

**IN THE MATTER of an Application  
for Executive Clemency  
for American Prisoner Leonard Peltier**

---

**EXECUTIVE SUMMARY**

---

**by**

**THE INNOCENCE PROJECT**

**Directors: Professor Dianne Martin & Paul Burstein**



**OSGOODE HALL LAW SCHOOL, York University  
4700 Keele St., North York, ON, M3J 1P3, Tel: (416) 736-5174 Fax: (416) 736-5736**

# **A Brief in Support of an Application for Presidential Clemency for Leonard Peltier**

**The Innocence Project  
Osgoode Hall Law School, York University  
Toronto, Ontario, Canada  
M3J1P3**

## **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 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 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> 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.

1. 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.

2. 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.

3. 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.

4. 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.