted murder of a Milwaukee policeman. It is true that such charges were outstanding. However, it is also true that Mr. Peltier was acquitted of

these charges, after police witnesses were discredited. It would appear that the incident giving rise to the charge was in fact one of many instances of harassment of AIM members, and that the charges should not have been brought. Mr. Peltier was badly battered by the policemen in that incident. The charges were brought because he was carrying a broken handgun which could not have been fired even had Mr. Peltier attempted to do so. Moreover, we urge your office to look into Mr. Peltier's record. Although not unblemished, his record was not that of a violent man in any way. Mr. Gebhart's description is intentionally unfair and misleading.

C. STATEMENT OF SPECIAL AGENT DAVID J. WILLIAMS, APRIL 2000

Many of the same concerns are raised in Mr. Williams' statement to the Milwaukee Journal Sentinel. Again, our concerns are that United States officials should not intentionally disseminate false, misleading or distorted information to, or conceal key information from, the public with regards to matters of public concern. This is particularly important in matters affecting the process of justice. In addition to those matters described above, are the following:

1. Mr. Williams states that Mr. Peltier was the only Native American present at the scene in possession of a .223 weapon. In fact, even the government has recognized that several other such weapons were present and used on the ranch that day. Mr. Williams is surely aware of this fact.
2. Mr. Williams also insists that the courts have repeatedly sustained Mr. Peltier's conviction for the two murders. This, in light of the careful language in the Eighth circuit decision regarding the Bagley standard, and Judge Heaney's letter requesting clemency for Mr. Peltier, is a misleading summary of the actual case history.
3. Mr. Williams ends by insisting that Mr. Peltier's guilt has been clearly established, as has Mr. Peltier's penchant for violent confrontations with law enforcement agents. As discussed throughout this memorandum, Mr. Peltier's never received a fair trial, and in light of the heavily fabricated and tainted evidence, there is room for grave doubts as to his guilt. Moreover, during the last many years he has been an excellent prisoner, and has engaged in numerous humanitarian efforts from behind bars, including the sponsorship of prisoner art programs and an annual Christmas drive for the children of Pine Ridge, the establishment of a Native American scholarship program, collaboration on medical services programming for the reservation, and the adoption of children in Central America, among many other exceptional contributions.

D. "NO PAROLE PELTIER ASSOCIATION": FBI INITIATED WEB SITE

This web site was created at the request of an FBI agent according to the designer. The materials disseminated bear the same defects complained of in the discussion above. We merely note, here, an additional distortion in the section entitled "A Question of Truth." This editorial states that during the firefight, Leonard Peltier "ran like a coward leaving the women and children to fend for themselves." This declaration is inaccurate and raises both legal as well as ethical questions. The persons who survived the shoot out with Mr. Peltier have repeatedly stated that he saved their lives. Most of the small group with Mr. Peltier that day did indeed consist of young AIM members under the age of twenty one, including several fifteen years old and one eleven year old. Many were women. After the deaths of the agents, the ranch was surrounded by law enforcement agents and vigilantes, and the group was caught in a hail of bullets. There was grave danger that all would be killed. One young man, named Joe Stuntz, was in fact shot dead by a sniper. Mr. Peltier did not turn tail and run off. He stayed with the group and led them through a culvert, below the heavily armed law enforcement vehicles and out the other side. He then led them through heavy fire up a hillside to safety.

We ask for an investigation of this web site's remarkable and unethical distortion of these events.

CONCLUSION

The Pine Ridge Reign of Terror is no doubt one of the worst chapters in recent American civil rights history. Despite the grim toll on human life and the frightening implications of government involvement and official injustices, nothing has ever been done to remedy the results of the misconduct which occurred. The chapter remains a de facto secret, there have been no serious investigations of the abuses which took place, and no steps have been taken to ameliorate or correct the harms inflicted.

Mr. Leonard Peltier remains a living symbol of the repression against our Native American citizenry. It would seem more than clear that he has been denied a fair trial and that grave doubts exist in the minds of numerous reasonable people as to his guilt. Under such circumstances our constitution forbids his incarceration, and yet he has served twenty four years in prison. Even now, vengeful FBI officials continue to press their own heavily tainted if not wholly fabricated evidence in order to block his release on either a well deserved grant of parole or clemency.

I have full confidence that your office has the moral strength and courage to take this matter under the most strict of scrutiny. Government corruption and abuses of power are not matters to be corrected through disclaimers and concealment. Rather, they must be rooted out, thoroughly examined, and urgently remedied. To do otherwise can only endanger the most cherished values of our laws and society.

Accordingly, I ask for a full and urgent investigation into the matters described above, and for appropriate corrective action to be taken. I also ask for a full public reporting on all findings and decisions made.

Should you require any other documentation or information, please contact me at the above address. I very much appreciate your time and attention to this matter.

Respectfully Submitted,

Jennifer Harbury
Attorney at Law