

## THE CASE OF LEONARD PELTIER:

### STATEMENT OF FACT

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

— **Amnesty International, April 6, 1999**

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

— **Archbishop Desmond Tutu, April 18, 1999**

[Regarding FBI use of falsified testimony]... *I have nothing on my conscience at all.*

— **U.S. Prosecutor Lynn Crooks**

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The facts of this case have long been the subject of intensive investigation & documentation. Mr. Peltier has been incarcerated for over 30 years despite clear indications of misconduct, including the falsification of evidence by United States government officials which led to his conviction, as set forth below.

On February 27, 1973, members of the American Indian Movement (AIM), together with a number of local & traditional Native Americans, began their 71-day occupation of Wounded Knee in South Dakota (SD). Their goal was to protest injustices against their tribes, violations of the many treaties with the U.S. government, & current abuses & repression against their people. The U.S. government responded with a military style assault against the protesters. In the end, various officials promised hearings on local conditions & treaty violations. These hearings were never convened. The use of military force by the U.S. government was later ruled unlawful.

Throughout the next three years – long referred to by local Native Americans as the "Reign of Terror" – the Federal Bureau of Investigation (FBI) carried out intensive local surveillance, as well as repeated arrests, harassment & bad faith legal proceedings, against AIM leaders & supporters. The FBI also closely collaborated with & supported the local tribal chairperson, Dick Wilson, & his selected vigilantes – the Guardians Of the Oglala Nation (GOONs). Mr. Wilson was notorious for his corruption & abuse of power.

During this "Reign of Terror," some 64 local Native Americans were murdered. Three hundred people were harassed, beaten, or otherwise abused. Virtually all of the victims were either affiliated with AIM or their allies, the traditional tribal members. The FBI had jurisdiction to investigate major crimes, yet these deaths were never adequately investigated or resolved. Nor did the FBI agents take any measures to curb the violence of the GOONs, with whom they closely collaborated.

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

In May of 1975, the FBI began a sizable build up of its agents, mostly elite Special Weapons & Tactics (SWAT) members, on the Pine Ridge Indian Reservation, SD. In June 1975, SWAT teams from numerous divisions were designated for special assignment at Pine Ridge.

A June 1975 FBI memo, discovered much later, referred to the potential need for military assault forces to deal with AIM members.

The politically motivated murder rate on the reservation climbed. Tensions ran extremely high on all sides.

On June 26, 1975, two FBI agents – Mr. Jack Coler & Mr. Ron Williams – entered private property on the reservation, the Jumping Bull Ranch. They allegedly sought to arrest a young Indian man they believed they had seen in a red pick up truck.

A large number of AIM supporters were camping on the property at the time. They had been invited there by the Jumping Bull elders, who sought protection. Many non-AIM persons were present as well.

For unknown reasons, a shoot out began. A family with small children was trapped in the cross fire.

Throughout the ranch, people screamed that they were under attack & many of the men present hurried to return fire.

When the skirmish ended, the two FBI agents were dead. The U.S. government claims they had been wounded & shot through their heads at close range.

A young Native American named Joe Stuntz also lay dead, shot through the head by a sniper bullet. His killing has never been investigated.

The red pick up truck pursued by the agents was never found or identified.

The more than 30 AIM men, women, & children present on the ranch were then surrounded by over 150 FBI agents, SWAT team members, Bureau of Indian Affairs police, & local vigilantes. They barely escaped through a hail of bullets.

Mr. Leonard Peltier was one of several AIM leaders present during the shoot out. Murder charges were brought against him, as well as his two friends & colleagues Dino Butler & Bob Robideau, who also had been present throughout the incident.

Butler & Robideau stood trial separately from Leonard Peltier who, convinced he would never receive a fair trial in the United States, had fled to Canada.

At the trial of Butler & Robideau a key prosecution witness, Mr. Draper, admitted that he had been threatened by the FBI & as a result had changed his testimony based on agents' instructions, so as to support the government's position.

The jury found both defendants in that case not guilty. They found that there was no evidence to link the defendants to the fatal shots. Moreover, the exchange of gun fire from a distance was deemed an act of self defense.

Mr. Leonard Peltier was extradited from Canada on the basis of an affidavit signed by a Myrtle Poor Bear, a local Native American woman known to have serious mental health problems. She claimed to have been Mr. Peltier's girlfriend at the time of the shootings, & to have been present during the shoot out & witnessed the murders. Mr. Peltier was extradited from Canada to the U.S.

Today, the government concedes that, in fact, Myrtle Poor Bear did not know Mr. Peltier, nor was she present at the time of the shooting. She later confessed she had given the false statement after being pressured & terrorized by FBI agents, one of whom had also been involved in the falsification of the aforementioned Moves Camp testimony. Myrtle Poor Bear sought to testify in this regard at Leonard Peltier's trial. However, the judge barred her testimony on the grounds of mental incompetence.

Nothing was done with regard to the illegal extradition.

No known witnesses exist as to the actual shooting of FBI Agents Coler & Williams. Three adolescents gave inconclusive & vague testimonies, contradicting their own earlier statements as well as each other. All three witnesses admitted they had been seriously threatened & intimidated by FBI agents.

Critical ballistic information reflecting Mr. Peltier's innocence was withheld from the defense team making a fair trial impossible. Specifically, at the trial, the FBI ballistic expert Evan Hodge testified that he had been unable to perform the best test, a firing pin test, on certain casings found near Agent Coler's car because the rifle in question had been damaged in a fire. Instead, he stated that he had conducted an extractor mark test & found the casing & weapon to match. Years later, documents obtained through the Freedom of Information Act (FOIA) showed that in October 1975, a firing pin ballistic test had indeed been performed on the rifle & that the results were clearly negative. In short, the fatal bullets did not come from Leonard Peltier's weapon. It should also be made *very* clear that the AR-15 & FBI-issued M-16 deliver the *same* .223 caliber round. However, the jury never heard about any of these crucial issues.

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

The court, at Mr. Peltier's trial, did not permit the jury to learn of the FBI's pattern & practice of using false affidavits & intimidating witnesses in recent related cases against other AIM leaders where such evidence had been admitted. The jury was thus unable to properly evaluate the credibility of prosecution witnesses' testimony.

There was no witness testimony that Leonard Peltier actually shot the two FBI agents. There was no witness testimony that placed Mr. Peltier near the crime scene *before* the murders occurred. Those witnesses placing Peltier, Robideau, & Butler near the crime scene *after* the killing were coerced & intimidated by the FBI. There was no forensic evidence as to the exact type of rifle used to commit the murders. Several different weapons present in the area during the shoot out – evidence now shows that there were other AR-15 rifles in the area – could have caused the fatal injuries. In addition, the AR-15 rifle claimed to be Mr. Peltier's weapon was found to be incompatible with the bullet casing allegedly found near Agent Coler's car. Although other bullets were

fired at the crime scene, no other casings or evidence about them were offered by the prosecutor in this case. In short, there was no reasonable evidence that Mr. Peltier committed the murders.

Instead there is very strong evidence of FBI misconduct.

In addition, today, the U.S. Attorney admits that no one knows who fired the fatal shots.

The only evidence against Mr. Peltier was the fact that he was present at the Jumping Bull ranch during the fatal shoot out. There were more than 30 other individuals there on the day of the shooting, but Mr. Peltier is the only one who was ever sentenced & imprisoned.

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

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

Clearly the killings of Mr. Stuntz & the two agents represent a tragedy for all three men & their families. However, it is equally clear that an unfair trial & the decades-long imprisonment of an innocent man are also tragic.

As noted by Judge Heaney of the Eighth Circuit Court of Appeals, in his 1991 letter to U.S. Senator Inouye in support of a grant of Executive Clemency to Peltier: "The United States government overreacted at Wounded Knee. Instead of carefully considering the legitimate grievances of the Native Americans, the response was essentially a military one which culminated in the deadly firefight on June 26, 1975... The United States government must share responsibility with the Native Americans for the... firefight... the government's role can properly be considered a mitigating circumstance."

As compared to similar cases, Mr. Peltier has served a significantly longer period of imprisonment than is normal before a grant of parole is made. No

adequate reason has been given for such arbitrary & discriminatory treatment. The U.S. Parole Commission stated at one hearing that the denial of parole was based upon Mr. Peltier's participation in the "premeditated & cold blooded execution of these two officers." Yet, as noted, there is no evidence that Mr. Peltier ever fired the fatal shots. This has been admitted by the government attorneys themselves.

Despite these realities, various FBI agents & U.S. Attorney Crooks have been present during parole hearings to personally oppose Mr. Peltier's release.

More recently, it also has been made clear that Mr. Peltier will not receive parole until he "recognizes his crime" or, in short, confesses to a crime he did not commit.

Government officials have not only interfered with Mr. Peltier's due process rights with regard to fair consideration for parole, but for fair consideration for Executive Clemency by misinforming congressional leaders & the public with regard to Mr. Peltier's character & background, as well as the critical aspects of this case.

In addition, during trial, the FBI produced approximately 3,500 documents & claimed that these were all the documents in existence. Through a FOIA request, the Peltier attorneys discovered that some 12,000 documents had been withheld. Six thousand of these documents were released. More recently, despite the FBI's claim that only 6,000 full documents related to this case remain undisclosed – & that these are merely "administrative" documents, of no use to the defense team – Mr. Peltier's attorneys have discovered that the government continues to withhold over 140,000 documents concerning Mr. Peltier's case.

In recent years, Mr. Peltier's attorneys have filed FOIA requests with FBI Headquarters & various FBI field offices in an attempt to secure the release of these additional documents concerning Mr. Peltier. Similar FOIA requests also have been submitted to the Central Intelligence Agency.

Although the FBI has engaged in a number of dilatory tactics to avoid the processing of these requests – claiming "national security" or "ongoing investigation" reasons – thousands of FOIA documents have been released in 2002-2005. But not nearly enough documents have been released to Peltier's legal team. Based on the critical nature of those documents that have been disclosed over the years, such as the ballistic test reports, it is reasonable to conclude that the remaining files would contain evidence that may help to establish Mr. Peltier's innocence. Over three decades after the shootings, there is clearly no current reason to fear national security risks or the disruption of ongoing investigations.

Mr. Peltier has now served more than 34 years in prison. He is over 65 years old & his health is deteriorating. He has suffered a stroke which left him partially blind in one eye. For many years, he had a seriously debilitating jaw condition which left him unable to chew properly & caused consistent pain & headaches. The prison medical facilities could not properly treat this condition. In fact, two prison surgeries only worsened Mr. Peltier's condition. A physician from the Mayo Clinic in Rochester, Minnesota, offered to repair Mr. Peltier's jaw free-of-charge, but was turned down again & again by prison authorities until the United Nations sharply rebuked the United States for subjecting Mr. Peltier to inhumane conditions. Today, Mr. Peltier continues to suffer from diabetes, high blood pressure, & a heart condition. According to an affiliate of Physicians for Human Rights, he risks blindness, kidney failure, & stroke in the future given his inadequate diet, living conditions, & health care.

Despite such hardship, Mr. Peltier has made remarkable contributions to humanitarian & charitable causes during his many years in prison:

- Mr. Peltier has played a key role in getting people from different tribes, with a history of animosity, to come together in peace. He advocates for peaceful resolution of all issues that deal with Native Americans & respect for the rights of others.
- Mr. Peltier has worked with Dr. Steward Selkin on a pilot program on the Rosebud Reservation, the Leonard Peltier Health Care Reform Package, to document needs & requirements for delivery & care. The ultimate intent of the program is to fundamentally alter health care delivery on reservations throughout the U.S.
- He has worked with Professor Jeffery Timmons on a program to stimulate reservation-based economics & investments in Native American business enterprises, including a component to teach business ownership & operation to the young people of First Nations.
- In 1992, Leonard Peltier established a scholarship at New York University for Native American students seeking law degrees. He also was instrumental in the establishment & funding of a Native American newspaper by & for Native young people in Washington State. In addition to having raised two of his grandchildren from prison, Mr. Peltier has been a sponsoring father of two children through ChildReach, one in El Salvador & the other in Guatemala. Every year, he sponsors a Christmas food & gift drive for the children of Pine Ridge. Peltier also serves on the Board of the Rosenberg Fund for Children.
- Mr. Peltier also organized an emergency food drive for the people of Pohlo, Mexico, in response to the Acteal Massacre. He frequently contributes to Head Start programs & domestic violence shelters to address funding shortfalls.
- Peltier has helped several Indian prisoners rehabilitate themselves by advocating a drug- & alcohol-free lifestyle while encouraging pride & knowledge in their culture & traditions. He also has worked to develop prisoner art programs thereby increasing prisoners' self-confidence.
- Leonard Peltier donates his artwork to several human rights & social welfare organizations to help them raise funds. Most recently, recipients have included the American Civil Liberties Union; Trail of Hope (a Native American conference dealing with drug & alcohol addiction); World Peace & Prayer Day; the First Nation Student Association; & the Buffalo Trust Fund.

Leonard Peltier has been widely recognized for his humanitarian works & has won several human rights awards, including the North Star Frederick Douglas Award; Federation of Labour (Ontario, Canada) Humanist of the Year Award; Human Rights Commission of Spain International Human Rights Prize; & the 2004 Silver Arrow Award for Lifetime Achievement. In 2009, for the sixth consecutive year, Mr. Peltier also was nominated for the Nobel Peace Prize.

The FBI & other government officials clearly singled out Leonard Peltier as a scapegoat & forced him to pay the price for the killings of the FBI's agents despite the lack of evidence against him. Personalized & politically motivated vengeance of this kind cannot be tolerated. The concepts of justice & good government also require that such tragic errors of the past be set right.

Join with numerous internationally recognized human rights organizations, including Amnesty International, & civil rights leaders who have called for the immediate release of Leonard Peltier. Press for the declassification & release of all FBI documents still being withheld in this case, & for a congressional investigation into Mr. Peltier's case & the Pine Ridge "Reign of Terror" (1973-1976). Also help to secure Peltier's prompt release from prison. Urge President Obama to immediately grant clemency to Leonard Peltier.