



amnesty international news release

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AMNESTY INTERNATIONAL URGES INQUIRY INTO FBI MISCONDUCT IN TRIALS OF MINORITY MILITANTS IN UNITED STATES

Amnesty International today (Tuesday, October 13, 1981) called for an inquiry into the effects on U.S. trials of abuses by the Federal Bureau of Investigation (FBI), particularly in the convictions of a black militant and an American Indian now serving life sentences.

In a new report, the worldwide human rights movement called on the United States Government to set up an independent commission of inquiry into the influence of FBI activities on the criminal justice system. It said the inquiry should include the cases of Elmer Pratt, a leader of the Black Panther Party, and Richard Marshall, a member of the American Indian Movement, both convicted of murder after being targeted for FBI intelligence action.

Elmer Pratt, convicted in California in 1972, and Richard Marshall, convicted in South Dakota in 1976, both say they are political prisoners. Both men argue that they are victims of "frame-ups" -- fabrication of evidence and withholding of vital information by the authorities in order to get them convicted.

The Amnesty International report, a detailed 144-page study based on examination of thousands of pages of official transcripts and documents, cites many examples of irregularities by the FBI, the major national law enforcement agency in the U.S., in the cases of activists from militant groups targeted for FBI intelligence work.

Production of false evidence, misstatements about FBI action, harassment, infiltration of defense teams by informants and failure to make available information which the defense might have used are all shown to have occurred. The report does not comment on juries' decisions on the basis of the information given them, but says an independent, overall inquiry is needed to determine whether the basis of fair trial was undermined. It stresses that Amnesty International has not tried to judge questions of guilt or innocence.

Some of the abuses documented were part of the FBI's COINTELPRO program, aimed at disruption of target organizations, which officially ended in 1971; but other misconduct took place long after that under investigation programs.

The report, entitled Proposal for a commission of inquiry into the effect of domestic intelligence activities on criminal trials in the United States of America, says the inquiry should try to determine whether misconduct which judges might have treated as isolated irregularities formed part of a pattern. Amnesty International, it points out, does not assume that a defendant should automatically be acquitted if FBI misconduct is shown. "But there comes a point," it adds, "when the number or type of measures taken against members of a political group suggest that it may be impossible to decide whether a particular case has been affected by law enforcement misconduct without the conducting of a comprehensive inquiry into whether or not the individual measures form part of a pattern."

The report says that much of Amnesty International's work is for people imprisoned for obviously political reasons. When people are charged under laws

banning the expression of opinions or membership in political organizations, as happens in some countries, it is relatively easy to decide that they are prisoners of conscience. This is not what happens in the U.S., it adds. When people are convicted on charges of criminal offenses, it is often harder to establish whether the reason for prosecution is really political.

Evidence of FBI misconduct, it says, may not at first seem to affect the questions of whether a crime was committed, and by whom. But when that evidence is ruled out, the court may not be in a position to determine whether there is a pattern that influenced the preparation of the case and the ultimate conviction.

In the case of Black Panther leader Elmer Pratt, it emerged long after his 1972 trial that he had been a target of COINTELPRO. The FBI denied this as late as 1979, but it later became clear from official documents.

COINTELPRO went beyond intelligence gathering to try to disrupt target groups. As used against black nationalist organizations and activists, it was intended to discredit and demoralize them, to prevent the growth of such organizations and the rise of any leader who could unify the movement. Violence among black groups was fomented. Arrests and prosecutions were used to intimidate and demoralize, according to records which have since become public.

A U.S. Senate committee, commenting on COINTELPRO, later said: "Domestic intelligence activity has threatened and undermined constitutional rights of Americans to free speech, association and privacy."

The Amnesty International report notes: "Undoubtedly there is a clear distinction between the 'chilling' of constitutional rights and the imprisonment of individuals on political grounds. One object of an inquiry would be to ascertain whether COINTELPRO, which certainly did the former, also resulted in the latter."

Elmer Pratt, a leader of the Black Panthers in southern California, was targeted for "neutralization" under COINTELPRO.

The report cites a long list of irregularities in connection with his case, the latest of which date from long after the trial and the end of COINTELPRO.

Still trying to clear himself, Elmer Pratt argued that records of FBI surveillance would show that he was attending a meeting in another city, Oakland, on the day the murder of which he was accused took place in Santa Monica, December 18, 1968. The FBI first replied that it had no information about Elmer Pratt before 1969. When documents later came to light showing that there was surveillance of the Black Panther leaders in precisely the period of the murder, the FBI was reported by an appeals judge to have said that "the transcripts of the conversations recorded by these telephone taps have been lost or destroyed."

At the time of the trial, it was not disclosed that the chief prosecution witness, Julius Butler, had been regarded by the FBI as a "probationary racial informant." He testified that Elmer Pratt had confessed the murder to him.

The FBI had planted informants in Elmer Pratt's defense team and it received information about preparation of the defense case.

In 1980, an FBI document emerged indicating that the FBI had passed to the Los Angeles police some 14 months before the trial information about an alleged second suspect in the murder, and that it had information about the suspect's identity. This had not been made known to the defense.

Elmer Pratt's lawyers have said that the jury should also have heard evidence

showing that another witness, who identified Elmer Pratt at the trial, appeared to have identified someone else earlier as the assailant.

In cases involving the American Indian movement (AIM), Amnesty International points both to irregularities in the FBI's actions against Richard Marshall and to a background of misconduct and alleged abuses against other Indians arrested in connection with an upsurge of unrest in South Dakota in 1975.

Myrtle Poor Bear was a witness whose testimony was used by the FBI and state authorities against both Richard Marshall and Leonard Peltier, another Indian later convicted of murder. She testified at Richard Marshall's trial that he had confessed murder to her. Earlier, her testimony that she had witnessed other murders had been used by the FBI to extradite Leonard Peltier from Canada so that he could be put on trial. Myrtle Poor Bear later repudiated her testimony against both men, swearing that it was false. She said she testified against Richard Marshall after the FBI threatened her life and that of her daughter.

At different stages, both prosecution and defense argued that Myrtle Poor Bear was not a credible witness. In the Marshall case, the South Dakota Supreme Court said a retrial was unnecessary: but the Chief Justice, dissenting, said the jury might have reached a different decision without Myrtle Poor Bear's testimony. He said the defense did not know of her "apparently false affidavits" and her "true relationship with the FBI," and that her medical history, which was not produced for the trial, "would probably have had a substantial effect on her credibility." Medical records and her family's testimony, he said, "indicate that Poor Bear is a seriously disturbed young woman who often fantasizes and tells stories and lies."

The prosecution did not use Myrtle Poor Bear as a witness at Leonard Peltier's trial; she had already contradicted herself. The FBI's use of her testimony however to extradite Leonard Peltier from Canada led an appeal court to comment: "What happened happened in such a way that it gives some credence to the claim of the ... Indian people that the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada ... And if they are willing to do that, they must be willing to fabricate other evidence. And it's no wonder that Indian people are unhappy and disbelieve the things that happened in our courts when things like this happen."

Government witnesses against Leonard Peltier testified that FBI agents threatened, intimidated or physically abused them when questioning them about the murders early in the investigation.

Among other aspects of the FBI's actions against accused Indians, the Amnesty International report cites the infiltration of defendants' defense teams by paid informants. Replying to appeals on these grounds, courts decided that they did not have evidence that significant information gathered by these informants was actually passed back through the FBI to the prosecution; but the Amnesty International report says that in the context of a pattern of FBI bad faith and harassment, the presence of an informant in the defense team, with an opportunity to get confidential information on the defense case, requires careful study.

"Amnesty International," the new report says, "does not have any view about the need for any particular domestic intelligence investigation, but it wonders what conclusion should be drawn when a federal government agency (the FBI) conducts such an investigation and at the same time appears willing to fabricate evidence against its 'targets' and to withhold information which, according to law, should have been disclosed."

After citing a number of FBI actions connected with the accused which were not disclosed during trial, including the FBI's relations with witnesses, the report comments: "Allegations against the FBI of a pattern of FBI intimidation of AIM must be considered against this background. Moreover, within this context what is legally relevant to a case becomes important; for the discretion to exclude evidence as 'collateral' may coincidentally serve to conceal from the public an authoritative record of a pattern of misconduct.

"How widespread is such FBI misconduct? Amnesty International does not know."

In the Peltier and Marshall cases, inconsistencies in Myrtle Poor Bear's evidence, her retractions, and the evidence of other irregularities were not considered decisive by courts hearing the individual cases. Amnesty International argues that the two cases considered together, with examples from other cases, give enough cause for concern about the FBI's role and the effects of that role on trials to point to the need for a broad, independent examination.

The Amnesty International report makes the following recommendations to the United States Government:

1. Amnesty International recommends that the United States Government establish an independent commission of inquiry to examine thoroughly and impartially the matters raised in this report.
2. The commission of inquiry should examine the effect of the FBI's domestic intelligence program "COINTELPRO" on criminal prosecutions of persons who were "targeted" under it. Amnesty International considers that the case of Elmer Pratt, including the role and conduct of the FBI, should form part of the material studied by the commission of inquiry.
3. The commission of inquiry should consider the conjunction of FBI domestic intelligence investigation of members of the American Indian Movement with the irregular and inappropriate FBI conduct in prosecutions against them. Amnesty International considers that the case of Richard Marshall, including the role and conduct of the FBI, should form part of the material studied by the commission of inquiry.
4. The commission of inquiry should consider whether the political views of any citizens, or the FBI's attitude toward those views, have been a factor in prosecutions or the preparation of cases against them and, if so, seek ways of preventing this from occurring in future.