THE INNOCENCE PROJECT : OSGOEDE HALL LAW SCHOOL

Remedies for Miscarriages of Justice

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Credits: Nine. Fall Semester: 3 credits (Clinical), Winter Semester: 6 credits (3 Clinical, 3 Seminar)

The Innocence Project at Osgoode Hall Law School has been developed to address in a systemic way the phenomenon of wrongful convictions in Canada. Up to 10 law students each year, working for credit under the supervision of Co-Directors Dianne Martin and Alan Young will provide assistance to those claiming to have been wrongly convicted. Selected cases will be reinvestigated and, where possible and appropriate, new scientific tests such as DNA will be conducted. When a case for innocence has been made out, the Project will seek a pardon, new trial, compensation, or other appropriate remedy. As well, the students will study and research both the causes of and remedies for miscarriages of justice.

Students will earn 9 credit hours over 2 semesters. 6 credits (3 in the fall and 3 in the winter) will be awarded for clinical work. The Project will extend over both semesters to ensure that students have sufficient time to devote to the cases and to the research. 3 credits will be awarded for the seminar. Students will meet weekly each term for two hours with one or both of the Co-Directors. Each student will be responsible for a seminar presentation and a major piece of writing in addition to their Clinical work.

The programme will also have ties to the wider community through co-operation with members of the bar and with The Association in Defence of the Wrongly Convicted (AIDWYC) a volunteer organization that has been formed to address the problem of wrongful convictions in Canada and abroad.

Finally, the Project will maintain a collaborative association with the Innocence Project at Cardozo Law School in New York City, the first law school-based clinical programme to address wrongful convictions, and other Innocence Projects where-ever they are based.
Academic Requirements:

I. The Seminar:

1. Seminar participation and presentation. Attendance at the weekly meeting is mandatory. Participation and presentation of a selected topic required which will be evaluated with a letter grade worth 40% of the final seminar grade.

2. During the course of the term students must produce a piece of scholarly writing, the equivalent of a 30-page research paper. This piece of work will be evaluated with a letter grade worth 60% of the final seminar grade.

II. Clinical Work:

Clinical Work will be graded Pass/Fail and accompanied by a written evaluation which will be attached to the transcript.

1. Duty Counsel: Weekly Rotation:
   Students will rotate as Project Duty Counsel:
   Duties include: Collecting, sorting and replying to mail; Answering and returning telephone calls and faxes and e-mail messages; Serving and Filing court documents.

2. New File Screening:
   Preparing and presenting a synopsis of the facts and the potential issues in files that have not yet been accepted by the Project.

3. Case Analysis:
   Reading, analyzing, preparing and presenting a report on the evidence and issues in assigned cases that have been accepted by the Project.

4. Client Contact and Case Development:
   Client and witness interviews, re- investigation of physical evidence, media searches and analysis.

5. Legal Research and Drafting:
   Motions to preserve evidence, motions to reopen appeals, appeals and applications to the Minister of Justice pursuant to s. 690 of the Criminal Code.

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THE INNOCENCE PROJECT OF OSGOODE HALL LAW SCHOOL

Students

Ralph Krikke
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Colleen Robertshaw
Sonja Shpely
Andrea Unikowsky

The following Osgoode students deserve special recognition for their tireless work on behalf of Mr. Peltier

Robert Christie
Angela Green-Ingham
Kingsley Laurin
Renée Pelletier
Brian Ross
Matthew Stone
August 8, 1995

Hon. Alan Rock
Minister of Justice
Room 441-S, Centre Block
House of Commons
Ottawa (Ontario) K1A OA6

Re: The Leonard Peltier Extradition

Dear Alan,

This is further to our previous meetings and correspondence with respect to this case. As I stated previously, I am convinced that the extradition process was flawed and it is doubtful that Peltier would have been extradited if all the evidence had been before the Judge.

Having re-examined all my files in this case as well as the files and documents at the Department of Justice, it is clear that the critical difference between the Department and the Protesters (those claiming that Peltier was wrongly treated) is the significance of the “other evidence” considered sufficient to extradite Leonard Peltier. The Protesters argue that once the Myrtle Poor Bear Affidavits were dismissed as unacceptable, then there was not a sufficient case to extradite. The Department, on the other hand, argues that there was sufficient other evidence. This was repeated in recent memos from Justice officials to you on May 26 and 27, 1994. I would like to deal with the case put to you by these officials.
A In the opinion sent to the Minister by the Senior Counsel on May 26, 1994, he made the following statements:

1. He says that the Federal Court of Appeal in October 1976 considered the three (3) Poor Bear Affidavits and nevertheless concluded that there was sufficient circumstantial evidence to commit for extradition.

   *Ans:* This is not correct. The Federal Court of Appeal ruled the third affidavit inadmissible and consequently did not consider its impact on the decision of Justice Schultz.

2. He says that none of the circumstantial evidence was challenged in Canada or in the U.S.

   *Ans:* This is not correct. To begin with the circumstantial evidence in the U.S. case was different than that used in Canada. Schultz did not rely on it in Canada and no judge ever ruled on it. The Trial Judge in the U.S. did not allow the defence to tender evidence, which challenged the circumstantial evidence. On the appeals in the U.S. the ballistic evidence (circumstantial) was declared to be questionable and in part fabricated.

3. He says that Peltier accepted the Federal Court of Appeal decision by not appealing to the Supreme Court in 1976.

   *Ans:* This is an incorrect interpretation. Peltier never accepted the Federal Court of Appeal decision. The decision not to appeal to the Supreme Court in 1976 was based on “time factors”. Peltier and his attorneys also believed at the time that they had a better case to put to the Minister of Justice in the second phase of the extradition process which would have rejected the extradition. The Federal Court of Appeal, by not considering the third affidavit, and the false evidence of Myrtle Poor Bear, confirmed the political character of this case as a matter for the Minister of Justice. With respect to the Supreme Court, when an appeal was attempted in 1989, the leave to appeal was rejected.
4. *He refers* to the Minister of Justice's (Ron Basford) reasons for "surrendering" Peltier for extradition – that Robideau and Butler received fair treatment in the U.S. and were acquitted.

**Ans:** Robideau and Butler were able to get fair treatment in the U.S. because they got a change of venue from South Dakota to Cedar Rapids, Iowa, with a judge, and in a community which had a reputation for fairness to "Indians". The U.S. Department of Justice and the FBI did not allow this to happen with Peltier, much to the surprise of the Court in Iowa, which thought it would hear the Peltier case as well. This belief was also understood by Peltier and his legal counsel. Mr. Basford, obviously relied on this understanding in accepting the U.S. government's assurance that Peltier would get a fair trial. In fact, Peltier did not get fair treatment at his trial in Fargo, N.D. The judge and the community had a reputation for non-sympathetic statements regarding American Natives, and the FBI, before and during the trial, pounded the community with adverse publicity regarding Peltier and the American Indian Movement (AIM).

5. *He attempts* to explain why the First Poor Bear Affidavit was not sent to Canada – referring to the fact that there was additional detail in the second and third affidavits and therefore, the first affidavit was not necessary.

**Ans:** This is totally unacceptable. They should have sent them all or sent none. In assessing this point, one must consider the conflicting evidence with respect to the role played by Paul Halprin, the Canadian Justice lawyer who represented the U.S. at the Peltier extradition. As a result of inquiries by the Canadian government to determine why the first affidavit was not sent, several answers were sent. In a memo dated May 10, 1979, from Ronald Moore, Assistant Director of the FBI, to Robert Keuch, Department Assistant A.G., it was stated that,
"Paul Halprin travelled to South Dakota to confer with Special Prosecutor R. Simka, and to review available evidence against Peltier. Halprin was aware of all three (3) affidavits, and in fact, he was the reason Myrtle Poor Bear furnished the third affidavit as he requested that certain issues previously furnished by her be amplified. It was on Halprin's recommendation...that only Poor Bear's second and third affidavits were used".

However, in another memo dated April 26, 1979, from Lawrence Lippe, Acting Chief, Criminal Division, U.S. Justice to Murray Stein, Associate Director, International Affairs - he said, "We are not able to ascertain how it was decided that the first affidavit would not be submitted to Canada".

Finally the Senior Counsel on May 26, 1994, says, "there was nothing to suggest that Halprin was aware of fabrication, coercion, etc". A careful examination of these affidavits show that the second affidavit is a revision of the first affidavit as the language is identical with key changes. All these matters convince me that the whole process was flawed. If Halprin did not know, then the FBI was guilty of trying to manufacture a case and mislead the Canadian Justice system. If Halprin did know, then Canada was partly involved in this injustice and we have an even greater responsibility.

6. **The Senior Counsel** also says that – "no court ever found that the U.S. government knowingly put forward fabricated or false evidence."

    **Ans:** While it is correct that no judgement specifically ruled on that point, there were comments by the courts and by judges which did say that.

Judge Ross, of the U.S. Court of Appeal, commenting on the Poor Bear Affidavits said – "Why the prosecutor's office continued to extract more from her...is beyond my understanding."
In a letter of April 18, 1991, from Judge Heaney, to the U.S. Senator Inouye, he said – “the FBI, used improper tactics in securing Peltier’s extradition from Canada and in otherwise investigating and trying the Peltier case.”

In April 1978, after Peltier was extradited to the U.S., Judge R.P. Anderson of the B.C. Supreme Court said – “It seems clear to me that the conduct of the U.S. government involved misconduct from inception.”

7. **The Senior Counsel** goes on to say – “The U.S. authorities admitted that Myrtle Poor Bear was incompetent and unbelievable but not threatened or coerced.”

    **Ans:** If the U.S. authorities admitted that Poor Bear was incompetent, and unbelievable, then why did they rely on her affidavits for the extradition? This was their principle evidence at the extradition hearings. These admissions by the U.S. authorities constitute more contradictions and evidence of misconduct.

8. **Further he states** – “Peltier’s conviction was not overturned on appeal because there remains incontroverted evidence pointing to his guilt.”

    **Ans:** This is usually said in all miscarriages of justice – Marshall, Milgaard, Morin, the Guildford Four in the U.K. More seriously, in this case, there is evidence of misconduct which is acknowledged by the U.S. authorities who concede that Poor Bear was “unbelievable”, and which puts in doubt the finding of guilt.

9. **The Senior Counsel** concludes by stating that “If Judge Schultz had the three affidavits, along with the circumstantial evidence, he would have been entitled, if not required, to commit for extradition.”
**Ans:** Judge Schultz said that the **Poor Bear Affidavits were prima facie proof for extradition.** He did not rely on the circumstantial evidence. He never concluded that it was either 'sufficient' or 'substantial'. The Chief Counsel's conclusion is only lawyer speculation. Unfortunately, because of the suppression of the 3rd affidavit, nobody can say that he would have allowed the extradition if he had the third affidavit. Furthermore, all these factors applied in the Susan Nelles case, but the charge was tossed out at the Preliminary Enquiry.

B. **In the internal review carried out by Erin McKey,** it is concluded that there was sufficient, although not substantial, circumstantial evidence to extradite. It is admitted that the only direct evidence that Peltier fired the fatal shots were the Poor Bear Affidavits, which were no longer acceptable.

**Ans:** It must be noted that, without any doubt as to Ms. McKey's integrity, this official was a crown prosecutor. As such, this assessment was made form a prosecutor's point of view. Prosecutors often conclude that they have a good case, that there is sufficient evidence – when in fact there is not. I would argue that the machinations surrounding the preparation and presentation of the Poor Bear affidavits are so serious that they cast doubt on the circumstantial evidence as well. As mentioned above, this has since shown to be the case with the ballistic evidence.

**Other Arguments to Consider**

1. **There was nothing in the trial (and judgement) of Butler and Robideau** which supports the decision in the Peltier Case. As a matter of fact, the evidence in that trial which resulted in acquittal would point to an acquittal for Peltier as well.
2. **One must consider the environment** in which these shootings took place. From 1972, there had been much violence and conflict on the Pine Ridge Reserve. The US BIA had made arrangement with Oglala Tribal Council for the exploitation of uranium and other resources – but this was opposed by the traditional chiefs and by the American Indian Movement (AIM). The Tribal Council was funded and paid for a heavily armed 'police force' known was GOONS.

At the same time of this incident there were, over a three-year period, 64 unsolved murders on the Reserve. Nearly all those killed were members or friends of AIM. Almost everyone carried a gun for self-protection. Vigilantes roamed the Reserve and often carried out acts of intimidation, violence, executions and terrorism. There had been protests, sit-ins, arrests, raids and many drive-by and sniper shootings.

It was in this context that the shootings started on the Reserve on June 26, 1975. Since the FBI agents came onto the Reserve in plain clothes and unmarked cars, it wasn't even clear to initial observers who these men were – but they were certainly perceived as a threat. Some witnesses state these intruders (unknown at the time to be GOON vigilantes or FBI) started the shooting and once shots were fired, it didn't take long for the incident to escalate.

As the U.S. Court of Appeal's Judge Heaney concluded, this incident was the culmination of the federal government's refusal to respond to the "legitimate grievances" raised by the Indian community and its decision to use military force to suppress the dissent. On April 24, 1975, the FBI issued a position paper entitled "The Use of Special Agents of the FBI in a Paramilitary Law Enforcement Operation in Indian Country." It is also recognized that the FBI supplied the vigilante snipers with weapons and ammunition.
3. **There is other evidence of misconduct** by the FBI in the prosecution of Peltier. First the FBI concealed ballistic evidence indicating Peltier's rifle could not have fired the shots that killed the agents. The U.S. Court of Appeal (1986) said this suppressed evidence “cast a strong doubt on the government's case.” It did not, however, order a new trial. This evidence was revealed four years after the trial through Freedom of Information.

Second, three male witnesses who testified against Peltier in the U.S. had charges dropped against them. Later, two of them said they were coerced and one had died. None of this evidence was ruled on at the extradition since it probably was not available.

4. **One must remember that Anna Mae Aquash**, the Canadian MicMac who worked with AIM, was murdered on the same reserve around New Year in 1976, and her body was discovered on February 25, 1976. Her hands were cut off and sent to Washington by the FBI ostensibly to identify her. This macabre procedure was not normal practice. Thus far there has been no arrest or prosecution in this case despite several inquiries from the Canadian government. Finally, the case was reopened in South Dakota last year by a Grand Jury, which is still gathering evidence. Anna Mae Aquash was closely associated with Leonard Peltier and other accused in this case.

5. **It is not unusual for the U.S. government to use illegal methods** in order to return individuals to American territory. You have the case of Manual Salazar who was returned to the U.S. from Mexico by means of a false extradition, and the Alvarez case where the individual was kidnapped and returned to the U.S. In the case of Graham Tomlins, the House of Lords in the U.K. has just stopped an extradition to the U.S. because of shady evidence. This was widely reported in England because the U.S.
has operated on the assumption that extradition from England will always be granted.

6. **One must also ask** why the FBI went to such great lengths to prevent the publication of *Peter Matthiessen’s book “In the Spirit of Crazy Horse”*, which told the whole story about Peltier. As a result of legal actions, this book was banned for eight years and only distributed in 1991.

7. **We must also consider the pleas** made by the UN Human rights Committee, Amnesty International, the European Union, and many other world leaders to grant Peltier a new trial.

8. **Lastly,** I would recommend that you read the *Yale Law Review Article* in the fall 1993 edition. This article concludes that the extradition and the trial were fraudulent.

**CONCLUSIONS**

I have always said that I don’t know whether or not Peltier fired the fatal shots — but I am convinced that there was fraud and misconduct at both the extradition and the trial — and the benefit of doubt should favour a new trial. I hope that you would come to the same conclusion.

*If so, I would ask that you 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, have serious concern about the misconduct practised at both 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. Letters have been sent by former ministers
to U.S. officials expressing serious concern, but they did not come to any conclusions.

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.

Yours very truly,

Warren Allmand, MP
Montreal
Notre-Dame-De-Grâce
OCT 12 1999

The Honourable Janet Reno
U.S. Attorney General
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530-0001
U.S.A.

Dear Madam Attorney General:

In December 1976, Leonard Peltier was surrendered to the United States following extradition proceedings in Canada. Mr. Peltier was subsequently convicted of two counts of murder in relation to the deaths of two Special Agents of the Federal Bureau of Investigation on the Pine Ridge Indian Reservation in South Dakota. He was sentenced to two consecutive life sentences, which he continues to serve at Leavenworth Penitentiary.

Over the years, individuals and organizations in Canada and the United States have voiced concerns about Mr. Peltier’s extradition, prosecution and conviction. Among the concerns expressed to me are allegations that Mr. Peltier’s extradition was based on fraud and misconduct on the part of American authorities. In addition, I continue to receive regular correspondence from Canadians voicing their concerns about the Peltier case generally. They argue that in light of all of the issues surrounding the case, Mr. Peltier is an appropriate candidate for the exercise of executive clemency.

In 1994, my predecessor, the Honourable Allan Rock, asked Department of Justice officials to conduct a review of Mr. Peltier’s extradition file. That process has been completed and I am now publicly releasing the file review, which I enclose for your information. I bring this matter to your attention because the release of the review may generate renewed publicity regarding Mr. Peltier’s extradition from Canada and his subsequent prosecution and conviction in the United States.

Given the unique circumstances of this case and its connection to both Canada and the United States, I felt it appropriate to relay to you the conclusions I have reached regarding Mr. Peltier’s extradition. In short, after reviewing this matter, I have concluded that Mr. Peltier was lawfully extradited to the United States. The main reasons for my conclusions, along with some background factual information, are set out below.
On February 18, 1976, the United States formally requested the extradition of Mr. Peltier for five criminal offences, including the two counts of murder, two of attempted murder and a burglary charge. Mr. Peltier's extradition hearing took place over 18 days in May 1976. Six witnesses were called and approximately 30 affidavits were entered on behalf of the United States. Counsel for Mr. Peltier called ten witnesses. In addition, Mr. Peltier made an unsworn statement at the beginning of his case.

Among other things, the role of the extradition judge at Mr. Peltier's extradition hearing was to determine whether there was sufficient evidence adduced that if the conduct had been carried out in Canada, the judge would order the person to stand trial in Canada.

The test for committal for extradition to be applied by Canadian extradition judges was set out by the Supreme Court of Canada as follows: the extradition judge must determine whether there is any evidence upon which a reasonable jury properly instructed in the law could return a verdict of guilty. In other words, an extradition judge must order committal if there is any evidence, whether direct or circumstantial, upon which a jury could convict. In making this determination, the extradition judge cannot test the quality or reliability of the evidence, weigh the evidence, or consider the credibility of witnesses. These are matters reserved for the judge or jury at trial in the requesting state.

In the case of Mr. Peltier, the extradition judge noted in his reasons for judgment that with respect to the two murder charges there was both direct evidence and circumstantial evidence. The direct evidence was found in two affidavits sworn by Myrtle Poor Bear, who claimed to be an eyewitness to the shootings. The judge found that the evidence produced justified the committal of Mr. Peltier on the two murder charges. He also ordered committal on the burglary charge and one of the two attempted murder charges.

The order for committal was made on June 18, 1976. Following that, Mr. Peltier became aware that there was a third Poor Bear affidavit that predated and contradicted the two produced at the extradition hearing. In the third affidavit, Ms. Poor Bear stated that she had not seen the shooting but had left the Pine Ridge Reserve before the shooting of the F.B.I. agents occurred.

Mr. Peltier appealed his committal for extradition to the Federal Court of Appeal in October 1976. At the beginning of the hearing, counsel for Mr. Peltier made a motion before the Court to introduce the third Poor Bear affidavit as fresh evidence. Mr. Peltier's counsel argued that had this affidavit been before the extradition judge, it might have induced the judge to change his view on committal on the two murder charges. They also argued that the withholding of
The third affidavit showed misconduct on the part of the U.S. authorities. The Federal Court of Appeal dismissed the motion and the hearing continued. At the end of the hearing, the Court upheld the order for committal in a unanimous judgment, without reasons.

Following the decision of the Federal Court of Appeal, Mr. Peltier did not seek leave to appeal to the Supreme Court of Canada at that time, but opted to make submissions to the then Minister of Justice asking the Minister to refuse to surrender him to the United States. In Canada then, as now, it was the role of the Minister of Justice to decide pursuant to the Canada - U.S. Extradition Treaty and the Extradition Act whether a fugitive who had been committed for extradition should ultimately be surrendered to the requesting state.

All three of the Poor Bear affidavits were before the Minister, as were extensive written and oral submissions made on Mr. Peltier’s behalf. Among other things, it was argued that the submission by the American authorities of two of the Poor Bear affidavits without the third affidavit was evidence of misconduct on the part of the United States.

After considering the submissions, the Minister of Justice exercised his discretion to order Mr. Peltier’s surrender, having sought and received assurances that Mr. Peltier would not face the death penalty if convicted and having satisfied himself that Mr. Peltier would receive a fair trial in the United States. Mr. Peltier was then surrendered to the United States.

Subsequent to his return to the United States, a jury convicted Mr. Peltier on two counts of first degree murder. Myrtle Poor Bear did not testify at Mr. Peltier’s trial. Mr. Peltier’s convictions have consistently been upheld by the United States Court of Appeals (8th Circuit), and the United States Supreme Court has denied his certiorari applications.

In 1989, Mr. Peltier sought leave to appeal the 1976 decision of the Federal Court of Appeal to the Supreme Court of Canada. The evidence used in support of Mr. Peltier’s application included all three Poor Bear affidavits and new evidence that was not available at the time of the Federal Court of Appeal hearing. Once again, counsel for Mr. Peltier argued that there was fraud and misconduct on the part of U.S. authorities, including the withholding of the third Poor Bear affidavit. The Supreme Court of Canada refused to grant Mr. Peltier’s application.

As you are no doubt aware, in 1993, Mr. Peltier applied for executive clemency in the United States. His application is still pending.
As I indicated above, I have concluded that Mr. Peltier was lawfully extradited to the United States. In my opinion, given the test for committal for extradition referred to above, the circumstantial evidence presented at the extradition hearing, taken alone, constituted sufficient evidence to justify Mr. Peltier's committal on the two murder charges. My conclusions in this regard are consistent with the arguments made by Department of Justice counsel before both the Federal Court of Appeal and the Supreme Court of Canada.

Furthermore, the third Poor Bear affidavit was considered by the Federal Court of Appeal and the Minister of Justice before Mr. Peltier was extradited to the United States. Subsequently, further submissions respecting the third Poor Bear affidavit were made to the Supreme Court of Canada, as well as the appellate courts in the United States.

The record demonstrates that the case was fully considered by the courts and by the then Minister of Justice. There is no evidence that has come to light since then that would justify a conclusion that the decisions of the Canadian courts and the Minister should be interfered with.

Yours sincerely,

A. Anne McLellan

Enclosure
This case was first brought to my attention in the fall of 1976 just after I was appointed Minister of Indian and Northern Affairs. I was approached by some Indian leaders who told me about the extradition proceedings and their view that Peltier was the victim of fraud and political discrimination. They asked that I intervene on his behalf. I checked this out and was advised that it was incorrect for a Minister to intervene in such a judicial process.

Some time later I learned that the Myrtle Poor Bear statements in the affidavits were incorrect, that the FBI concealed other evidence, and that they carried on a concerted campaign to have Peltier convicted at any cost. It was at this time that I decided to join with others in raising this issue in the House of Commons. This was done on several occasions until 1997. I also attended conferences, did media interviews, and lobbied governments — always condemning the wrongdoing at the extradition and the trial and requesting a new trial, parole, or clemency for Leonard Peltier. I should point out, that as Solicitor General prior to September 1976, I had no role to play in this case and was not involved in any way.

After the 1993 election, I approached the new Minister of Justice, Alan Rock, asking him to personally examine the Peltier extradition and then to take action to correct any injustice. As a result, in 1994 Mr. Rock asked Justice officials to conduct a review of the Peltier extradition file. Furthermore, in 1995 he asked me to examine the Justice files and to give him my views on the case in writing. This was done and I sent my conclusions to the Minister in a letter dated August 8, 1995.
Unfortunately Mr. Rock did not reply to my letter prior to the 1997 election and then he was transferred to the Ministry of Health. As soon as Anne McLellan was appointed Minister of Justice, I approached her on this same matter. Her reply on October 14, 1999 was a great disappointment.

Rebuttal of Anne McLellan's letter to
US Attorney General Janet Reno – October 12, 1999

1. In the 8th paragraph of her letter she says – “the extradition judge noted in his reasons for judgement that with respect to the two murder charges there was both direct evidence and circumstantial evidence.”

This is not a correct interpretation of Judge Schultz’s judgement. In Erin McKey’s Review on page 4, she quotes Judge Schultz as follows – “There is direct evidence relating to each alleged crime contained in exhibit 18N, the affidavit of Poor Bear sworn February 23, 1976, and exhibit 180, the affidavit of Poor Bear sworn March 31, 1976 her further deposition.

There is, in addition, circumstantial evidence comprising other affidavits of exhibit 18 which it is unnecessary to relate.”

McKey also states on page 5 of her review “Reviewing the file and assessing the circumstantial evidence available at the extradition is difficult because scant attention appears to have been paid to this material at the time of the hearing.”

2. In the 17th paragraph of McLellan’s letter she says – “the circumstantial evidence presented at the extradition hearing, taken alone, constituted
sufficient evidence to justify Mr. Peltier's committal on the two murder charges."

McLellan's conclusion is pure lawyer speculation. This was not part of Judge Schultz's extradition judgement. Schultz based his judgement on the two affidavits by Myrtle Poor Bear claiming she witnessed the shooting. Once the affidavits are admitted to be false there is no ruling by the Judge that the circumstantial evidence alone would have supported the extradition.

Rebuttal of Erin McKey's Review of the Leonard Peltier file
(May 1994)

1. Part of Ms. McKey's Review, reports statements and incidents which are factual and with which I have no objection. On the other hand, at several places she analyses these facts and comes to conclusions which are personal (and in my view are incorrect).

2. At the end of the part entitled "Circumstantial Evidence", she makes a summary of the US case which is her own analysis and conclusions and very much the reasoning of a prosecution attorney.

3. In the part entitled "Decision of the Extradition Judge", she says, "Schultz found that there was direct evidence of the murders...as well as circumstantial evidence".

This contradicts statements which she makes in the same report, that I set out in my rebuttal to Anne McLellan's letter. Schultz did not rely on the circumstantial evidence.
She makes another speculative conclusion on the same page where she said – "although one cannot second guess the judge, it is not unlikely that he would have treated submissions concerning the February 19, 1976 affidavit in the same manner".

This was the concealed affidavit where Poor Bear says she did not witness the murder. How can McKey say that Judge Schultz would have treated it like the two affidavits where she said she did witness the shootings?

What Erin McKey Left Out

1. The fact that (in order to get a fair trial) Robideau and Butler got a change of venue to Cedar Rapids, Iowa – and they were acquitted. On the other hand the prosecution opposed a change of venue for Peltier who was tried in Fargo, North Dakota where there was strong sentiment against Indians.

2. She does not mention that the three young Indians from Pine Ridge who testified at the trial, that they saw Peltier running near the scene of the crime, later recanted and said they were pressured to make these statements. One is now dead.

3. She does not mention that not only did the FBI conceal the first affidavit, and evidence of the bullet casings, but that some 6000 FBI documents are still being withheld in their entirety from Leonard Peltier.

4. That the FBI has a history in illegality with respect to extradition. See my letter to Rock dated August 8, 1995.

5. That Leonard Peltier was not the only possessor of an AR-15 rifle at Pine Ridge on that day. There were several in the area at the time of the
shoot-out. The circumstantial evidence indicated that the shooting was carried out with an AR-15 and Peltier had the only one at Pine Ridge.

6. McKey did not refer to the arguments in the Yale Law Review of 1993, which concluded that Peltier's extradition and trial were fraudulent.

I intend to send the following documents to Janet Reno, the US Clemency Attorney, selected US Congressmen and Canadian Parliamentarians –


My conclusion is that there should be an independent judicial enquiry into the entire circumstances surrounding the Leonard Peltier extradition.

Warren Allmand, P.C., Q.C.

P.S. In the Herald Tribune of October 19, 1999 John F. Harris writes in referring to the incident in Waco, Texas in 1993, that Bill Clinton believes that the FBI's position, that it is above politics - is a guise that allows it to avoid accountability.
Unions and Labour Organizations in support of Clemency for Leonard Peltier

Canadian Labour Congress (CLC-CTC)

District Labour Councils:
- British Columbia, Prairie, Ontario, Quebec & Atlantic Regions

Federations of Labour:
- British Columbia
- Alberta
- Saskatchewan
- Manitoba
- Ontario
- Quebec
- Nova Scotia
- New Brunswick
- Newfoundland & Labrador
- Yukon
- Northwest Territories

British Columbia Teachers' Federation

Canadian Auto Workers (CAW)

Canadian Union of Educational Workers (CUEW)

Canadian Union of Postal Workers (CUPW)

Canadian Union of Public Employees (CUPE)

Hospital Employees' Unions

International Longshore & Warehouse Union (AFL-CIO)

National Union of Public & General Employees (NUPGE):
- B.C. Government and Service Employees' Union
- Health Sciences Association of British Columbia
- Alberta Union of Provincial Employees
- Saskatchewan Government and General Employees' Union
- Manitoba Government Employees' Union
- Ontario Liquor Board Employees' Union
- Ontario Public Service Employees' Union
- Brewery, General and Professional Workers Union
- Canadian Union of Brewery and General Workers
- New Brunswick Government Employees Union
- Nova Scotia Government Employees Union
- PEI Union of Public Sector Employees'
- Newfoundland Association of Public Employees

Ontario Public Service Employees Unions (OPSEU)
Public Service Alliance of Canada (PSAC)
United Auto Workers (UAW)
United Brotherhood of Carpenters & Joiners of America
United Electrical, Radio & Machine Workers of Canada (UE)
United Food and Commercial Workers (UFCW)
United Steelworkers of America (USWA)
United University Profession (AFL-CIO)
United Farm Workers of America (UFWA)
United Workers of the World
Mr. Kaufman practised primarily in the fields of criminal and administrative law in the Province of Quebec.

He was appointed by the Federal Government to the Quebec Court of Appeal in 1973 and retired from the Bench in 1991. Since then, has been active as a mediator/arbitrator and as a commissioner of public inquiries.

In 1994-95, he conducted an inquiry for the World Bank into the legal profession in Tanzania.

In 1996-98, he presided over the Ontario Commission of Inquiry into the wrongful conviction of Guy-Paul Morin, at the request of the Attorney General of the Province of Ontario.

In 1998 - 1999 he conducted an independent review of the performance of the Public Prosecution Service (the "PPS" or the "Service") of the Province of Nova Scotia at the request of the Minister of Justice and Attorney General of the Province.

He is presently engaged in a review of the provision of Legal Aid in the Province of Ontario.

Mr. Kaufman, who has an MBA, speaks English, French and German.

He resides in Toronto.
Michael Code

Michael Code received three degrees from the University of Toronto: a B.A. in 1972; an LLB in 1976; and an LLM in 1991.

His legal career was initially devoted to criminal and constitutional law, and more recently, has expanded to include other areas of public law. He has worked as defence counsel; as Crown counsel; as teacher and writer; and as counsel to various public entities such as the Ontario Securities Commission, the Royal Canadian Mounted Police and the Special Investigations Unit of the Ministry of the Attorney General.

As defence counsel, Michael Code practiced from 1981-1991 with the firm of Ruby & Edwardh and for the last four years with the firm of Sack Goldblatt Mitchell. He is primarily an appellate lawyer and has argued some of the leading Charter of Rights cases in the Supreme Court of Canada and the Court of Appeal for Ontario. In particular, he has argued leading Supreme Court of Canada cases of section 11(b) of the Charter concerning systematic delays of criminal trials (R. v. Askelov), and section 24(2) of the Charter concerning the exclusion of evidence (R. v. Stillman), section 10(b) of the Charter concerning the right to counsel (R. v. Ross and Leclair).

On the Crown prosecution side, Michael Code did policy work for the Ministry of the Attorney-General during 1979 and 1980 and, more recently, from 1991-1996 he was Assistant Deputy Attorney-General (Criminal-Law). This position is the functional equivalent in Ontario of a Director of Public Prosecutions, as it is the head of the Criminal Law Division of the Ministry of the Attorney-General. In this capacity, he was responsible for Ontario’s 500 criminal prosecutors and for the Division’s $80 million budget. His tenure was marked by a great deal of policy work aimed at trying to make the criminal prosecution system more efficient and expeditious as a result of the twin pressures of the right to a trial in a reasonable time guaranteed by section 11(b) of the Charter and government budget cutbacks.

As a teacher and writer, he taught substantive criminal law at the University of Toronto (Woodsworth College) from 1981-4, evidence at Osgoode Hall Law School of York University from 1990-2 and criminal procedure at the University of Toronto, Faculty of Law from 1990 until present. His publications include: a short book on section 11(b) of the Charter, emerging out of Ontario’s experience with the Askov case, titled Trial within a Reasonable Time (1992 Carswell); two articles concerning the proper procedure when seeking section 24(2) remedies under the Charter, published in (1991) 33 C. L. Q. 298 and 407; and a recent article concerning the mutual independence of the police and the prosecutors and their independence from government, published in (1998) 40 C.L.Q. 326. The latter article emerged out of his testimony as an expert witness on Crown prosecution practices in two recent cases involving leading political figures in Canada (former Prime Minister Brian Mulroney’s libel action against the police and the Crown, as a result of a criminal investigation in which he and others were targeted, and former Premier Gerald Regan’s motion to stay a number of sexual assault charges on the basis of alleged police and Crown misconduct during the investigative stages of the case).
AREA OF PRACTICE:
Criminal Litigation

CALLED TO THE BAR:
Ontario, 1988

EDUCATION:
B.A. (Hons.), University of Western Ontario, 1983, Gold Medalist
LL.B., University of Toronto, 1986

Defence counsel practicing criminal, quasi-criminal and constitutional law at all levels of the judiciary. Former partner, Fasken Martineau DuMoulin LLP, Toronto.

From 1990 to 1996, Mr. Fenton acted as Crown counsel at the Federal Department of Justice in Toronto, where he prosecuted numerous criminal and tax cases, including several jury trials, and over 75 appeals in the Court of Appeal for Ontario.

Since returning to private practice, Mr. Fenton has acted for a number of defendants in high profile criminal and white collar cases. He has also assisted clients in coordinating internal corporate investigations, conducting compliance audits and negotiating agreements with government agencies.

Mr. Fenton has argued several appeals in the Supreme Court of Canada including the leading constitutional search cases of R. v. Stollery, R. v. Goldhart and R. v. Sylviera and R. v. Farinacci dealing with electronic surveillance.

PROFESSIONAL ASSOCIATIONS:
Law Society of Upper Canada
The Criminal Lawyers Association
The Advocates Society
Metropolitan Toronto Lawyers Association
National Association of Criminal Defense Lawyers (U.S.)
American Bar Association

PUBLICATIONS:
Co-Author, Wiretapping and Other Forms of Electronic Surveillance in Canada (Canada Law Book), March 2000
Co-Editor, Corporate Liability Journal, Federated Press, Toronto
Co-Editor, Criminal Appeal Law Reports, Amicus Press, Toronto
Recent Developments in Section 24(2) Jurisprudence, (1997), 39 Criminal Law Quarterly 279
REPORTED CASES:


LECTURING:

Mooting Judge, University of Toronto Law School, Competitive, Compulsory and Voluntary Moots 1993 - 1999

Lecturer, Entrapment Issues, presented to Federal Department of Justice National Conference on Criminal Law, August 1994.

Faculty member, Appellate Advocacy Course, organized by the Crown Law Office, Ministry of the Attorney General (Ontario), August 1995, McMaster University

Seminar Leader, Search & Seizure Issues, Third Annual Charter Conference, Federal Department of Justice, March 29, 1996

Speaker, Recent Developments in Section 24(2) Jurisprudence, Criminal Prosecutions Conference, Federal Department of Justice, August 19, 1996

Speaker, Criminal Procedure, Osgoode Hall Law School, York University, 1996-1997

Speaker, Callaghan Moot Seminar: R. v. Stillman, Faculty of Law, University of Toronto, March 10, 1997

Speaker, Trial Advocacy Course, Faculty of Law, Queens University, April 2, 1997

Faculty member, Appellate Advocacy Course, organized by the Crown Law Office, Ministry of the Attorney General (Ontario), August 20, 1997, McMaster University

Speaker, Recent Developments in Charter Jurisprudence, Criminal Prosecutions Conference, Federal Department of Justice, August 21, 1997

Speaker, Recent Developments in Section 24(2), Continuing Legal Education, Law Society of Upper Canada, September 27, 1997

Speaker, Recent Issues and Developments in Criminal Law, Institute of Continuing Legal Education, Canadian Bar Association (Ontario), January 31, 1998


Speaker, Recent Developments in Search & Seizure Commercial Crime Section, Royal Canadian Mounted Police, Milton, Ontario, April 1, 1998


Speaker, Criminal Law & Procedure, Immigration Appeal Division, May 4, 1999

Speaker, Search and Seizure Law in Canada, Osgoode Hall Law School, Professional Development Programme, June 4, 1999

Speaker, Ontario Provincial Police Proceeds of Crime Conference, Orillia, September 1, 1999


Panalist, The Defence Expert, Criminal Lawyers' Association, Annual Convention, November 13, 1999

Speaker, Corruption of Foreign Public Officials Act, Conference of Association of Forensic Investigators of Canada, January 25, 2000