

BUFFALO CHIP

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The Real Story of the Rice/Poindexter Case

The Rice/Poindexter case is 32 years old, but 9/11 has made the counter-terrorism policies of the sixties and seventies newly relevant: Congress has recently voted overwhelmingly for Pres. Bush's anti-terrorism bill, again giving the FBI, the CIA and local police the powers they so abused in the past. Again the government can spy on citizens and ignore the Bill of Rights, just as they did 30 years ago. It's COINTELPRO redux. For those too young to remember that time, the Rice/Poindexter Case is a valuable a history lesson.

Edward Poindexter and David Rice (who later changed his name to Mondo we Langa) are currently serving life sentences for the August 17, 1970 bombing murder of Omaha policeman Larry Minard. Both continue to maintain their innocence -- and evidence that has come to light since their conviction is persuasive enough to convince Amnesty International, among many others, that, at the very least, they did not receive a fair trial. Some familiar with the case even believe it's possible they were framed.

The group seeking their release is Nebraskans for Justice (NFJ), a non-profit organization which focuses on human rights in the justice system, and publishes *Buffalo Chip*. NFJ board member Mary Dickinson has organized a team of attorneys, law students and other specialists. After reviewing court transcripts, police reports, thousands of pages of government documents obtained through the Freedom of Information Act (FOIA), and other relevant material, NFJ has concluded, first, that serious doubts exist about the guilt of these men; second, that the FBI and local police committed many abuses from 1968 until their

conviction; and finally, that the court system itself behaved with such cruel ambiguity that Poindexter and we Langa should be freed.

BACKGROUND

A good place to start is 1968, with the FBI's Counterintelligence Program -- COINTELPRO. It was initiated by FBI Director J. Edgar Hoover, to spy on and infiltrate groups of political activists. In Hoover's eyes this included everyone from Malcolm X to Dr. Spock. Hoover considered the Black Panthers "the greatest threat to the internal security of the country." It should be noted that he also considered Martin Luther King, Jr. a national menace, and that King was another victim of COINTELPRO. A September 16, 1970 memo from Hoover to the field is a good example of the FBI's intentions. In it Hoover stated, "The effectiveness of counterintelligence depends on ... the imagination and initiative of Agents. Purpose of counterintelligence action [COINTELPRO] is to disrupt BPP [Black Panther Party] and it is immaterial whether facts exist to substantiate the [charges]."

In Omaha, NE, racial tensions were high in the sixties. Four Blacks and two whites had been shot by Omaha police between 1966 and 1968, and one of those killed was a 14-year-old girl, Vivian Strong. Her death at the hands of a white policeman set off a riot and destroyed so many businesses in Omaha's North Side that the neighborhood has yet to recover from its losses.

It was in this climate that Ed Poindexter, David Rice and other young Black leaders joined the Omaha chapter of the Black Panther Party. We Langa (Rice) has written from prison, "We ... set about to make ourselves more visible

No feature of our administration of criminal justice calls for thoroughgoing study so urgently as the public prosecutor.

"Criminal Justice in the American City," 1922

Roscoe Pound

in the African community, participating with other organizations in community meetings; holding frequent rallies; starting a newsletter (*Freedom By Any Means Necessary*); doing cop patrols, in which we would document police behavior, sometimes show up at scenes of cop harassment of our people and have our guns in plain view, etc.; opening up our Vivian Strong Liberation School for Children; and otherwise doing what we could to serve the African community."

Though it may not seem so now, *all* these activities were considered radical behavior at the time. For African-Americans to be so bold as to offer classes in Black history, to speak out about the right of citizens to defend themselves against police brutality, to ostentatiously monitor police activities on the streets, to keep track of Omaha Mayor Leahy's schedule and attend many of his meetings, was threatening to public officials. They aroused implacable hostility in both the Omaha Police Department and the local office of the FBI. It is important to note that the FBI, the ATF and police kept a daily watch on them. As Poindexter told the BBC in a 1990 documentary about the case, "We were under constant surveillance ... We couldn't leave a building and enter the streets without being frisked or harassed. This went on around the clock." Yet their secret files maintained by FBI in the two years before the Minard murder show no criminal activity. They may have enraged and frightened public officials, but they acted within the law.

CHRONOLOGY

1970. It can't be stressed enough that, both the police and many individuals believed the country was heading for anarchy. After Martin Luther King, Jr.'s assassination, cities went up in flames. This was also the summer

that an epidemic of dynamite bombings struck in the Midwest. There were five bombings in six weeks in Iowa alone. Other explosions rocked buildings in Wisconsin and Minnesota, and both a police precinct and the Component Concept Corp. suffered bomb damage in Omaha. The Black Panthers were the prime suspects in these bombings, so any confrontation between Omaha Black Panthers and the police, however lawful, was bound to increase tensions.

July. Agent Thomas J. Sledge of the Bureau of Alcohol, Tobacco and Firearms (ATF) got a warrant to search the Omaha BPP headquarters, on the grounds that an informant had told him a suitcase bomb had been made there. He alerted the Omaha police, and scheduled a raid for July 21, 1970. The raid was called off.

July 28. Three men, Luther Payne, Conroy Gray, and Lamont Mitchell, were arrested in Omaha for possessing dynamite. One was an ex-Panther who had been expelled from the party; the other two had no connection with the BPP. Police confiscated the dynamite and held the three men.

August 17. Police were lured to a vacant house by an anonymous 911 call which reported hearing a woman screaming at a vague address on Ohio Street, in Omaha's North Side. Patrolmen Michael Lamson and James Sledge (brother of ATF Agent Sledge) were routed to the call. Other officers also responded.

Five officers entered 2867 Ohio Street. They noticed a suitcase sticking halfway out the door. This call occurred less than a month after cancellation of the raid on BPP headquarters to search for a bomb -- and in the aftermath of the Midwest bombings. The officers passed it, and went to the rear of the house. Patrolmen Larry Minard and John Tess arrived later. As Minard approached the suitcase, patrolman Tess stood only a few feet away. The suitcase exploded and killed Minard, the father of five, instantly. Tess was seriously injured.

August 28. Fifteen-year-old Duane Peak was arrested. In his first of several confessions, Peak implicated no one else. In

his second statement to police, he implicated six others, but not we Langa or Poindexter. Then in a subsequent statement Peak told police that we Langa and Poindexter had made the bomb and told him to plant it at the vacant house and to lure the police to the house with an anonymous phone call. Peak was charged with first degree murder.

August 31. Poindexter and we Langa were charged with murder.

September 28. At a preliminary hearing, Peak took the stand and recanted his story, testifying instead that neither Poindexter nor we Langa were involved. The prosecution was then granted a recess. When Peak returned to court he changed his testimony yet again and implicated Poindexter and we Langa. Witnesses state that on his return he wore dark glasses, and when David Herzog, we Langa's attorney, asked him to remove them, his eyes were red and swollen. We Langa's attorney questioned him about changing his story:

Q: You had a conversation between the time you were placed on the witness stand this morning and the present time ... Weren't you reminded of a few things that would happen to you if you didn't testify? **A:** Yes.

Q: And those were the same things that the police officers told you about that would happen to you, like sitting in the electric chair, isn't that correct? **A:** I didn't have a chance....

Q: You are doing what they want you to do, aren't you? **A:** Yes.

Q: Has anyone gone over your confession with you to help you to remember it? **A:** Yes.

Q: Who did? **A:** Mr. O'Leary [the County Attorney].

Q: Was your lawyer there ... when you went over it with Mr. O'Leary. **A:** No.

April 1971. Poindexter and we Langa were tried in Douglas County District Court. The jury of eleven whites and one Black deliberated

The man who laughs has not yet heard the news.

Bertold Brecht

for four days before finding both men guilty. Judge Donald A. Hamilton sentenced them to life in prison.

CORROBORATIVE EVIDENCE:

THE DYNAMITE, and SPEECH

Nebraska law requires corroboration. In addition to Peak's testimony, the state offered three pieces of evidence.

THE DYNAMITE. Though police claimed to have found it in we Langa's home, in their court testimony they couldn't agree on exactly where it had been found, nor on who had discovered it. Nor could they produce we Langa's or Poindexter's fingerprints as evidence that they had handled it.

Ex-police officer Marvin McClarty, in a TV interview, stated he thought something was wrong because of the way the search was conducted. "It could have been something was planted in that house, and to this day I still believe that."

The names of Luther Payne, Conroy Gray and Lamont Mitchell -- the three men from whom the police had confiscated dynamite just nineteen days before the bombing murder -- never came up at the trial. Four days after the trial ended police dropped the charges against all three. They were released and disappeared.

The state also alleged that particles of dynamite were found in the clothing of each defendant, but cross-examination revealed that the substances found lacked several characteristics of dynamite, and could have come from other sources. Skin tests of both we Langa and Poindexter were negative, whereas one other suspect's skin indicated that he had handled dynamite.

Duane Peak was not tested.

THE RHETORIC. The state's third allegation was that both men had written inflammatory literature. It should be noted that this was the era when underground newspapers thrived throughout the country, and "inflammatory literature" addressing racial issues and the war in Vietnam was epidemic. For example, in 1969 the underground New York city paper *Rat* published a very graphic cartoon

of President Nixon raping "Miss Liberty." Muckraking is of course an honorable tradition going back to Thomas Paine, among others. The Constitution calls it freedom of speech and freedom of the press. Indeed, former Nebraska Governor Frank Morrison, who had represented Poindexter at his trial, believes Poindexter and we Langa are innocent.

"The reason they were suspected was because they were members of the Black Panthers. [Authorities] had a couple of young Blacks who everybody knew used incendiary language — hateful things that irritated the police. They weren't convicted of murder. They were convicted of rhetoric. The only thing these young fellas did was try to combat all the racial discrimination of the time the wrong way."

March 1974. We Langa appealed his conviction. Judge Warren Urbom of the Federal District Court found that the police had no evidence to allow a search of we Langa's home, where they had allegedly found dynamite. Judge Urbom noted the inconsistencies in a Police Lieutenant's testimony about the reasons for a search warrant and concluded that "it is impossible for me to credit his testimony" — and he overturned we Langa's conviction, ordering a new trial in which the evidence of the dynamite could not be used to corroborate the state's case.

Shortly after his conviction, we Langa's house was burned to the ground, eliminating any possibility of exploring the accuracy of

police testimony about the dynamite.

1975. The State of Nebraska appealed to the Eighth Circuit Court of Appeals. The Court upheld Judge Urbom's ruling and ordered a new trial for we Langa — without the evidence of the dynamite.

THE NON-DECISION DECISION

July 1976. The State of Nebraska appealed to the U.S. Supreme Court.

Although up to this time appeals like we Langa's did not go through state courts, but were taken directly to the federal level for adjudication, the U. S. Supreme Court did not rule on the order of the lower courts that we Langa should receive a new trial without use of the dynamite in evidence. Instead the Court ruled that, beginning with this and one other case, defendants could no longer bring appeals of illegal search matters to the federal courts without first going through state court systems.

We Langa duly took his appeal to the Nebraska Supreme Court He was turned away, on the grounds that the time limit for appealing through the state court had been exhausted.

Activist Anne Else, who has worked for years to free we Langa and Poindexter, has written, "Suppression of evidence usually overturns a conviction; so does an illegal search ... [A] later appeal to overturn their conviction by showing the court the FBI's own memo documenting the suppression of evidence did not succeed — nor have any other appeals to date."

How could two men be convicted and sentenced to life in prison, on the basis of highly questionable testimony of a former Panther, the results of a search ruled illegal by two federal courts, and police testimony which a judge called "unbelievable?"

The Civil Rights movement, and soon after, the war in Vietnam, brought thousands of people into the streets. The rhetoric, the police dogs, the cattle prods, the burning draft cards and the burning cities created a climate of fear that made it possible to overlook the flimsy evidence in the case, and to crush at any cost what was perceived to be a dangerous menace

During the 10 years that I was on the U.S. Intelligence Board ... never once did I hear anybody, including myself, raise the questions: "Is this course of action which we have agreed upon lawful, is it legal, is it moral and ethical?" We never gave any thought to this realm of reasoning, because we were just naturally pragmatists. The one thing we were concerned with was this: will this course of action work, will it get us what we want, will it reach the objective we desire to reach?

William C. Sullivan, Former FBI Asst. Dir., 1975

Deja vu All Over Again

In one of the biggest civil rights verdicts ever, Oakland police and the FBI were ordered to pay Earth First organizers \$4.4 million in damages to the estate of Earth First activist Judi Bari and fellow organizer Darryl Cherney. Both were injured in a 1994 car bombing -- and then arrested by police, who thought Bari and Cherney were carrying a bomb to use it elsewhere.

The jury found 6 ... FBI agents and police officers had violated the pair's constitutional rights.

Juror Mary Nunn said, "The FBI and Oakland police ... lied about their investigation, and they had to lie ... to cover up ... Police tried to blame ... the FBI, but the FBI was trying to shove the blame right back.

San Francisco Chronicle, 7/3/02

to the Republic.

Det. Jack Swanson, the officer in charge of investigating this case, made a comment in the 1990 BBC documentary about this case which seems to reveal the real reason the police targeted Poindexter and we Langa: "We feel we got the two main players in Rice and Poindexter, and I think we did the right thing at the time, because the Black Panther Party ... completely disappeared from the city of Omaha ... and it's ... been the end of that sort of thing in the city of Omaha -- and that's 21 years ago."

The *Washington Post* (1/8/78) asked County Prosecutor Art O'Leary if it was conceivable that we Langa could have been set up by local or federal officials. O'Leary replied that he had made a deal with Duane Peak to prosecute him as a juvenile in return for his testimony, and acknowledged that without Peak's testimony, Rice (and Poindexter) could not have been convicted.

The full story of this case is still not known. Poindexter and we Langa themselves were themselves unaware of its circumlocutions. But years later, the the prosecution's case was seriously compromised with the emergence of the 911 tape and the evidence that the government had purposely suppressed it at the time of the trial.

COINTELPRO became public in 1977, after a break-in of an FBI office in Media, PA

(remember Watergate?). COINTELPRO documents were stolen and leaked to the press. Senate hearings led to passage of the Freedom of Information Act (FOIA) in 1978, which opened government files to COINTELPRO's victims. The FBI stonewalled for nineteen months before releasing a small portion of we Langa's FBI file, and Poindexter's first request garnered only six pages. They later learned their files were thousands of pages long.

In 1980 of former FBI Director L. Patrick Grey, and Edward S. Miller, former head of COINTELPRO, were convicted for having "conspired to injure and oppress the citizens of the United States." Neither spent a day in jail. President Ronald Reagan pardoned them in 1981, because their misdeeds had occurred during a turbulent and divisive period in our history. It was time to "put all this behind us," he said, and to "forgive those who engaged in excesses" during the political conflicts of the era.

In 1978 Amnesty International published a report finding that irregular conduct by the FBI during its COINTELPRO operations had undermined the fairness of trials of a number of political activists during the 1970's.

THE EVIDENCE OF THE WITNESS. The tape of the 911 call which had lured police to Ohio Street was never presented as evidence in the trial, and we Langa's attorney, William Cunningham, had been told it no longer existed. Then Poindexter and we Langa obtained a copy of an FBI memo, dated 10/13/70, from the Omaha office of the FBI, and addressed to "Director, FBI" in Washington. It stated, in part: "... Assistant COP GLENN GATES, Omaha PD, advised that he feels that any use of tapes of this call might be prejudicial to the police murder trial against two accomplices of PEAK and, therefore, has advised that he wishes no use of this tape until after the murder trials of PEAK and the two accomplices has been completed ... [N]o further efforts are being made at this time to secure additional tape recordings of the original telephone call."

As a result of this information, Cunningham finally forced the police to release

the 911 tape of the call purportedly made by Duane Peak. On hearing it, it seemed clear to the defense why the police and the FBI had colluded to withhold it at the trial. David Herzog testified at the post-conviction hearing that this was not the voice of Duane Peak. Certainly the voice heard on the tape which the BBC used in its 1990 documentary is neither "raised" or "excited", as Peak had described it in his deposition before the trial.

Nevertheless, the Judge ruled that we Langa had not proven the voice on the tape was not Duane Peak's.

Amnesty International's Secretary General Ian Martin noted on November 7, 1990, that withholding the 911 tape until after the trial "raised an inference that the FBI had performed scientific tests, including a voice print of the caller's voice, which may have been damaging to the state's case," and noted that the jury might have decided differently than the Judge, had they had the opportunity to hear the tape.

Indeed, if the FBI memo had come to light in 1970, would there have been a trial at all? County Attorney Sam Cooper told the BBC, "The forensic evidence of the dynamite is all we would have had ... Without Duane ... it would have been questionable if you could have filed it ... [A]bsent the testimony of Duane Peak, it would have been a weak circumstantial case ... He was critical to the case."

PARDONS AND PAROLES:

AN ALTERNATIVE?

U.S. Supreme Court rulings have increasingly limited access to court appeals by petitioners. The Herrera case is another in which the U.S. Supreme Court seems to have changed the rules of the game. Herrera was on death row in Texas for murder when his brother confessed to the crime. The Court refused to overturn his conviction, saying that, if a trial and appeals process is conducted fairly, the defendant doesn't have a constitutional right to a new trial just because there is new evidence of innocence. With this case, the court established that the role of the judiciary is no longer to address the question of what

happened in the trial and appeals process, only how it happened: was it done fairly? according to the constitution? state law? As one prisoner advocate put it, "After Herrera, you no longer have a constitutional right to a new trial, even if you're innocent."

The court's reasoning was that state pardons boards can deal with the question of when or if a convicted person should be freed, or be shown mercy.

The outcome of these decisions neither reflects well on the U.S. justice system, nor on the Nebraska Board of Pardons.

THE PARDONS BOARD. All the states have Pardons Boards. It is the means by which the state can alter a court verdict. States also have parole boards to review inmates' records and grant parole for good behavior or special circumstances. The existence of Pardons and Parole Boards is a tacit admission that time can alter conditions, and that humans make mistakes -- even in the justice system. The number of people released from Death Rows over the past few years is testimony to that. Can anyone believe such mistakes are limited to Death Row cases?

There are also moral and ethical considerations involved when the state locks someone up: should a convicted person be freed? should the state show mercy to those condemned to death? And how can the state redress an injustice?

This system functioned almost unnoticed until the the eighties. Then politicians found they could win elections by running "tough on crime" campaigns (the Willie Horton Syndrome). We now live in a country which incarcerates over 2 million people, and spend more on prisons than on higher education. Paroles and pardons are hard to come by, no matter what the circumstances..

Nebraska is a case in point. In their 1996 Senate race, then Governor, now Senator Ben Nelson, and Attorney General Don Stenberg used their positions on the Nebraska Board of Pardons, as a campaign platform. They vied with each other at the expense of petitioners, to prove who was tougher on crime. Gov.

Nelson also politicized the Parole Board during his term as Governor by his "tough on crime" appointments..

The Nebraska Board of Pardons is free to do what it wishes, no matter how politically motivated or how unfair it may seem. The Nebraska Supreme Court has ruled that a pardon is an "act of grace," which can be granted for any reason, or for none — the Nebraska Board of Pardons has full authority to decide. So the Governor, the Attorney General and the Secretary of State can go wherever their politics takes them, as far as the courts are concerned. Nor must they impose the same standards on each petitioner: one may be freed and another held, and for opposite reasons.

The burden of doing justice, case by case, falls to the Board of Pardons. We can all hope this duty will supersede any election campaign, but if Mondo we Langa's history with the Nebraska Board of Pardons is any criterion, it is a sad commentary on how much the need to be elected overrides the duties of office.

It should be said that in Nebraska, there is no parole in life sentences: a petitioner must first obtain a commutation of his sentence to a specific number of years before he can be paroled. Of late, the Nebraska Pardons Board rarely even grants petitioners a hearing.

The Nebraska Board of Pardons has a history of inconsistent and contradictory decisions. For example, in 1994 Gov. Ben Nelson, Atty. Gen. Don Stenberg refused to commute the life sentence of Ronald E. ("Arch") Kirby, stating that a perfect record of no infractions of the rules for fifteen years was not a reason for pardon. Yet on the same day Nelson and Stenberg refused even to grant a hearing to Mondo we Langa, stating that his minor infractions were a factor (Secretary of State Alan Beerman voted for the petitioners).

In 1996 We Langa again petitioned the Board of Pardons to agree to hear all the evidence that has come to light since the trial: COINTELPRO abuses, "lost" or withheld evidence, the failure of a court system which first orders a new trial without the use of tainted

evidence, then, on a technicality, shuts the door on the possibility of that trial.

We will never know whether Gov. Nelson, Atty. Gen. Stenberg and Secy. of State Scott Moore would have agreed with Amnesty International that "serious doubts remain about the fairness of the proceedings," and would have made we Langa eligible for parole by commuting his sentence to time served, because the Board unanimously voted "no" to a hearing. The Board overlooked the Herrera case, and stated that the evidence of innocence was not cause to grant a hearing, and that guilt or innocence was the purview of the courts.

THE PAROLE BOARD. The Nebraska Parole Board annually reviews eligible inmates. Before the year 2000, eligibility included a requirement that there be no major infractions (e.g., acts of violence) on the part of an inmate. For five consecutive years. Poindexter and we Langa were recommended for parole by the Nebraska Parole Board,

But, in yet another turn of the screw, the current Parole Board (now as politicized as the Pardons Board) has ruled that even minor infractions disqualify petitioners for parole for five years. As we Langa wrote in the Fall 1999 issue of *Buffalo Chip*, it is almost impossible for a prisoner to know all the rules and regulations, and they are arbitrarily imposed. If any guard wishes to charge a prisoner with an infraction, there is no way to avoid one.

We Langa, who has committed no violent act during his thirty-two years in prison, is currently disqualified for parole for five years, due to two infractions. They are, first, he did not wear socks to the cafeteria; and second, he (a vegetarian) gave his meat to another inmate.

This case is "Catch-22," written by Franz Kafka. Nebraskans for Justice asks: If not in the courts, if not with the Nebraska Board of Pardons, if not at the Nebraska Parole Board, where is there justice for Ed Poindexter and Mondo we Langa?





An Update, and an Appeal

The legal team of Nebraskans for Justice continues to move forward. We have hired a private investigator, who is making out-of-state trips to obtain key witness statements.

The lawyers working on the case anticipate a filing for Ed Poindexter before the end of 2002. His filing could ultimately benefit Monto, as well.

We ask that you help to bring out all the information that was suppressed at Ed and Mondo's trial, so that they can have their day in court, at last

All the attorneys are working *pro bono*, as is the whole legal team, but there are many expenses to cover -- for example, petitioners must pay for the cost of copying FBI and ATF files (which does seem to add insult to injury, but there you have it). We need your help.

Please make a contribution to Nebraskans for Justice today. Address: P.O. Box 4307, Omaha, NE 68104-0307. Many, many thanks.

Yes, I want to help. Here's my gift of \$_____. Please put me on your mailing list, to receive *Buffalo Chip*.

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