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FBI Director Louis J. Freeh today issued the following statement:

Leonard Peltier was convicted of grave crimes--two counts of first degree murder in the execution-style slayings of two wounded, helpless FBI Special Agents--and there should be no commutation of his two consecutive terms of life in prison.

The FBI Agents, Ronald A. Williams and Jack R. Coler, were gravely wounded by gunshots from about 250 yards away as they searched for a robbery suspect in South Dakota in 1975. The killer then walked to the two crippled and bleeding agents.

Agent Williams was on the ground or kneeling, holding out his hand in front of his face to protect himself. A rifle muzzle was placed against his hand and one shot was fired. The bullet pierced Williams' hand, tore through his face, and carried away the back of his head. It later appeared to investigators that Williams had been trying to surrender.

As Agent Coler lay on the ground, unconscious, he was shot in the top of the head, with the bullet carrying away part of his forehead at the hairline. A second shot was then fired through his jaw. The bullet exploded in his skull. Both shots were fired at point-blank range.

Peltier's guilt has been firmly established. He was convicted in a jury trial in United States District Court. All of Peltier's many appeals to the United States Court of Appeals for the Eighth Circuit have failed.

In addition, Peltier has twice asked the United States Supreme Court to hear his appeals, and the Supreme Court denied both of his petitions for review of his case.

In 1979, Solicitor General Wade H. McCree, Jr., submitted to the Supreme Court the first brief of the United States Department of Justice in opposition to Peltier's request. McCree said there was ample evidence of Peltier's guilt, including this important link to the murders of the Agents:

Peltier fled South Dakota after the FBI Agents were murdered; a highway policeman in Oregon tried to arrest Peltier, who shot at the officer and then escaped on foot; police discovered in Peltier's vehicle a paper bag containing Agent Coler's handgun, and Peltier's fingerprint was found on the bag.

The Supreme Court refused to hear Peltier's appeal.

In 1987, the Department of Justice once more firmly opposed another petition by Peltier to the Supreme Court, with Solicitor General Charles Fried saying there was no merit to Peltier's claims.

The Supreme Court again refused to hear Peltier's appeal.

An evaluation of a commutation request must also consider whether any new crimes have been committed by the offender while in prison. The facts show Peltier fails this test, too.

After being sentenced in 1977 for the murders of the FBI Agents, Peltier escaped from a federal prison. Peltier was recaptured, tried, and convicted for escape and being a felon in possession of a firearm. He received an additional seven years in prison, to run consecutively with his life terms.

In his appeal, Peltier said he escaped because the government planned to harm him in prison. The United States Court of Appeals for the Ninth Circuit in 1982 rejected Peltier's appeal, saying: "No imaginable set of circumstances could be drawn from the offers of proof to justify the armed jail break that took place."

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"RESMURS"

The FBI investigation concerning the murders of
Special Agents Jack R. Coler and Ronald A. Williams



RESMURS

QUICK FACTS:

- ◆ On June 25, 1975, warrants were issued by a U.S. Magistrate, Rapid City, South Dakota, for James "Jimmy" Eagle and two others charged with robbery on an Indian reservation.
- ◆ On June 25, 1975, FBI Agents, including Special Agents (SA) Ronald A. Williams and Jack R. Coler traveled to the Pine Ridge Indian reservation and met with Bureau of Indian Affairs (BIA) personnel in an attempt to locate Eagle. This effort met with negative results, but they learned that Eagle was seen in a red vehicle.
- ◆ On June 26, 1975, Agent Williams returned to the Pine Ridge area, followed by Agent Jack R. Coler in a separate FBI vehicle, to effect the arrest of Eagle.
- ◆ Unknown to Agents Williams and Coler, Leonard Peltier was present on Pine Ridge. A warrant was outstanding for the arrest of Leonard Peltier which had been issued in the Eastern District of Wisconsin for Unlawful Flight to Avoid Prosecution (UFAP) - Attempted Murder (of an off-duty police officer).
- ◆ Peltier and his supporters allege they had arrived on Pine Ridge with a contingent of American Indian Movement (AIM) members. They had traveled to Pine Ridge from Farmington, New Mexico.
- ◆ At approximately 11:50 a.m., June 26, 1975, Agent Williams indicated over his car radio that he had spotted a red and white vehicle. (Agent personnel overhearing the radio transmission have differing opinions of the vehicle description, but it was clearly established that there was only one operable vehicle in the area.)
- ◆ One of the occupants of the red and white vehicle was determined later to be an individual interviewed by Agent Williams and another FBI Agent in Williams' FBI vehicle the day before.
- ◆ Soon after Williams' initial transmission, he radioed information that the subject vehicle had stopped and that he and Coler had come under fire. Williams began transmitting directions to Agent Gary Adams who was approximately 12 miles away. Agent Adams could not reach the vicinity of Williams and Coler due to gunfire directed at him as he approached.

- ◆ Contrary to some media reports that gunfire lasted four hours, trial testimony described the gunfight directed at Agents Williams and Coler as lasting approximately 10 minutes. During this ordeal, a combined total of five rounds had been fired by both Williams' and Coler's weapons. The Agents' vehicles alone had 125 bullet holes. This total does not take into account those shots that hit the Agents, glass, or were not recovered.
- ◆ At approximately 4:25 p.m., Agents discovered the bodies of Agents Williams and Coler lying beside Agent Coler's vehicle. Agent Williams received bullet wounds to his left arm and side, foot, right hand, and head. Agent Coler received bullet wounds to the arm and head.
- ◆ An examination of the physical evidence concluded that Agents Williams and Coler had been killed at close range by a .223 type bullet. According to witnesses, Peltier was identified as the only person in possession of a weapon that would fire a .223 type bullet at the time of the murders. The weapon was an AR-15.
- ◆ Peltier's AR-15, Agent Coler's .308 rifle, and an arsenal of weapons were recovered from associates of Peltier on September 10, 1975, when a car exploded on the Kansas Turnpike near Wichita, Kansas.
- ◆ An examination by the FBI Laboratory made a positive match with a .223 shell casing found in the trunk of Agent Coler's car and marks produced by the extractor of Peltier's AR-15. No match could be made with the firing pin, because it was too smooth.
- ◆ On September 11, 1986, Federal Appeals Judge Gerald R. Heaney concluded, "When all is said and done, however, a few simple but very important facts remain. The casing introduced into evidence had in fact been extracted from the Wichita AR-15."
- ◆ Peltier was captured in February, 1976, by the Royal Canadian Mounted Police (RCMP), while in possession of several loaded weapons. Upon arrest, he advised the RCMP that two FBI Agents were shot when they came to a house to serve a warrant on him.
- ◆ During an interview on the television show "60 Minutes," aired September 22, 1991, Peltier admitted firing at Agents Williams and Coler.

- ◆ On April 18, 1977, Leonard Peltier was found guilty of the first-degree murders of Williams and Coler. On June 1, 1977, Chief U.S. District Judge Paul Benson sentenced Peltier to two consecutive life terms.
- ◆ One issue during the appeals was the allegation that the FBI fabricated statements from a woman named Myrtle Poor Bear who claimed that she saw Peltier shoot the Agents.
- ◆ The prosecuting Assistant United States Attorney determined Myrtle Poor Bear was incompetent to testify at trial due to obvious mental deterioration prior to trial and did not use her as a trial witness. Her affidavits were only used in extradition proceedings against Peltier in conjunction with other evidence and prior to a determination of her incompetence.
- ◆ Arguments that Peltier did not receive a fair trial have been repeatedly heard by the U.S. District Court, the Eighth U.S. Circuit Court of Appeals, and the U.S. Supreme Court. Peltier's most recent appeal was argued on November 9, 1992, under the defense grounds that the federal government changed its prosecutive strategy, to wit; initially arguing that Peltier shot and killed the Agents, but since, claiming that he aided and abetted in their deaths.
- ◆ On July 7, 1993, the Eighth Circuit Court of Appeals dismissed Peltier's latest appeal. The theory that the government had changed its prosecutive strategy was rejected by the courts review of the trial record. Other issues raised by the defense were also dismissed as having been previously decided or bypassed on previous appeals. Peltier's petition requesting a re-hearing on the matter was denied.

PRE-INCIDENT FACTS

The Pine Ridge Indian Reservation is located in the southwest corner of South Dakota. Wounded Knee, South Dakota, is located approximately 18 miles from the Village of Pine Ridge on the reservation. The incident involving the FBI at Wounded Knee, occurred approximately two years prior to the murders of Agents Jack R. Coler and Ronald A. Williams. There is no factual connection between the two. However, the Indian factionalism that resulted from Wounded Knee possibly contributed to an atmosphere of tension that existed on the Pine Ridge Reservation.

The factionalism pitted the supporters of the local tribal government and its then president against the members of the American Indian Movement (AIM) and Indian traditionalists. As a result, crime on the reservation had increased. The jurisdiction assigned to the FBI on the reservation was the responsibility of the Rapid City, South Dakota, Resident Agency (RA), assigned to the Minneapolis Field Division. The 12-Agent complement of the RA had been increased to include 6 additional temporary duty (TDY) Agents to assist in handling the increased workload. Victim Jack Coler was one of those TDY Agents.

Neither Leonard Peltier nor members of his group of associates were from the Pine Ridge Indian Reservation. Testimony stated that Peltier and the others in his group came to the reservation at the request of AIM leaders following an AIM convention in Farmington, New Mexico. There is evidence Peltier was the leader of a group of Indians who may have committed burglaries on the reservation. A British .308 rifle taken in a burglary on the reservation was fired at the Agents by Norman Charles, a member of Peltier's group, on the day of the murders.

At the time of the murders, Peltier was the subject of an outstanding federal warrant for Unlawful Flight to Avoid Prosecution (UFAP). The UFAP warrant was issued after Peltier fled Milwaukee to avoid apprehension and prosecution for the attempted murder of an off-duty police officer in that city.

On June 25, 1975, the evening before the murders, Agents Ron Williams and Jack Coler were on the reservation attempting to locate and arrest Jimmy Eagle. A federal warrant charging Eagle with robbery was outstanding. Eagle and companions from the reservation had beaten and robbed a subject on the reservation. Additional charges stemming from that incident included Assault with a Deadly Weapon. One of the areas where Agent Williams attempted to locate Eagle was the Jumping Bull Compound.

The Agents were unsuccessful in their attempts to locate Eagle. However, during that investigation, the Agents talked with Norman Charles and two others in Agent Williams' car and advised Charles that the purpose of their visit was to locate Eagle. It is noted that Norman Charles was with Peltier at the time of the murders on the following day. The Agents were told that Eagle had just left in a red vehicle. No further detail was given concerning that vehicle.

There is no evidence the Agents were aware that Peltier was in the area.

FACTS OF THE INCIDENT

On the morning of June 26, 1975, Agents Coler and Williams returned to the Pine Ridge Reservation to continue their attempts to locate and arrest Jimmy Eagle pursuant to a federal arrest warrant. Conversations with numerous persons earlier that morning made it clear that executing the Eagle warrant was their purpose for going to the reservation.

At approximately 11:50 a.m., other Agents overheard a radio transmission where Agent Williams advised Agent Coler he had spotted a red and white vehicle and was going to stop it. Williams and Coler were in separate FBI vehicles. None of the radio transmissions were recorded because the FBI did not have a system in place to record any radio transmissions. Recollections vary as to the description of the vehicle given by Williams. However, testimony presented at trial made it clear that there was only one vehicle operational in the area fitting that general description. It is noted this vehicle stop would be consistent with the information Williams had received on the previous day that Jimmy Eagle was reported to have been in a red vehicle. As later testimony showed, Leonard Peltier, Norman Charles, and Joe Stuntz were the occupants of the vehicle Williams was following. Coler then followed Williams in attempting to stop the suspect vehicle.

In the next radio transmission overheard, which was only a few seconds later, Williams stated that the vehicle they were pursuing had stopped, the occupants had exited the vehicle, and it appeared they were preparing to fire at the Agents.

These facts are corroborated by the testimony of Michael Anderson. His testimony indicated Leonard Peltier's red and white suburban entered the area of the murders first, followed shortly thereafter by Williams' and Coler's FBI vehicles. Peltier's vehicle stopped approximately 250 yards in front of the Agents' cars. Peltier, Charles, and Stuntz got out and started firing at the Agents.

In the last radio transmission monitored, Williams was giving directions to other Agents on how to get to his and Coler's location. Williams warned Agent J. Gary Adams that if he did not get there quickly, they were dead men. Williams announced that both he and Coler had been hit, and gunfire could be heard in the background of the transmission. Upon arrival in the area, Agent Adams was unable to reestablish radio contact with Williams.

The time frame of the shooting was established by Williams' first transmission being overheard at approximately 11:50 a.m. Agent Adams, the first Agent to arrive after Williams and Coler, made a twelve-mile trip at 90 miles per hour. It is estimated the incident involving Williams and Coler was over in a maximum of ten minutes.

As Agent Adams and two Bureau of Indian Affairs police officers arrived in the immediate area, they also came under fire. Both Adams and the officers had tires shot out of their vehicles. Agent Adams' car became hung up as he attempted to maneuver it and he was unable to get to Williams and Coler. As other Agents and officers from numerous agencies arrived, they received sniper fire which continued throughout the afternoon. This hampered rescue attempts and the Agents' bodies were not discovered until approximately 4:25 p.m. that afternoon.

PHYSICAL EVIDENCE AND TESTIMONY CONCERNING THE CRIME SCENE

Examination of the Agents' weapons showed that one round had been fired from Agent Coler's handgun, two rounds from Agent Williams' handgun, one round from Agent Coler's .308 rifle, and one round from Agent Coler's shotgun. The Agents' weapons had fired a total of five rounds during the incident. The Agents' vehicles contained a total of 125 bullet holes. This total does not include the rounds that hit the Agents, the windows, or were misses. Testimony indicated that other persons from a tent encampment near the Jumping Bull Compound arrived after hearing the firing and began shooting at the Agents. According to witnesses, at least seven persons were believed to have shot at the Agents.

Physical evidence examined by the pathologist indicated that at least three bullets consistent with .223 caliber were fired at close range at the Agents. However, only a single .223 caliber shell casing was recovered from the open trunk of Agent Coler's car. This indicates that the persons who were present at the Agents bodies attempted to remove all of the shell casings from the scene of the murders and inadvertently overlooked the .223 casing in Agent Coler's trunk. Testimony established Peltier was the only person carrying an AR-15 rifle at the time of the murders. The AR-15 was the only weapon present which was capable of firing a .223 round. One hundred fourteen .223 shell casings were found in the general crime scene area, away from the Agents' bodies. All had been fired by the same AR-15. These 114 shell casings matched the one shell casing found in the trunk of Agent Coler's car.

Pathology reports disclosed Agent Coler had been hit in the arm, which was nearly severed. The pathologist's opinion was that Agent Coler was disabled upon receiving that wound and would not have been able to continue the fight. Physical evidence demonstrated that Agent Coler received this wound while standing at the open trunk of his car, retrieving his long guns. Agent Williams' shirt had been wrapped around Agent Coler's arm as a tourniquet. The shirt had bullet holes that coincided with wounds Agent Williams had received to his left arm and side. Additionally, Agent Williams had been shot in the foot. Neither of Agent Williams' wounds up to this point would have been fatal, and his right arm was still operational.

The pathology reports also showed there were three additional wounds delivered to the Agents at close range. An eyewitness testified that Peltier, Robert Eugene Robideau, and Darrelle Dean Butler walked down to the Agents' cars. Robideau and Butler had come from the tent encampment to join the shooting after it had started.

There is no eyewitness testimony of what happened at the Agents' cars. However, the physical evidence showed Agent Williams had received a defensive wound through his right hand. The same bullet then traveled through his head killing him instantly. Agent Coler was lying on the ground, unconscious or near unconscious, when he was shot once in the top of his head, but the wound was not fatal. Agent Coler was then shot a second time near the jaw. This wound was fatal.

At the scene of the murders, very little was taken from Agent Coler's car. Agent Williams' car was driven to the location of Peltier's red and white suburban, and then to the area of the tent camp where it was stripped of almost everything.

Both of the Agents' handguns and both of Agent Coler's long guns were stolen from the scene. Testimony described Butler as carrying out one of the Agents' handguns, and Peltier the other. Robideau carried out both of Agent Coler's long guns.

Robideau's fingerprint was found on the inside door handle of Williams' car.

AFTERMATH

After the murders, those involved split up and fled in different directions. On September 5, 1975, Agent Williams' handgun and shells from both Agents' handguns were found in a vehicle near the residence where Darrelle Butler was arrested.

On September 10, 1975, a station wagon blew up on the Kansas Turnpike near Wichita, and a burned-up AR-15 was recovered, along with Agent Coler's .308 rifle. The car was loaded with weapons and explosives which were apparently ignited when placed too close to a hole in the exhaust pipe. Present in the car among others were Peltier's associates, Robert Robideau, Norman Charles, and Michael Anderson, all of whom were tied to the shooting of the Agents.

On September 9, 1975, Leonard Peltier purchased a Plymouth station wagon in Denver, Colorado. Peltier began traveling in a recreational vehicle (RV), accompanied by associates in the recently purchased Plymouth. The FBI provided descriptions of the two vehicles to other law enforcement agencies. An Oregon State Trooper stopped the RV based on the description. Peltier got out of the RV, fired at the trooper, and fled. Agent Coler's handgun was found in a bag with Peltier's fingerprint on it, under the front seat of the RV. Both of the vehicles were loaded with weapons and explosives, as was the vehicle that blew up in Kansas. Some of the weapons had obliterated serial numbers.

Peltier then fled to Hinton, Alberta, Canada, where he hid out at an Indian reservation until apprehended by the Royal Canadian Mounted Police (RCMP). Peltier was heavily armed at the time of his arrest, and stated he would have blown the RCMP out of their shoes if he had known they were coming for him. When asked if he knew why he was wanted, Peltier made a statement that two FBI Agents were shot when they came to a house to serve a warrant on him. He identified the warrant as the attempted murder charge in Milwaukee, Wisconsin.

THE CEDAR RAPIDS TRIAL

The first trial of subjects in this case took place in the summer of 1976 in Cedar Rapids, Iowa, after a motion for a change of venue was granted. Peltier was in custody in Canada, fighting extradition, and so was not available for this trial. As a result, only Robideau and Butler went to trial. Charges against Jimmy Eagle, the only other person charged in the Agents' murders, were dismissed voluntarily by the government for lack of evidence.

There were several issues and factors in this trial that were substantially different from the later Peltier trial. Robideau and Butler were not present when the shooting started. They were in a camp a short distance away and came with guns to the area of the murders once they heard the shooting. Unlike Peltier, there was no direct evidence that they were aware the Agents were law enforcement officers. As a result, a self-defense argument was made by the defense.

A primary difference in the Cedar Rapids trial was that the government's two best witnesses, Angie Long Visitor and Michael Anderson, were both missing for the trial. Despite the best efforts of the government, neither could be located. In both instances, it was suspected undue pressure was placed on them not to testify. Angie Long Visitor provided information to the FBI, which was entered into the trial record at Peltier's trial, that she was taken, not by choice, by persons she named, to another state prior to the Cedar Rapids trial. She related that she was told to stay away until the Cedar Rapids trial was over and she complied. However, Long Visitor and Anderson were available and testified at Peltier's trial.

During the course of the Cedar Rapids trial, the government was prohibited from introducing evidence that shell casings fired from Agent Coler's handgun and casings fired from Agent Williams' handgun were located in and near the residence where Butler was arrested. During the Peltier trial, the same evidence was admitted into evidence.

In the Robideau/Butler trial the jury heard testimony concerning past activities of the FBI that were arguably unrelated to events on the reservation. The testimony was offered based on a defense theory that through such past activities, the FBI had assisted in creating a climate of fear on the reservation. That climate of fear precipitated the murders. At the conclusion of the trial, the jury foreman stated that an

important facet to the acquittals was the atmosphere of fear and violence that did exist on the reservation, and how that atmosphere arguably contributed to the self-defense theory of defendants Robideau and Butler.

By contrast, at Peltier's trial, the trial judge required that any evidence offered to the jury must be relevant to the guilt or innocence of Peltier. As a result, much of the information concerning the FBI's past that was arguably unrelated to events on the reservation, was not presented to the jury.

At the conclusion of the government's case, the judge recessed the trial for ten days to attend a judicial conference. This provided the defense with additional time to prepare their case and a greater span from the presentation of the government's case to the time of deliberation by the jury.

Additionally, the jury was not sequestered and there was no gag order placed on the defense. As a result, the jury was subject to numerous headlines that appeared in the local newspaper which were adverse to the FBI. Conversely, the federal prosecutors were governed by Department of Justice guidelines which prohibit discussing the facts of any pending case with the media. The end result was that the public, which in this case included the trial jury, was subject to only the defense version of the facts in the media.

THE FARGO TRIAL OF LEONARD PELTIER

To address problems that impacted the Cedar Rapids trial, the government asked for, and received: a sequestered jury; a gag order for lawyers; and a pretrial ruling that the FBI could not be placed on trial unless the information offered related to the evidence or witnesses in the case.

Defendant Peltier had been indicted not only for the murders but additionally on the theory that he may have been an aider and abettor in the murders.

Facts argued to the jury identified Peltier as the leader of the group of Indians that were involved in shooting at the Agents.

Peltier was aware of Coler's and Williams' identities as FBI Agents. Unlike the Cedar Rapids trial, self-defense was not argued effectively by Peltier's attorneys. Norman Charles was in Peltier's suburban, with Peltier, when they first began firing at the Agents. Charles was the subject who was with Agent Williams the night before, in Williams' Bureau car, being questioned concerning the whereabouts of Jimmy Eagle. Angie Long Visitor testified that FBI cars were easily recognizable on the reservation. She testified that only the FBI drove cars that looked like that.

Peltier admitted to the RCMP at the time of his arrest that the persons who were fired upon, were FBI Agents who had come to the reservation to arrest him for an outstanding warrant. Since the trial, Peltier has admitted, on the "60 Minutes" television program on September 22, 1991, that he had shot at the Agents.

Witness testimony established that Peltier was the only person carrying an AR-15 rifle at the time of the murders and Peltier was seen at the location of the Agents' bodies carrying his AR-15. The .223 shell casing recovered from the trunk of Agent Coler's car had identifiable extractor markings which were made by the rifle that fired one of the bullets. These extractor markings on the casing matched the AR-15 rifle that was recovered in Kansas, from the car that exploded and contained Peltier's associates. An AR-15 is a semi-automatic rifle which fires a .223 caliber bullet. This caliber is a small, high-velocity bullet, that is consistent with bullet fragments found in and under the Agents' bodies.

On April 18, 1977, after a five-week jury trial, Leonard Peltier, was convicted of two counts of first-degree murder.

After his incarceration, Peltier was involved in an armed escape from the federal penitentiary in Lompoc, California. Another inmate was shot and killed in the escape. Peltier was recaptured a short time later after a farmer reported to the sheriff's office that a man had confronted him with a rifle and took his shoes and truck. Peltier was convicted of the escape and of being a felon in possession of a firearm. The conviction was affirmed on appeal.

DEFENSE ALLEGATIONS AND REBUTTALS

The allegations of the defense are far too numerous to address in a summary fashion. However, the following are two arguments that appear to have been consistently raised since Peltier's conviction in 1977.

MYRTLE POOR BEAR

The defense has alleged that the government fabricated evidence in several instances. One of those instances is the claim that the Myrtle Poor Bear affidavits were the result of undue pressure by FBI Agents on Poor Bear. The government has received criticism because Poor Bear's second and third affidavits were used in Peltier's extradition from Canada.

Poor Bear surfaced as a possible witness during the investigation. As a result, she gave three sworn affidavits. In the first affidavit she stated, she was not an eyewitness to the murders but, Peltier had told her he had committed the murders. In her second affidavit, she claimed she was an eyewitness and provided more detail concerning the incident. In the third affidavit, Poor Bear provided still more detail. Poor Bear's second and third affidavits were used in Peltier's extradition from Canada. To extradite, a showing of probable cause is the legal standard that is required. Peltier's extradition was based on evidence other than Poor Bear's affidavits.

After Peltier's extradition from Canada, subsequent interviews of Poor Bear by the government established that she was incompetent to testify at trial. As a result, Poor Bear was never called to testify at trial, and therefore, her information had nothing whatsoever to do with Peltier's conviction.

THE SHELL CASING FROM THE TRUNK

The defense has alleged that the government fabricated the .223 shell casing recovered from inside the open trunk of Agent Coler's car. This shell casing was eventually matched to the AR-15 rifle recovered from Peltier's associates in Wichita, Kansas.

It was established through witness testimony that Peltier was the only individual carrying an AR-15, at the time of the murders. An AR-15 is a semi-automatic rifle capable of firing a .223 caliber bullet. The only other weapons capable of firing a .223 caliber bullet present at the crime scene that day were carried by law enforcement officers who had assembled later in an attempt to rescue Agents Coler and Williams.

Although there were a minimum of 125 bullet holes in the Agents' cars, there were only three shots which had been fired at close range. These were the shots used to execute the Agents. The shell casings from two of those shots were never found and had been removed from the area of the bodies prior to the arrival of additional law enforcement officers. However, one .223 shell casing was discovered in the trunk of Agent Coler's car. It was missed by the person(s) who removed all of the other .223 shell casings from the area of the Agent's bodies. This shell casing was therefore crucial in establishing what weapons were fired at close range causing the Agents deaths.

The shell casing was recovered by an Agent examining the car for fingerprints, rather than firearms evidence. As a result, the shell casing from Agent Coler's trunk was part of a second shipment of evidence sent to the FBI Laboratory.

The FBI Laboratory made a partial examination of seven .223 shell casings from the first shipment of evidence. These casings were government issue and could therefore be distinguished from those which were later associated with Peltier's AR-15. In addition, the AR-15 that had been recovered from the burned up vehicle in Kansas had an extremely smooth firing pin. The weapon that had fired the seven shell casings which were examined in the first shipment, on the other hand, left a very distinct firing pin impression. Because the initial comparisons of those seven shell casings were negative, the examiner turned his attention to other evidentiary items.

A laboratory report was written in October, 1975, which indicated simply that there were no matches with the AR-15 that had been recovered from the burned-up vehicle in Kansas, and later associated with Peltier. In fact, not all of the shell casings from the first shipment of evidence and none of the shell casings from the second shipment of evidence had yet been examined. As a result, the October, 1975, laboratory report could have been misinterpreted to exclude all .223 shell casings from matching the AR-15 recovered in Kansas.

The balance of the .223 shell casings (over 100) were not examined until December, 1975, or January, 1976, when the remainder of the first shipment of evidence was examined. At that time, the laboratory did match the extractor marks from the .223 shell casing taken from the trunk of Agent Coler's car, and over 100 others found in the general crime scene area, with the AR-15 recovered in Kansas and later associated with Peltier.

A hearing was held in 1984, and the FBI firearms examiner testified for two days concerning the shell casing from Agent Coler's trunk and his subsequent reports. The short answer to the firearms issue is found in the Eighth Circuit Court of Appeals decision which affirmed Peltier's conviction the second time, which states, "When all is said and done, however, a few simple but very important facts remain. The casing introduced into evidence had in fact been extracted from the Wichita AR-15. This point was not disputed."

LEGAL HISTORY OF THE CASE

On November 17, 1975, Leonard Peltier, along with Darrelle Dean "Dino" Butler, Robert Eugene Robideau, and James "Jimmy" Eagle were charged in a federal indictment with two counts of first-degree murder and aiding and abetting.

During the summer of 1976, for reasons discussed earlier, Butler and Robideau were both acquitted at trial before the U.S. District Court in Cedar Rapids, Iowa. Charges against Jimmy Eagle were voluntarily dismissed by the government. Peltier was in custody in Canada fighting extradition.

Peltier was eventually extradited back to the United States. Following a five-week jury trial before the U.S. District Court in Fargo, North Dakota, he was convicted on April 18, 1977, of two counts of first-degree murder. He was sentenced on June 1, 1977, to serve two consecutive life terms in prison.

Peltier appealed his conviction to the Eighth Circuit Court of Appeals and his conviction was affirmed in 1978. A Writ Certiorari was denied by the U.S. Supreme Court in 1979.

Following this initial appeal, Peltier made an armed escape from prison, was apprehended, tried and convicted in the U.S. District Court, for the Central District of California. He appealed this conviction and it was affirmed by the Ninth Circuit Court of Appeals in 1982.

In April, 1982, Peltier filed his first Habeas Corpus petition. It was denied in December, that same year.

Also in December, Peltier filed his first motion for recusal of U.S. District Court Judge Benson. That motion was denied.

Shortly thereafter, Peltier filed an appeal from both orders, denying the Habeas Corpus and Judge Benson's recusal and filed a motion to recuse the entire Eighth Circuit Court of Appeals. In 1984, the motion to recuse the Court of Appeals was denied and that court also affirmed the U.S. District Court ruling denying Peltier a new trial and the refusal to recuse Judge Benson. However, the Court of Appeals did remand the case back to the U.S. District Court for an evidentiary hearing on the meaning of an FBI teletype concerning findings of a firearms examination.

Peltier filed his next motion to dismiss Judge Benson in June, of 1984. The motion was denied by the District Court and Peltier sought review by the Court of Appeals, who affirmed the dismissal of the motion.

In 1985, the U.S. District Court denied Peltier a new trial as a result of the evidentiary hearing concerning the FBI laboratory firearms teletype. He appealed to the Court of Appeals, and the District Court order denying a new trial was affirmed. In 1987, the U.S. Supreme Court again denied certiorari.

MOST RECENT COURT ACTION

On December 3, 1990, a new Habeas Corpus petition was filed by Peltier with the U.S. District Court. The petition reargued points that had been previously litigated. Additionally, the defense asserted that the government had changed its theory of prosecution in its arguments before the Eighth Circuit Court of Appeals on the previous appeal.

The defense contended that the government had originally argued to the trial jury that Peltier was the person who fired the shots that killed Agents Coler and Williams execution-style. However, the defense charged, in the previous appeal the government stated for the first time that they could not prove beyond a reasonable doubt that Peltier was actually the murderer. The government had then proceeded under the new theory that Peltier was guilty as an aider and abettor of others in the murders.

In fact, Peltier had been originally indicted under Title 18, United States Code, Section 2, aiding and abetting, in addition to two counts of murder. The prosecutor presented the aiding and abetting theory to the jury in his closing arguments at trial. Finally, the jury received instructions from the trial judge concerning the aiding and abetting charges.

The U.S. Magistrate recommended dismissal of all issues raised by the defense except the change of prosecutive strategy argument. The U.S. District Court Judge agreed. A hearing was held in the fall of 1991, on the issue that the government changed its prosecutive strategy. As a result of that hearing the Magistrate issued a recommendation that there had been no change of prosecution theory from the indictment to present. On December 30, 1991, the U.S. District Court affirmed that ruling.

Peltier again appealed this ruling to the Eighth Circuit Court of Appeals. On July 7, 1993, the Court of Appeals dismissed the appeal attempt. Peltier's main argument that the government had changed its theory of prosecution was rejected by the court's review of the trial record. Other issues contained in the appeal were also dismissed as having been previously decided adversely to Peltier or having been bypassed on previous appeals.

Attorneys for Peltier filed a petition for rehearing before the Eighth Circuit Court of Appeals and the petition was denied.

Accusations of government misconduct and claims that Peltier has not received fair treatment by the American justice system have continued in the 17 years since the murders. A review of the legal defense afforded Peltier conclusively shows this is not the case.

Normally, a federal criminal defendant is entitled to a single court-appointed attorney, chosen by rotation. Peltier received five lawyers, two as trial attorneys and three as investigators. All were chosen by Peltier, rather than the normal rotation process, and all were paid for by the government. The defense received almost double the normal number of preemptory challenges during jury selection. Peltier's lawyers were allowed to personally question the jury, which is highly unusual in federal criminal cases. The trial court provided daily transcripts of testimony to the defense, a very expensive measure, rarely allowed. After his conviction, Peltier was allowed to dismiss four of his five trial attorneys and hire new ones for his appeals. Peltier's arguments have been presented repeatedly to a U.S. Magistrate, two U.S. District Court Judges, the Eighth Circuit Court of Appeals, and the U.S. Supreme Court has twice denied requests to hear the case after reviewing defense arguments.

The cumulative impact of the above safeguards, though not improper, are evidence that the protections provided for Peltier have gone well beyond the normal due process furnished to federal criminal defendants.

DEAR MR. PRESIDENT:

**"LEONARD PELTIER MURDERED TWO
FBI AGENTS. HE DESERVES NO CLEMENCY."**

The Leonard Peltier Defense Committee has announced that November, 1999, is "Freedom Month for Leonard Peltier". This Committee intends to deliver to President Clinton a petition asking him to grant clemency to Peltier. Leonard Peltier is currently serving consecutive life sentences in a federal penitentiary for the ruthless murder of two FBI agents. To commute the sentence of Peltier and allow him to be released would be a tragic injustice and a moral blow to the entire community of law enforcement professionals in the United States. The members of the FBI Agents Association and the Society of Former Special Agents of the FBI want the President and all Americans to be aware of all the reasons why clemency should not be granted to Peltier. Misguided efforts to obscure or dilute the truth must not undermine justice in the case of Leonard Peltier.

June 26, 1975, was a hot, dusty Thursday on the Pine Ridge Indian Reservation in southwestern South Dakota when two young FBI agents arrived from their office in Rapid City. It was about noon when Special Agents Ronald A. Williams, 27, and Jack R. Coler, 28, pulled into the Jumping Bull Compound area of the remote reservation seeking to arrest a young man in connection with the recent abduction and assault of two young ranchers in nearby Manderson, S.D.

Observing Peltier's vehicle the two agents pursued it. Unknown to Special Agents Coler and Williams, one of the three men in the vehicle was Leonard Peltier, a violent man with a violent past, a fugitive wanted for attempted murder of an off-duty Milwaukee police officer. Knowing the two vehicles pursuing him were occupied by FBI agents and believing they were seeking to arrest him on the attempted murder case, Peltier and his two associates abruptly stopped their vehicle and began firing their rifles at the agents.

Surprised by the sudden violence, outmaneuvered, outgunned and at an extreme tactical disadvantage, Coler and Williams were both wounded and defenseless within minutes. Coler sustained a severe wound, the force of a bullet nearly tearing his right arm off. Williams, wounded in the left shoulder and right foot, removed his shirt during the hail of incoming rifle fire and fashioned a tourniquet around the arm of Coler, who had fallen unconscious. Agents Coler and Williams were at the mercy of Peltier and his associates. But there was to be no mercy that day for the fine young law enforcement officers.

Not satisfied with the terrible injuries they had inflicted, Peltier and two other men walked down the hill toward the ambushed agents. Three shots were fired from Peltier's rifle. Williams, kneeling and apparently surrendering, was shot in the face directly through his outstretched, shielding hand. He died instantly. Coler, still unconscious, was shot twice in the head at close range. He died instantly after the second shot.

The crime scene examination testified to the brutality of the ambush. Coler and Williams had little chance to defend themselves. They had fired only five shots. In contrast, over 125 bullet holes were found in their two cars.

Following the murders, Peltier fled the reservation. In November 1975, an Oregon state trooper stopped a recreational vehicle in which Peltier was hiding. Peltier fired at the trooper and escaped. Coler's revolver, stolen when he was murdered, was found in a paper bag under the front seat of the RV. Peltier's thumbprint was on the bag.

When later arrested in Canada by the Royal Canadian Mounted Police, Peltier remarked that, had he known the RCMP officers were there to arrest him, he would have thrown them out of their shoes. These are not the comments of an innocent man and portray the true character and violent nature of Leonard Peltier.

In April 1977, a jury convicted Peltier of the murders of Coler and Williams. A judge sentenced him to two consecutive life sentences. While incarcerated in the Lompoc, California Federal Prison, and with outside assistance, Peltier shot his way out of jail, using a smuggled rifle to make his escape. Several days later, after assaulting a rancher and stealing his truck, Peltier was captured. He was tried and convicted of the escape and of being a felon in possession of a firearm.

Peltier has since appealed his various convictions numerous times. Each time, the federal courts have upheld earlier court actions. The U.S. Supreme Court has twice denied Peltier review without comment. The record is clear. There are no new facts. The old facts have not changed and Peltier is guilty as charged.

Several times on national television, Peltier has admitted to firing at the two agents. In his most recent public interview Peltier has even reluctantly conceded what he had previously denied, that he had in fact gone down to where the agents were executed. Still, he openly states that he feels no guilt, remorse or even regret for the murders. Leonard Peltier has lived a life of crime. He has earned and deserves a lifetime of incarceration. Leonard Peltier is a murderer without compassion or feeling for his fellow man. In turn, he deserves no compassion.

Mr. President, there is no justification for relieving Leonard Peltier from his punishment. Our judicial system has spoken in this case, again and again. Leonard Peltier is a vicious, violent and cowardly criminal who hides behind legitimate Native American issues. Leonard Peltier was never a leader in the Native American community. He is simply a brutish thug and murderer with no respect or regard for human life. Our citizens, on and off the reservations, must be protected from predators such as Peltier.

Mr. President, since Leonard Peltier couldn't fool the federal courts, he is now trying to fool you and the public. He is shading and hiding the facts - and playing on sympathy. He and his advocates want to confuse the fact of his guilt with matters completely extraneous to that fact. Don't let him get away with it, Mr. President. Sympathy is appropriate only for the dead heroes and their surviving families. Don't let their sacrifice be forgotten. ☆ ☆ ☆

The Federal Bureau of Investigation Agents Association, P.O. Box 250, New Rochelle, NY 10801. The Society of Former Special Agents of the Federal Bureau of Investigation, P.O. Box 1027, Quantico, VA 22134.

The above organizations, which are professional non-governmental associations, represent over 20,000 active duty and former FBI agents.

Mr. Hill 11/3/99