

COINTELPRO appeal dismissed by Nebraska Supreme Court without opinion

December 4, 2014

9:49 AM MST

The Nebraska Supreme Court dismissed, without opinion, the post-conviction appeal of **COINTELPRO** target Mondo we Langa on Sept. 26. Mondo, former David Rice, was not given a hearing or even a written decision by the state high court. The perfunctory dismissal notice issued by the court only stated Mondo's appeal was "time barred."



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Mondo we Langa high school graduation
photo/Michael Richardson



Official photo/Nebraska Supreme Court

Mondo we Langa and Edward Poindexter, now known as the **Omaha Two**, are serving life sentences at the Nebraska State Penitentiary for the 1970 murder of Omaha police officer Larry Minard, Sr. The two men were subjects of the infamous **COINTELPRO** counterintelligence operation of the Federal Bureau of Investigation. Director **J. Edgar Hoover** ordered an exculpatory FBI Laboratory report to be withheld from the jury that convicted the two Black Panther leaders.

The controversial trial put the two men at the mercy of inexperienced lawyers, an agent of the Alcohol, Tobacco and Firearms Division bent on conviction, the FBI's withheld evidence, hostile police officers with conflicting testimony, an alleged sleeping jury foreman, and a teenage killer looking for a way out of trouble.

Both Poindexter and Mondo filed an appeal with the Nebraska Supreme Court after their April 17, 1971 conviction which upheld the verdict against them. Mondo then filed an appeal in U.S. District Court and after an evidentiary hearing, Judge Warren Urbom ordered Mondo released or granted a new trial. Urbom tossed out dynamite evidence against Mondo after an improper search of his home. Two different Omaha police detectives, Jack Swanson and Robert Pfeffer, have claimed they found dynamite in Mondo's basement contradicting each other. With conflicted testimony Pfeffer backed up Swanson's account at trial but changed his story after Swanson's death to claim credit for the purported discovery.

Prosecutors appealed Judge Urbom's order and the Eighth Circuit U. S. Court of Appeals reviewed the matter. A three judge federal panel upheld the District Court decision and commended Judge Urbom's careful analysis of the case again ordering that Mondo be released or retried.

Prosecutors then appealed the Eighth Circuit ruling and the case went to the U. S. Supreme Court. Chief Justice Warren Burger, eager to make his own stamp on the court, consolidated Mondo's case with a California murder case and returned the matter to state court in the landmark *Stone v. Powell* decision on procedural grounds. The Supreme Court did not consider Mondo's case on the merits but instead retroactively applied a new restriction on prisoner appeals.

In a sharp dissent to sending Mondo back to state court, Justice William Brennan wrote of the "Nebraska Supreme Court's distortion of the Fourth Amendment in an emotionally charged case."

Brennan wrote, "Even more violative of constitutional safeguards is the manner in which the Nebraska courts dealt with the merits in respondent Rice's case. Indeed, the manner in which Fourth Amendment principles were applied in the Nebraska Supreme Court is paradigmatic of Congress' concern respecting attempts by state courts to structure Fourth Amendment jurisprudence so as not to upset convictions of the "guilty" or the "unworthy."

When Mondo returned to the Nebraska Supreme Court, as directed by the Supreme Court, he was told he had exhausted his appeal time while in federal court. Mondo we Langa never got the new trial that four federal judges said he was entitled to receive.

In 2012, Mondo filed for post-conviction relief and his case was assigned to Douglas County District Judge **James Gleason**. After a year of waiting, Mondo was turned down by Gleason in part because he supposedly did not claim to be innocent. Somehow Gleason overlooked or ignored Mondo's claim of innocence authored by attorney Timothy Ashford.

"Defendant Rice [Mondo] is entitled to a new trial because he did not commit the crime charged and he is not guilty of the crime leading to the death of Officer Minard in 1970, and further, the defendant's presumption of innocence was lost as a result of the errors alleged herein."

The current "time barred" ruling comes after years of revelations about the case. The lodestone that pointed at J. Edgar Hoover was a memorandum to Ivan Willard Conrad, the director of the FBI Laboratory, to not make a formal laboratory report on the identity of the **anonymous 911 caller** that lured Larry Minard to his death. Omaha Deputy Chief Glen Gates had sent a recording made by the operator of the caller's voice to the FBI for analysis. Conrad spoke by phone to Hoover about the unusual request and Hoover ordered Conrad to follow the directive and issue no report.

The information about COINTELPRO manipulation of the trial by withholding evidence was not available to the Nebraska Supreme Court at the time of Mondo's first appeal. Those dirty secrets only came to light years later after hard-fought litigation effort.

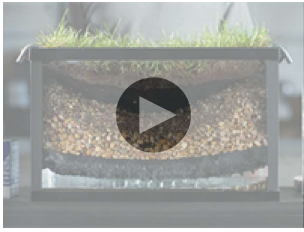
The number of important post-conviction issues raised by Mondo would seem enough to open the courtroom door had the Nebraska Supreme Court been guided by a search for truth. With no opinion, one is left to speculate the court's rationale. One of the issues addressed in Mondo's appeal brief, written by Omaha attorney Timothy Ashford, was timeliness of the appeal. Thus, even a dismissal only for that reason merits an explanation by the court.

Mondo we Langa's next legal step being contemplated by Ashford is an appeal to the U.S. District court to take advantage of a recent U.S. Supreme Court ruling allowing appeals like Mondo's in cases alleging ineffective counsel. Nebraska's "time barred" ruling, without opinion, is the judicial equivalent of thumbing one's nose at the Supreme Court.

Mondo's case, standing at the state-federal divide, gave rise to *Stone v. Powell* and limited legal actions by innumerable state prisoners nationwide under the theory the state courts would treat them fairly. In light of the injustice done to Mondo, an improper search of his home, retroactive application of appeal restrictions, denial of a new trial ordered by four federal judges, the first timeliness denial by the Nebraska Supreme Court, and now the new "time barred" without opinion dismissal, it is time to revisit *Stone v. Powell*.

The United States is to undergo a review by the United Nations next spring over its compliance with human rights treaties. A multi-year effort led by Efiya Nwangaza of the Malcolm X Center for Self-Determination to include the plight of COINTELPRO targets and other political cases in the **Universal Periodic Review** has moved the **Omaha Two** case into an international political arena. The Obama administration will be asked what it has done to ameliorate the injustices done in state courts. The Nebraska Supreme Court's no opinion dismissal will leave President Obama with some explaining to do.

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Michael Richardson

COINTELPRO Examiner

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