

666-3320

November 8, 1978

Mr. Michael Phelps,
Special Advisor,
Office of the Minister of
Justice and the Attorney
General of Canada,
Ottawa, Ontario

Dear Sir,

Re: Mr. Leonard Peltier

This is in reply to your memorandum of August 30,
1978.

I have already expressed my opinion on the subject
of Mr. Peltier's proceedings before the United Nations
Human Rights Committee in letters to Mr. Donald J.A.
Rutherford and Mr. F.J.E. Jordan. For your convenience,
copies of these letters are attached.

My opinion, with respect to the sufficiency of the
evidence in support of the charges against Leonard Peltier,
other than the evidence of Myrtle Poorbear, is that there
was other sufficient evidence on which the Extradition Judge
could have ordered the Extradition of the fugitive on a
standard that a committal for trial was warranted. (See
United States of America vs. Shephard, (1976) 34 C.R.N.S.
207.)

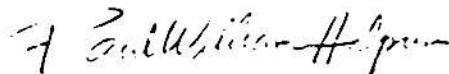
I know of no basis for "re-opening" the Extradition
Hearings. The fugitive is granted a review by appeal to the
Federal Court of appeal under Section 28 of the Federal
Court Act and a further appeal to the Supreme Court of Canada.
In this case, the Federal Court of Appeal considered the
additional evidence tendered by Counsel for the fugitive
(i.e. the Myrtle Poorbear affidavit) and denied the appli-
cation to introduce it as fresh evidence. Further, the
fugitive chose not to pursue his right to appeal to the
Supreme Court of Canada.

In any event, it is my opinion that the Extradition Judge acting as persona designata is functus officio once he makes his order. (See R vs Gallicano, (1978) 2 W.W.R. 93 - reversed on other grounds and Skied and the Queen (1975) 24 C.C.C. (2d) 93.)

With respect to the investigation carried out by the Federal Bureau of Investigation, I cannot characterize the same to be "sloppy." I think that the witness Myrtle Poorbear was difficult to assess and handle and that it would not be unusual for such a person to give additional evidence in the course of such a long investigation. I already pointed out that within the three affidavits, there was a consistent report by her that when she met Leonard Peltier during August 1975, again at Crow Dog's Paradise, at the Rosebut Indian Reserve, that they talked about the killing of the two F.B.I. Agents at Jumping Bull Hall and that Leonard Peltier repeated his statement that he murdered the two F.B.I. Agents.

My comment in my letter of September 12, 1978, to the effect the withholding of the first affidavit by the F.B.I. was a practice that I could not condone remains as stated. This is a matter of record and the question of whether the Canadian Government wishes to express their condonation of this practice is one on which I do not wish to comment.

Yours truly,



Paul William Halprin
Vancouver Regional Office

PWH/klm

Enclosures

Handwritten: No. 100-100000
Handwritten: 100-100000-13

Douglas J. Rutherford

Paul W. Halprin

Mr. Leonard Peltier

June 12, 1979

In your memorandum of June 7, 1979 you asked for my comments on the most recent replies from the United States Government.

The memorandum from Ronald W. Moore, Jr., Assistant Director of the Federal Bureau of Investigation to Robert L. Keuch, Deputy Assistant Attorney General dated 5/10/79 is not factually correct. I did not meet Robert Sikma until Peltier was in fact returned to South Dakota and Mr. Sikma asked me to assist him in a bail hearing. My discussions were with Mr. Bruce W. Boyd, the Assistant U.S. Attorney at Sioux Falls, South Dakota. The first time that I received an affidavit from Myrtle Poor Bear was when the same was attached to a letter from Boyd dated March 22, 1976. I located that letter and have enclosed a copy. You will see that it bears our date of receipt on March 26, 1976 and a hand-written note from SJH (Steve Hardinge as he then was) to me. It was as a result of his note that I again travelled to Sioux Falls and the third affidavit dated March 31, 1976 was obtained. (I did not have anything to do with the preparation of the affidavit and left this entirely up to the two agents who were controlling Myrtle Poor Bear).

I was not aware of the first affidavit dated February 19, 1976 until the hearing before the Federal Court of Appeal when Counsel for the fugitive attempted to introduce the same as fresh evidence. Accordingly the statement that "Halprin was aware of the contents of all three affidavits" in the memorandum previously referred to is incorrect, but the latter part of the sentence "and in fact, he was the reason Myrtle Poor Bear furnished the third affidavit as he requested certain issues previously furnished by her be amplified" is correct, and you can see that the impetus for this action was Mr. Hardinge's hand-written instructions.

In conclusion, the simple comment is that the Federal Bureau of Investigation are still "covering up" the suppression of the first affidavit.

P.W.H.

1. Page 1 of 13 pages
2. 5-20-83
3. Security Classification - Code de sécurité

Security Classification - Cote de sécurité

MEMORANDUM/NOTE DE SERVICE

File number - numéro de dossier

243667

Date _____

February 21st, 1980

TO/A: Mr. William Halprin
Vancouver Regional Office

FROM/DE: Director of Criminal Prosecutions

SUBJECT/OBJET: Leonard Peltier

RECEIVED

FEB 28 1980

DEPARTMENT OF JUSTICE
VANCOUVER, B.C.

Comments/Remarques

I thought you would be interested in the attached material which adequately explains, as far as I am concerned, the fact that you were not aware of Myrtle Poor Bear's first affidavit while you were putting forward her second and third affidavits. From a prosecutor's point of view I think it is understandable that she was found to be a credible witness, although she was obviously a difficult witness and her evidence was in fact developed over a period of time insofar as the understanding of it by the U.S. authorities is concerned.

I take it you are the unknown private Queen's counsel hired by the Government of Canada.

I am closing our files on this matter.

DMV

Douglas J.A. Rutherford

Encl.

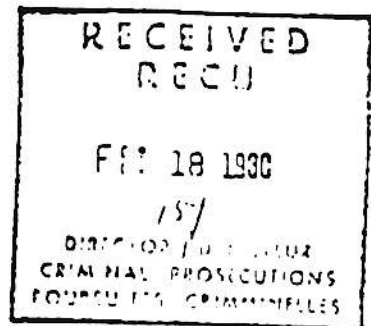


U.S. Department of Justice

MRS:mst
95-100-1154

Washington, D.C. 20530

FEB 11 1980



Mr. Douglas Rutherford
Director of Criminal Prosecutions
Department of Justice - Rm. 459
Justice Building
Ottawa, Ontario, Canada K1A0H8

Re: Leonard Peltier

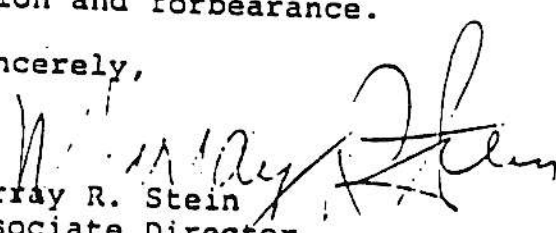
Dear Mr. Rutherford:

The Department of Justice, as a result of your letter dated December 7, 1979, again requested the F.B.I. to respond to concerns of your government. We also reviewed our files.

In answer to your questions, we are enclosing a copy of a self-explanatory memorandum from the F.B.I. dated January 29, 1980 and a copy of a self-explanatory internal Departmental memorandum dated April 26, 1979. We trust that the information contained therein has resolved the matter.

Thank you for your cooperation and forbearance.

Sincerely,


Murray R. Stein
Associate Director
Office of International Affairs
Criminal Division

Robert L. Keuch
Deputy Assistant Attorney General
Criminal Division

January 29, 1980

Francis M. Mullen, Jr.
Assistant Director
Criminal Investigative Division

LEONARD PELTIER

Reference is made to your memorandum dated January 11, 1980, enclosing a letter from the Canadian Department of Justice, Ottawa, Canada, dated December 13, 1979. In addition, reference is made to two memorandums from Donald W. Moore, Jr., then Assistant Director, Criminal Investigative Division, dated May 10, 1979, and July 31, 1979, both concerning the Canadian extradition proceedings involving one Leonard Peltier.

In preparing our initial response to the Canadian Government request for information regarding the circumstances surrounding the three affidavits provided by Myrtle Poor Bear in connection with Leonard Peltier's killing of two FBI Agents, the following sources were utilized: (1) official FBI files concerning this case, (2) the recollection of the Agent who had direct supervisory responsibility over the investigation, and (3) the recollection of our Agents in the Minneapolis Division wherein this investigation took place.

No records of the discussions pertaining to the selection of the Myrtle Poor Bear affidavits provided to the Canadian Government were found in the FBI files. Accordingly, our response regarding the selection of those affidavits was based upon the best recollection of our Agents knowledgeable of the circumstances surrounding this matter. This recollection was furnished in referenced memorandum dated May 10, 1979. There is no other source to turn to within the FBI.

As previously stated, all affidavits were voluntarily furnished by Myrtle Poor Bear and taken in good faith by FBI Agents assigned to this task. At the time the affidavits were furnished by Myrtle Poor Bear, it was believed that she was furnishing the information in good faith and was mentally stable. The inconsistency in the affidavits was always believed to be the result of Myrtle Poor Bear's initial reluctance to fully cooperate because of a perceived fear for her life and personal

Robert L. Keuch

safety. The decision not to use Myrtle Poor Bear as a witness in the ensuing trial of Leonard Peltier was made subsequent to the use of the two affidavits by the Canadian Government and was a decision within the purview of the attorneys charged with the prosecution of the case.

Again, convey to the Canadian Government that we appreciate their concern; however, we have no additional information or source for obtaining additional information concerning this matter.



Court File No.: A-441-76

Federal Court of Appeal

IN THE MATTER OF THE EXTRADITION ACT, R.S.C.
1970, CHAPTER E-21

- and -

IN THE MATTER OF A REQUEST FOR THE
EXTRADITION OF LEONARD PELTIER, also known as
Leonard Little Shell, Leonard Williams, John Yellow Robe,
Erwin Yellow Robe, Leonard John Peltier, BY THE UNITED
STATES OF AMERICA

- and -

IN THE MATTER OF A DECISION RENDERED BY THE
HONOURABLE MR. JUSTICE SCHULTZ ON THE 18TH
DAY OF JUNE, 1976

BETWEEN:

LEONARD PELTIER, also known as Leonard Little Shell,
Leonard Williams, John Yellow Robe, Erwin Yellow Robe,
Leonard John Peltier,

Applicant,

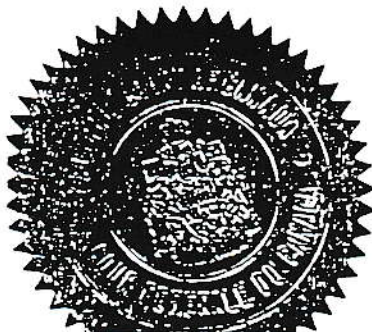
- and -

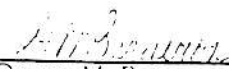
THE UNITED STATES OF AMERICA,

Respondent.

I HEREBY CERTIFY that the attached page is a true copy of page 2 of the minutes taken by P. Egerton, Court Registrar, at the hearing held at New Westminster, British Columbia, the 25th day of October 1976, before the Court (Gibson, Ryan JJ. and Kerr D.J.). These minutes were recorded at page 82, volume 26, of the Court's Minutes of Hearing Book.

DATED AT OTTAWA, Ontario, this 5th day of May 1989.




Denise M. Bergeron
Registry Officer

000545

A-441-76

6E 2

- 10:36 Mr. Rosenbloom speaks to the matter - OUTLINES THE REQUEST FOR THE REQUEST
- 10:38 Mr. HARRIS REPLIES
- 10:39 Mr. Rosenbloom REBUTS
- 10:41 APPLICATION IS DENIED
- Mr. Rosenbloom SPEAKS TO THE LOCATION OF THE HEARING - SPEAKS IN THE ORDER OF 5 OCT 76 FROM THE JUDICIAL ADMINISTRATION - THEN ARGUES THAT THE PROCEEDINGS FOLLOWED RAIL START AT THE STATUTORY PROVISIONS - QUOTES SEC 16C FCA, & RULE 1403 + 205 (3) + 326 (2) + 1210 THEN ARGUES HIS POINT
- 10:59 Mr. HARRIS REPLIES - OBJECTS TO 1403 (4), 1210 THEN QUOTES R. 302 AND R. 205
- 11:02 Mr. Rosenbloom REBUTS.
- 11:03 ORDER THAT THE HEARING PROCEED AT THAT TIME ON THAT DATE
- Mr. Rosenbloom INTRODUCES Mr. HARRIS WHO SPEAKS TO A WRIT ON HARRIS CORPUS. PRESENTS HIS MOTION AND THEN ASKS SHORT LEAVE - SUBMITS THAT THE COURT DOES HAVE JURISDICTION TO GRANT THE APPLICATION
- 11:08 Mr. HARRIS SAYS THE MATTER IS RESOLVED AND CLOSURES THE APPLICATION
- Mr. HARRIS REBUTS. - QUOTES CCL 615
- 11:11 APPLICATION IS DENIED
- Mr. Rosenbloom ~~SAYS~~ ~~THE~~ SAYS THE MOTION FOR NEW EVIDENCE WILL BE SPoken to BY Mr. RUSH WHO QUOTES RULE 1102 (1) THEN REFERS TO THE AFFIDAVIT FILED
- 11:38 Mr. HARRIS OBJECTS TO THE WORDS USED BY Mr. RUSH
- Mr. RUSH CONTINUES
- 12:00 Mr. HARRIS REPLIES
- 12:24 Mr. RUSH REBUTS
- 12:37 Mr. RUSH CLOSURES
- COURT IS ADJOURNED FOR 2 MINUTES
- 12:46 COURT IS RESUMED
- Mr. JUSTICE GIBSON SAYS THE APPLICATION TO INTRODUCE NEW EVIDENCE IS RETURNED
- 12:47 Mr. Rosenbloom OPENS HIS ARGUMENT ON THE PETITION 38 APPLICATION
- 12:50 Mr. Rosenbloom ASKS TO SEE THE COURT IN CHAMBERS
- COURT IS ADJOURNED
- 2:30 COURT IS RESUMED
- Mr. JUSTICE GIBSON ~~SAYS~~ DENIES THE MOTION FOR NEW EVIDENCE



In The Federal Court of Appeal

New Westminster, B.C. 27th day of October, 1976

CORAM:

THE HONOURABLE MR. JUSTICE GIBSON
THE HONOURABLE MR. JUSTICE ROYAN
THE HONOURABLE MR. JUSTICE KERR

IN THE MATTER OF THE EXTRADITION ACT, R.S.C.
1970, CHAPTER E-21

and

IN THE MATTER OF A REQUEST FOR THE EXTRADITION OF
LEONARD PELTIER, ALSO KNOWN AS, Leonard Little Shell,
Leonard Williams, John Yellow Robe, Erwin Yellow Robe,
Leonard John Peltier, BY THE UNITED STATES OF AMERICA

and

IN THE MATTER OF A DECISION RENDERED BY THE HONOURABLE
MR. JUSTICE SCHULTZ ON THE 18TH DAY OF JUNE, 1976

BETWEEN:

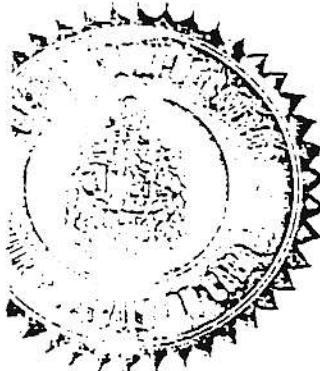
LEONARD PELTIER, ALSO KNOWN AS
Leonard Little Shell, Leonard
Williams, John Yellow Robe,
Erwin Yellow Robe, Leonard John
Peltier

APPLICANT

-and-

THE UNITED STATES OF AMERICA

RESPONDENT



J U D G M E N T

For some days prior to the hearing we have had the advantage of considering the case and the extensive memoranda of points of argument provided by counsel for the Applicant and for the Respondent, respectively, and the cases and authorities referred to in such memoranda, and we have, at the hearing, allowed counsel to make their submissions at considerable length without restriction as to time or subject matter; and, on the whole, we are of the opinion that no sufficient cause or reason has been shown for this court to set aside the warrant of committal dated the 18th day of June, 1976, referred to in the Originating Notice herein. Therefore the application is dismissed.

000521

IN THE MATTER OF THE EXTRADITION ACT, R.S.C.
1970, CHAPTER E-21

and

IN THE MATTER OF A REQUEST FOR THE EXTRADITION OF
LEONARD PELTIER, ALSO KNOWN AS, Leonard Little Shell,
Leonard Williams, John Yellow Robe, Erwin Yellow Robe,
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Peltier

APPLICANT

AND:

THE UNITED STATES OF AMERICA

RESPONDENT

J U D G M E N T