

Quotes from the Bench

The first appeal of Peltier's conviction occurred in 1977 before the Eighth Circuit Court of Appeals. In reference to the false affidavits discovered to have been used to extradite Leonard Peltier from Canada, Judge Donald Ross stated:

"But can't you see... that what happened happened in such a way that it gives some credence to the claim... that the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada? And if they are willing to do that, they must be willing to fabricate evidence as well."

Prosecutor Lynn Crooks, during oral arguments before the Eighth Circuit Court of Appeals on October 15, 1985, stated:

"We can't prove who shot those agents" and argued that Peltier had been "proven" to have "aided and abetted" the killings of the agents.

"Aiding and abetting Robideau and Butler?" the appellate panel asked.

"Aiding and abetting whoever did the final shooting," Crooks responded. "Perhaps aiding and abetting himself. And hopefully the jury would believe that in effect he had done it all."

The trial testimony on the Wichita AR-15 (claimed by the government to have been Leonard Peltier's weapon and to have caused their agents' fatal injuries) was the lynchpin of the prosecution's case. Allegedly, the Wichita AR-15 shell casing was found in the trunk of Agent Coler's vehicle. FBI documents released after Peltier's trial showed that two different FBI agents claimed to have discovered that shell casing—and on two different days. The judges of the Eighth Circuit Court of Appeals stated:

"There are only two alternatives... to the government's contention that the .223 casing was ejected into the trunk of Coler's car when the Wichita AR-15 was fired at the agents. One alternative is that the .223 casing was planted in the trunk of Coler's car either before its discovery by the investigating agents or by the agents who reported the discovery. The other alternative is that a non-matching casing was originally found in the trunk and sent to the FBI laboratory, only to be replaced by a matching casing when the importance of a match to the Wichita AR-15 became evident."

In 1986, in its ruling on Peltier's 1985 appeal, the Eighth Circuit of Appeals implicitly acknowledged that the United States government had used dishonest means to effect Peltier's

conviction. The court concluded that the government withheld evidence from the defense favorable to Peltier, "which cast a strong doubt on the government's case," and that had this other evidence been brought forth, "there is a possibility that a jury would have acquitted Leonard Peltier." The appeal nevertheless was denied on a legal technicality.

The author of the Eighth Circuit Court's decision, Judge Gerald Heaney, in a letter supporting a 2001 award of Executive Clemency to Leonard Peltier, wrote:

"The United States government must share in the responsibility for the June 26 firefight... It appeared that the FBI was equally to blame for the shootout... the government's role can properly be considered a mitigating circumstance... At some point, a healing process must begin... Favorable action by the President in the Leonard Peltier case would be an important step in this regard."

Before the Court of Appeals on November 9, 1992, Prosecutor Lynn Crooks again admitted,

"We don't know who shot those agents."

Also in 1992, Crooks demonstrated his predisposition to achieve a conviction even if based on fraudulent evidence when, in an interview conducted by Steve Kroft on the television show "West 57th Street," he said,

"It doesn't bother my conscience one bit... Doesn't bother my conscience one whit. I don't agree that there's anything wrong with that, and I can tell you, it don't bother my conscience if we did."

In 2002, an appeal was heard by the Eighth Circuit Court regarding a sentence reduction for Peltier. On December 12, 2002, the appellate court stated that the sentences imposed were themselves legal, but they

"were imposed in violation of [Peltier's] due process rights because they were based on information that was false due to government misconduct."

As late as November 2003, the 10th Circuit Court of Appeals acknowledged that

"...Much of the government's behavior at the Pine Ridge Reservation and its prosecution of Leonard Peltier is to be condemned. The government withheld evidence. It intimidated witnesses. These facts are not disputed."