60.Poor Bear was called by the defence on a voir dire to testify about her treatment at the hands of the FBI and that the affidavits were untrue. The trial judge did not permit her to testify before the jury. For a transcript of her retraction and her description of the coercion see **United States** v. **Leonard Peltier**, April 13, 1977, Transcript of Proceedings, pp. 4584-4679.

AND SEE NOTE 57

Your Honor, we certainly did not oppose having the entire documents in. That's what I asked for originally. But now we've got some red marks on there which I would not want the jury to see. They might draw some inference why they were there and if Your Honor changes his ruling I take a neutral position on it. If Your Honor changes his position I think we ought to have some clean copies made as exhibits. I think it is appropriate to leave Your Honor's ruling the way it was made.

THE COURT: I'm going to examine into this question that counsel has just raised with reference to Exhibit 135 and I'll make a ruling later in the day.

MR. LOWE: All right, sir.

THE COURT: Just one more matter for the record before the jury is brought in. Because of the inquiry of defense counsel just prior to the recess yesterday I will clarify for the record the ruling of the Court on the offer of proof of the testimony of Myrtle Poor Bear.

The offer of proof related to a collateral matter and under the Rules of Evidence is therefore inadmissible. If the witness as she testified yesterday were to be a believable witness the Court would have seriously considered allowing her testimony to go to the jury on the grounds that if believed by the jury the facts she testified to were such that they would shock the conscience of the Court and in the interests

of justice should be considered by the jury.

However, for the reasons given on the record yesterday the Court concluded the danger of confusion of the issues, misleading the jury and unfair prejudice outweighed the possibility that the witness was believable.

Jury may now be brought in.

While the jury is coming in could I safely advise them that we expect the evidence to be completed today?

MR. TAIKEFF: Maybe this morning, Your Honor.

THE COURT: Very well. And my intention is to ask the jury if they want to work over the weekend. If so, I would anticipate that we would have arguments tomorrow, they will be charged first thing Saturday morning and then they can deliberate over the weekend.

MR. TAIKEFF: Your Honor, if it makes any difference, Your Honor, could I hope, tell them that counsel would encourage that schedule? Does the Government agree?

MR. HULTMAN: Even if the Court wants to charge them on Friday afternoon it's fine with the Government.

THE COURT: Well, we're going to have six hours of argument. I think --

MR. HULTMAN: I'm not anticipating three hours, Your Honor. There have been --

MR. TAIKEFF: I may take some of the Government's time, Your Honor.

61.The trial judge would not permit Poor Bear to testify before the Jury. United States v. Leonard Peltier, April 13, 1977.

Your Honor, we certainly did not oppose having the entire documents in. That's what I asked for originally. But now we've got some red marks on there which I would not want the jury to see. They might draw some inference why they were there and if Your Honor changes his ruling I take a neutral position on it. If Your Honor changes his position I think we ought to have some clean copies made as exhibits. I think it is appropriate to leave Your Honor's ruling the way it was made.

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62.Evan Hultman, arguing before US Court of Appeals for the Eighth Circuit said this during oral argument on April 12, 1978; Excerpts from argument from magnetic tape (No. 77-1487) at 7326 7.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

LEONARD PELTIER, Appellant,	)	
vs.	)	No. 77-1487
UNITED STATES OF AMERICA, Defendant.	)	

EXCERPTS FROM ARGUMENT

FROM MAGNETIC TAPE

April 12, 1978

THE COURT: Mr. Hultman.

MR. HULTMAN: Your Honor, may it please the court. Your Honor, since the last issuing is freshest in your memory and because a question was asked, or two, I would like to address the issue concerning Myrtle Poor Bear first, and then go to some of Mr. Kunsler's remarks. So that Your Honor will know the posture in which Myrtle Poor Bear appears, I would refer you to Page 24 and 25 and 26 of the Government's brief. And in response, Judge Stevenson, I believe it was to your question, as we point out there, and the things I'm about to say are documented at the record at the pages in our brief, the Government's.

The counsel for Mr. Peltier in opening statement spoke of one witness in the trial that was about to proceed, and that was Myrtle Poor Bear. As he later specifically said during the course of the trial and at the opening statement, he said, as we have indicated to you on the page in the record, that in his opening statement that the Government was going to bring a witness whose mental-- I'm quoting the record now-- "a witness whose mental imbalance is so gross as to render her, her testimony, unbelievable", unquote. Now that was the posture that defense counsel placed this witness in in opening statement. And I submit to you that that was a correct statement without any question. And the record from that point on, likewise, will make that statement of defense counsel's in opening statement correct.

Both of the defense attorneys referred to her at Page 1464 of the record as being unstable when applying for a material witness warrant. Now, this is a second time, officially, in the record when they wanted to get a material witness warrant that they characterized this particular witness. Now, the government didn't call her very simply, and I made that decision myself.

JUDGE ROSS: And they were subpoening her?

MR. HULTMAN: That is correct, Your Honor, that is correct. And that's found on page 1464 of the record, Your Honor.

JUDGE ROSS: Assuming that she was incompetent, what about the affidavit that they utilized in the extradition proceedings?

MR. HULTMAN: All right, Your Honor. When the -- To go back in time frame, Your Honor, so that maybe I can better explain that, these affidavits were in the early part of the year, in January, February. I don't remember the exact dates, but the dates were on the affidavits themselves. And at that time that was all that was known by anybody concerning Myrtle Poor Bear. And I can stand before this court and say that that is the only thing that the prosecutor, because I was the representative for the Government, that was the only thing of which I had any knowledge of any kind. So the affidavits were accepted on their face as being statements of a witness who was present

who was present who was testifying in the affidavit under oath as to what it was she saw.

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.

MR. HULTMAN: Yes.

JUDGE ROSS: 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.

JUDGE ROSS: The Government --

MR. HULTMAN: And I don't excuse, by my remark just now to Your Honor, I don't in any way excuse what the court has just indicated. Your Honor, I have trouble with that myself, and Your Honor that is the exact reason which I did read these affidavits and put together the fact that -- And that gets to the second point, Judge Gibson and Judge Ross. 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, first, that secondly, there was no relevance of any kind. Absolutely not one scentilla 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 this witness was no witness. First of all, because she was incompetent in the utter, utter, utter ultimate sense of incompetency as recognized by defense counsel on more than one occasion. And there was some more indicia here in the record where they likewise further did. But, secondly, as Judge Ross, you are indicating, and I take no issue at that, Your Honor, but 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 scentilla 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 relevency

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 --

MR. HULTMAN: I understand, yes, Your Honor.

JUDGE ROSS: --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.

MR. HULTMAN: Judge --

JUDGE ROSS: 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.

MR. HULTMAN: Judge Ross, I in no way do anything but agree with you totally.

JUDGE ROSS: And you try to explain how they get there is not legally relevant in the case, and they don't understand that.

MR. HULTMAN: I understand, Your Honor.

JUDGE ROSS: 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, and that is why I say, as I indicated, I ultimately made a decision that I made, and I made that decision personally. I think the trial, itself, Your Honor, and the record in its totality, as well as its individuality will show the very posture that the court has now indicated. And as a legal matter, I think that that is correct. Although, I certainly accept what the court has just said in totality, and I agree with it one hundred percent, Your Honor.

Now, later on then, the counsel again indicated at Page 3455 at the record, that anyone who talked to her, and he was referring

to Myrtle Poor Bear, for even a few minutes would immediately know that she was an unbelievable witness. Now, those are just -- that's all from the defense's side of the house, Your Honor. That has nothing to do from the Government's side of the house. So I believe that the ruling was a proper, discretionary one on the court, and he would have opened up a Pandora's Box into things that had absolutely nothing to do with the ultimate issues at trial, because she knew nothing, absolutely nothing, without question, about what took place.

JUDGE ROSS: Was she there at the time?

MR. HULTMAN: No, she was not. I don't think there is any question on the part of anybody, there is not one scentilla of evidence that indicates, finally, that she is there and has anything to testify to the events.

JUDGE ROSS: All of this was in the affidavits?

MR. HULTMAN: Yes, that is correct, Your Honor. Now, let me move, Your Honor, for a minute or two to the other crime issues that Mr. Kunsler addressed.

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63. This interview was held with US prosecutor Lynn Crooks for a documentary produced for U.S. television news show "West 57th". The transcript was filed with the Supreme Court of canada on the Leave to Appeal Application June, 1989.

64.Mr. Justice Schultz committed Leonard Peltier for extradition on June 18, 1976; United States of America v. Leonard Peltier, Reasons for Judgement, B.C. Supreme Court, No. 760176, Vancouver, at pp 86-87. The Butler Robideau trial commenced June 7, 1976 (ending in an acquittal on July 16, 1976) United States v. Robideau & Butler, Cr. 76-11 (N.D. Iowa July 16, 1976). The third affidavit was disclosed at a disclosure hearing on June 6, 1976.

011

VANCOUVER
JUN 18 1976
REGISTRY

NO. 760176 1377

IN THE MATTER OF THE "EXTRADITION ACT", R.S.C. 1970, CHAPTER E-21, AND IN THE MATTER OF LEONARD PELTIER, also known as Leonard Little Shell, Leonard Williams, John Yellow Robe, Erwin Yellow Robe, Leonard John Peltier	REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE SCHULTZ (IN CHAMBERS)
P. W. Halprin, Esq.	of Counsel for the United States of America
Donald J. Rosenbloom, Esq., and Stuart Rush, Esq.	of Counsel for Leonard Peltier
Dates of hearing:	May 3, 4, 5, 6, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 25, 26, 27, 28, and June 18, 1976.

The United States of America ("U.S.A.") seeks the extradition from the Dominion of Canada of Leonard Peltier (hereinafter called "Peltier"), a Sioux Indian of the U.S.A., who was arrested on February 6, 1976, at a place called "Chief Small Boy's Camp", located about 70 miles south of Hinton, in the Province of Alberta, Canada, by members of the Royal Canadian Mounted Police ("R.C.M.P.").

This is an extradition hearing, under section 13 of the "Extradition Act", R.S.C. 1970, Chapter E-21 (hereinafter called "the Act") of Peltier, who is charged in the Information, dated February 12, 1976, of Staff Sergeant Gerald James Young, R.C.M.P. (Exhibit 1), with five alleged crimes committed in the U.S.A.; namely:

A. November 22, 1972, Milwaukee, Wisconsin, attempted murder,

B. June 26, 1975, near Oglala, South Dakota, murder of Ronald A. Williams, a Special Agent of the Federal Bureau of Investigation ("F.B.I."),

C. June 26, 1975, near Oglala, South Dakota, murder of Jack R. Coler, a Special Agent of the F.B.I.,

IV. Conclusion:-

Salient portions of the evidence have been stated or reproduced, earlier, in these Reasons for Judgment.

Questions of law, arising from the submissions of respective Counsel, have been canvassed, previously, in these Reasons for Judgment.

The whole of the evidence and the submissions of respective Counsel have been considered.

For reasons hereinbefore expressed, I conclude, as follows:-

1. With respect to D. Attempted Murder - Oregon, the evidence produced, in this hearing, would not, according to the law of Canada, justify the committal of Peltier for trial, if this crime had been committed in Canada. Accordingly, I discharge Peltier on this charge, pursuant to section 18 (2) of the Act.

2. With respect to each of the other four (4) charges, namely,

A. Attempted Murder - Wisconsin,

B. Murder (of Williams) - South Dakota,

C. Murder (of Coler) - South Dakota, and

E. Burglary - Oregon, respectively,

the evidence produced in this hearing would, according to the law of Canada, justify the committal of Peltier for trial, if the crime had been committed in Canada. Accordingly, with respect to each of these four extradition crimes, with which Peltier is charged, I commit Leonard Peltier, pursuant to section 18 (1) of the Act, to the nearest convenient prison; namely, Lower Mainland Regional Correctional Centre, there to remain until surrendered to the U.S.A.

Counsel for the U.S.A. is to prepare a Warrant of Committal, in proper form, and submit it to me for signature.

Section 19 (a) of the Act prescribes:-

> "19. Where the Judge commits a fugitive to prison, he shall, on such committal,
>
> (a) inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus, ..."

Accordingly, I inform Peltier "that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for habeas corpus, . . .".

This hearing, under section 13 of the Act, is concluded.

THE HONOURABLE MR. JUSTICE
WILLIAM A SCHULTZ

A JUSTICE OF THE
SUPREME COURT OF BRITISH COLUMBIA,
acting as a Judge under
the "Extradition Act".

City of Vancouver,
Province of British Columbia,
Dominion of Canada,
June 18, 1976.