

## Cynthia K Dunne

January 12, 2017

### **BY EXPRESS MAIL**

President Barack Obama  
1600 Pennsylvania Ave  
Washington, DC 20500

### **Re: Leonard Peltier Clemency Petition C179410**

Honorable President Obama:

I am a member of the legal team that represents Leonard Peltier in his 2016 Clemency Petition.

Until 2013, I worked as an Assistant United States Attorney in the Southern District of New York, where I served a total of 28 years in both the Civil and Criminal Divisions. Throughout my federal service, the FBI depicted American Indian Movement (AIM) activist Leonard Peltier as a “cold blooded murderer” who killed Agents Jack Coler and Ronald Williams at close range on the Pine Ridge Reservation in 1975, an assessment I accepted for decades.

Working on Pine Ridge Reservation in SD as I often do now, Leonard Peltier’s name regularly arises. At some point, I undertook an independent review of the case, mindful of the history of the Oglala Lakota Nation and equally mindful of ethical restrictions, which govern federal investigations and prosecutions.

Long before I imagined I’d ever represent Leonard Peltier, I reached the opinion that his case in combination with many factors, including the FBI’s role in escalating the violence on Pine Ridge and the length of time that the case has remained unaddressed, have produced one of the greatest injustices in the history of the American justice system.

One of many striking facts I learned through my review of records obtained through FOIA litigation, is that the FBI targeted Mr. Peltier immediately, even before witnesses were debriefed. Continuing to employ policies established during the Hoover Administration, in 1975 the FBI considered the AIM a threat to national security and its members, including Leonard Peltier, were branded “extremists.”

Just three days before the agents’ deaths, the United States Senate Select Committee on Intelligence (the Church Committee) announced that it would hold public hearings to explore the FBI’s alleged improper activities on Pine Ridge Reservation arising from its response to the 1973 siege of Wounded Knee by the AIM and the aftermath. Records annexed to the petition indicate that the FBI immediately was concerned about potential negative press coverage.

At age [30], Mr. Peltier was the oldest member of the AIM present at the shootout. From my review of old government records it appears that agents considered Leonard Peltier a symbolic trophy or fall guy, whose participation might absolve the FBI of any responsibility for the incident or the dangerous conditions on Pine Ridge.

Among the records attached with the Petition is a Teletype instructing agents to target Mr. Peltier -- even when they erroneously thought that they had killed him in the gunfire -- in order to gain an advantage in the press. Following the reports of two FBI agents' deaths at the hands of an AIM member, two days following the incident the Church Committee's hearings were postponed indefinitely.

The vilification and demonization of Mr. Peltier has continued ever since. Most recently, the FBI Agents Association, a group of former and current agents, demanded that American University remove a statue of Leonard Peltier, and utilized the event as an opportunity to re-broadcast its 41-year old dialogue. Its heavy-handed censorship of a private display of art illustrates the extreme measures to which the FBI will go to demonize Mr. Peltier and to avoid facing history -- even more than four decades later.

Breaking 40 years of silence, former United States Attorney James Reynolds, who supervised the Peltier case during a critical post-trial period, recently came forward to urge you to grant Clemency "as being in the best interests of Justice in considering the totality of all matters involved." Mr. Reynolds supervised the case when Mr. Peltier's attorneys discovered that exculpatory ballistics records had been withheld by government officials in order to gain an unfair advantage at the trial. Although for decades prosecutors said that the critical ballistics results must have been "misplaced," among the records annexed to the Petition is a Teletype from an FBI agent to his superiors reporting that a prosecutor directed the FBI to withhold the reports.

During US Attorney Reynolds' tenure, prosecutors admitted to appellate judges that there was no competent evidence to support its trial theory that Mr. Peltier was the person who actually shot the FBI agents, and further admitted that they had no way of identifying a shooter. Prosecutors urged the appellate court to uphold the conviction on a very thin "accomplice" theory.

Mr. Reynolds told reporters last week that the government may have "shaved a few corners here and there." He described Mr. Peltier's prosecution as a "moving target" which first depicted Mr. Peltier as the shooter who killed FBI agents at close range, and then later depicted him on appeal as an "accomplice," who was guilty because he was present and participated in the incident with others.

Today, Mr. Peltier is [72] years old and lives in a maximum security facility far from his family and which cannot treat his very significant medical conditions. He has great grandchildren he has never met, and last month his youngest son, "Waha," died while showing support for his father's petition in Washington DC.

Mr. Peltier has spent a staggering 6 years in solitary confinement primarily for institutional, safety or health concerns. I have worked with prisoners who served only months in solitary confinement and have observed the psychological wounds from those conditions. In my opinion, the service of any time in solitary confinement makes *any* sentence, including Mr. Peltier's, exponentially longer and harder.

Having already served almost 41 years, Mr. Peltier has been jailed more than 4 times the ten years served by former FBI Special Agent Mark Putnam, who had an affair with an informant, killed her when he learned she was pregnant and then obstructed the investigation into her disappearance. He has served more time than former FBI Special Agent John Connolly will serve on his 40 year sentence for the deliberate facilitation of countless murders, as Whitey Bulger's inside man in the Boston FBI. Finally, he has served more time in prison than Nelson Mandela, who before his death, was one of Mr. Peltier's strongest supporters and for decades called for his release.

In my opinion, each additional day that Mr. Peltier remains in jail, our government creates an even greater injustice. This is an opinion shared by countless humanitarians, scholars, tribal nations, the NCAI, NARF, members of Congress and the Senate, your fellow Nobel Peace Laureates, more than 110,000 people who signed Amnesty International's petition, the 70,000 who signed the Change.org petition and the thousands others who reach out to the White House daily.

Former United States Attorney Reynolds' decision to "go against company policy" in his words, to stand up for the Justice System which many of us have spent our careers defending, is extraordinary, and I respectfully submit that his recommendation should be weighted accordingly in the decision-making process.

Over any given forty-year period, government leadership, worldview, ethics, notions of fundamental fairness and Justice evolve. Although, ordinarily, it is never too late to correct or mitigate a great injustice, for Mr. Peltier it will be too late after the conclusion of your term; he is next eligible for parole in 2024.

By reckoning with the past and moving forward in the best interests of Justice, reconciliation and compassion, we can become a stronger and more just nation.

With great admiration for your Presidency, your service, and for all that you have done to begin the process of reconciliation throughout Indian Country, I respectfully and urgently submit, it is time to free Leonard Peltier.

Respectfully,

Cynthia K Dunne

cc: Robert A. Zauzmer, Pardon Attorney  
United States Attorney General Loretta Lynch