

Smoke Signals Radio Program Episode 1993-07-17
Segment 3
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Mary Lou Smoke reads a press release regarding the decision on Leonard Peltier's third appeal. After, Dan and Mary Lou discuss the ways in which the Canadian federal government is extinguishing Aboriginal and treaty rights. Mary Lou reads an article by Alex Jamieson (Six Nations) which details the government's actions and Walter Rudnicki's (a former senior analyst with the Department of Indian Affairs) work to expose the truth behind their actions.

Host(s): Dan Smoke, Mary Lou Smoke

MARY LOU SMOKE: "On July 7th, 1993, **Judge Daniel Friedman**, writing for the **Eighth Circuit Court of Appeals**, filed the decision for the Circuit on **Leonard Peltier's** third appeal. It is of no great shock to those of us familiar with the case that the three-judge panel chose to ignore both facts and past circuit findings in reaffirming Leonard Peltier's conviction. Lost in the political mire were the words of **Senior Circuit Judge Gerald Heaney**. **Affidavits** proving gross **FBI** misconduct on the reservation, and the very real and total admission of **Prosecutor Lynn Crooks** said the government does not know who killed the FBI agents. The court claims that the government's theory on the case against Leonard Peltier did not change, and that the prosecutors argued it as both **first-degree murder** and **aiding and abetting**, both at close range or at a distance of over two football fields away. One would think, in agreement with the words of Judge Heaney during Leonard's second appeal, that the case against Leonard Peltier would be an entirely different case, both in terms of the manner in which it was presented and the sentence the judge imposed, if the only evidence was that Leonard Peltier was participating on the periphery. They have completely ignored two separate findings by the same Circuit that state that Leonard Peltier's trial was for close-up first-degree murder, period.

As the Circuit wrote in its 1986 decision, 'We could have resolved this issue without much difficulty if the government had presented the case on the theory that he was an aider and abetter, but this is not the government's theory.' This time, blatantly going against the findings of the judges who make up their own circuit, [audio repeats itself], the court has concluded that this statement cannot overcome, that the government was asserting that Peltier either personally committed the murders or aided and abetted their commission. We have read the statement a thousand times and invite you to do the same. Could it have been written any clearer? They do admit that evidence was circumstantial at best, however, they use the disturbing lack of evidence to somehow validate the concession made by Prosecutor Lynn Crooks. We can't prove who shot those agents.

During the November 9th oral arguments against themselves, Judge Friedman asked Prosecutor Lynn Crooks to better explain the statement. Mr. Crooks went on for quite some time, stating that there was no direct evidence, no eyewitnesses, and nothing substantial to tie Leonard Peltier to the actual deaths of those agents. Judge Friedman responded with, 'That, to me, seems quite significant.' He went on, however, to drag Crooks from the damaging waters into which he had fallen by answering his own question, which he reiterates in the course decision: 'The government did not present any direct evidence since all the government's proof was circumstantial.' He goes on to challenge the defendant's assertions by calling this important admission an eight-word comment,' completely disregarding the fact that Mr. Crooks spent nearly a quarter of his time during argument attempting to explain it all away. By misusing the **McCluskey Standard**, which states that for cases in which constitutional violations have caused the conviction of one innocent of the crime, judicial intervention is called for.

The court dismissed each claim set forth by the defence as claims that were either litigated previously or could or should have been litigated. This catch-22 is clearly not applicable to the Peltier case because anyone with even the most rudimentary understanding of the circumstances surrounding the investigation, trial, and subsequent appeals can see that evidence of innocence exists, and innocence of guilt has gone from substantial to circumstantial to apparently fabricated. Yet the court has ruled that because these claims should have been argued before, they cannot be made now. There's absolutely no reference as to whether or not these claims are valid, only that they have been made in an untimely fashion. This includes the **Dwayne Brewer** affidavit that clearly describes the full involvement of the FBI in illegally training, arming, and encouraging the activities of the local **Indian police**, known as the **Goon Squad**, during the terrible reign of terror on the **Pine Ridge Reservation**. This information was a distinct example of misconduct on the part of the FBI.

The court writes that Peltier gives no explanation for his failure to obtain that evidence earlier. Are we then to assume that the court expected Leonard Peltier to somehow magically get a former Goon leader like Brewer to freely give such information at his own simple request? If, and when, more documentation is available through a new **Freedom of Information Act** suit, would it be dismissed because we should have gone into the archives and had it stolen? In short, this argument is absurd in its entirety. We feel that this latest so-called judicial remedy is unacceptable. To purposely act as another prosecutor against the defendant, and or to meet with FBI agents or other prejudicial law enforcement, is neither ethical nor legal and that is what happened here. Leonard Peltier remains in prison despite a lack of direct evidence. The withholding of evidence, **witness coercion**, and a concession by the government that they did not, and have not, proven what part he may have played in the June 26th, 1975 **firefight**.

He has spent over 17 years fighting for his freedom, and despite the setback, the fight will continue. This is only the beginning. From here on in, there will be no stone unturned, no plight silenced. Only the rage against a blatant injustice that will not cease until remedied. We are asking our supporters to write to the **president, attorney general**, and the judges on the Eighth Circuit to express their anger on this continued injustice and to demand a full and independent investigation into the FBI and judicial procedures responsible for Leonard's illegal incarceration, including allegations that **Judges Morris Arnold, Daniel Friedman, and Theodore McMillian** held secret meetings with FBI agents while considering this most recent appeal."

DAN SMOKE: Nya:weh, miigwetch Mary Lou. So, those of you who want more information, would like a copy of this **press release**, can contact us here at Smoke Signals by calling and leaving a message at [redacted], extension [redacted]. Or you can contact us, myself at home, at [redacted].

Another matter that has come up that has really started to gain awareness, consciousness raising, sensitization, is this group by the name of the **Coalition Against First Nations Genocide**. This coalition was started by the **Obomsawin-Irwin Group**, who has been largely responsible for the raising awareness of what the federal government of **Canada** is right now doing, in that it's quietly extinguishing our **treaty** and **Aboriginal rights**. For some time now, the Canadian government has been determined to take away treaty and Aboriginal rights from our people. This all started a few years ago when a top-secret government study revealed that if the Canadian government paid up to First Nations what was owing under treaties and recognized Aboriginal rights under the **Royal Proclamation of 1763** and the **British North America Act**, it would cost an enormous amount of money. The government decided rather than to pay up, it would instead extinguish our powers.

Now, this began about 1985 when a fellow by the name of **Eric Neilsen** from the **Yukon** was conducting this top-secret government study, and he found and uncovered all this information about how much it would cost the Canadian government. So, rather, as is stated, rather than pay, they would rather extinguish our powers. This is what the government has decided. This is where the bureaucracy is moving. But the federal conservative government is the one that's really starting to spearhead this movement. The tools which will extinguish the First Nations' powers and our rights are being implemented this year. The first one being taxation, there's a secret government paper that's titled **Working Paper on Indian Government Taxation**, and it says that the taxation of Aboriginal people will be taken away in two steps. The first step is off-reserve taxation, which is already going to be happening. The taxation rights are to be taken away next January the 1st, 1994. As I said, the government's already announced this. And not only will this take away all taxation rights for those working off reserve, it'll seriously affect First Nations businesses and those of you who, as part of your job, spend time off reserve. All off reserve time is to be taxed as of next year.

And b), the taxation that's going to be taking place on the reserve, the Canadian government is in the process of passing legislation which will clear the way for taxation to start being applied on reserve. And the extinguishment of our land. The Canadian government has developed a piece of legislation called **The First Nations Chartered Land Act**. Now we here at Smoke Signals have been raising awareness and talking about this piece of legislation called **The First Nations Chartered Land Act** for some time, but this legislation is on its way to **Parliament**, and it will be passed unless stopped within a few months. Now hopefully, it will not be passed in September when Parliament reconvenes. There will be a new government, so it'll probably be sitting before the House after the election. Another movement is that First Nations are to become municipalities. The Canadian government is through self-government agreements and the transfer of programs and services to First Nations. They will be accomplishing several objectives. The first one being that by turning over one lump sum of money to a First Nations to run all of its programs and services, the Canadian government will be better able to control expenditures. If a First Nations asks for extra money to do something, it will be told to take the money from other programs and services controlled by the First Nations.

Now, that's obvious why they would want to do that. And the municipal structure that is being worked out is the **First Nations Governance Recognition Act**, which is developed by the Canadian government. This will put the First Nations under provincial jurisdiction with some federal control. The community government acts will apply to communities to remove them from the **Indian Act** and turn them into municipalities. And once a First Nations signs, it claims settlement, it has to, quote, 'cede, release, and surrender to **Her Majesty the Queen**, in right of Canada, all their Aboriginal claims, rights, titles, and interests, if any,' unquote. At the same time, those who sign are transferred to provincial control. So, we believe that the, the OI group believe that, the Canadian government is conducting genocide of our people, and most of us don't even know it. Right now, Mary Lou will read to us a letter that was written by a good friend of ours, **Alex Jamieson**, on the **Six Nations** reserve. His Indian name is **Gawetra**, and he wrote this letter to the editor of **Tekawennake**. Tekawennake is a publication out of Six Nations, it's their newspaper there. And this is what **Gawetra** has to say about this [inaudible] and treaty rights, here on Smoke Signals.

MLS: "Back at the turn of the century, **British North America** was sitting pretty. It was part of the huge **British Commonwealth**, and it had no external threats to worry about. Internally, as well, there were few concerns. Some sour grapes in **Quebec** and huge judiciary obligations to an Aboriginal population which was swiftly dying off from disease, neglect, and starvation.

Quebec proved to be manageable and, of course, all treaty obligation would disappear along with the disappearing red men. Soon, they must've thought, the whole of Canada, with all its rich resources, would be theirs free and clear. But something went terribly wrong. The red men survived to become a thorn in Canada's flesh, the millstone around its neck, and a source of great international embarrassment. Like wealthy, young heirs to a fabulous fortune, who has been illtreated and cast off by its own guardian, the Native people have now come of age and have returned to claim their inheritance only to find that Canada has spent it all on high living. In a mystery thriller, such a scenario would have the evil guardian attempting to protect his image and interest by plotting ways to get rid of the young heirs once and for all. This is exactly Canada's grand plan.

Should the implementation of its buffalo-jump policies devolution the transfer of programs like police, CAS, education, etc., self-government, comprehensive claim settlements, alternative legislation, and the Aboriginal constitutional package, Canada will finally succeed in destroying the Native Nations in getting out from all the treaty obligations. This is all spelled out in **Walter Rudnicki's** October 1992 analysis of the **Charlottetown Accord** of last August. Every Native adult should become familiar with this material. It is called the **Aboriginal Constitutional Package of 1992: Its Hidden Sting**. This paper describes why the *Indian Act* is basically illegal. Canada's grand plan for our termination. Why Canada prefers to deal with groups it has created, then cancels the Native organizations like the AFN, rather than the Native Nations. Why Native Nations are still recognized as Nations. How we can protect our nationhood. Why we still have title to the land. Why our sovereignty is still intact. Why Canada's rule of law did not apply to **Mohawks at Oka**. The emptiness of such terms as 'inherent rights' and 'self-government.' Why we have a valid claim to huge reparation payments. How some of our own people are helping the government. Why all provinces were happy with the Charlottetown Accord. How **Bob Ray** played the part of the good cop. Why any Natives who push for those government initiatives are either ignorant, insane, or just plain sell-outs. Thanks to Walter Rudnicki, a former senior analyst with the **Department of Indian Affairs**, our worst suspicions about the government have been confirmed.

Through his attempt to warn us, as he has, likely sealed his own fate. But now there is no need to speculate further. We now know beyond doubt that the government and any of our own people who are pushing government policy are working against our best interests as Native Nations. Band councils and Native organizations can be seen now for what they are. These government-sponsored organizations should be rejected and despised by all Native people who value their nationhood, their culture, their inheritance, and the future of their children. Using the good mind, we can hopefully assume that the person who advocated this position did so out of sincere concern, but also out of ignorance. And now, the expositor's coming up with a series on cigarette smuggling. It is an act which'll almost certainly create more anti-Native feelings. It almost seems as if it's been timed to coincide with the government's push to eliminate the Native people through eliminating our status. Good journalism is supposed to be balanced. It'll be interesting to see if this series includes the reporting of non-Native smuggling activities as well. On this issue, it must be said that had the government treated us properly and continued to recognize our nationhood, there would be no need for us to resort to these activities. The Six Nations people would have no need for government money or cigarette money if the government would pay us half of what it owes us. Personally, I have greater respect for cigarette dealers who try to maintain their nationhood than I have for those of our people who collaborate with the government for a paycheck." And it's signed, Gawetra.

DS: Nya:weh, Mary Lou. Yes, that is also going to be the premise of our featured tape this afternoon. We're going to right now take a music break with "**Morning Prayer**" from **Sharon Burch** with **Paul Ortega** from their album entitled ***The Blessing Ways***, here on Smoke Signals.