

10 Reasons to Free Leonard Peltier

An innocent man, Leonard Peltier was wrongfully convicted and illegally imprisoned for the deaths on June 26, 1975, of two agents of the Federal Bureau of Investigation (FBI). He has served nearly 40 years in federal prison despite proof that he was convicted on the basis of fabricated and suppressed evidence, as well as coerced testimony. He also has been denied fair consideration for Executive Clemency and parole. The U.S. appellate courts, by their decisions, have recognized the undisputed misconduct in Peltier's case, yet have refused—by misapplying legal standards and claiming lack of authority—to take corrective action.

The debate about Peltier's case has continued over the decades, but the only things that matter are those things that have transpired in our courts of law. Judicial opinions themselves provide the rationale for Peltier's immediate release:

1. According to Judge Fred Nichol, after presiding over the Wounded Knee II trial of American Indian Movement (AIM) leaders Dennis Banks and Russell Means, "... the FBI was determined to get the AIM movement and completely destroy it." (NY Times, Sept. 17, 1974.) Numerous instances of investigative and prosecutorial misconduct came to light in that case. In open court, Nichol spoke with particular severity of the FBI. "It's hard for me to believe," he remarked, "that the FBI, which I have revered for so long, has stooped so low." Addressing the court, Nichols said: "The fact that incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice. The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution in this case." This ruling, however, failed to prevent further instances of misconduct in subsequent AIM-related prosecutions.
2. Jury Foreman Robert Bolin, after the acquittals of Leonard's co-defendants, Dino Butler and Bob Robideau, stated: "The jury agreed with the defense contention that an atmosphere of fear and violence exists on the reservation, and that the defendants arguably could have been shooting in self-defense. While it was shown that the defendants were firing guns in the direction of the agents, it was held that this was not excessive in the heat of passion." (Bolin has stated that he was genuinely alarmed by the anger exhibited by FBI agents when the verdict was read to the court.) Had Leonard Peltier been tried with his co-defendants, he also would have been acquitted of the crimes he was alleged to have committed. However, Peltier was tried separately and not allowed to argue self-defense (even though his actions on

- June 26, 1975, were no different than those of his co-defendants). Also, during Peltier's trial, repeated reference was made by the prosecution to the actions of Butler and Robideau—who allegedly did what, where, when and how and to the extent that the prosecutor even stated outright, during closing arguments, that all three men had murdered the agents in cold blood. The one thing the Peltier jurors were not told was that co-defendants Butler and Robideau had been acquitted the previous year—and by reason of self-defense.
3. The first appeal of Peltier's conviction occurred in 1977 before the Eighth Circuit Court of Appeals. 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." This statement was made in reference to the coerced and perjured affidavits discovered to have been used to extradite Leonard Peltier from Canada. [Emphasis Added] Nevertheless, on September 14, 1978, the Judgment of Conviction was affirmed.
 4. Prosecutor Lynn Crooks, during oral arguments before the Eighth Circuit Court of Appeals on October 15, 1985, and in stark contrast to his summation to the jury at Peltier's trial in 1977, stated: "We can't prove who shot those agents." [Emphasis Added] Crooks argued that Peltier had been "proven" to have "aided and abetted" the killings of the agents. Such contortions generated a marked confusion among the appeals judges. "Aiding and abetting Robideau and Butler?" they 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." In its ruling on September 11, 1986, the judges' indicated that Crooks' aiding and abetting argument held no merit. The judges observed that all indications were that the jurors had convicted Peltier of first degree murder on the premise that he was the shooter. Also, as a matter of law, the elements of "aiding and abetting" are well defined, i.e., "aiding and abetting" isn't merely a matter of the accused having been present at the scene of a crime. It also is true that when the principals in a crime have been found not guilty, as Butler and Robideau were, there is no one who can be responsible for having "aided and abetted."
 5. 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. A FBI teletype dated October 2, 1975, indicated that (FBI ballistics expert) Evan Hodge had performed a firing pin test on the Wichita AR-15 and compared it to the cartridges found at the scene of the shooting.

Contrary to his trial testimony that the test was inconclusive, this memo stated that, without a doubt, the rifle contained "a different firing pin" from the weapon used in the firefight. [Emphasis Added] This exculpatory evidence was withheld from the defense at trial and discovered years later with the release of documents via the Freedom of Information Act. The prosecution also had claimed that the Wichita AR-15 was the only weapon of its type present at the scene on the day of the shoot-out. FBI documents obtained after the trial show that this also was a false claim.

6. 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." The Court recognized, then, that key evidence against Leonard Peltier could only have been fabricated by the government.
7. 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 court had erred in its strict interpretation of the Bagley standard (*United States v. Bagley*, 478 U.S. 667, 1985), however. While under the circumstances, a jury might well have arrived at a different decision in the Peltier case, the judges claimed, these circumstances fell short of the judicial standard required in ordering a new trial, that is, the court must find that the jury "probably" rather than "possibly" would have acquitted Peltier. However, the Ninth Circuit Court of Appeals had previously rendered an opinion in another case and established the legal precedent that a clear "possibility" of acquittal was all that was required. The author of the Eighth Circuit Court's decision, Judge Gerald Heaney, commented that the decision on Peltier's appeal was the most difficult one he'd ever been required to make. In a letter supporting a 2001 award of Executive Clemency to Leonard Peltier, Heaney 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."

8. Before the Court of Appeals on November 9, 1992, Prosecutor Lynn Crooks again admitted, "We don't know who shot those agents." [Emphasis Added] Also in 1992, Crooks demonstrated his predisposition to achieve a conviction even if based on false or 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."
9. At the time of Peltier's sentencing, convicted defendants could request "a second round before the sentencing judge... giv[ing] the judge an opportunity to reconsider the sentence in light of any further information about the defendant or the case which may have been presented to him in the interim." In 2002, an appeal was heard by the Eighth Circuit Court regarding a sentence reduction for Peltier. Leonard's attorney argued that his two life sentences, at minimum, should have been concurrent rather than consecutive. 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." The appellate judges upheld the district court's ruling denying Peltier's motion saying that, while the court may correct a sentence imposed in an illegal manner, the courts lacked authority to rule on a motion filed more than twenty-two years after the 120-day filing period expired. Unfortunately, Peltier's attorneys could never have filed within the 120-day period because much of the evidence on government misconduct in Leonard's case was not discovered until years later.
10. 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."

Time to Set Him Free... It's the RIGHT Thing to Do

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