

LEONARD PELTIER -- EXTRADITION

CHRONOLOGY

June 26, 1975	FBI agents Jack Coler and Ronald Williams murdered.	
Sept 15, 1975	District Attorney in Milwaukee, Wisconsin contacts Vancouver Police Department to advise them that they believe Leonard Peltier ("Peltier") is in area and they would like his return in relation to an outstanding attempted murder charge for which he had failed to appear.	
Jan 23, 1976	Original Extradition Warrant issued for Peltier with respect to the attempted murder of an American State Troupier in Wisconsin	
Jan 26, 1976	Leonard Peltier, Robert Robideau ("Robideau"), Darrell Butler ("Butler"), James Eagle ("Eagle") indicted for first degree murder in relation to the murders of Special Agents Coler and Williams. [United States Attorney (USA) Evan L. Hultman Assistant United States Attorney (AUSA) Robert Simka]	
Feb 1, 1976	Proceedings in chambers in Supreme Court of B.C. [approx 44 pages]	
Feb 6, 1976	Provisional Arrest in Hinton, Alberta	
Feb 12, 1976	Warrant of Apprehension issued for Peltier with respect to murder of two FBI agents, attempted murder of state trouper, and burglary.	
Feb 12, 1976	Original Warrant charging only attempted murder abandoned. New Warrant issued with respect to five charges, including two charges of murder, and single count of attempted murder pursued. Scheduled bail hearing adjourned one week to allow defence to prepare. Reason for remand was that new warrant and new information provided to defence counsel that day, immediately prior to bail hearing. Proceedings in chambers in Supreme Court of B.C.[approx 11 pages].	
Feb 12, 1976	Report of Mr. Justice Rattan for original extradition warrant forwarded by letter from Rondeau, Criminal Registry County Court B.C. , to Minister of Justice Ron Basford.	
Feb 16, 1976	Letter from Rondeau, Criminal Registry County Court	

	B.C., to Minister of Justice Basford attaching Report of Schultz J. dated Feb 13, 1976	
Feb 18, 1976	Diplomatic Note from US Embassy received by External Affairs formally requesting the provisional arrest and extradition of Peltier on murders, attempted murders and burglary.	
Feb 19, 1976	Appplication for bail pending extradition hearing, discussion of potential dates for hearing. **No issue raised about political nature of offence or political assylum. Record of proceedings approx 33 pages.	
Feb 19, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Feb 19, 1976	Poor Bear Affidavit #1 (never authenticated): -she was not at crime scene -subsequently Peltier made admissions to her that he shot agents	
Feb 23, 1976	Poor Bear Affidavit #2 (authenticated): -she was present at scene when agents killed -she saw Peltier shoot the agents -(authenticated)	
Feb 26, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Mar 11, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Mar 16, 1976	Reasons for Judgment of the Honourable Justice Hinkson [approx 6 pages]	
Mar 18, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Mar 22, 1976	Paul Halprin ("Halprin") receives affidavit of Poor Bear dated February 23, 1976 as part of original extradition package forwarded by the United States through the diplomatic channels.	
	Letters begin to stream in to External Affairs requesting that Peltier be granted political assylum in Canada.	
March 31, 1976	Poor Bear Affidavit #3 (authenticated) -she was present at scene -she saw Peltier shoot one agent while other lying face down on the ground -more vivid detail -(authenticated)	
Apr 12, 1976	Application for mandamus brought before Mahoney, J. of Federal Court Trial Division from Order of Hinkson J. remanding Peltier in custody directly to May 3, 1976, the date set for his extradition hearing, a period greater than 8 days.	

Apr 13, 1976	Determination by Federal Court that: - Judge Hinkson erred in remanding more than 8 days. - Any loss of jurisdiction corrected by appearance of fugitive.	
Apr 15, 1976	Proceedings in Supreme Court of B.C. [Transcript approx 12 pages]	
Apr 15, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Apr 22, 1976	Proceedings in Chambers in the Supreme Court of B.C. [Transcript approx 20 pages]	
Apr 22, 1976	Warrant remanding prisoner, Peltier, to the Peace Officer of the Province of B.C.	
Apr 26, 1976	Peltier swears affidavit asserting that he is being detained under cruel and deplorable conditions.	
May 3, 1976	Demonstrations in Seattle at Canadian Consulate General.	
May 3-28 1976 (18 days)	Extradition hearing begins before Judge Schultz	
May 4, 1976	Preliminary Objections: 1. improper service of documents--dismissed 2. locus standi of US government--dismissed 3. loss of jurisdiction--dismissed Reasons for Judgment on Preliminary Objections by Justice Schultz [approx 12 pages]	
May 10, 1976	Reasons for judgment on admissibility of South Dakota documents by Justice Schultz [approx 10 pages]	
May 12, 1976	Reasons for judgment on admissibility of Oregon documents by Justice Schultz [approx 3 pages]	
May 13, 1976	Reasons for judgment by Justice Schultz [approx 3 pages]	
May 18, 1976	Fed Ct T.D dismissed defence motion to quash decision by Schultz allowing certain evidence to be admitted against Peltier on basis that special remedies not appropriate at this time in the proceedings; proper procedure to await decision then appeal.	
May 21, 1976	Reasons for judgment on admissibility of documents by Justice Schultz [approx 5 pages]	
May 25, 1976	Reasons for judgment by Justice Schultz [approx 5 pages]	

May 28, 1976	" " "	" "
June 7, 1976 - July 16, 1976	Butler and Robideau, Peltier's co-defendant's tried and acquitted after 5 days of jury deliberations	
Jun 18, 1976	Peltier ordered extradited by Schultz on four of five charges, including murders of special agents [decision 92pp]	" " "
July 27, 1976	United States Embassy advises Minister Ron Basford that Butler and Robideau acquitted along with editorial comment that jury verdict goes against contention that Peltier would not get fair trial	
Sept 16, 1976	Letter to Minister Ron Basford from AUSA Robert Simka and USA E. Hultman, the prosecutors involved in the Butler, Robideau trial, providing some detail about the length of trial, etc. Above-noted are the assigned prosecutors involved in Peltier's prosecution. They suggest that acquittal belies Peltier's contention that he would not receive a fair trial.	
Sept 27, 1976	Halprin forwards transcripts of all evidence taken on extradition to Minister of Justice Ron Basford.	
Oct 17, 1976	Elizabeth Clark filed complaint with the United Nations Human Rights Committee on behalf of Peltier	
Oct 25- 27 1976	Preliminary applications to the Fed. C.A.: 1. adjournment sought pending fugitives appeal from British Columbia Supreme Court regarding Habeas Corpus 2. complaint that Federal Court of Appeal was sitting in New Westminster, B.C. rather than Vancouver 3. Application for Habeas Corpus to produce fugitive at Hearings 4. Motion by Rush to admit "Feb 19 Poor Bear Affidavit" as new evidence. This was dismissed on basis the "no case made out to have material submitted on application to form part of section 28 Appeal Section 28 Appeal -- Application to set aside the decision of the Extradition Judge-----> Denied	
November 1976	Submissions made on Peltier's behalf to the Honorable Ron Basford, Minister of Justice, by counsel and native representatives. The submissions, written and	

	oral, addressed the inconsistencies of Poor Bear Affidavits and the issue of the "newly discovered" Feb 19, 1976 affidavit.	
Nov 26, 1976	Peltier's Canadian counsel, Rosenbloom and Rush, file complaint with United Nations Human Rights Committee concerning his treatment while incarcerated in Canada and the use of perjured evidence at his extradition hearing.	
Dec 4, 1976	Peltier, represented by his cellmate, makes submissions to the United Nations Human Rights Committee from prison.	
December 17, 1976	Minister of Justice News Release--Honourable Ron J. Basford In keeping with his role under section 22 of the <u>Extradition Act</u> and having considered the matter can Order to deliver Peltier to US signed	
December 18, 1976	Basford signs Extradition Warrant.	
February 17, 1977	Full copy of transcript of the proceedings before the Federal Court of Canada, including evidence given on the Extradition Hearing, forwarded to AUSA Robert Simka, Northern District of Iowa from Vancouver Office	
April 18, 1977	Jury convicts Peltier of murder of two FBI agents. Peltier sentenced to two consecutive life terms.	
April 12, 1978	<p>AUSA Hultman appeared before the 8th Cir Court of Appeal and addressed the issue of the Poor Bear Affidavits. He agreed with the Judge's statement that " anybody who read those affidavits would know that they contradict each other. And why the FBI and the prosecutor's office continued to extract more to put into the affidavits in hope to get Mr. Peltier back to the United States is beyond me."</p> <p>He asserted that he, as prosecutor was not involved in any way in obtaining the affidavits. He stated that the first he saw of the affidavits that was all he knew of Poor Bear and he initially accepted the affidavits on their face as being statements of a witness who was present who was testifying in the affidavit under oath as to what it was she saw.</p> <p>He went on to say that after an examination of the affidavits in the context of all other evidence he determined that Poor Bear was incompetent and decided he would not call her at trial. He testified that his decision was based, in large part, on the fact that no other witness could place her at the scene.</p>	
April 13, 1978	Peltier's appellate counsel wrote the 8th Circuit Court of Appeal asserting that Hultman's comments in oral argument the day before amounted to an admission of	

	misconduct.	
April 18, 1978	<p>United States Attorney responds to April 13, 1978 letter of defence counsel in a letter to the Court of Appeal, which stated:</p> <p>"....We also feel that it is appropriate to state that we take great exception to Mr. Privatera's reference in his letter to "admitted fraudulent conduct by government agents." The government has never conceded that Myrtle Poor Bear's allegations at trial concerning alleged threats and coercion by the FBI are true. In fact, we categorically deny they are true. What we conceded at oral argument is what we contended at trial and in our appellee's brief, namely, that Myrtle Poor Bear was indeed an incompetent and unbelievable witness. We also conceded that when viewed in context of the full investigation, her statements to the FBI that she was an eyewitness on June 26, 1975, are probably not true. We can only speculate as to the source of the information which she supplied to the FBI. Remembering that her statements to the FBI came relatively early in the investigation, the question of whether or not the Government should have spotted her incompetence at that point and not relied upon her statements in the extradition proceedings is one which cannot be finally answered on the record before this Court, and is a question which need not be answered to resolve the issues of this appeal.</p> <p>***above not forwarded to Canada until 1993.***</p>	
May 3, 1978	<p><u>Halprin v. Sun Publishing</u> (1978) 4 WWR 685 Halprin's libel action against Sun Publishing for comments made in an article entitled <i>Canada "an Accomplice" in Conviction</i> was dismissed by the British Columbia Supreme Court on the basis that he was not personally identified in the article. Anderson J. , in his reasons, made the following comments concerning Halprin's conduct at the extradition @ 691:</p> <p>" it is clear beyond all doubt that the plaintiff had no knowledge whatsoever of any suppression of evidence, or of any misconduct on the part of anyone. It is also clear that the plaintiff has a reputation at the bar, and with those who know him, as being a person of the highest integrity. He has always acted fairly, honestly and in a straightforward manner, and in strict conformity with the ethical standards required of a prosecutor. "</p>	
August 1, 1978	Doug Rutherford ("Rutherford") requests Halprin's comments on the allegations that the US DOJ sought	

	extradition on the basis of affidavit evidence known to be unreliable	
Sept 12, 1978	Halprin replied stating that "irrespective of the evidence of Poor Bear, there was other evidence which would justify extradition, namely, the finding of the personal police weapon of the murdered FBI agent Coler in the possession of Peltier, shells from the Colt AR-15 being the same type of weapon used in the killing of the two Agents, as well as two eyewitnesses who saw Peltier fleeing the scene, carrying a similar type of weapon."	
Sept 14, 1978	<p><u>USA v. Peltier</u> 585 F.2d 314:</p> <p>Eighth Circuit Court of Appeal affirmed Peltier's conviction on direct appeal, rejecting Peltier's contentions that :</p> <p>a) evidence was improperly admitted;</p> <p>b) evidence designed to show that Peltier was the victim of an FBI frame-up was improperly excluded;</p> <p>c) proposed instructions concerning the frame-up theory were improperly denied; and</p> <p>d) Peltier's extradition from Canada violated the Webster-Ashburton-Treaty.</p>	
Mar 5, 1979	<p><u>USA v. Peltier</u> 440 U.S. 945 (1979)</p> <p>United States Supreme Court denied certiorari.</p>	
March 29, 1979	<p>Doug Rutherford writes to Murray Stein, Gov Reg Section, Criminal Division, US DOJ, asking that he determine the level of knowledge of American DOJ and FBI officials concerning the unreliability of Poor Bear at the time the second and third affidavits were submitted to Canada, and, the reason for withholding the first affidavit.</p> <p>Rutherford's request was based, in part, on comments made by US Attorney Hultman to the 8th Circuit Court of Appeal.</p>	
April 26, 1979	<p>L. Lippe ("Lippe"), Acting Chief, General Litigation (Criminal), advised that at the time the Poor Bear Affidavits were submitted to the Canadian authorities, Poor Bear, was considered a credible witness who would be used at trial. The two affidavits were believed to be truthful. The first affidavit had been partially repudiated by Poor Bear when she furnished the subsequent affidavits. We were not able to ascertain how it was decided that the first affidavit would not be submitted to Canada.</p> <p>Lippe refers, in the letter, to an interview of Sikma, one of the principal prosecutors, concerning the extradition. Sikma recalled "dealing with a Queen's Counsel in Canada, and with the DOJ. Sikma said that the Queen's counsel, whose name he cannot recall, was a private attorney hired by the Government for that particular case. Sikma had no specific recollection of making a decision to withhold the Poor</p>	

	<p>Bear Affidavit #1 and to submit #2 and #3, nor does he recall whether the Queen's Counsel was making requests for information or affidavits directly to the FBI".</p> <p>According to this letter, Sikma made his decision as early as July 1978 during the course of the Butler, Robideau trials. He based his decision on pretrial interviews with Poor Bear in which he described her as being emotionally out of control, claiming to be unable to remember anything and fearful that she would be harmed if she testified.</p> <p>Hultman based his decision not to use Poor Bear during his preparation for trial, which was based, in part, on the fact that no other witness could place Poor Bear at the scene and her emotional state in a pre-trial interview.</p>	
May 10, 1979	<p>Ronald Moore, Assistant Director, FBI, writes that all Poor Bear Affidavits were voluntarily furnished and taken in good faith. At the time the three affidavits were furnished, it was believed that she was totally reliable and mentally stable. The inconsistency between the first affidavit and the subsequent two affidavits is believed to be the result of her initial reluctance to fully cooperate because of her legitimate fear for her own personal safety. At the time the two affidavits were submitted to Canada, it was believed that they were accurate and from a reliable mentally stable witness.</p> <p>He expressly stated that Halprin was aware of the contents of all three affidavits, and he was the reason the third affidavit was furnished. It was on Halprin's recommendation, with concurrence of Special Prosecutors Hultman and Sikma, that only the second and third were used.</p>	
June 1, 1979	US Dept of Justice forwards letter from US Attorney in No. Dakota and FBI to Doug Rutherford.	
June 7, 1979	Rutherford asks Halprin to respond to FBI's assertion in the memorandum of May 10, 1979, that he had full knowledge at the outset of the extradition process of the first Poor Bear Affidavit and that the third affidavit was taken at Halprin's urging.	
June 12, 1979	<p>Memo from Halprin to Rutherford Responding to FBI's assertion, wherein he states:</p> <p>"The first time that I received an Affidavit from Myrtle Poor Bear was when the same was attached to a letter from AUSA Bruce Boyd dated March 22, 1976.[.....] I was not aware of the first affidavit of Poor Bear dated Feb 19, 1976 until the hearing before the Federal Court of Appeal when Counsel for the fugitive tried to introduce the same as fresh evidence.</p> <p>Accordingly, the statement that Halprin was aware</p>	

	<p>of the contents of all three affidavits" is incorrect, but the latter part of the sentence, "in fact, he was the reason Myrtle Poor Bear furnished the third affidavit..." is correct, and the impetus for this action was Steven Harding's written instructions to me."</p> <p>He concludes by stating that it is his opinion that the FBI is "covering up" the suppression of the first Affidavit.</p>	
June 28, 1979	Rutherford writes Murray Stein ("Stein") to acknowledge June 1, 1979 letter and sets out Halprin's response that the FBI's letter wherein they claim that Halprin had full knowledge of the existence of the first affidavit of Poor Bear, is factually incorrect. The full text of Halprin's position was included. Rutherford requests that the USA respond in light of Halprin's assertions.	
July 31, 1979	Assistant Director FBI, states in letter to US Deputy Assistant AG, that no further information available to add to explanatory letter of May 10, 1979.	
Aug 14, 1979	UN Human Rights Committee delivers its decision that Peltier's communications inadmissible for a variety of reasons, including the fact that Peltier had not exhausted his appeal route in Canada. This refers to Peltier's failure to appeal to the Supreme Court of Canada.	
Aug 16, 1979	South Dakota United States Attorney Robert Haring responds to the Deputy Assistant Attorney General's request for information on the Peltier extradition by stating that after reviewing the files, there is no way of determining which affidavit was attached and forwarded to Canada in March 1976. He further stated that no one currently employed at the office was involved in the extradition or prosecution so they can be of little assistance.	
Sept 19, 1979	United Nations Human Rights Committee releases written reasons.	
Dec 7, 1979	Letter from Rutherford to Murray Stein, Associate Director Office of International Affairs, asking for a more helpful/adequate response to Canada's queries about the handling of the Peltier extradition, in preparation for an upcoming meeting with the Attorney General of Canada.	
Jan 29, 1980	Letter from Francis Mullen, Assistant Director, Criminal Investigative Division USA to Deputy Assistant General (Criminal) USA responding to Rutherford's questions and explaining that to the best of his knowledge, the decision not to use Myrtle Poor Bear as Witness at trial was made subsequent to the use of her affidavits in Canada at the discretion of the attorney's prosecuting the case.	
Feb 11, 1980	Letter from Deputy AG Criminal Division USA to	

	Francis Mullen, Assistant Director Criminal Investigative Division enclosing Rutherford's letter (above) and initial US departmental responses to Canadian Government inquiries. A further response was requested.	
Feb 1980 ???????	Douglas Rutherford receives explanation from Murray Stein concerning the use of the Poor Bear affidavits at the extradition and the subsequent decision not to use Poor Bear as a witness at trial.	
????	Peltier involved in armed escape from jail. Peltier contended that his jail break was the product of duress because he feared that the US government had arranged to have him assassinated while in prison.	
????	Peltier convicted of escape from Federal prison and being a felon in possession of a firearm.	
March 20, 1981	USCA (9th) Circuit releases unpublished memorandum remanding Peltier for new trial on escape charges because they found that Peltier unduly restricted in cross-examining government witnesses.	
?	The government petitioned for a rehearing and the March 20, 1981 memorandum was then withdrawn and the case remanded to the district court for the purpose of supplementing the record on the limited question of whether the abbreviation of cross-examination was harmless error.	
April 20, 1982	Peltier filed motion before United States District Court to vacate the judgment and for a new trial pursuant to 28 USC s. 2255 (1976) based in large part on assertions that evidence helpful to the defence had been suppressed by the FBI contrary to the <u>Brady</u> doctrine governing disclosure. This evidence had become available recently through a freedom of information application.	
June 4, 1982	USA appeals decision of 9th Circuit Court of Appeal overturning Peltier's escape custody conviction.	
Nov 23, 1982	<u>USA v. Peltier</u> 9th Circuit Court of Appeal released decision that pursuant to review of trial record and briefs submitted it found trial court decision to cut short cross-examination of witness was beyond reasonable doubt a harmless error. Stated that even if defence story of planned assassination true, such facts would not present lawful basis for participating in an armed jail break.	
Dec 13, 1982	MacLean's Magazine publishes feature article "Was Leonard Peltier Framed?"	
Dec 30, 1982	<u>US v. Peltier</u> 553 F.2d 889 USDC North Dakota Peltier motion to the District Court for new trial on basis that many new documents were exculpatory and had never been disclosed thus violating the Brady doctrine. The motion was dismissed without a hearing. Judge Benson found that perjury was not	

	<p>shown and no reasonable doubt that did not already exist was raised as a result of the new information.</p> <p>Court concluded that jury had heard conflicting evidence and had assessed the credibility of witnesses.</p>	
May 27, 1983	<p>Paul Halprin was deposed in the United States of America on a matter unrelated to the Peltier extradition concerning the use of the Poor Bear affidavits in the Canadian extradition. The proceeding was part of one initiated by a person convicted of murder in the United States based in part on evidence given by Poor Bear in May 1976. Halprin was called to establish possible misconduct on the part of the FBI agents who took Poor Bears statements.</p>	
Dec 15, 1983	<p>Peltier filed motion for new trial under Fed. Crim. P. 33, based on a mass of data and reports received from FBI pursuant to a freedom of information request. The appeal was based on the non-disclosure violation of his rights under the <u>Brady</u> doctrine. He simultaneously moved to disqualify district court judge. The district court judge dismissed all motions without an evidentiary hearing based on written submissions and the trial record.</p>	
April 4, 1984	<p><u>US v. Peltier</u> USCA 8th Circuit. On appeal, the court upheld the district court's rejection without a hearing of all of Peltier's charges other than the ballistics one.</p> <p>The court found that, with respect to the ballistics evidence, the prosecution did withhold evidence favourable to the accused. The issue of whether the non-disclosure of the ballistics evidence adduced below supports Peltier's contention that its non-disclosure violated the Brady doctrine, requiring a new trial, was remanded to the district court for an evidentiary hearing.</p>	
May 31, 1984	<p>Warren Allmand raises the issue of Peltier's extradition at the Justice and Legal Affairs Committee. In particular, he makes reference to the Poor Bear affidavits and the new information concerning the ballistics evidence tendered at Peltier's trial, obtained through Freedom of Information in the USA. He wants Canada to take some action based on new developments in the USA.</p> <p>Ian Binnie and Doug Rutherford respond. Binnie states, for the record, that there has never been any suggestion, that at any time any Canadian official was aware that there was any conflict in the evidence or that the proper and complete story had not been put before the court. So it was not a matter which touched the Canadian justice system.</p>	
June 25, 1984	<p>Rutherford writes Murray Stein, Associate Director,</p>	

	Office of International Affairs, Criminal Division, US DOJ, asking for update on Peltier case, in particular relating to the recent US decision considering the ballistics evidence tendered at Peltier's trial.	
August 14, 1984	<p>Murray Stein replies to Rutherford's letter stating that he has sought to retrieve all pertinent files and while Rutherford's and Stein's correspondence was located promptly, "other information on Peltier, both recent and past, is another story". He went on to say that "Strangely, to date, I have been unable to obtain copies of any files relating to Peltier's trial and conviction for the two murders.</p> <p>Stein attached the recent appellate judgement concerning Peltier's jail break and a civil suit that had been launched by Peltier against prison authorities.</p>	
Oct 6 1984	Stein writes Rutherford that files still not located.	
May 22, 1985	<p><u>USA v. Peltier</u> 609 F. Supp 1143 (Dist Court No. Dakota) District court held evidentiary hearing and denied Peltier relief. In its detailed memorandum the court held that the October 2 teletype, evaluated in the context of the entire record, would not have changed the outcome of the trial. The court concluded that after having seen and heard the ballistics expert, Agent Hodge testify, that he was a credible witness (@1152). The Court further found that the disputed teletype did not refer to the .223 casing found in the agents' car, but to other casings found at the scene.</p>	
October 15, 1985	Peltier filed appeal to 8th Circuit Court of Appeal	
July 29, 1986	Don Avison ("Avison") memo outlining Peltier case history, including new evidence of police misconduct concerning ballistics evidence presented to the USCA.	
Aug 1, 1986	<p>Rutherford writes to Murray Stein that the Minister of Justice Canada is the subject of a mounting campaign on behalf of Leonard Peltier with the objective of obtaining full recognition that Peltier was the subject of a miscarriage of justice in his prosecution and conviction. He advised Stein that it was difficult to respond to the legal and factual assertions in the absence of a clear understanding of the issues being pursued in the US. He asks for any information available to assist.</p> <p>In his letter, he stated that he was soliciting Stein's assistance, notwithstanding that "no satisfactory explanation, and in fact no explanation at all was ever forthcoming" in response to Canada's enquiries into how the conflicting Poor Bear affidavits were relied on by US authorities and forwarded for use in the Canadian Courts.</p> <p>In a subsequent letter, Rutherford acknowledges that</p>	

	has comments about lack of cooperation ignored the April and May 1979 responses.	
Aug 19, 1986	Halprin and Avison met to discuss file; no record of discussion available on the file.	
Sept 11, 1986	<p><u>USA v. Peltier</u> 800 F. 2d 772, 8th Circuit Court of Appeal affirms evidentiary finding of district court that while there was a possibility that the verdict would have differed had the non-disclosed evidence been available, there was not a "reasonable probability" that the trial verdict would have been affected by newly disclosed ballistics evidence.</p> <p>Hodge's testimony at the post-trial evidentiary hearing was examined. The court of appeal found that the newly discovered evidence indicates Hodge may not have been telling the truth. The Court found that "there is a <u>possibility</u> that the jury would have acquitted Peltier had the records and data improperly withheld from the defence been available to him in order to better exploit and reinforce the inconsistencies casting strong doubts upon the government's case. Yet, we are bound by the <u>Bagley</u> test requiring that we be convinced, from a review of the entire record, that had the data and records withheld been made available, the jury <u>probably</u> would have reached a different conclusion. We have not been so convinced."</p>	
Sept 16, 1986	Avison memo outlining decision of US Court of Appeal to confirm conviction notwithstanding the prosecution's failure to disclose an FBI teletype concerning the ballistics evidence that was favourable to Peltier. The Court stated that "there is a <u>possibility</u> that the jury would have acquitted Peltier had the records and data improperly withheld from the defence been available to him in order to better exploit and reinforce the inconsistencies casting strong doubts upon the governments case. Yet, we are bound by the <u>Bagley</u> test requiring that we be convinced, from a review of the entire record, that had the data and records withheld been made available, the jury <u>probably</u> would have reached a different conclusion. We have not been so convinced."	
Sept 17, 1986	Access to Information Request by M.P Jim Fulton ("Fulton") seeking disclosure of contents of Department of Justice, Canada file.	
Dec 1986	Peltier awarded the International Human Rights Prize for 1986 by the Human Rights Commission of Spain for his defence of his people.	
Dec 10, 1986	Murray Stein forwards copy of USCA decision affirming conviction.	
Jan 13, 1987	Fifth Estate broadcasts segment on Peltier suggesting that he was extradited from Canada on the basis of false evidence.	

Feb 23, 1987	Fulton receives material pursuant to his access to information request	
Mar?????	Fulton files private members motion M-28 calling for an annulment of the extradition	
April 9, 1987	Private members bill M-28 heard in the House. Argument extended the full hour. The matter did not come to a vote.	
July 27, 1987	Freedom of Information Commissioner finds M.P. Jim Fulton's formal complaint about the undue delay in disclosing the Peltier files "well founded".	
Oct 5, 1987	<u>Peltier v. USA</u> 484 US 822, certiorari from 800 F. 2d 772 denied by USSC.	
Aug 17, 1988	Private members bill M-115 filed in the House by M.P. Jim Fulton seeking the annulment of the extradition of Peltier which was based on the filing of false information in Canadian courts.	
April 17, 1989	Application for Leave to appeal to the Supreme Court of Canada filed by Peltier	
May 8, 1989	Don Avison memo to Rutherford outlining telephone discussion with Murray Stein with respect to the upcoming leave to appeal to the Supreme Court of Canada. Appears to have been some reluctance on part of USA to acknowledge that they were to be a party to the appeal as the extradition was conducted on behalf of the USA.	
May 19, 1989	Application for leave to appeal to the Supreme Court of Canada 1. FCA erred in finding that BCSC had sufficient evidence to support extradition Order; 2. FCA erred in refusing to admit new evidence on appeal; 3. Substantial new evidence available which establishes that the respondent obtained extradition order by material non-disclosure of relevant evidence and fraud. Application for extension of time Application to tender new evidence	
June 12, 1989	Oral submissions before the Supreme Court of Canada. During argument, Mr. Justice LaForest observed that any effective extradition arrangement requires good faith and suggested that the Poor Bear episode raised questions about the bona fides of the extradition process. LaForest J. stated, 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.	
June 21, 1989	Letter from Rutherford to Drew Arena, Office of International Affairs outlining comments made by the Supreme Court wherein the bona fides of the Americans was raised and requesting further review. In his letter, Rutherford stated that despite many	

	inquiries by Canada on this issue, no satisfactory or substantive response had been received.	
June 22, 1989	Leave to Appeal to the Supreme Court of Canada refused.	
Oct 26, 1989	<p>"Ng Letter". Canada takes following position on US legal system and constitutional standards:</p> <p>"First, the Government of Canada has determined that the administration of criminal justice in the USA sufficiently corresponds to our concepts of justice and fairness to warrant entering into and maintaining the existing extradition Treaty. Canada accepts and has confidence in the body of criminal law and the manner in which it is administered in the US. The American Constitution enshrines protections, rights and freedoms similar to our own and the US courts ensure that the criminal justice system complies with these constitutional standards"</p>	
Dec 20, 1989	Doug Rutherford writes Drew Arena, Office of International Affairs, Criminal Division, stating that Canada views the matter of the production of the Poor Bear Affidavits as "requiring examination" with respect to determining how such unreliable evidence was produced for use in the Canadian extradition process and to ensure it does not recur.	
Jan 15, 1990	Memo from Rutherford to the Minister of Justice concerning the issue of the production by US authorities of unreliable affidavit evidence for use in Canadian extradition proceedings.	
Jan 26, 1990	Drew Arena, Office of International Affairs, writes Doug Rutherford that he has requested the FBI provide him with information concerning the production of the Poor Bear Affidavits, as well as the results of investigations into the allegations of false evidence so that any concerns can be properly addressed.	
June 25, 1990	<p>National Law Journal publishes <u>Conviction of Convenience</u> about the Peltier trial. At page 28 it states that "high ranking members of the Canadian Parliament want him returned to Canada from where he was extradited based on false affidavits that may have been the product of government coercion."</p> <p>On page 29 it stated that: "after the evidentiary hearing, upon return to the 8th Cir. on October 15, 1985, prosecutors made startling admissions during oral arguments, among them they admit that the affidavits used in the extradition hearing were fabricated."</p>	
June 25, 1990	Rutherford writes Drew Arena, Director, Office of International Affairs, expressing concern about a recent publication in the National Law Journal suggesting the prosecutors admitted during oral	

	argument before the 8th Cir. Court of Appeal that the affidavits used in the extradition were fabricated.	
June 29, 1990	<p>Lyn Crooks letter to National Law Journal refuting "factual inaccuracies" in article on Peltier wherein he states that :</p> <p>"We have never "admitted" that the affidavits used in the extradition were fabricated. In discussions with Judge Ross, Mr. Hultman conceded that if indeed the FBI interrogated witnesses they knew to be incompetent that would be wrong. That was all that was conceded. We never fabricated evidence and neither has the FBI. If the facts in Miss Poor Bear's affidavit were false, as it appears they probably were, it was because she lied about her role. We certainly recognised by trial time that she could not be called as a witness for the government. Her incompetence was the stated reason she was not permitted to testify for the defence."</p>	
July 23, 1990	Drew Arena advises Rutherford that, in response to Canada's query, he has contacted Assistant US Attorney Lyn Crooks for information about the evidence presented to Court of Appeal.	
Aug 2, 1990	<p>Stephen Easton, AUSA, and Lyn Crooks, AUSA, respond to the queries of the Office of International Affairs writing "that neither the United States Attorney nor the FBI has ever acknowledged fabrication of evidence. The most that can be said is that we conceded that a serious issue is raised as to the judgement of repeatedly interviewing an incompetent person. The issue was, of course, whether Poor Bear was as obviously incompetent when interviewed as she was at trial. I doubt if she was."</p> <p>They also enclose Lyn Crooks' June 29, 1990 letter to the National Law Journal responding to their article on Peltier.</p>	
Feb 12, 1991	<u>Peltier v. Henman</u> 11991 WL 31248 (D. Kansas No. 90-3528-R) District Court Judge Richard Rogers denied a bid by Peltier for new trial .	
April 18, 1991	<p>Judge Heaney, Senior Circuit Judge, 8th Circuit Court of Appeal, author of the appellate judgement (800 F. 2d 772, 1986) affirming Peltier's conviction and member on the appellate bench in the earlier appeal 731 F. 2d 550, wrote an open letter to Senator Daniel Inouye. In his letter he confirms the decision that he authored [i.e. "was not convinced that a jury would <u>probably</u> have reached a different result."] and states that</p> <p>"no new evidence has been called to my</p>	

	<p>attention that would cause me to change the conclusion reached in that case. "</p> <p>However, notwithstanding his confirmation, he stated that one ground for seeking clemency for Peltier is that:</p> <p>"the FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court decided that these actions are not grounds for reversal, they are, in my view factors that merit consideration in any petition for leniency filed."</p>	
July 26, 1991	Rutherford wrote Mueller, Assistant AG, USA, and asks that he respond to the comments made by Judge Heaney that "the FBI used improper tactics in securing Peltier's conviction."	
Aug 22, 1991	Letter from Robert Muller, Assistant Attorney General USA (signed by P. Maloney on Mueller's behalf) responding to Rutherford's query. Assurance given to Canada that Lyn Crooks, the AUSA who prosecuted Peltier, confirmed that there is no evidence or judicial finding suggesting that the FBI used improper tactics to secure the extradition. Mueller stated that there have been no indications that the FBI considered Poor Bear's second and third affidavits unreliable.	
Nov 1, 1991	Rutherford, further to a request from M.P. Jim Fulton, wrote the Robert Mueller to request permission to disclose the Feb 11, 1980 letter of Robert Stein attaching letters from the FBI and the US Justice department, as well as his letter of August 22, 1991. Each of above addressed Canada's concerns of FBI misconduct.	
Jan 6, 1993	<p>Star Tribune article written by Nicholas V. O'Hara, special agent in charge of FBI's Minneapolis Division, defending Peltier convictions.</p> <p>He stated that allegations that the FBI fabricated Poor Bear's affidavits are false. He asserts that when the affidavits furnished by Poor Bear were used to establish probable cause to extradite Peltier, her information was believed to be credible. Subsequently, due to intense and continuing pressure by various supporters of Peltier, her mental condition became an issue [.....] The US government did not mislead either US or Canadian courts in the extradition process.</p>	
Feb 16, 1993	Office of International Assistance, Washington writes William Corbett and confirms that the prosecutors in Peltier continue to assert that their position concerning defence allegations remains consistent with the position taken in 1978. See April 19, 1978.	

July 7, 1993	<p><u>Peltier v. Henman, Warden US Penetentiary Leavenworth</u> 997 F. 2d 461 (8th Cir.).</p> <p>Peltier brought post-conviction proceeding to set aside conviction on grounds that:</p> <ul style="list-style-type: none"> a) an alleged government admission during oral argument before this court in the appeal in the prior section 2255 proceeding changed the government's theory of the case and eliminated the legal basis of his conviction; b) the district court improperly refused to permit him to present evidence of self-defence; c) the government engaged in serious misconduct in the case; and d) the government deliberately created an intimidating atmosphere at trial. <p>49 Members of the Canadian Parliament filed amicus curia brief and presented oral argument challenging the legality of Peltier's extradition. The court declined to consider this issue because:</p> <ul style="list-style-type: none"> a) extradition is an arrangement between States and these MP's did not purport to act for the Canadian government and Canada did not protest; b) in November 1992 appeal, Peltier did not challenge his extradition; and c) the contention comes far too late. This court rejected Peltier's challenge to the extradition based on the falsity of the affidavits in affirming his conviction on direct appeal in 1978. The amici offered no justification for their delay. 	
Aug 7, 1993	<p>Rehearing and suggestion for rehearing en banc [before the full appellate bench] denied by 8th Circuit Court of Appeal.</p>	