



Leonard Peltier Defense Offense Committee

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LEGAL UPDATE

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Executive Clemency

Peltier's application for Executive Clemency, which had been active for over 15 years, was denied by President George W. Bush prior to his leaving office. Peltier is now eligible to reapply for consideration.

The Pardon Attorney prepares the recommendation of the U.S. Department of Justice (DOJ) for the President for final disposition of each application. However, the authority to grant clemency belongs only to the President (under Article II, Section 2 of the U.S. Constitution). This means that the clemency regulations are advisory only and for the internal guidance of DOJ personnel. The President may grant clemency to Peltier at any time and attach any conditions he wishes.

Clemency as regards the Peltier case refers to the commutation of his sentence, not a pardon. The president can decrease the amount of time Leonard Peltier must serve prior to release or immediately release Peltier for time already served. (A form of clemency, a pardon can only be awarded once a released prisoner has been free and hasn't re-offended for a period of five years.)

While a strategy for moving forward is being formulated by the legal team, supporters are asked to urge President Obama to take independent action: President Barack Obama, The White House, 1600 Pennsylvania Avenue, NW, Washington, DC 20500; Phone Numbers: Comments - 202-456-1111 or 202-456-1112 and Switchboard - 202-456-1414 (Ask to be connected with the Comment Line); Fax - 202-456-2461; E-Mail: <http://www.whitehouse.gov/contact/>.

Executive Review

In 2009, U.S. Attorney General Eric Holder took the necessary steps to vacate the conviction of former Senator Ted Stevens due to misconduct by federal prosecutors and FBI agents. The similarities between the Stevens and Peltier cases are startling: hiding evidence favorable to the defendant, manufacturing other evidence, disregarding court orders, lying to the court, and preventing witnesses from testifying at trial.

We know one doesn't have to look far to find investigative and prosecutorial misconduct in the Peltier case. It's already been acknowledged by the Courts—the 10th Circuit Court of Appeals, for example: "Much of the government's behavior at the Pine Ridge Reservation and in its prosecution of Leonard Peltier is to be condemned. The government withheld evidence. It intimidated witnesses. These facts are not disputed."

In the interest of equal justice, therefore, the Peltier Legal Team demands that Holder conduct an Executive Review of the Peltier case and take the necessary steps to vacate Peltier's conviction.

Parole

Leonard Peltier received his first full parole hearing in 15 years on July 28th of last year. Parole was denied and an administrative appeal of the decision by the U.S. Parole Commission was filed. On February 24, 2010, the Parole Commission affirmed its decision. Peltier will not be eligible for another full parole hearing until 2024. The Peltier Legal Team is preparing a court challenge to this decision.

Transfer

Despite the Bureau of Prison's claim that Leonard isn't eligible for transfer to a less secure facility, we'll keep pushing for his transfer to a medium facility closer to home, where he can be close to family and have access to quality health care. In particular, we'll advance the legitimate request of the Turtle Mountain Band of Chippewa Indians, a sovereign nation, for the transfer of their tribesman into their custody.

Withheld Documents

The Peltier Legal Team continues to press the government to produce the case documents which it has withheld for over 34 years. As a result of Peltier's Freedom of Information Act (FOIA) lawsuits, it has been learned that the FBI actually possesses over 140,000 pages of material which it has failed to provide to the defense. Put simply, it is Peltier's position that the government would not be fighting so hard to keep these documents secret unless it had something to hide. New FOIA actions will be taken in the coming months.

Let's review some past actions.

- ***Buffalo, New York***—The catalyst for the Buffalo case was a heavily excised 1975 teletype message from the Buffalo office of the FBI to then-FBI Director Clarence M. Kelley that indicates that an informant was trying to infiltrate Peltier's defense effort. Kelley later testified during the Butler/Robideau trial that the government used informants against the American Indian Movement. This information could have had a potentially explosive impact on the case, providing grounds for a new trial or even for an outright reversal. Oral arguments were heard on September 13, 2004, on the government's Motion for Summary Judgment.
- ***Manhattan (New York, New York)***—A FOIA request was made on November 1, 2002, to the FBI Field Office in Manhattan (New York, New York). The FBI alleged that its file on Leonard Peltier was missing. Correspondence from the FBI claims that the so-called "missing" file is on "special locate," a bureaucratic manner of saying that they are looking for the file. This file has yet to be located by the FBI. The "missing" Manhattan file is of particular significance given that a number of Peltier's attorneys including William M. Kunstler, Elliot A. Taikeff, and Ramsey Clark were based in Manhattan. Also of some interest is the fact that Louis Freeh, the director of the FBI during the Clinton Administration (and a man who made it his mission to prevent Peltier's clemency), was stationed in the Manhattan field office while he was an agent with the FBI. The Peltier Legal Team filed a brief with the United States Court of Appeals for the Second Circuit in Manhattan.

The above two actions ultimately failed. In two separate decisions rendered in March 2007, United States District Judge Donovan W. Frank and the three-judge panel for the United States Court of Appeals for the Second Circuit refused to order the FBI to release thousands of pages of documents relating to Leonard Peltier, upholding the FBI's claims that release of the sought-after information would, among other things, cause serious damage to the national security of the United States and the war on *transnational terrorism*.

- ***Minneapolis, Minnesota***—On June 8, 2007, Peltier attorneys filed with the U.S. Court of Appeals for the Eighth Circuit an appellate brief asking the Court to review and release some 11,000 pages of documents related to the investigation and prosecution of Leonard Peltier. The FBI continues to withhold those documents, claiming that their release would violate promises of confidentiality made to informants and would, incredibly, endanger the national security of the United States. The Peltier attorneys argued that the FBI's promises to its informants expired long ago and were waived when those informants testified publicly; the virtually unprecedented public interest in the case of Leonard Peltier warrants careful judicial review of the withheld documents; and the FBI's demonstrated misconduct in this case, coupled with its continued misrepresentations about Peltier's case, show sufficient bad faith to require the most searching inquiry into any claims of privilege. Oral argument was heard on March 11, 2008. The Court denied the appeal on April 29, 2009.

And in a related matter... Peltier's illegal extradition was brought about through the use of false affidavits, the result of FBI coercive tactics applied against Myrtle Poor Bear. Myrtle Poor Bear passed away on September 15, 2005, in Rapid City, South Dakota. On November 14, 2006, a FOIA request to FBI Headquarters for all records pertaining to Myrtle Poor Bear was submitted. Peltier attorney Mike Kuzma was informed that the Minneapolis Field Office of the FBI might have records responsive to the request. A separate FOIA request was submitted to that office on April 20, 2007, but was told the documents could not be located. On December 21, 2009, The FBI Headquarters notified Attorney Kuzma that "A search of the general indices to the Central Records System did not reveal that the subject of [the] request has been the subject of an FBI investigation by this office... cross references that may or may not have been responsive to [the] Freedom of Information-Privacy Act request... have been destroyed... one additional file was found to be possibly identifiable to [the] request. This file is currently missing and cannot be located."