

December 11, 2000

**LEONARD PELTIER DEFENSE COMMITTEE CANADA**  
**Canadian Clemency Campaign 2000 – 2001**



**CANADIAN REPORT / UPDATE**

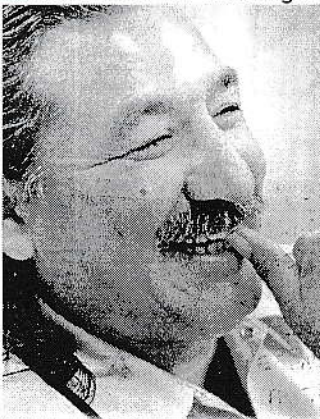
*This report is dedicated to all peoples struggling in defense of their fundamental rights and freedoms. It is in the spirit of truth and justice that we strive for a world of human and environmental integrity, justice and balance with all of Creation. With this in heart and mind, we struggle for the day our brother Leonard Peltier walks to freedom.*

***Greetings Sisters and Brothers, Comrades  
and Supporters in the struggle for Leonard Peltier's freedom:***

A decision by the President of the United States is close at hand. And if miracles exist, it will be with the stroke of Bill Clinton's pen approving Leonard Peltier's clemency release. After 25 years of sacrifice and hard work, a campaign, which gained political endorsements, recognition and support from human rights organizations and millions of peoples worldwide, has finally come to rest in the conscience and decision of one man.

On Nov. 7, the president responded on public radio that he would consider Mr. Peltier's request for executive clemency and "see what the merits dictate ... based on the evidence." On Nov. 27, the White House confirmed that the President would make a decision before he leaves office on Jan. 20, 2001. During this time, volumes of documentation and evidence will come to his attention as part of an updated clemency appeal from two countries - Canada and the United States. On Dec. 11, the day following the U.N. Anniversary of the Universal Declaration of Human Rights, the Canadian application for clemency was formally delivered to United States Ambassador to Canada, The Hon. Gordon Giffin, at the American embassy in Ottawa. Embassy officials will then forward the document to the President, which represents an appeal for clemency and reconciliation on behalf of millions of Canadian peoples.

*Leonard Peltier – P. Worthington/Sun*



The Canadian application contains stunning new evidence received at a tribunal-legal hearing in Toronto on Oct. 25 indicating Leonard Peltier was extradited from Canada on the basis of false testimony. A vigil was organized outside of the American embassy on this day. Delegates, who served the embassy notice include **Frank Dreaver**, *International Spokesperson, of LPDC Canada*; **Warren Allmand**, *President of Rights & Democracy*; **Dianne Martin**, *Director of The Innocence Project of Osgoode Hall Law School*; **Ethel LaValley**, *an Officer of the Ontario Federation of Labour* and **William Commandant**, *Algonquian elder from Maniwaki, Quebec*. Shortly after, these people then attended a media conference inside Canada's Parliament. They were then joined by **Matthew Coon-Come**, *Chief of the Assembly of First Nations*, **Alex Neve**, *Secretary General, Amnesty International (Canada)*; **Lawrence Greenspon** of the *Association in Defense of the Wrongly Convicted*; and **James Clancy**, *an executive of the Canadian Labour Congress and President of the National Union of Public & General Employees*. (More details of what happened on this day will be released soon.)

-2- ***If there was ever a time to take action, it is now.*** We urgently request each person to send in your letters, your faxes and e-mail messages as a collective appeal to President Clinton. We are also requesting letters sent to the Prime Minister of Canada for his urgent recommendation to the President to grant clemency.

### ***U.S. Judge supports political asylum***

In another development on Nov. 15, a United States judge refused to turn over a Gustafson Lake defendant to Canadian authorities on "political" grounds in response to an extradition request from Canada. Magistrate Judge Janice Stewart supported her decision by referring to Mr. Peltier as an example of someone who could have been eligible for sanctuary in Canada since he was extradited on what turned out to be "false affidavits." However, she could not determine why Canada's Justice Minister in 1976 refused him political asylum. He "was a prominent leader of the American Indian Movement," she concluded, "an organization dedicated to encourage self-determination among American Indians and to establish international recognition of American Indian treaty rights."

At the time, Leonard Peltier had argued he would never receive a fair trial and feared for his life. A year later at trial, he would endure history's most blatant obstruction of justice, in which all FBI wrongdoing was banished from the courtroom. In 1979, an attempt on his life was exposed in California's Lompoc Prison, with the would-be assassin revealing the state-orchestrated plot. It is believed that Justice Stewart's judgement is the first time the United States has refused to surrender a native fugitive to Canada on political grounds on the basis that he was defending his land and nationhood rights. In Peltier's case, he was also defending the rights of his peoples when across North America during the early 1970s, the FBI's counter-intelligence operations were set up to destroy civil rights dissident movements, including the American Indian Movement. The FBI installed a network of informants, tied up AIM leadership in courts on hundreds of bogus charges and used countless other destabilizing tactics.

Today it is recorded how the FBI targeted the Pine Ridge Indian Reservation in South Dakota and created a climate of fear and intimidation that escalated to astronomical proportions during the years 1973 to 1976. The FBI equipped the corrupt tribal government and its private army with military weapons. It then turned aside to make way for the hundreds of brutal assaults and drive-by shootings that resulted in more than 60 unsolved murders. Evidence of this was allowed in the trial of Peltier's two co-defendants, who were acquitted on grounds of self-defense in the deaths of two federal agents on June 26, 1975. All evidence of FBI wrongdoing was refused at Leonard's trial to ensure the FBI would get a conviction. Meanwhile, more than a 166,000 acres of reservation lands had been transferred into leasing arrangements with up to a dozen resource industries that siphoned off millions of dollars worth of uranium ore, oil and other minerals.

### ***Canadian Clemency Campaign***

For the past year, the LPDC Canada, its legal advisory and a coalition of labour and non-labour partners have worked on a broad plan of public awareness and lobby actions. Together with our partners in the labour movement, the Canadian Labour Congress and many of the national unions, parallel clemency awareness campaigns have been initiated within national and regional trade union structures.

-3- Some examples include the commissioning by the CLC of a full colour Peltier Clemency poster and its nation-wide distribution to union offices and at public functions and conferences. Clemency post cards, addressed to President Clinton, have also been distributed through the same network. By the end of the year, many thousands of the cards will have been sent to the White House in addition to the thousands of letters sent to the Canadian and American governments.

The National Union of Public & General Employees (NUPGE) through its president, **James Clancy**, together with **Ethel LaValley** of the Ontario Federation of Labour (OFL) were the first trade unions to respond to a request for support from the Canadian Leonard Peltier Defense Committee. This followed shortly after the CLC paved the way and unanimously adopted an updated resolution at its convention in May 1999. These dedicated individuals further initiated a lobby within the CLC and other national unions for a commitment in partnership and support of the initiatives and projects of the Leonard Peltier Defense Committee Canada and in co-ordination with the development of a Canadian clemency campaign. In October 1999, NUPGE conducted its own assessment of the Peltier case and the work in Canada and the United States over the years. It produced a report with conclusions that provided the basis of two historic meetings with the CLC and national union representatives together with LPDC Canada's national coordinators and international representative, and Canadian and American legal advisory in Toronto in December 1999 and in April 2000.

On October 14, 1999, Justice Minister Anne McLellan completed the government's internal review shirking responsibility for Canada having authorized a fraudulent extradition. She succumbed to U.S. interests, making public the fact that she had permission from American officials to close her own department's review that had ran five-and-a-half years in length. We realized that the most effective strategy to persuade Mr. Clinton to grant clemency would have to be through an independent assessment of the facts and evidence together with an appeal for reconciliation, justice and clemency. We then turned our attention to decide the scope of an independently held and unbiased hearing focussing on Canada's involvement and the false extradition. We explored the possibility of Canadian citizens' commission of inquiry. However, because of President Clinton's remaining term of office, time would only allow us to focus on a Canadian legal hearing to formally receive "new" evidence a larger tribunal would have heard. We then spent time tracking potential witnesses for testimonies, whose statements have never been heard from before or who have tried but no court or political hearing would ever allow.

### ***Commission to hear new evidence***

On Oct. 25, this extraordinary hearing took place, a non-public event, its proceedings confidential and closed to media with the exception of two well-known Canadian journalists, whose articles appeared in newspapers after the American presidential election. A low-key event would help shield the witnesses until the election was over. There was fear that publicity could incite public debate from the FBI, which has embarked on its own public misinformation and propaganda campaign against clemency for Peltier. Our main witness, Myrtle Poor Bear was relieved to recount the horrifying abuse she received at the hands of the FBI. She recanted her testimony when the FBI coerced her into signing falsified affidavits, the main evidence relied upon by the Canadian extradition court.

-4- Her testimony was officially received by **Justice Fred Kaufman**, formerly with the Quebec Court of Appeals and Chair of committees of the Canadian Bar Association. Lawyers **Michael Code**, a former deputy attorney general and **Scott Fenton**, a former Canadian prosecutor interviewed the witnesses. Myrtle testified before the judge at Leonard's 1977 trial but in the absence of the jury. Judge Benson would then rule out her testimony stating the FBI was not on trial.

Ms. Poor Bear spoke of the extreme lengths the FBI took to threaten and intimidate her into unknowingly signing the false statements, stating she saw Leonard Peltier shoot the agents. Kidnapped for months at a time, shuffled between hotel rooms in different states, threatened with 15 years in prison if she didn't co-operate, and harm to herself and her family, Myrtle was systematically abused and victimized for more than a year. Other witnesses included her sister, Elaine Martinez, U.S. attorney Bruce Ellison, Edgar Bear Runner of Pine Ridge, South Dakota, Ron George of British Columbia, former president of the United Native Nations and the Native Council of Canada, and Frank Dreaver, LPDC Canada's founder and international spokesperson. The testimonies and evidence from the hearing will give greater legitimacy to a *Canadian clemency application*, assembled by a legal team co-ordinated by Prof. Dianne Martin of Osgoode Hall Law School. This position statement includes the facts of Leonard's extradition, an account of FBI wrongdoing and legal/political responses by Canada, the United States and internationally. It contains an appeal for reconciliation intended to convince the president that by granting clemency he would begin a new process of the possibility of good faith relations between North American Native peoples and the United States government.

### **Action in Ottawa**

As part of an ongoing mobilization to create awareness and momentum in the nation's capital, we collaborated with one of Canada's top music bands, *Blue Rodeo*, and held a tribute concert on Nov. 14. We were astonished with the amount of publicity as the majority of both local and national newspapers carried news coverage of the clemency appeal and details of the Canadian campaign. Years earlier when we released *Pine Ridge, An Open Letter to Allan Rock*, album of 1997, articles were more geared to reporting the entertainment than of the issue itself. We were pleased to note the opposite today. Some of downtown Ottawa's *Blue Line Taxi* drivers were also displaying the Peltier Clemency posters in their cabs that evening in an expression of solidarity. Other developments we are presently working on include a future documentary film on the Canadian involvement in the Leonard Peltier case with APTN (Aboriginal Peoples Television Network).

After many years of political lobbying for human rights endorsements from around the world, the consensus has been freedom for Leonard Peltier! However, we can not forget that granting Mr. Peltier clemency doesn't prove that justice has been served. On the contrary, Leonard Peltier has served 25 years as a political prisoner for a crime that governments are forced to admit they cannot prove he committed. Now it is up to Bill Clinton to weigh this distinction and grant Leonard Peltier his immediate release from prison.

**In Solidarity,  
Frank & Anne Dreaver, LPDC Canada  
Int'l Representative / National Co-Chair**

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**AN APPEAL TO THE PRIME MINISTER OF CANADA  
IN SUPPORT OF CLEMENCY FOR LEONARD PELTIER**

December 11, 2000

LEONARD PELTIER DEFENSE COMMITTEE CANADA  
43 Chandler Dr., Scarborough, Ontario M1G 1Z1



The Honourable Jean Chretien, Prime Minister of Canada  
House of Commons, Centre Block, Room 309-S, Ottawa, Ont., K1A 0A6 Canada

**Re: A Canadian Clemency Application for Leonard Peltier, a North  
American Aboriginal leader wrongfully imprisoned for 25 years**

**Greetings Mr. Prime Minister:**

On Monday December 11, 2000, a brief in support of executive clemency for Leonard Peltier has been delivered to the Ambassador to Canada of the United States of America, for delivery to President William Jefferson Clinton.

It is being presented on behalf of a broad coalition of Canadians, brought together by the *Leonard Peltier Defence Committee Canada* and supported by Canada's aboriginal and justice organisations and organised labour from coast to coast. It is written by the students and directors of the *Innocence Project of Osgoode Hall Law School of York University* (a clinical programme involving law students in investigating potential miscarriages of justice and seeking appropriate remedies).

As you know, Leonard Peltier's extradition from Canada and subsequent conviction in the United States for the murder of two F.B.I. agents has long been a matter of bitter controversy.

On October 25, 2000, a hearing was held before The Honourable Fred Kaufman, C.M., Q.C., former Justice of the Quebec Court of Appeal, renowned for his work inquiring into the wrongful conviction in Ontario of Guy Paul Morin, to receive fresh evidence bearing upon the extradition. Witnesses were heard whose evidence had never before been considered in this matter, most importantly, Myrtle Poor Bear whose false affidavits formed the heart of the extradition case. Her testimony concerning the steps taken by the F.B.I. to coerce her signature to false affidavits is highly persuasive and very troubling. This evidence heard by the Honourable Fred Kaufman, forms the basis for the brief submitted to the President.

At this time, we are providing you with a copy of that Brief, in the hope that you will be moved to support the request for Executive Clemency. As you may know, President Clinton has committed to giving the issue serious consideration. We are enclosing the following materials:

1. Executive Summary;
2. Brief in Support of the Application for Clemency and Appendix;
3. Transcript of the October 25, 2000 Hearing before the Honourable Fred Kaufman, C.M., Q.C., in Toronto and Exhibits;
4. Copy of letter of Mr. Kaufman to President Clinton regarding the hearing and the clemency application.

Leonard Peltier's extradition from Canada implicates us in a miscarriage of justice of international notoriety. You may recall that in 1976, American authorities had assured Canada's Justice Minister, the Hon. Ron Basford, that Mr. Peltier would receive a fair trial, when in fact overwhelming evidence proves he did not. As a country complicit in having authorised a fraudulent extradition, we have a duty to seek ways to remedy this injustice by supporting Mr. Peltier's right to a fair executive review and clemency.

It is now clear that there never was sufficient reliable evidence to support Leonard Peltier's conviction for murder. It is also clear that the October 1999 decision by the Minister of Justice to continue the pretence that his extradition from Canada was lawful and justified can no longer be maintained even by Justice Officials acting as counsel to the United States. The fresh evidence heard by Justice Kaufman on October 25, 2000 exposes the sham of the extradition, and of the conviction.

This record of injustice and Canada's role in it has concerned prestigious international human rights, political, NGO's, and governmental organisations over the years, including the European Parliament and Committees of the U.N. Human Rights Commission. Amnesty International has renewed an international appeal for Leonard Peltier's immediate and unconditional release as a world recognised political prisoner.

Your recommendation for Executive Clemency from the President of the United States would help remove that stain from Canada's reputation. It would seek to present Canada as a nation, which has made a historic gesture in respect of fundamental rights and freedoms, the rule of law, and reconciliation with the First Nations of this country.

Your support for this step by the President might make the difference in his decision. On behalf of fundamental justice, we urge you to recommend to President Clinton that he grant Mr. Peltier executive clemency and the relief he deserves.

**Yours Sincerely,**

**Frank Dreaver  
International Representative  
National Co-Chair**

**Dianne L. Martin  
Director, Innocence Project**

**Anne Dreaver  
National Co-Chair  
Leonard Peltier Defense Committee  
Canada**

**Osgoode Hall Law School  
York University, Toronto**

**cc: The Hon. Anne McLellan, Justice Minister of Canada, Ottawa  
The Hon. John Manley, Minister of Foreign Affairs & International Trade, Ottawa  
Ambassador Michael Kergin, The Embassy of Canada, Washington, D.C  
Ambassador Gordon D. Giffin, The Embassy of the United States of America, Ottawa**

**(tel/fax) (416) 439-1893  
enclosures**

## **LETTERS IN SUPPORT OF EXECUTIVE CLEMENCY:**

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### **CLEMENCY:**

**President Bill Clinton**  
**The White House**  
1600 Pennsylvania Ave. NW  
Washington DC 20500  
202-456-1111

Room 309-S, Ottawa,  
Ontario, Canada K1A 0A6

**The Hon. Anne McLellan**  
**The Justice Minister of Canada**  
House of Commons, Ottawa  
Ontario Canada K1A 0A6

### **CC Your Clemency Letters To:**

**US Pardon Attorney**  
**Roger C Adams**  
500 First Street NW Suite 400  
Ref: Leonard Peltier #89637-132  
Washington DC 20530  
202-616-6070

**John Manley**  
**Minister of Foreign Affairs**  
Department of Foreign Affairs & Int'l Trade  
125 Sussex Dr., Ottawa, Ontario K1A 0G2

### **CANADA:**

**The Hon. Jean Chretien**  
**The Prime Minister of Canada**  
House of Commons, Centre Block,

### **WRITE TO LEONARD PELTIER:**

**POW 89637-132**  
Leavenworth Federal Prison  
Box 1000  
Leavenworth, KS 66048

## **ACKNOWLEDGEMENTS:**

*In closing we would like to thank our partners, sponsors and supporters in the Canadian Labour Movement for their great support and solidarity for Leonard's freedom and the Canadian Clemency Campaign. Enclosed is a partial list::*

*The Canadian Labour Congress and its executive council, Kenneth Georgetti, CLC president and Hassan Yussuff, vice-president; David Onyalo, former CLC president Bob White; James Clancy & Len Bush of the National Union; Ethel LaValley of the OFL; CUPE national; and Brian O'Keefe of CUPE Ontario; CUPW and Denis Lemelin, vice-president, Dave Bleakney & Evert Hoogers; United Steelworkers of America, especially local 1005, Hamilton, PSAC and Angela Fairweather, UFC and Dan Goodman, Ramon Antipan, CUPW, Edmonton, AFL, Communications, Energy and Paperworkers Union of Canada, Tom Kozar and BCGEU, Wayne Marsden of Hamilton & District Labour Council, B.C. Federation of Labour; CAW-TCA and to all 2.2 million unionized workers in Canada. A special thank you to Larry Wartel of Victoria, LPDC Canada's regional representative, for making great strides in awareness and lobby within the AFL-CIO and American trade unions.*

*We would also like to thank the many academic, human rights, legal and aboriginal representatives and organizations across Canada who have supported us over the years. Special thanks to Anishnawbe Health Toronto and to Wanda Whitebird & the Anishnawbe Womens' Community Drum Group. Our thanks also to our music friends who continue to walk the path with us, in particular Greg Keelor, Jim Cuddy and the Blue Rodeo band & management. And finally, we want to thank our aboriginal elders, whose prayers continue to guide us and to those who have passed on – the late Ethel Pearson, Leonard's adoptive mother, Kwakiutl nation, and the late Ojibway elder Art Solomon. We feel your loss. Thank you also to Jean & Ben Shek, David Walsh, Dianne Martin, to members of the legal team, and the many others who have stood with us over the years. Thank you to all.*

**For more information, contact LPDC Canada at (416) 439-1893 or [lpdccfd@web.net](mailto:lpdccfd@web.net)  
43 Chandler Dr., Scarborough, Ontario M1G 1Z1 U.S. web site: [www.freepeltier.org](http://www.freepeltier.org)  
and soon to go online: [www.lpdccanada.org](http://www.lpdccanada.org).**

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## **I. Introduction**

### **A. Overview and Executive Summary**

More than twenty five years ago, on June 26, 1975, three men died violently on the Pine Ridge Indian Reservation in South Dakota. They were not the first to die of violence in that place of tragedy, nor the last, but the deaths of two of them, Federal Bureau of Investigation Special Agents Ronald A. Williams and Jack R. Coler, initiated one of the most extensive manhunts in American history. The resolution of that manhunt, the conviction of Native American Leonard Peltier for the murder of the agents, touched off one of the most enduring challenges ever made to the legitimacy of the justice systems of both Canada and the United States. While the F.B.I. and their supporters cling to the belief that justice was served by Leonard Peltier's extradition from Canada and conviction for murder in Rapid City, South Dakota, literally millions of people from around the world, but most significantly hundreds of thousands of Canadians, Americans, and Aboriginal Peoples, have struggled ceaselessly to demonstrate that his extradition, conviction, and continued imprisonment represent a profound miscarriage of justice. (The third violent death that day, that of Native American Joe Stuntz, has never been solved. A fourth violent death associated with these tragic events, that of Native Canadian Anna Mae Aquash in February, 1976, remains unsolved as well).

The extradition and conviction have been challenged in the courts numerous times - to no avail. The reasons for rejecting the appeals and applications have been procedural rather than substantive in most cases, as courts in both countries have found reasons to avoid the troubling political, social, and legal questions raised. At the same time, political institutions in Canada at least, have chosen to defer to these legal outcomes, as if they had resolved the outstanding *factual* questions, while frustration and anger mount over an injustice that will not be ignored. Now, a Petition for a Presidential Pardon is pending. This is an historic opportunity.

The application of Leonard Peltier for Executive Clemency provides a unique opportunity for

“healing” for three nations – for Native Americans and for the peoples and governments of Canada and the United States. The concept of “healing”, central to Aboriginal culture, involves open dialogue. It requires the acknowledgment of wrongdoing, the acceptance of responsibility, and a commitment to change. It is also about making amends for such wrongdoings. It is not, however, about recrimination. The deaths on Pine Ridge will not be forgotten if clemency is granted to Leonard Peltier, the man wrongly held to blame for them. But acknowledging that many suffered from the events on Pine Ridge and that many wrongs, not just two, were committed will begin healing the deep historical wounds that Native Americans still endure.

For many Native Americans and Native Canadians, Leonard Peltier epitomizes the long history of injustice visited upon them by the Governments of both countries. Despite his incarceration, Leonard Peltier is also seen as a symbolic leader of the ongoing aboriginal struggle for justice and equality. It is fitting for the leader of one nation to extend his hand to a symbolic leader of another nation, a leader who has come to represent much that has gone wrong in the relationship between those nations. The value of extending a grant of presidential clemency to Leonard Peltier cannot be underestimated – it would do far more than simply redress the miscarriage of justice in his case, it would go a long way to promoting the healing that is so desperately needed between these two great nations. It would contribute to the same end in Canada, where the journey to a wrongful conviction began with his wrongful extradition.

In January of this year, the Innocence Project of Osgoode Hall Law School of York University, Toronto, Ontario, Canada,<sup>1</sup> began to investigate Leonard Peltier’s extradition and the role it played in his subsequent conviction. His case was taken up in response to the claim made by Canadian Minister of Justice Anne McLellan, in her October 12, 1999 letter to U.S. Attorney General Janet

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<sup>1</sup> The Innocence Project is a clinical programme at Osgoode Hall Law School, York University, Toronto, Ontario, Canada which involves law students under the supervision of Director Dianne L. Martin and Co-Director Paul Burstein in investigating and seeking to remedy miscarriages of Justice. Appendix, Tab 1: <http://www.yorku.ca/dmartin/Innocence/innocenc.htm> The work of the Innocence Project on behalf of Leonard Peltier actually began 5 years ago when the Aboriginal Law Students Society at Osgoode Hall law School took up his cause.

Reno, that there was, in effect, no new evidence to warrant reconsideration of the extradition. The history of that proposition is that, while Canadian Department of Justice officials have long officially denied that an extradition fraud occurred, others, equally well informed, have repeatedly expressed concern about it.<sup>2</sup> The Innocence Project<sup>3</sup>, undertook to search for the evidence that would resolve this dispute.

That research resulted in a hearing held in Toronto, Ontario, Canada on October 25, 2000, before the Honourable Fred Kaufman, C.M., Q.C., a retired Justice of the Quebec Court of Appeal. Testimony was taken under oath from a number of witnesses whose stories had never before been heard in any meaningful way. Most importantly, Myrtle Poor Bear, the Native American who was compelled by the F.B.I. to sign the false affidavits which secured Leonard Peltier's extradition from Canada, and her sister Elaine Poor Bear Martinez, testified. Both Ms. Poor Bear and her sister had compelling evidence to give about the tactics F.B.I. Special Agents used to secure Leonard Peltier's extradition and subsequent conviction. As well, they spoke movingly about how his wrongful extradition and subsequent conviction have affected their lives and their communities. Myrtle Poor

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<sup>2</sup> Former Solicitor General of Canada, and former Minister of Indian affairs, the Honourable Warren Allmand reported to then Justice Minister Allan Rock on August 8, 1995, that his review of the extradition files convinced him that there was fraud and misconduct at the extradition and that he should either say so, in support of an application for clemency, or, order an independent external review of the matter. Justice Minister Rock did not act. However, on October 12, 1999, his successor, Anne McLellan, chose to rely instead on the position the extradition group of the Department of Justice has always taken in this case, did not refer it for an independent review, and wrote to U.S. Attorney General Janet Reno that "no evidence has come to light since [1976] that would justify the conclusion that the decisions of the Canadian courts and the Minister should be interfered with". That correspondence and Warren Allmand's response are reproduced in the Appendix, Tab 2.

<sup>3</sup> The Innocence Project were supported by the Association in Defense of the Wrongly Convicted (AIDWYC); a coalition of Canadian labour organizations and unions, and The Leonard Peltier Defense Committee Canada. AIDWYC is an advocacy group of lawyers, law students, other volunteers and Executive Director Rubin "Hurricane" Carter working to assist the wrongly convicted in Canada, the United States and abroad. A list of the supporting unions and labour organizations is found in the Appendix at Tab 3. The skill and tireless efforts of Frank and Anne Dreaver of the Leonard Peltier Defense Committee (Canada) were an inspiration to the directors and the students alike.

Bear had never before been allowed to testify before a jury about her forced role in the prosecution of Leonard Peltier. It was on her unexamined affidavit evidence alone that he was extradited from Canada.

Important testimony was also given by Edgar Bear Runner, Bruce Ellison, Ron George, and Frank Dreaver. Edgar Bear Runner was present at Pine Ridge shortly after the shootout on June 26, 1975, and had testified at Leonard Peltier's 1976 Extradition Hearing in British Columbia. At the recent Canadian Hearing, Mr. Bear Runner was able to recount numerous incidents of F.B.I. harassment and intimidation on Pine Ridge. As a Native American who is still residing there, his testimony also focused on the current need for reconciliation within the community. Mr. Bear Runner was supported in this view by the testimony of Ron George and Frank Dreaver, long time Native Canadian Aboriginal Right's activists, who spoke passionately about the importance of executive clemency for Leonard Peltier. The evidence of attorney Bruce Ellison provided important corroboration. Bruce Ellison was a junior defense attorney involved in Leonard Peltier's first trial in Fargo, North Dakota. He has worked as a member of the defense team ever since. Mr. Ellison produced numerous documents obtained through trial disclosure and through a Freedom of Information Act action which concretely demonstrated how the questionable conduct of a handful of F.B.I. agents, including their creation of false evidence for the Canadian extradition case, generated the miscarriages of justice which occurred in Canada and the U.S.

The evidence was led by Michael Code, the former director of Criminal Prosecutions for Ontario (Assistant Deputy Attorney General). Cross-examination was conducted of the witnesses by another senior lawyer from Ontario, former federal prosecutor, Mr. Scott Fenton, acting as Amicus Curiae.<sup>4</sup>

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<sup>4</sup> Brief biographies of Justice Kaufman, Michael Code and Scott Fenton may be found in the Appendix, Tab 4. The Report the Inquiry into the wrongful conviction of Guy Paul Morin, a landmark analysis of a miscarriage of justice presided over by Justice Kaufman may be found at: <http://www.attorneygeneral.jus.gov.on.ca/html/MORIN/morin.htm>. The Innocence Project is deeply grateful to Justice Kaufman and to Messrs.'s Code and Fenton for donating their skill and time, and to the court reporters of Neeson & Knoll Real Time Reporting Inc. for donating transcription services.

The proceedings were recorded and transcribed. The full transcript of the proceedings, the exhibits and an audio tape of the evidence are filed under separate cover.

Justice Minister Anne McLellan was wrong. The evidence that an injustice was done to Leonard Peltier in Canada 25 years ago does exist, and it should no longer be ignored. The pressures and politics of those long ago times must not fester any longer. It is time for healing to begin.

## **B. Why Clemency for Leonard Peltier is a Canadian Concern**

Leonard Peltier would not have been convicted of killing the F.B.I. agents if he had not sought sanctuary in Canada. He would not have been convicted if Canada had refused to extradite him to the United States. He might be free today if Canada had fought for his release when the extent of the extradition fraud was exposed. That is why the Innocence Project is writing this brief on behalf of hundreds of thousands of concerned Canadians. The brief supports Leonard Peltier's application for clemency in two significant ways: with new evidence that the extradition of Leonard Peltier from Canada was a miscarriage of justice, and the expression of a unique Canadian perspective on the case for clemency.

### **1. New Evidence of a Wrongful Extradition**

Evidence concerning the extradition of Leonard Peltier from Canada that has never been considered by either a Canadian or American Court, nor by any Minister of Justice of Canada, was heard in Toronto, Ontario, Canada on October 25, 2000. This new evidence demonstrates that Leonard Peltier was wrongfully extradited from Canada because F.B.I. Special Agents acted as if the 'ends' justified any 'means' to secure his extradition and conviction. They acted in a manner now known as "noble cause corruption" (a term used to describe police officers who engage in misconduct to secure, what they believe to be righteous convictions). This rationalization has been exposed by revelations about wrongful conviction scandals around the world - as have the dangerous and corrupt practices associated with it. Among other improper means, the F.B.I. in the case of Leonard Peltier:

- ‘developed’ and coerced witnesses for the purpose of obtaining false testimony to secure his extradition;
- ‘scripted’ false affidavits to mislead lawyers and the Canadian courts;
- ‘developed’ and utilized jailhouse informers and other suspect means to add spurious corroboration to the case they had constructed;
- manipulated records, disclosure obligations and other accountability mechanisms to ensure that their practices would remain covert.

This pattern of misconduct in regard to the extradition is consistent with what is now known of the worst “Cointelpro” (Counter Intelligence Program) practices of the time. The pattern of misconduct is also characteristic of that which marks most cases of wrongful conviction. As such, it supports the conclusion that Leonard Peltier’s subsequent conviction in the United States was driven by the political concerns and biases of the day, rather than by the evidence, the facts and, most importantly, the truth.

## **2. The Canadian Perspective on the Leonard Peltier Clemency Application**

The people and governments of many different nations have expressed support for Leonard Peltier over the years. That is of course their right. However, the concerns of *Canadians* are of a different order. The information, evidence and arguments contained in this brief come from the only jurisdiction, other than the United States, to have participated directly in Leonard Peltier’s wrongful conviction and his 25 years of imprisonment. Leonard Peltier sought sanctuary in Canada. Instead of ensuring that he received justice and sanctuary, his Canadian captors were duped into returning him to face, what many now acknowledge to be, an unfair trial. Canadians do not easily forget the painful irony of the fact that, had Leonard Peltier remained in the United States, he would have been acquitted in Cedar Rapids, Iowa along with those who had been indicted with him (*i.e.*, Darrelle Butler and Robert Robideau).<sup>5</sup> Many Canadians have, as a result, always felt a sense of

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<sup>5</sup> It is doubly ironic, but perhaps a sign of changing sensibilities about justice for Native people, that on November 15, 2000, an American Judge, Janice M. Stewart, denied a request for

responsibility for what has repeatedly been called one of America's gravest injustices. Canada's involvement in Leonard Peltier's extradition, has had a negative impact on the views and opinions of justice held by Canadian citizens, and in particular those held by Aboriginal Peoples. It is for those reasons that a Canadian voice must be heard in giving consideration to a grant of clemency for Leonard Peltier.

#### **a) The Presentation of False Affidavits Constitutes a Fraud on a Canadian Court**

This brief is being submitted because the extradition of someone widely believed to be innocent was obtained by a fraud on the Canadian people and their courts. The extent of that fraud will be explored in subsequent sections of this Brief. Here, the point is simply the fact that a fraud occurred and remains an unresolved wrong between our nations, as well as a wrong against Leonard Peltier.

It has long been known that the affidavits used to secure Leonard Peltier's extradition were false. It is also notorious that one, inconsistent, version was (wrongly) never disclosed to the defense until after the extradition hearing was over.<sup>6</sup> It is now known that those affidavits were scripted by the F.B.I. and that Myrtle Poor Bear was coerced into signing them. Myrtle Poor Bear's sworn recantation at the recent Canadian Hearing, confirmed through documents obtained through disclosure and Freedom of Information actions, finally establish what many have suspected. She was not an incompetent witness, as American prosecutors claimed in trying to explain why she was never called by them to repeat the allegations contained in the affidavits. Myrtle Poor Bear was a coerced

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extradition of a Native Canadian to Canada from the United States because of the political character of the prosecution. *United States of America v James Allen Scott Pitawanakwat*, U.S. District Court, Dist. of Oregon, 00 - M - 489-ST.

<sup>6</sup> Three affidavits were taken from Myrtle Poor Bear. Two of those affidavits were provided to Canadian prosecutor Paul William Halprin to use at Mr. Peltier's extradition hearing. In these affidavits, Myrtle Poor Bear swore that she was Leonard Peltier's girlfriend and that she had witnessed him shoot and kill the F.B.I. agents on June 26, 1975. The third affidavit (though dated first in time and only later uncovered) conflicted with the two affidavits which had been tendered as evidence at Mr. Peltier's extradition hearing Three Affidavits of Myrtle Poor Bear: dated February 19, 1976; February 23, 1976; and March 31, 1976. Exhibit "1", Canadian Hearing.

witness who refused to repeat under oath the lies that the F.B.I. had set out in those affidavits.

Former Cabinet Minister and Member of Parliament, the Honourable Warren Allmand, had a greater reason than most Canadians for being concerned. As Minister of Indian Affairs in 1976, he was approached by Native peoples on Leonard Peltier's behalf. At the time, Mr. Allmand could not easily intervene in a matter before the courts. Moreover, Canadian officials had assured him that Leonard Peltier would receive a fair trial in the United States, citing the Butler - Robideau acquittals as proof. Years later, when Mr. Allmand learned the extent of the extradition misconduct, and its role in Leonard Peltier's subsequent conviction, he began to seek answers. In his 1995 Report on the case to then Justice Minister Allan Rock, Mr. Allmand unequivocally concluded that the Canadian extradition of Leonard Peltier was wrongful. With respect to its effect on the Canadian criminal justice system, he said:

***I am convinced that there was a fraud and misconduct at both the extradition and the trial... I would ask you [then Justice Minister Allan Rock] to write to the U.S. Attorney General stating that you have reviewed the case, have come to the conclusion that without the Poor Bear affidavits, the extradition on the South Dakota charges may well not have taken place, that you have serious concerns about the misconduct practiced both at the extradition and the trial, and that these concerns be given serious attention in deciding to grant a new trial or clemency to Leonard Peltier. I would also state that this sort of misconduct undermines the extradition process and should not take place between friendly nations... As an alternative, if you cannot come to that conclusion, then surely you can observe that there were sufficient improprieties to order an independent external review – either by a learned counsel – or by a retired judge. Only in this way will the Canadian and international communities be convinced that our government is unwilling to stand by and allow our courts to be misled by foreign governments<sup>7</sup>. (Emphasis added)***

#### **b) Canada Cannot Independently Remedy this Injustice**

This Brief is also being submitted because Leonard Peltier's fate has been out of this country's hands since his extradition in 1976.

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<sup>7</sup> *Supra* Note 2.

Canadian courts have refused to deal with questions about the extradition fraud<sup>8</sup>:

- first, because a narrow reading of Canadian law permits the conclusion that there is no jurisdiction to do so;
- second, because arguably the issue became moot once he left the country; and
- third, because the question of fraud is one that our courts have concluded is for the parties to the Extradition Treaty, (that is, Canada and the United States) and not for the prisoner himself.

Canadian political solutions have not been forthcoming either:

- The usual response to requests for a remedy at the political level has been to claim that “the courts have dealt with it”;
- The independent review of the facts surrounding the extradition requested by the Honourable Warren Allmand, and others, most recently in 1994, has never taken place. Instead, in 1999, the Minister of Justice, the Honourable Anne McLellan, chose to once again rely upon the long standing position of Canadian Department of Justice lawyers (the very agency who had represented the United States Government at Leonard Peltier’s extradition hearing) that “the courts have dealt with it” and that, in any event, it was not fraud which compelled the extradition<sup>9</sup>. (She is wrong on both counts.)

Although Ms. McLellan’s position has been widely criticized by concerned and informed members of the Canadian public, including Mr. Allmand, the reality remains that, as Canadians, we are not able to right the wrongs done to Mr. Peltier. It is up to the government, most particularly, the President, of the United States of America to see that justice is done. This brief is filed in the hopes that it may assist in achieving that result.

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<sup>8</sup> The legal questions are discussed further in Part IV of this brief, *Infra*.

<sup>9</sup> *Supra* Note 2.

## **II. An Analysis of the Case that Resulted in the Wrongful Extradition of Leonard Peltier from Canada**

### **A. The Context**

#### **1. Pine Ridge Indian Reservation in 1975**

##### **a) Three Men Die on June 26, 1975**

The Pine Ridge Reservation in South Dakota, one of the largest reservations in the United States of America, and home to the Oglala Sioux Nation, was the site of tension for years leading up to the summer of 1975. ‘Traditional’ Natives on the reservation, who opposed the governing structure imposed by the Bureau of Indian Affairs and the deals for land and mineral rights that threatened traditional values and a traditional way of life were seen by others, often of mixed-race heritage, as frustrating progress and interfering with their own economic well being. The threats, beatings, suspicious deaths and intimidation, suffered by the traditionals at the hands of Bureau of Indian Affairs police, the self styled “Guardians of the Oglala Nation” (who proudly used the acronym “GOONS”) were widely attributed to the F.B.I. who trained and funded them.<sup>10</sup> The traditionals asked the American Indian Movement (AIM) for help.

Leonard Peltier was a member of AIM, and was among the group who went to Pine Ridge in the spring of 1975 to help. As tension increased in the early summer of 1975, a small AIM camp was set up near the Jumping Bull property. The Jumping Bull property housed half a dozen dwellings used by four traditional Native families, including children and elders.

On the morning of June 26, 1975, two F.B.I. agents, Agent Williams and Agent Coler, drove in separate cars onto the Reservation. Within hours, perhaps less, they had been shot and killed, as was

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<sup>10</sup> P. Matthiessen, *In the Spirit of Crazy Horse*, 2d ed. (New York: Viking Press, 1991) at 5. The popular film “Thunderheart” (directed by Michael Apted) is a fictionalized account of that same struggle and the role of the GOONS and the F.B.I.

Native American Joe Stuntz.

**b) We do not know who shot F.B.I. Special Agents Ronald A. Williams and Jack R. Coler**

Today, there is no definitive proof about what happened on Pine Ridge on June 26, 1975. The jury in Cedar Rapids, Iowa who tried and acquitted Leonard Peltier's co-defendants, Darrelle Butler and Robert Robideau, believed that those who had fired on the Agents did so justifiably because they believed that they were acting in self-defence (due to the history of violence on Pine Ridge). The jury did not accept the prosecution theory that the Agents were shot as part of a violent Indian revolution. The story submitted by the American authorities to the Canadian extradition court framed Leonard Peltier as a cold blooded executioner. There was no opportunity for Leonard Peltier to challenge that theory. A few months later, the jury in Rapid City, South Dakota who convicted him of two counts of murder accepted a modified version of that theory. Evidentiary rulings made at Leonard Peltier's trial meant that he was still unable to challenge that prosecution theory. When Leonard Peltier's subsequent court challenges to his wrongful conviction revealed the weaknesses of key prosecution ballistics evidence, a *third* prosecution theory emerged; namely, that some or all of those who had been indicted had aided and abetted each other to commit murder (even though the prosecution could not prove who actually fired the fatal shots). As stated above, there is today no credible evidence to support any of these theories.

Leonard Peltier did not testify at his trial. He did, however, give a statement from the prisoners box (as he did at his extradition) and has since described the events in his book *My Life is My Sundance*.<sup>12</sup> He has been steadfast and consistent in denying that he killed the agents.

The prosecutors, the F.B.I., and their supporters cling to their version of events even in the face of overwhelming contrary evidence on some issues, such as the Myrtle Poor Bear affidavits. This is a

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<sup>12</sup> L. Peltier, *Prison Writings: My Life is My Sundance* (New York: St. Martin's Griffin, 2000).

standard feature of wrongful conviction cases and their certainty adds nothing to the actual quality of the evidence.

What is clear, 25 years later, is that the poverty, violence, and destitution on America's largest Indian Reservation, and the official and unofficial responses to that poverty, all lie at the heart of the tragic deaths on Pine Ridge<sup>13</sup>. What is also clear is that in order to avenge the deaths of the agents, the F.B.I. engaged in practices which would be clearly unacceptable and almost inconceivable today. That history is also one of the urgent reasons for clemency.

**2. June 26, 1975: The largest manhunt in American History is launched to avenge the deaths of F.B.I. Special Agents Ronald A. Williams and Jack R. Coler**

The F.B.I. and the U.S. government responded to the deaths of their agents by bringing its full military force to bear on the Pine Ridge Reservation. The F.B.I. brought in helicopters and commenced a "search and destroy" mission across the Reservation. There was a buildup of approximately 200 to 300 men on the Pine Ridge Reservation by June 27, 1975, supported by U.S. Army armed personnel carriers. SWAT teams, spotter planes, a helicopter and a chemical warfare team were centered on Pine Ridge. People living on the Reservation stated that, following the firefight, the Jumping Bull Compound looked like a war zone.<sup>14</sup> All of the AIM members fled. Leonard Peltier fled to Canada.

A massive manhunt began for the Native Americans accused of killing Agents Williams and Coler. Initially, the F.B.I. could not narrow down its possible list of suspects beyond 47 people. However, the F.B.I. soon began focusing their attention and their investigation on the known leaders of AIM who they could place at the scene. The list eventually narrowed down to four individuals, all of

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<sup>13</sup> Much as author Peter Mattiessen described, *Supra* Note 10.

<sup>14</sup> *United States of America v. Leonard Peltier* (18 June 1976), Vancouver 760176 (B.C.S.C.) (*Evidence of Louis Bad Wound, Extradition Hearing*) Vol. IV, p.572, 1.28 – p.573, 1.1; *United States of America v. Leonard Peltier* (18 June 1976), Vancouver 760176 (B.C.S.C.) (*Evidence of Cindy Hamilton, Extradition Hearing,*) Vol. VI p.919, 11.3-29. Appendix, Tab 5.

whom were eventually indicted (though charges against Jimmy Eagle were ultimately dropped). Two of those suspects, Darrelle Butler and Robert Robideau, were apprehended in the United States: Darrelle Butler on September 5, 1975 and Robert Robideau on September 10, 1975. The Butler and Robideau trial began in Cedar Rapids, Iowa on June 8, 1976. Both accused were acquitted by a jury on July 16, 1976.

Leonard Peltier was arrested in Hilton, Alberta, Canada on February 6, 1976. His extradition hearing began on May 3, 1976. On June 18, 1976 Justice Shultz of the British Columbia Supreme Court ordered Leonard Peltier committed for extradition with respect to the Reservation murders.

## **B. A Case for Extradition from Canada**

Leonard Peltier's extradition from Canada was obtained through false evidence presented to the Canadian extradition court by U.S. authorities through the Canadian Department of Justice lawyer who represented them. Obviously, Leonard Peltier and his counsel knew that the extradition case was based on false evidence but they had neither the opportunity nor the means to prove it.<sup>15</sup> This section of this Brief sets out the events of the extradition fraud in chronological order: from the point that F.B.I. Special Agents Wood and Price realized that they needed to 'develop' more evidence to achieve extradition and therefore produced the false Myrtle Poor Bear affidavits, through to the effectiveness of their work in constructing a case which persuaded Justice Schultz that a warrant of extradition committal should be issued and, ultimately, to the final order of the Minister of Justice surrendering Leonard Peltier to the American Government.

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<sup>15</sup> It is now known that at the time the Poor Bear evidence was 'developed' by F.B.I. the affidavits were not merely untrue. Special Agents Wood and Price knew they were false. See the discussion *Infra* in Part III of the brief detailing what Special Agents Wood and Price did.

## 1. "Constructing" the case for extradition

### a) That case didn't exist when Leonard Peltier was arrested

On February 6, 1976, Leonard Peltier was arrested by the Royal Canadian Mounted Police in Hinton, Alberta, Canada, where he had sought refuge. Before he could be brought to trial in the United States for the murders of S.A.'s Williams and Coler, however, he had to be extradited from Canada *on those charges*. In order to obtain a warrant of extradition, the American Government, represented by a prosecutor from the Canadian Department of Justice, had to establish a *prima facie* case of murder against him. That is, sufficient evidence which if believed could support a conviction. In the normal course, a Canadian extradition judge does not assess the *credibility* of the evidence, only its *sufficiency*.<sup>16</sup>

The evidence actually known to the F.B.I. at the time of the extradition request is revealed through the telexes, teletypes and memoranda, which the F.B.I. produced to Leonard Peltier's attorneys after the extradition (through FOIA litigation).<sup>17</sup> In February, 1976, the F.B.I. did not have sufficient evidence for extradition. They could establish that Mr. Peltier was at Pine Ridge and that he was one of the *many* people with a weapon, and thus had the *means* and opportunity to fire on law enforcement officers, including the murdered agents. They could demonstrate that at some point in the intervening five months, he had contact with a paper bag which contained a hand gun that had

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<sup>16</sup>The leading Canadian case on sufficiency of evidence for extradition is *United States of America v. Sheppard* (1976), 70 D.L.R. (3d) 136 at p.141 (S.C.C.).

<sup>17</sup>Note: The telexes, F.B.I. Memoranda, correspondence, unreported judgements and testimony set out in the following sections is either contained in a two volume document entitled "*The Extradition of Leonard Peltier from Canada*" which was filed on July 27, 1995 with the United Nations Working Group on Indigenous Populations, sitting in Geneva, Switzerland (and copied to the Government of the United States) or, were filed as Exhibits at the Canadian Hearing on October 25, 2000. Both the transcript, an audio recording of the testimony, and the Exhibits are being filed with this brief. However, only selected documents contained in "*The Extradition of Leonard Peltier from Canada*" have been reproduced here. A copy of that document was filed with the government of the United States in 1995 and provided to the Clemency office; it is part of the collection of the Osgoode Hall Law School Library, York University, or may be obtained by contacting Professor Martin or the Innocence Project.

belonged to one of the agents. They did not have a *prima facie* case of murder. In essence, all that they could prove is that on June 26, 1975, Leonard Peltier was one of *many* present on the Pine Ridge reservation when the shooting began that led to the death of the two agents.

#### **[i] Placing Leonard Peltier at the Scene**

- The June 26, 1975 fire fight commenced at approximately 11:50 a.m. and continued "from many sources" until approximately 6:00 p.m.
- Some 30 residents of Pine Ridge were returning fire over four to six hours. By 6:00 p.m. on June 26, 1975, the firefight was over.
- The scene of the deaths of the two Agents had been completely disrupted prior to any investigation. Their cars had been stripped, including the tires. All of their weapons and some personal possessions were missing. Further, the body of Joe Stuntz, the Pine Ridge resident killed that day was clothed in the jacket of one of the dead agents.<sup>18</sup>

#### **[ii] 'Developing' Leonard Peltier as a Suspect**

The investigation proceeded with no arrests and no resolution to the deaths of two Special Agents, as the thrust of the investigative strategy was to pursue the AIM presence on the reservation. Essentially all individuals who may have fired on June 26, 1975 were considered to be AIM members, and were, of course, suspects in the deaths of the agents. The F.B.I. began by pursuing a list of 47 suspects, basically all the AIM members who may have participated in the firefight and on whom the F.B.I. had been able to "develop" informants and files.

- By July 6, 1975, F.B.I. interest in Leonard Peltier as a suspect was increasing, although they had no evidence that distinguished him from any of the other 47 people. In fact, they had information that he had been shot and killed during the siege.

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<sup>18</sup> Memorandum from R.E. Gebhardt to Mr. O'Connell, dated June 27, 1975, 5 pages.

- The F.B.I. were interested in him because there was an outstanding charge against him in Wisconsin of attempted murder of a police officer – *which they described as a conviction*. It is relevant to note in assessing the forensic, as contrasted with the public relations, value of this information, that Leonard Peltier was readily acquitted by a jury on the Wisconsin charge and in fact has no criminal record (apart from the murder convictions). In the F.B.I.'s own words:

**Inasmuch as solid evidence has been uncovered placing Leonard Peltier at the scene of the crime firing at Law Enforcement, consideration is being given to obtaining a warrant for aiding and abetting murder, Cir. AUSA has verbally given his authorization. Even though Peltier might be deceased, much benefit could be obtained from national press showing type of individual agents faced in battle. (emphasis added)<sup>19</sup>**

The F.B.I. strategy in regard to Leonard Peltier, and the others who were eventually charged, is a classic example of "tunnel vision". This is a well-documented cause of wrongful convictions which refers to situations where investigators single out a suspect and then proceed to build a case against him (as opposed to following the evidence in whatever direction it may lead the investigators). While today, tunnel vision is understood as a major cause of wrongful convictions, back in July, 1975, it was common practice. In order to resolve the unsolved murder of two Agents, the F.B.I. decided, in its own words, to:

- **"Develop information to lock Peltier and Black Horse into this case".**

To do that, the F.B.I. had to:

- **"Develop additional confidential informants and sources", while:**
- **"Examining the evidence and connecting it to the suspects".<sup>20</sup>**

When Leonard Peltier was arrested in Canada on February 6, 1976, it was *not* as a result of a warrant in relation to the murders of the F.B.I. Agents. Bruce Ellison, testifying at the recent Canadian hearing, based upon his knowledge as a staff attorney with the Wounded Knee Defense Committee

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<sup>19</sup>Teletype from SAC Richard G. Held, Pine Ridge to Director, dated July 6, 1975, 6 pages, pp.3-4.

<sup>20</sup>Teletype from Rapid City F.B.I. to Director, "Daily Summary Teletype" dated July 16, 1975, 2 pages.

since 1976, observed:

**[a]t that point, he was wanted by the United States on various indictments. The first information on the extradition, to my knowledge, that was filed listed a charge of attempted murder of a police officer in Milwaukee and did not include the allegations of any involvement with the deaths of the two F.B.I. agents on Pine Ridge.<sup>21</sup>**

On February 6, 1975, when the Canadian authorities arrested him (pursuant to the request of the American authorities), there was no *prima facie* case against Leonard Peltier . But there soon would be.

#### **b) The Need to 'develop' Direct Evidence Against Leonard Peltier**

By February 10, 1976 the F.B.I. were aware that Canadian Department of Justice prosecutor Paul William Halprin, their counsel on the extradition, was reluctant to seek extradition on the Pine Ridge Reservation murders because of a lack of evidence. If they did not succeed in obtaining an order for Mr. Peltier's extradition on those charges, he could not be prosecuted for them even if they succeeded in getting an extradition order on the other charges emanating from Milwaukee.<sup>22</sup>

On February 12, 1976, the F.B.I. reiterated the problem it faced getting Leonard Peltier extradited back to the U.S.. This time, however, it identified the solution; that is, provide more 'information':

**Halprin stated had not sufficient information to file other charges...**

**After extensive deliberations Halprin agreed to file additional charges based upon information furnished by F.B.I. February 11, 1976.<sup>23</sup>**

According to Bruce Ellison,

**F.B.I. documentation indicates that there was a meeting with Mr. Halprin and he was pressured, according to the F.B.I.'s own words, and only under**

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<sup>21</sup>Tribunal, Pg. 145, line 23 - Evidence of Bruce Ellison

<sup>22</sup> F.B.I. teletype, to Director, February 11, 1976, 4 pages. Presumably they were aware, as well, how frail the evidence on all the charges actually was. (They were only ever able to gain convictions in the Reservation Murders; all other charges were withdrawn or dismissed).

<sup>23</sup>Teletype from Minneapolis to Director, dated February 12, 1976, 2 pages.

**considerable pressure, according to their language, did he agree to file a new information which would include allegations of murder involving the deaths of Agents Williams and Coler. And that was on February 12th, such a new information, sir, was filed.<sup>24</sup>**

The new information consisted of documentation that the F.B.I. had an eyewitness who placed Leonard Peltier at the murder scene. The witness was a Bureau of Indian Affairs police officer.<sup>25</sup> No mention was made at the time of Myrtle Poor Bear, who would soon after become the key to Leonard Peltier's extradition.

Between February 17 and 19, 1976, Paul William Halprin was in Rapid City, South Dakota interviewing witnesses and preparing the extradition case. In order to review the available evidence, he attended F.B.I. offices in Rapid City, South Dakota and Boise, Idaho.<sup>26</sup> He was in Rapid City when he was advised that there was a potential eyewitness to the shootings.<sup>27</sup> This witness was later revealed to be Myrtle Poor Bear.

**On February 17th, according to an F.B.I. teletype of February 20th, Mr. Halprin arrives in Rapid City and has meetings with agents and looks at Affidavits that they have prepared.**

**Two days later, on February 19th, the day of the first Myrtle Poor Bear Affidavit which is never submitted in the extradition proceedings, Mr. Peltier's bail application petition in the extradition proceedings is denied, according to F.B.I. documentation.<sup>28</sup>**

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<sup>24</sup>Canadian Hearing, October 25, 2000, Pg. 147, line 24 - Evidence of Bruce Ellison

<sup>25</sup>Canadian Hearing, October 25, 2000, Pg. 149, line 16 - Evidence of Bruce Ellison

<sup>26</sup>"Paul William Halprin ... arrived Rapid City, February 17, 1976, and reviewed affidavits prepared by witnesses concerning Peltier's involvement RESMURS. Halprin appeared satisfied re evidence furnished through the affidavits. Departed Rapid City, February 19, 1976, taking annual leave ... en route and will arrive in Boise Idaho ... February 22, 1976." Teletype: Director F.B.I., February 20, 1976, 2 pages.

<sup>27</sup>Halprin swore that he was not advised of details or her name; he did not in fact see the February 23, 1976 affidavit until March 26, 1976, at p.15, l.20; p.17, l.5; *Richard Marshall v. Herman Solem*, in the United States District Court, District of South Dakota, File CIV 82-4072, Deposition of Paul William Halprin sworn July 20, 1983.

<sup>28</sup> Canadian Hearing, October 25, 2000, Pg. 150. line 10 - Evidence of Bruce Ellison

Through discussions between Mr. Halprin and the F.B.I., the two Myrtle Poor Bear affidavits are selected to be used at the extradition proceedings. There is some question as to whether Mr. Halprin was aware of the contents of all three affidavits and whether he was involved in selectively using the final two for Leonard Peltier's extradition.<sup>29</sup> There is, however, no question that the suppression of the key "third" affidavit was deliberate and that all three of the affidavits were false.

## **2. The Significance of the Myrtle Poor Bear Affidavits**

The only direct evidence of Leonard Peltier's guilt that was presented at the extradition hearing consisted of two affidavits sworn by Myrtle Poor Bear: one on February 23, 1976 and another on March 31, 1976.<sup>30</sup> These two affidavits were not entirely consistent. In the February 23, 1976 affidavit, Myrtle Poor Bear stated that she was Leonard Peltier's girlfriend around the time the agents were shot and that she was aware that Leonard Peltier was in charge of planning how to kill any police officer or F.B.I. agent who came onto the reservation and how to escape thereafter. She then swore that she saw him shoot both agents.<sup>31</sup>

In the March 31, 1976, affidavit, the claim that she was Leonard Peltier's girlfriend is repeated. This time, the affidavit describes Leonard Peltier shooting *one* of the wounded F.B.I. Agents as that Agent threw down his handgun and told Mr. Peltier that he was surrendering. The affidavit continues that Mr. Peltier shot the agent even though Myrtle Poor Bear tried unsuccessfully to pull him away.<sup>32</sup>

On May 3, 1976, the extradition hearing began in Vancouver, British Columbia. On June 18, 1976, the extradition judge, Mr. Justice Schultz of the British Columbia Supreme Court ordered Mr. Peltier committed for extradition on the murders of Agents Williams and Coler. He made clear in his

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<sup>29</sup>Canadian Hearing, October 25, 2000, Pg. 208, line 1 - Evidence of Bruce Ellison

<sup>30</sup> Affidavits of Myrtle Poor Bear sworn before clerk B. Berry, February 23, 1976. Affidavit of Myrtle Poor Bear sworn before clerk B. Berry, March 31, 1976. Exhibit No. 1 of the Canadian Hearing, October 25, 2000.

<sup>31</sup> Affidavit of Myrtle Poor Bear sworn before clerk B. Berry, February 23, 1976. Exhibit No. 1 of the Canadian Hearing, October 25, 2000.

<sup>32</sup> Affidavit of Myrtle Poor Bear sworn before clerk B. Berry, March 31, 1976. Exhibit No. 1 of the Canadian Hearing, October 25, 2000.

judgement that Myrtle Poor Bear was the heart of the case. He did not know that she had sworn inconsistent affidavits nor that she had no truthful evidence to give in any event. He was brief in his discussion of the evidence on the F.B.I. murders:

**Direct evidence relating to each alleged crime is contained in Ex. 18N, the deposition of Myrtle Poor Bear, sworn February 23, 1976, and Ex. 18 "O", sworn March 31, 1976, her further deposition.<sup>33</sup>**

Mr. Justice Schultz then quoted paragraphs 1 and 2 of the February 23 affidavit and paragraphs 2, 3 and 4 of the March 31, 1976 affidavit. His only reference to the other evidence puts its significance into perspective:

**There is, in addition, circumstantial evidence comprising other affidavits of Exhibit 18, relating to each of the two alleged murders, which it is unnecessary to relate.<sup>34</sup>**

After discussing a range of legal issues raised in regard to all the charges extradition was being sought on, he concluded in regard to 4 of the 5 charges, including the Reservation Murder charges that:

**With respect to *each* of the other four (4) charges . . . 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 Correction Centre, there to remain until surrendered to the U.S.A. (emphasis in the original).<sup>35</sup>**

**3. In hindsight, the Minister of Justice of Canada was wrong not to act when it was revealed that the Affidavits were false**

Before Leonard Peltier could be surrendered to the United States, the Minister of Justice for Canada (the Honourable Ron Basford at the time) was required to determine whether the extradition was

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<sup>33</sup> *United States of America v. Leonard Peltier*, B.C. Supreme Court, No. 760176, Vancouver. Appendix, Tab 6.

<sup>34</sup> *Ibid.*

<sup>35</sup> *United States of America v. Leonard Peltier*, B.C. Supreme court, No. 760176, Vancouver.

being sought for political motives, or whether for any sufficient reason he should refuse to sign the warrant to surrender the prisoner. He did not refuse and ordered the surrender of Leonard Peltier on December 17, 1976. He placed his faith in American Justice on the following two grounds.

**a) But the Courts would try Leonard Peltier, *not* the F.B.I.**

On December 17, 1976, Justice Minister Ron Basford, ordered Mr. Peltier's extradition as it had "not been demonstrated" to him that the offenses were of a political character, in spite of evidence and submissions concerning the conditions on Pine Ridge.<sup>36</sup> The Minister of Justice dismissed the evidence about the state of the siege at Pine Ridge as essentially irrelevant to his decision, and demonstrated his faith in U.S. courts:

**...it will be the courts and not the F.B.I. or the B.I.A. who will be trying Mr. Peltier.**<sup>37</sup>

The Minister did not seem to appreciate that courts can only act on what is presented to them, and that there was evidence that false evidence had already been 'developed' by the F.B.I. For submission to the extradition judge. Nor did he deal with the issue of the deliberate suppression of relevant evidence from the defense, relying on the purported distinction between 'legal and 'political' issues:

**One of the matters referred to in the submission was the alleged inconsistency in the affidavits of Myrtle Poor Bear. This is a legal matter for the courts *which have dealt with it in Canada and will undoubtedly do so in the U.S.* (emphasis added).**<sup>38</sup>

**b) The Minister of Justice was told that Leonard Peltier would get the same fair trial that Darrelle Butler and Robert Robideau had received**

**[i] The Butler - Robideau Trial**

Darrelle Butler and Robert Robideau were indicted along with Leonard Peltier for the murder of the

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<sup>36</sup> Press Release, Minister of Justice, December 17, 1976, p.4. Appendix, Tab 7.

<sup>37</sup> Press Release, Minister of Justice, December 17, 1976, p.4

<sup>38</sup> Press Release, Minister of Justice, December 17, 1976, p.4. Appendix, Tab 8.

two F.B.I. Agents on the Pine Ridge Reservation. On June 6, 1976, while Leonard Peltier's extradition Hearing was still in progress, the February 19, 1976 affidavit of Myrtle Poor Bear and the evidence of Wilfrid Draper ( which makes it clear that Myrtle Poor Bear had never been at Pine Ridge and did not know Leonard Peltier,)were disclosed to Mr. Butler and Mr. Robideau's defense counsel in the United States. (The February 19<sup>th</sup> affidavit is the one which was never presented nor even disclosed by the prosecution during the extradition process.)<sup>39</sup>

Bruce Ellison testified at the recent Canadian Hearing, that Judge McManus (the trial judge in the trial of Butler and Robideau) had authorized an opportunity for the defense to examine Myrtle Poor Bear at a pretrial deposition.<sup>40</sup> On June 5, 1976, Ms. Poor Bear was brought before the defense team. She refused to speak with the attorneys and denied that she was told not to speak. When asked if she wanted "to talk in the case involving these two men", Mr. Butler and Mr. Robideau, Ms. Poor Bear stated, "No, I don't want to."<sup>41</sup>

On June 8, 1976, the Butler-Robideau trial formally began in Cedar Rapids Iowa (as it was recognized that they could not get a fair trial in South Dakota). Myrtle Poor Bear was not called as a witness at that trial, although she had been listed as a prosecution witness.

On July 16, 1976, Darrelle Butler and Robert Robideau were acquitted, even though they did not testify to deny participating in the firefight.<sup>42</sup> After the trial, members of the jury said that they had acquitted on the basis that the case had not been proven and that F.B.I. tampering with witnesses and evidence was manifest. The jury had *also* accepted the claim of self-defense. The foreman of the jury explained that:

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<sup>39</sup> October 20, 1976 affidavit of Leonard Peltier in support of the Federal Court of Appeal application to introduce fresh evidence. Exhibit "I", filed, Supreme Court of Canada. This chronology has never been disputed. Appendix, Tab 9.

<sup>40</sup>Canadian Hearing, October 25, 2000, Pg. 176, line 13 and Pg. 177, line 24 - Evidence of Bruce Ellison. Exhibit No. 15 of the Canadian Hearing, October 25, 2000.

<sup>41</sup> Exhibit No.15 of the Canadian Hearing, October 25, 2000.

<sup>42</sup>F.B.I. Memorandum from B.H. Cooke to Mr. Gallagher, Subject: Resmurs, Purpose: to advise of Jury verdict, dated July 16, 1976, 1 page.

**the jury agreed with the defense contention that an atmosphere of fear and violence exists on the reservation, and that the defendants arguably could have been shooting in self-defense. While it was shown that the defendants were firing guns in the direction of the agents, it was held that this was not excessive in the heat of passion.<sup>43</sup>**

Essentially the jury found that no murder had ever been committed, and had certainly not been proven. In the result, no one so far had been held accountable for the deaths of the F.B.I. Agents.

**[ii] The Effect of the Butler - Robideau Acquittals on the Outstanding Murder Charge Against Leonard Peltier**

The evidence against Leonard Peltier was essentially the same as that proffered by the government in the trial of Darrelle Butler and Robert Robideau. However, there were two differences (both of which were ultimately discredited). The first difference lay with the testimony of the F.B.I. firearms expert Evan Hodge relating to his putative match of an AR-15 rifle attributed to Leonard Peltier and a .223 shell casing found in the vicinity of the Agents' bodies. That evidence was ultimately undermined when it was revealed that an *exculpatory* ballistics test had never been disclosed. The second difference between the two "cases" was the purported eye witness testimony of Myrtle Poor Bear.

On July 20, 1976, the F.B.I. reacted to the Butler-Robideau verdict by analyzing the acquittal. The factors viewed as problematic by the F.B.I. were that:

- The defense was allowed to introduce testimony concerning the past activities of the F.B.I.; The Church Report was entered into evidence<sup>44</sup>;
- The defense was "uncontrolled in its dealings with the news media";
- The jury was not sequestered; and
- "[t]he defense utilized during this trial the services of nine attorneys, many of which were

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<sup>43</sup> Peter Matthiessen in *The Spirit of Crazy Horse*, Viking Press, New York, 1984, 2d edition 1991 at p.318. The foreman also appeared in the Robert Redford produced documentary movie "Incident at Oglala" (Mirimax, 1992) and expanded on these grounds for the acquittal.

<sup>44</sup> F.B.I. Teletype from Rapid City to Director, "Re: Resmurs; Analysis of Robideau and Butler Trial," dated July 20, 1976, 6 pages; "A Comparison of the Two Trials" from Jim Messerschmidt, *The Trial of Leonard Peltier*, South End Press, Boston, 1983. Appendix, Tab 9.

#### **IV. Why Clemency Is an Appropriate Remedy for Leonard Peltier's Wrongful Extradition.**

##### **A. Canadian Policy and Law of Extradition.**

###### **1. Summary of the Law**

In the last two decades, there have been a number of cases before the Supreme Court of Canada challenging extradition rulings on the basis that they violate the *Canadian Charter of Rights and Freedoms*. Although the facts of each case differ, the end result is always the same. The highest court in Canada has consistently ruled that absent "extreme circumstances" they will not consider arguments suggesting that the extradition process violates Canadian constitutional rights as there is a presumption that the receiving country will afford the fugitive a fair trial. As Justice LaForest noted in the frequently cited case *R. v. Schmidt* [hereinafter *Schmidt*]<sup>120</sup>:

**The present system of extradition works because courts give the treaties a fair and liberal interpretation with a view to fulfilling Canada's obligations, reducing the technicalities of criminal law to a minimum and *trusting the courts in the foreign country to give the fugitive a fair trial*, including such matters as giving proper weight to the evidence and adequate consideration of available defenses and the dictates of due process generally.<sup>121</sup> [emphasis added]**

The rationale for the rule is clear:

**Extradition is the surrender by one state to another, on request, of persons accused or convicted or committing a crime in the state seeking the surrender. This is ordinarily done pursuant to a treaty or other agreement between these states acting in their sovereign capacity and obviously engages their honour and good faith.<sup>122</sup>**

Canada only enters into extradition treaties with those countries it knows will afford a fugitive a fair trial. Although a great deal of weight is placed on the assumption that an accused will receive a fair trial once returned to the receiving country, the extradition of a fugitive from Canada must still be based on at least some evidence that the fugitive committed the crime in question:

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<sup>120</sup> [1987] 1 S.C.R. 500.

<sup>121</sup> *Ibid.* at 524.

<sup>122</sup> *Ibid.* at 514.

**That is why provision is made in the treaties and in the Extradition Act to ensure that, before the discretion to surrender can be exercised, *a judicial Hearing must be held for the purpose of determining whether there is such evidence of the crime alleged to have been committed in the foreign country as would, according to the law of Canada, justify his or her committal for trial if it had been committed here.***<sup>123</sup> [emphasis added]

Of course, this safeguard rests on the belief that the requesting State will act in good faith and only present genuine evidence to the Judicial Hearing - otherwise the hearing provides no safeguard at all.

## **2. Application of the Law to the Extradition of Leonard Peltier**

Canada extradited Leonard Peltier in 1976 on the presumption that he would be given a fair trial once returned to the United States of America. The fact that the receiving country was the United States surely had an impact on the extradition judge's decision and perhaps lack of scrutiny given to the evidence presented. With respect to Canada's perception of the United State's criminal justice system, our Supreme Court of Canada noted in the extradition case of *R. v. Kindler* that a significant factor in the decision whether or not to extradite is that the United States as a requesting nation has a criminal justice system that is in many ways similar to our own.<sup>124</sup>

In reviewing the Peltier extradition files, former Canadian Member of Parliament Warren Allmand reached the conclusion that there was no evidence tendered, other than the Myrtle Poor Bear affidavits, which would have been sufficient to justify Leonard Peltier's extradition.<sup>125</sup> It is now clear that not only were the Poor Bear affidavits false, but that agents of the United States government were aware of their falsity and were responsible for their existence.

In receiving the case presented by the American authorities in support of their request for Leonard Peltier's extradition, the Canadian government trusted that the Myrtle Poor Bear affidavits were bona fide. It was through this same trust that encouraged the Canadian court to find that there was "such

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<sup>123</sup> *Ibid.* at 515.

<sup>124</sup> [1991] 2 S.C.R. 779.

<sup>125</sup> *Supra* Note 2, Appendix, Tab 2.

evidence of the crime alleged to have been committed in the foreign country as would, according to the law of Canada, justify [Peltier's] committal for trial if it had been committed here".<sup>126</sup>

Following the completion of the judicial phase of the extradition process, the Canadian Minister of Justice was asked to refuse to surrender Leonard Peltier because of the falsity of the Myrtle Poor Bear affidavits. The Canadian government did not scrutinize the Myrtle Poor Bear affidavits when they were presented to secure Peltier's extradition because there was a presumption that the United States government was acting in good faith.

**B. Canadian Courts refused to examine the Myrtle Poor Bear issue because the only possible remedy for the harm done lay with the Government of the United States (and now with the President)**

Canadian courts have never scrutinized the Myrtle Poor Bear affidavits, either.

In October, 1976, an application was made on behalf of Leonard Peltier to the Federal Court of Appeal to introduce evidence of the Poor Bear affidavit fraud. The Federal Court of Appeal dismissed the application, refusing to admit, or consider, the evidence. It then dismissed Leonard Peltier's appeal of the extradition order as well<sup>127</sup>.

A little over a decade ago, a second attempt was made to litigate the issue of the false Myrtle Poor Bear affidavits in the context of the Canadian extradition process after all possible appeals had already been exhausted in the United States (where the issue of the extradition fraud had received critical comment, but had been held not to affect the jurisdiction of the courts). On March 30, 1989, an Application for Leave to Appeal the Federal Court of Appeal's October 27, 1976 decision on Leonard Peltier's extradition (and to introduce new evidence) was filed in the Supreme Court of Canada on Mr. Peltier's behalf. The grounds for that appeal were:

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<sup>126</sup> *Ibid.*

<sup>127</sup> The Registrar of the Federal Court of Appeal's note concerning the fresh evidence application, and the brief reasons for the dismissing the appeal are found in the Appendix, at Tab 16.

1. The Federal Court of Appeal erred in finding that the extradition judge had sufficient evidence to support an extradition Order.
2. The Federal Court of Appeal erred in refusing to admit further evidence available at the time of appeal that established that the respondent had obtained the Order extraditing the Applicant by material non-disclosure or relevant evidence and fraud;
3. Substantial new evidence was now available which was not available at the time of the appeal Hearing to establish that the respondent obtained the extradition order by material non-disclosure of relevant evidence and fraud.

It was Leonard Peltier's position that the new evidence, consisting largely of F.B.I. teletypes and memos, would show that the American authorities had willfully withheld and suppressed key information essential to his defense of the extradition. It was pleaded that "false and discredited direct evidence of Poor Bear was knowingly obtained and presented by agents of the United States government in order to buttress an insufficient case for extradition". The new evidence that was being offered to the Supreme Court of Canada was also said to weaken the circumstantial evidence subsequently relied upon to justify Leonard Peltier's surrender.

The Supreme Court of Canada leave application was dismissed after an oral hearing. During oral argument, LaForest J. (one of Canada's leading authorities on the law of extradition) observed that any effective extradition arrangement requires that the parties act in good faith. He suggested that the Poor Bear episode raised questions about the bona fides of the means used by the United States to extradite Leonard Peltier. Justice LaForest concluded, however, that the issue involving the Poor Bear affidavits was, in the circumstances of the case, one for the Parties to the extradition arrangement and not for the Courts<sup>128</sup>.

Canadians have exhausted all avenues within the Canadian judicial system in their attempts to bring justice to Leonard Peltier's case. It is for this reason that we are submitting this brief in support of

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<sup>128</sup> Department of Justice document entitled "Leonard Pelteir - Extradition Chronology, reference to June 12, 1989. Appendix Tab 17.

Leonard Peltier's application for clemency. The only remaining remedy lies in the control of President Clinton.

**C. Canada now deals with Aboriginal People in the criminal justice system, in a way that would today recognize the injustice done to Leonard Peltier**

The trial judge, the Federal Court of Appeal, and the Justice Minister - none appeared to understand or to have much sympathy for the plight of Aboriginal Peoples when Leonard Peltier was denied sanctuary in Canada. Close to 25 years have now passed however, and were these issues being considered today, both the law, and the social/political context which shapes it, would view them very differently. Every one who refused to listen then, would today have a much greater appreciation of the history of oppression which Native Americans have experienced.

In Canada, a number of significant steps have been taken by the government in the past few decades to improve relations with Aboriginal Peoples. Although Aboriginal Peoples in Canada currently continue with their struggle to be recognized as sovereign Peoples, it is clear that the Canadian government is acknowledging that change is needed. For the first time in centuries, the government of Canada is taking responsibility for its poor treatment of Aboriginal Peoples and attempting to find ways to heal the wounds it has inflicted, including those inflicted by the justice system.

In 1996 new sentencing reforms were introduced in the *Criminal Code of Canada*<sup>129</sup> to reduce over-reliance on incarceration and overrepresentation of Aboriginal Peoples in Canadian prisons. In its first consideration of these new provisions, the Supreme Court of Canada in *R. v. Gladue*<sup>130</sup> acknowledged that "there is widespread bias against aboriginal people within Canada, and there is evidence that this widespread racism has translated into systematic discrimination in the criminal justice system."<sup>131</sup> The Supreme Court of Canada's decision in *Gladue* is but one example of the new trend in Canada to recognize, respect, and honour Aboriginal Peoples. There is a long way to go but in Canada today

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<sup>129</sup> *Criminal Code*, R.S.C. 1985, c.C-46.

<sup>130</sup> [1999] 1. S.C.R. 688.

<sup>131</sup> *Ibid.* at para 61.

there is a desire for reconciliation and healing that extends to the enduring injustice that Leonard Peltier remains a prisoner.

#### **D. Canada is now stigmatized in the international community for the role it played in Leonard Peltier's Wrongful Conviction**

The international community has condemned Leonard Peltier's conviction as wrongful and based on an unfair trial. The suppression of evidence and the leading of false evidence by the United States prosecution in Leonard Peltier's trial are but two of the reasons behind the international communities outcry for justice.

In February of 1999, the European Parliament passed its second resolution insisting that Leonard Peltier be freed, that he receive proper medical treatment, and that investigations into his unjust incarceration be held. In April, 1999, the former first lady of France and the president of France Liberties, Danielle Mitterand went to the United States on a fact finding mission on behalf of Leonard Peltier. She visited Mr. Peltier in prison and met with government officials on his behalf as well.

On April 18, 1999, Archbishop Desmond Tutu stated:

**I have been reading in Leonard Peltier's book, and about an hour ago I spoke with him .... He is a remarkable person and 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.**<sup>132</sup>

In October 1998, a written motion was introduced by MP, Laurence Dumont to the French Parliament asking for an official intervention in support of Executive Clemency and proper medical treatment for Leonard Peltier. Though the motion is still in process, the Minister of Foreign Affairs, Hubert Vedrine, recently stated in an April 19, 1999 letter, "at my personal demand, our Ambassador in Washington has recently called to the attention of his American counterpart at the State Department, the case of Leonard Peltier on humanitarian grounds."<sup>133</sup>

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<sup>132</sup> <sup>132</sup> Archbishop Desmond Tutu, April 18, 1999, from <http://www.freepeltier.org>

<sup>133</sup> LPDC, <http://www.freepeltier.org>

British Parliamentarian, Tony Benn, introduced an early bird motion to the British House of Commons which, as of August 1999, twenty-nine members had signed on to. The motion calls on the President of the United States to release Peltier through a grant of Executive Clemency. MP Tony Benn was an important figure in the international campaign which helped to win freedom for Nelson Mandela.

Rigoberta Menchu Tum, a Maya K'iche from Guatemala who won the Nobel Peace Prize in 1992 and is the Good Will Ambassador of UNESCO for the International Decade for the Rights of Indigenous Peoples, supports clemency for Leonard Peltier. She will be including Mr. Peltier's case and the Pine Ridge "reign of terror" from which this case stems, in her new program for Universal Justice.

It is the Canadian government who permitted Leonard Peltier to be surrendered to American officials to be tried in the United States for the Reservation Murders. Canada's actions were based on the presumption that he would receive a fair trial. He did not. Canada's role in delivering him up for an unfair prosecution has, in the eyes of many, left a stain on its international reputation for respecting principles of fairness and justice, and for respecting the rights and interests of aboriginal people.

#### **E. A Final Word: Presidential Clemency would help complete the healing circle**

While presidential pardons are granted to signal forgiveness and to correct injustices, they similarly are granted to promote healing. From ancient Athens to current times, clemency has often been used to bind together the social fabric of a nation and heal divisions in our society. Examples of this use of the president's clemency power include: President Washington's use of pardons in 1795 to help resolve the *Pennsylvania Whiskey Rebellion*; President Adams pardons in 1800 to the *Pennsylvania Insurgents*; President Lincoln and President Johnson's clemency to Confederates who had fought against the Union; and, President Carter's amnesty to *Vietnam draft evaders* to put the Vietnam War behind the country and enhance national unity.

The wound in the relationship between the United States Government and Native Americans is deep. In November, 1999 the Assembly of First Nations and the National Congress of American Indians,

the two largest Native American organizations in North America, representing the majority of Native Nations on the continent, went to Washington, D.C. to urge that Leonard Peltier be released. Mr. Peltier symbolizes the intimidation, dishonesty, suppression and oppression that Native Americans have suffered and continue to suffer. Leonard Peltier's incarceration is a constant reminder to Native Americans that none of them is truly because, like Leonard Peltier, any one of them could be jailed for life at the whim of government agencies who discriminate against them. By granting clemency to Leonard Peltier, the President will begin to heal a historic division in American society. More specifically, clemency for Leonard Peltier will finally acknowledge the other victims of the events at Pine Ridge, South Dakota. The aboriginal victims of the poverty, of the lost trust, of the broken treaties, of official lies and of the police misconduct, all need to be recognized by the American government so that they, in turn, can forgive and move on.

The significance of Leonard Peltier's case in the search for that reconciliation, was first articulated 25 years ago when Vernon Bellecourt testified at Mr. Peltier's *Extradition Hearing* and described why the American Indian Movement had become involved at Pine Ridge in the first place. As he described, it was a classic political struggle which led to the tragic deaths of the two Agents for which Leonard Peltier was extradited:

**"We recognize, of course, that the three factors that were most destructive to our way of life was the missionary policies of the institution of the Christian Church, the institutions of education and the federal and state and county governments that had encroached into our nations. Our political goals was then to – We have always known that the Government of the United States over the years knew why we came but they did not know how to greet us – for the simple reason that within the governmental attitude they had never had to deal with us in an honest relationship. They only had to demand our lands and resources and when we resisted we were called criminals and the cavalry was sent in. We saw that our treaty relationship with the United States Government had deteriorated to the point where, rather than that relationship being within the office of the president or his successors, that this<sup>43</sup> trust responsibility that the Government had assumed in treaty agreements was then turned over to its agency, the Department of the Interior, and within the Department of the Interior, the Bureau of Indian Affairs. In fact, we found ourselves being managed along with natural deposits, forests,**

**water, wildlife, natural parks, playgrounds and Indians. We could see that within that relationship with the Government that the very agency – the Interior Department – who has a legal responsibility to protect our lands and resources – is the same agency and government in collusion with special interest groups, mining, oil companies, business corporations – they were the same people who were violating that trust in leasing out well over one hundred, or selling well over one hundred million acres of land.”<sup>141</sup>**

In 1976, Mr. Bellecourt’s plea for justice for aboriginal people was too radical a concept for the courts or the government. Years have passed. We have entered a new millennium. Our governments have become more socially responsible and we have learned from our mistakes. We may take some comfort in knowing that Bellecourt’s words were spoken 25 years ago, and not in the present day. However, after 25 years, it is now time to heed Mr. Bellecourt’s words and to start the healing process by freeing Leonard Peltier.

As Margaret Love recently has said about the President’s clemency powers:

**“[If the President] is willing and able to use the power in the fashion envisioned by the Framers, courageously and creatively, he gains important opportunities to signal the need for changes in the law, to set an example for the discretionary decision-making by his subordinates, and to shore up public confidence in the overall morality of the criminal justice system.”<sup>142</sup>**

Granting clemency to Leonard Peltier would send all the right signals to the people of the First Nations, the people of Canada and the people of the United States of America. It would exemplify the courage and compassion that define the Office of the President.

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<sup>141</sup> *Evidence of Vernon Bellecourt, Extradition Hearing*, Vol. IV, p.452, l.21 – p.453, l.26 Appendix, Tab 18.

<sup>142</sup> Margaret Colgate Love, “On Pardons, Politics and White Collar Business: Reflections on the President’s Duty to be Merciful”, 27 *Fordham Urban Law Journal* 1483 (2000).