

Letter from Amnesty International's Secretary General Ian Martin to Nebraska's then Attorney General Robert Spire, November 7, 1990

I am writing to express Amnesty International's concerns about the case of David Rice, whose appeal against the US District Court's denial of habeas corpus relief is currently pending before the Eighth Circuit Court of Appeals. David Rice was convicted of first degree murder in the state of Nebraska in April 1971.

As you may be aware, Amnesty International is a worldwide, independent movement which seeks the release of prisoners of conscience: people detained on account of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour or language, provided that they have not used or advocated violence. Amnesty International also works for fair trials for political prisoners and against the death penalty and the torture or other cruel, inhuman or degrading treatment of all prisoners. Our concern in this case is that David Rice (now known as Mondo we Lange) may have been denied a fair trial on account of his political beliefs and activities.

Amnesty international has been investigating the case of David Rice for many years, together with that of his codefendant Edward Poindexter. Both have maintained their innocence of the murder of which they were convicted in 1971 and allege that they were 'framed' because they were leading members of the National Committee to Combat Fascism, an offshoot of the Black Panther Party. Amnesty International is unable to reach a firm conclusion on the guilt or innocence of either accused. However, we believe there is evidence to suggest that the authorities may have acted improperly to secure a conviction. Amnesty International published a report in 1981 which found that irregular conduct by the FBI during its Cointelpro operations had undermined the fairness of trials of a number of political activists during the 1970s, including members of the Black Panther Party. Although the record of FBI involvement in this case remains unclear, the existence of Cointelpro and its targeting of black nationalist groups during this period reinforces our concern that David Rice and Edward Poindexter may have been unfairly prosecuted. Despite numerous appeals to date, these issues have not been resolved. Our concerns include the following:

The case against David Rice and Edward Poindexter was based largely on the testimony of a 16year-old Duane Peak who admitted planting the bomb and making a 911 call which lured a police officer to his death. Duane Peak, then aged 15, was arrested some ten days after the incident in August 1970. He later implicated Rice and Poindexter but changed his testimony several times between deposition and trial. Several other persons implicated by Peak were never prosecuted. During the trial of David Rice and Edward Poindexter, Peak gave a detailed description of how Poindexter had assembled the bomb in his presence, stating that he himself had had no prior knowledge of bomb construction. However, he revealed under cross examination that he had discussed making a bomb with his cousin before August 1970 - testimony corroborated by the cousin later in the trial. Peak also revealed under cross examination that he had talked many times with the prosecutor about how the bomb was assembled prior to giving testimony at trial. Although he was a major suspect in the murder case, there is no doubt that Duane Peak received special treatment after his arrest, including being allowed out of jail to see his family and being taken to dinner by police officers, information which was brought out at the trial. Although initially under threat of a potential death penalty, Duane Peak was prosecuted for juvenile delinquency after Rice and Poindexter's convictions; he was released after spending a short time in a youth training centre and has since disappeared. Although the defence has been unable to establish a prior agreement by the prosecutor to treat Peak leniently in exchange for his testimony, it seems clear that the chief prosecution witness had a vested interest in the outcome of the trial. Amnesty International has studied the trial transcript in this case. While we do not suggest that the that court or jury acted improperly on the evidence presented, we believe Peak's reliability as a witness to be questionable under the circumstances.

The other evidence at the trial were dynamite and blasting caps found by the police at David Rice's home during a search conducted in his absence in August 1970 and particles of ammonia dynamite found on Rice and Poindexter's clothing. Rice, who had left town earlier that day, alleges that the dynamite evidence was planted and has stated that he would not have left incriminating evidence at his house knowing that he was

under surveillance by the police. He gave himself up voluntarily to the police after learning that a warrant for his arrest had been issued. In 1974 a federal district court overturned David Rice's conviction and ordered that he be retried or released, on the ground that the above search had been conducted with an invalid warrant. This decision was upheld by the US Court of Appeals but overturned by the US Supreme Court in a ruling which held that the federal courts had no jurisdiction to overturn state convictions based on claims of unconstitutionally obtained evidence. The fact, nevertheless, that such evidence was improperly obtained, casts some doubt on the fairness of the state proceedings against Rice. Although the forensic evidence produced by the police was incriminating, and accepted by the jury, this does not dispel our concerns about the case.

Since David Rice and Edward Poindexter's conviction, documents disclosed under the Freedom of Information Act suggest that information helpful to the defence may have been deliberately withheld at the time of trial. These included a memorandum dated October 1970 from the Omaha police department to the FBI field office in Omaha. The memorandum advised against use of the tapes of the 911 call allegedly made by Peak to lure officers to the bomb scene on the ground that this might be "prejudicial to the police murder trial against two accomplices of Peak." The memorandum indicated that the police wished no use of the tapes until after the murder trials had been completed. As the US district court later noted, this 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 that the tape was deliberately withheld until after Rice and Poindexter's trial. In 1980 a defence attorney for David Rice heard the 911 tape and pronounced it was not the voice of Duane Peak and was much deeper than that of a 15 year old boy. At a later evidentiary hearing witnesses testified for both sides, and the court concluded that the petitioner had failed to prove that the voice was not that of Duane Peak. However, had the memorandum been made available at the time of trial, this might have enabled the defence more effectively to challenge the credibility of Duane Peak's testimony; if it could be shown that Peak had falsely testified regarding making the 911 call, this could, of course, cast critical doubt on his testimony as a whole. Nondisclosure of the memorandum could thus have been seriously prejudicial to the defendants' case. David Rice's attorneys have continued to claim that conclusive voice tests would only be possible if Duane Peak himself were located. Although further discovery was granted on this issue, Duane Peak's whereabouts remain unknown. The defence have since developed some evidence to suggest that Peak may have been involved in a federal witness protection program, which in itself is suggestive of undisclosed FBI involvement in the case.

A further document not made available to the defence at the time of trial was a letter from Duane Peak to a third party, Olivia Norris, which he wrote from jail shortly before he changed his testimony and implicated David Rice and Edward Poindexter in the bombing. The letter expresses remorse for implicating the defendants and states inter alia that "...something happened which forced me to realize that I had no alternative but to say what I did." Although this letter may be open to differing interpretations, it provides at least the suggestion that Peak's testimony was coerced. In a post conviction proceeding in David Rice's case, the state district court acknowledged that "knowledge of the letter and its contents might well have aided the defendant's trial counsel in his questioning of Peak, both before and during trial, as to the reasons for his having changed his testimony" but held that the letter "does not cast doubt on the defendant's guilt." We cannot agree with this conclusion, taking together all the circumstances referred to above. At the very least, nondisclosure of this letter deprived the defendants of the opportunity to question Peak more effectively and consequently undermined the fairness of their trial.

We believe that the continued absence of the chief state witness, Duane Peak, is among the most disturbing aspects of this case and may have significantly hampered investigation of the petitioner's post conviction claims. Amnesty International believes that serious doubts remain about the fairness of the proceedings in this case, despite the numerous appeals which have been held to date. We believe that the interests of justice can only be served by granting David Rice's appeal and his motion for habeas corpus relief or further discovery on the matters raised.

I am sending copies of this letter to Assistant Attorney General William I. Howland and to John Stevens Berry, counsel for the petitioner.