

**THE SIGNIFICANCE OF THE DECLARATION ON THE RIGHTS
OF INDIGENOUS PEOPLES**

**A Conference and Consultation with the United Nations Special
Rapporteur on the Rights of Indigenous Peoples, James Anaya**

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Open Forum:

**American Indian Religious and Spiritual Practices
in the United States Prison System**

Submitted by:

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My name is Lenny Foster. I am the Program Supervisor for the Navajo Nation Corrections Project in Window Rock, Arizona. I also serve as a Board Member for the International Indian Treaty Council which promotes sovereignty and self determination of Indigenous peoples and recognition and protection of Indigenous rights, treaties, traditional culture, and sacred lands.

Approximately 26,000 Native Americans are incarcerated in 23 states with significant Native American populations. According to a recent Federal Bureau of Prisons (BOP) census, there are over 4,000 American Indians imprisoned in the federal system, as well.

Over the past 30 years, I have visited 96 state and federal correctional facilities throughout the United States and provided spiritual counseling to approximately 2,000 Indigenous men and women. I have observed the extreme racism and discrimination toward their religious and spiritual beliefs and practices which make it difficult for Native prisoners to participate in traditional ceremonies in a consistent manner, if at all. I have both witnessed and experienced harassment, interference, indifference, intimidation, and discrimination with regard to our Native traditional beliefs and our right to worship in a traditional manner as practiced by our ancestors. Prison officials have refused to allow Native ceremonies to be offered as last rites to death row prisoners, for example. Officials claim that ceremonies will be used as a means for escape or that singing and drumming is disruptive to the security of an institution. Tobacco has been restricted for ceremonies with the assertion that prisons are "smoke free environments".

It's common knowledge that most Native peoples are incarcerated due to alcohol or other substance abuse related offenses. Addiction, however, has long been recognized as a public health issue. As such, it is best addressed through traditional spiritual and cultural practices and beliefs. Native prisoners who are allowed to participate in traditional religious and spiritual practices become exemplary prisoners, more culturally viable, respectful and responsible and contributing citizens in their Native communities upon their release.

Denial of access to traditional religious and spiritual ceremonies and services is a violation of human and constitutional rights and is tantamount to a denial of opportunity for recovery and spiritual healing. I therefore recommend that the Special Rapporteur on the Rights of Indigenous Peoples seek compliance with and enforcement through the U.N. Declaration on the Rights of Indigenous Peoples for the free exercise of religion as an important human and civil right for Native prisoners.

Religious freedom is not my only concern vis-à-vis the imprisonment of Native peoples. According to census and BOP data, tribal members living on reservations are incarcerated in federal prisons at a rate of more than 249 per 100,000 residents. Most Americans don't know this and likely would be surprised to learn that this is a rate higher than that for even African Americans. Due to the Major Crimes Act (that gives the federal government jurisdiction for selected crimes on Indian lands), mandatory minimum sentences, and the abolishment of parole in the federal system, American Indians face harsher punishments than non-Indians for what are effectively local crimes. One such American Indian is Leonard Peltier.

As you may recall, Native American activist Leonard Peltier was wrongfully convicted in connection with the deaths of two agents of the Federal Bureau of Investigation (FBI). Despite the courts' acknowledgment of FBI and prosecutorial misconduct in the case, Peltier has been imprisoned since 1976—over 36 years.

The evidence shows that the FBI was the aggressor in the firefight that occurred on June 26, 1975. From 1973 to 1976, Indigenous People on the Pine Ridge Indian Reservation in South Dakota were victims of beatings, drive-by shootings, and stabbings carried out by local vigilantes who collaborated with the FBI. Peltier and other Indigenous activists were forced into a defensive posture to protect not only their lives, but the lives of others who were present—elders, women, and children. Indeed, Mr. Peltier's co-defendants, tried separately, were acquitted on grounds of self-defense.

The evidence also clearly shows that the U.S. government's goal was to orchestrate Mr. Peltier's conviction by any means—including falsifying extradition documents and intentionally committing fraud on a Canadian court, as well as suppressing evidence of Mr. Peltier's innocence during his trial. By the government's own admission, the critical part of the prosecution's case against Mr. Peltier was the ballistics testimony which, years after his conviction, was proved to be false. Simply, the jury verdict in Mr. Peltier's case was obtained illegally.

Despite its public claim that the government is committed to enforcing the law "in a manner consistent with the Constitution and with the rights and dignity of all citizens," the U.S. government has failed to address the staggering number of constitutional violations in Leonard Peltier's case or the indignities to which he has been subjected, including but not limited to substandard medical care and physical abuse while in U.S. custody.

Therefore, I recommend that the Special Rapporteur on the Rights of Indigenous Peoples seek compliance through the United Nations Declaration on the Rights of Indigenous Peoples and demand a congressional investigation into the human rights and constitutional violations suffered by Leonard Peltier. I invite the Special Rapporteur to also visit Leonard Peltier at the United State Penitentiary in Coleman, Florida. I further request that you actively support a grant of Executive Clemency to Leonard Peltier by President Barack Obama. Urge President Obama to act to put this tragic chapter of American civil rights history to rest in an honorable fashion. Should further delays ensue, justice may well come too late for any true healing to occur between the U.S. government and its Native citizens.

Thank you.