TABLE OF CONTENTS

UNITED STATES OF AMERICA

Human rights and American Indians

PART I: INTRODUCTION

As 1992 is being marked as the 500th anniversary of the arrival of Europeans on the American continent, Amnesty International is taking this opportunity to focus on human rights issues affecting the indigenous peoples of the Americas. In October the organization published *The Americas: Human Rights violations against indigenous peoples,* (AI Index: AMR 01/08/92). This additional document is one in a series of country-specific reports Amnesty International is producing to draw attention to its concerns in the region.

Amnesty International opposes violations by governments of certain fundamental human rights. It opposes the imprisonment of *prisoners of conscience*: those detained for their beliefs, ethnic origin, sex, or language, who have not used or advocated violence; it works for *fair and prompt trials for political prisoners*; and it seeks an end to *the death penalty, extrajudicial executions, "disappearances," torture and other cruel, inhuman or degrading treatment of all prisoners.* Amnesty International's work has included campaigning on behalf of indigenous victims of human rights violations throughout the world.

This report describes a number of cases of concern involving US American Indians. Amnesty International has examined the majority of the 45 cases of Indians under sentence of death in the USA and is

concerned that they serve only to confirm its conclusion that the death penalty as applied in practice in the USA is arbitrary, discriminatory and unjust. The organization has worked in recent years to oppose the reintroduction of the death penalty in federal law. Such legislation would be likely to have a significant impact on Indians residing on reservation land.

Amnesty International has investigated many allegations that US prisoners in state and federal detention and in police custody have been subjected to cruel, inhuman or degrading treatment or punishment. In December 1991 Amnesty International wrote to express concern at conditions in a newly opened maximum security unit of the Oklahoma State Penitentiary which houses inmates under sentence of death. Ten percent (12 out of 120) of Oklahoma's death row inmates are American Indians. In February 1992 it expressed concern at reports that a number of prisoners, including some Indians, were severely ill-treated in the aftermath of a prison riot in Montana in September 1991. There have been allegations of ill-treatment of Indians by law enforcement officers in Northern California. This report also looks briefly at the religious rights of Indian prisoners in the USA.

Other cases examined include an imprisoned Indian activist, Leonard Peltier, and the 1988 murder in North Carolina of an Indian lawyer, Julian Pierce.

The cases described in this report do not encompass all human rights violations against American Indians in the USA, only those which fall within Amnesty International's strictly defined mandate. Amnesty International's work covers a limited spectrum of fundamental rights, but this is not to ignore the importance of others. This report does not pretend to describe all the abuses that indigenous peoples in the USA have suffered, or the initiatives they have taken to remedy them.

Background

More than four hundred independent nations were prospering in what is now the United States of America (USA) when Europeans first arrived there: some estimates put the total indigenous population in 1492 at over 12 million. Undisputed is the fact that by 1900 war, disease and killings on a massive scale had reduced the population to some 300,000. Since 1900 the Indian population has increased to 1.5 million, nearly a third of whom are less than 15 years old. Almost half the Indian population lives on or near Indian reservation lands.

Today there are some three hundred Indian reservations in the United States covering 52.4 million acres of land in twenty-seven states. Most Indians live west of the Mississippi River, but 25 percent live in the Northeast, and North Carolina has the fifth-largest Indian population of any state.

Indians have a low life expectancy, living on average only two-thirds as long as the non-Indian population. Rates of unemployment are the highest of any recognized minority group in the country, exceeding 70 percent on many reservations. Indians fall well below the national average in income, quality of housing and education. In 1977, a US Senate commission concluded that American Indians "are the most impoverished and disadvantaged group in our society."[1]

Problems faced today by the USA's American Indian population include heavy regulation by the US federal government; persistent racial discrimination, alcoholism, unemployment and problems associated with

[1]American Indian Policy Review Commission, Final Report, Washington DC, Govt. Printing Office, 1977.

housing, health care and education. Alcoholism is considered to be "the most severe and widespread health problem among Indians today."[2]

[2]Ibid.

Conditions have improved somewhat in recent years, but economic survival would be difficult without major support from the federal government. Virtually every aspect of Indian life today falls under the supervision of some federal agency. Congress has created an Indian bureaucracy so vast that, in 1977, there was one government official for every 19 Indians.[3] Most of the government's Indian programs are administered by the Bureau of Indian Affairs (BIA). The BIA has about 13,500 employees nationwide and administers most of the federal Indian programs, with the exception of health and housing. The 1977 Senate Commission reported that the federal agencies administering the government's Indian programs were inefficient, unnecessarily complex, patronizing, insensitive, and antagonistic to tribal self-government.[4] This finding was endorsed a decade later in an exhaustive investigative report carried out by the *Arizona Republic* newspaper.[5]

A critical issue facing Indian tribes today is the preservation of their existence as governmental entities with all the power and authority that governmental status entails. One Indian law organization in particular, the Native American Rights Fund, since its foundation in 1970 has brought many landmark lawsuits which have redefined the status and powers of tribal governments, strengthened Indian rights, and asserted the historic claims of tribes to the land, water and other resources guaranteed in treaties over the last two centuries.

[3]Ibid.

[4]Ibid.

[5]"Fraud in Indian Country," *Arizona Republic*, 4-10 October 1987, composite reprint.

History

Most Indian tribes allowed the newly arrived Europeans to settle on their land. Treaties and agreements were made between the settlers and neighbouring tribes in which European goods were exchanged for Indian land and friendship. Few European settlements could have survived without the active support and protection of the local indigenous population. When fights erupted over the control of land, especially between settlements occupied by different European countries, each attempted to enlist the help of nearby Indian tribes. Had the Iroquis Confederacy sided with the French rather than the English during the war of 1763, history might have taken a very different turn.

In the years 1787 to 1828, Indian tribes were considered to have the same status as foreign sovereign nations. The Northwest Ordinance of 1787, ratified by Congress in 1789, declared: "The utmost good faith shall always be observed towards Indians: their land and property shall never be taken from them without their consent." Between 1787 and 1871 the USA entered into hundreds of treaties with Indian tribes. Almost always the Indians gave up land in exchange for promises. These promises included a guarantee that the USA would create a permanent reservation for the tribe and would protect individual members.

However, after the war of 1812, which ended the threat of British intervention in US internal affairs, friendship with the Indians became less valuable. In 1830 Congress passed the Indian Removal Act which authorized President Andrew Jackson to "negotiate" with eastern tribes for their relocation west of the Mississippi River. Between 1832 and 1843 most eastern tribes either had their lands reduced in size or were coerced into moving west. In 1835, President Jackson forced the

Cherokees to sign the Treaty of New Echota, in which they gave up all of their land east of the Mississippi River in exchange for land in the Oklahoma Territory. After the treaty was signed the federal government ordered the Cherokees to march to Oklahoma - the Trail of Tears - during which many died.

In 1871 Congress eliminated the practice of making treaties with Indian tribes and, in 1887, Congress passed the General Allotment Act, the effect of which was to break up tribal governments, abolish Indian reservations and force Indians to assimilate into white society. To force Indians to farm, each tribal member was given a parcel of land, with the surplus sold to white farmers. The effect was catastrophic. Most Indians did not want to abandon their communal society and adopt the way of life of a farmer. Much of the tribal land was unsuitable for small-scale agriculture. Thousands of impoverished Indians sold their parcels of land to white settlers. Indian land was reduced from 137 million to 52 million acres. Although Congress extended US citizenship to all Indians in 1924, this did little or nothing to improve their situation.

In the early 1930s a more humane and considerate approach to federal Indian policy was adopted after it had become widely recognized that the General Allotment Act was very harmful to the Indians, disrupting their reservations, their culture and their well-being. In June 1934 Congress passed the Indian Reorganization Act whose express purpose was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." This act prohibited the further allotment of tribal land to individual Indians and added lands to existing reservations to create new reservations for landless tribes. It encouraged Indian tribes to adopt their own constitutions and to assert their powers of local self-government.

Between 1935 and 1953 Indian landholdings increased by over two million acres and federal funds were spent for on-reservation health care, irrigation, roads, homes and schools.

But Congress abruptly changed in policy again in the 1950s. The new policy was called *termination*: the termination of federal benefits and support services and the forced dissolution of reservations. Between 1953 and 1963 Congress terminated its assistance to over one hundred tribes. Each was ordered to distribute its land and property to its members and to dissolve its government.

US federal Indian policy shifted once again when, in 1968, President Lyndon Johnson declared, "We must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans. We must affirm their rights to freedom of choice and self-determination." President Richard Nixon in 1970 expressly denounced the termination policy and stated that the government's goal now was "to strengthen the Indian sense of autonomy without threatening his sense of community." Since the late 1960s, Congress has passed a number of statutes that foster Indian self-determination and economic development and has repudiated the termination policies of the 1950s. The US Supreme Court noted in 1983, "both the tribes and the federal government are firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous federal statutes."[6]

The future of US federal Indian policy cannot be predicted. During the past forty years alone, Congress has radically altered its Indian policies three times. Current policy is aimed at strengthening tribal

[6]New Mexico v. Mescalero Apache Tribe, 462 US 324 (1983).

self-government, but this may change. In recent years, Indian tribes have increasingly asserted their treaty and statutory rights.

Land rights

The US Supreme Court has held that Indians must receive compensation whenever Congress abrogates their treaty rights. Realistically, however, a monetary award usually provides little compensation to people who have lost their homes or sacred lands. In 1980 the Supreme Court awarded the Sioux more than $100 million in compensation for the loss of their sacred Black Hills. A number of Sioux filed a lawsuit demanding that the federal government keep the money and return the land. The court refused to interfere with the issue of Congress having taken the tribe's land.[7]

Yet the protection of tribal lands and natural resources is closely linked to the preservation of tribal existence. Without a sufficient natural resource base to sustain it, tribal existence is difficult to maintain. Successful lawsuits in recent years have helped Indian people to reestablish ownership and control of land, water rights and hunting and fishing rights. The largest return of land to Indian people in US history - 300,000 acres - occurred in 1980 when the claims of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians were resolved in the Maine Land Claim Settlement. The tribes were awarded $27 million, and another $54 million for purchase of the 300,000 acres of land.

[7] US v. Sioux Nation of Indians, 448 US 371 (1980). Oglala Sioux Tribe of Pine Ridge Indian Reservation v. US, 862 F.2d 275 (8th Cir.), cert. denied, 109 S.Ct. 2087 (1989).

Criminal justice

Indian tribes had their own systems of criminal justice long before European settlement. Until the late nineteenth century punishment of crimes committed by one reservation Indian against another Indian was left solely in tribal hands. Tribes usually handled misbehaviour primarily through public scorn, the loss of tribal privileges, or the payment of restitution to an injured party, rather than by imprisonment. In the more extreme cases, banishment might occur. Executions were rarely if ever imposed: the death penalty was introduced to the country by the European settlers.

The federal government did not in general interfere with the traditional tribal justice systems until 1885, when it responded angrily to a highly publicized 1883 murder trial in the Dakota Territory. An Indian named Crow Dog was convicted of murdering Spotted Tail, the Chief of the Brule Sioux. Crow Dog was first tried by his peers and ordered to make restitution to the victim's family in accordance with tribal custom. The federal government, feeling that Crow Dog had not been adequately punished, prosecuted him in federal court and sentenced him to death. Crow Dog appealed his federal conviction to the Supreme Court, arguing that federal officials had no right to prosecute him for something that had occurred on an Indian reservation between two Indians. The Supreme Court agreed with Crow Dog. It ordered his release because the government did not have jurisdiction over reservation crimes committed by one Indian against another.

Congress was so upset by the decision that it passed the Major Crimes Act (1885). This gave the federal government jurisdiction over seven major crimes when committed by an Indian against the person or

property of any other person within Indian country. The crimes were murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny. The Act has been amended several times and now covers more than a dozen crimes. The effect has been to diminish tribal self-government. Congress has made it nearly impossible for tribes to deal effectively with serious crimes. Tribal courts are severely limited in the punishments they may impose,[8] and tribal law enforcement has not been adequately financed by the federal government.

According to a 1987 report, the violent crime rate on reservations was twice as high as that of the USA. Many major crimes such as murder and rape are not prosecuted on reservations because as many as six different law enforcement agencies and three separate court systems have potential jurisdiction. Many murders on Indian reservations remain unsolved.[9]

Criminal jurisdiction is one of the most confusing areas of federal Indian law. In some situations Indians are treated differently from other citizens for the same offence. For example, an Indian who murders someone on a reservation can be punished by the federal government under the Major Crimes Act. But a non-Indian who murders another non-Indian on the reservation can only be punished under state law. The US Supreme Court has held that the Major Crimes Act is not unconstitutional, even though it may subject an Indian to a harsher

[8]Under the Indian Civil Rights Act of 1968, the penalties that tribal courts may impose in a criminal case for any offence are limited to six-months' imprisonment and a $500 fine.

[9]"Fraud in Indian Country," Arizona Republic, 8 October 1987

penalty than a non-Indian who commits the same crime.[10] (See discussion of the impact of federal death penalty legislation on Indian lands, below).

The American Indian Religious Freedom Act report to Congress (1979) remarked that "Native Americans have a disproportionately high arrest and incarceration rate - the highest of any identifiable group in the country." Nine years later the inmate population for federal and state prisons in 1988 indicated that American Indians, Native Alaskans and Native Hawaiians were over-represented in prisons in many states. States with an especially high representation of Indian prisoners included Montana (19.4 percent of the prison population compared to 4.8 percent of the state population) and South Dakota (25 percent of the prison population compared to 6.5 percent of the state population). See chart in Appendix II.

Religion

On his first day in the "New World," (12 October 1492), Christopher Columbus wrote of the Native inhabitants he had encountered: "They ought to be good servants and of good intelligence...I believe that they would easily be made Christians because it seemed to me that they had no religion. Our Lord pleasing, I will carry off six of them at my departure to Your Highnesses, in order that they may learn to speak."

Conversion to Christianity became a cornerstone of the relationship between the European settlers and the indigenous peoples of North America. It became federal Indian policy to convert the "savage" Indians

[10] US v. Antelope, 430 US 641 (1977).

into Christian citizens and to separate them from their traditional ways of life. President Jackson tried to justify his Indian removal policy in the name of converting and civilizing the Indians. Christian missionaries, hired as government Indian agents, were an integral part of federal Indian policy for over one hundred years. The government placed entire reservations and Indian Nations under the administrative control of different denominations for the purpose of converting them.

Indians were granted citizenship of the USA in 1924 but the government continued to ban their right to worship until 1934. In 1978, in an effort to clarify the status of American Indian religious practices, Congress passed a joint resolution, "The American Indian Religious Freedom Act" (PL 95-341). The Act explicitly recognized the need to protect Indian religious freedom, including worship. It declared,

> "It shall be the policy of the United States to protect and preserve for Native Americans their inherent right of freedom of belief, expression, and the exercise of traditional religions of the American Indian...including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

The Congressional hearings revealed that much of the problem resulted from government ignorance about traditional Indian religious practices. The Act contained no penalty provision enforceable against violators, however, and nothing in the Act protects or preserves Indians' right to practice their religion and conduct ceremonies at sacred sites on public lands. Indian legal rights groups have lobbied Congress in recent years for legislation which would protect their religious practices.

In 1987 the US Supreme Court held that prison regulations are valid if they are reasonably related to legitimate prison interests, even when the regulations destroy a religious practice.[11] This ruling has serious implications for Indian prisoners who may wish to engage in religious practices requiring special exceptions, such as pipe ceremonies, sweat lodges[12] and wearing long hair. In practice most US prison systems, state and federal, nowadays make some provisions for American Indian beliefs. (However, see Oklahoma prison suit described on page 23.)

International law

The Universal Declaration of Human Rights sets out basic principles regarding the right to life, to liberty and to the security of all persons with no distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin. Article 5 protects all persons from torture or cruel, inhuman or degrading treatment or punishment. Article 7 stipulates that all are equal before the law and are entitled to equal protection of the law. Article 9 provides that no one shall be subjected to arbitrary arrest, detention or exile.

The fundamental principles enshrined in the Universal Declaration of Human Rights are given a more precise legal form in two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the

[11] O'Lone v. Estate of Shabazz, 482 US 342 (1987).

[12] An ancient purification and cleansing ceremony forming an important part of American Indian religious practice. The ceremony takes place in a small round enclosure framed from bent willow branches and enclosed with canvas tarpaulins or buffalo hides. Heated rocks are placed in a small hole in the centre, and worshippers gather inside the enclosure to meditate, sing and pray together.

International Covenant on Economic, Social and Cultural Rights. The USA ratified the ICCPR on 8 June 1992 and is legally bound to observe its provisions. The ICCPR protects a number of fundamental rights including those at the core of Amnesty International's work: the right to life; the rights to freedom of conscience, expression and association; the right to be free from arbitrary arrest or detention; the right to freedom from torture and ill-treatment; and the right to a fair trial. Article 27 of the ICCPR provides that "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

PART II: CASES OF CONCERN TO AMNESTY INTERNATIONAL

THE DEATH PENALTY AND AMERICAN INDIANS

The Death Penalty in State Law

Amnesty International opposes the death penalty unconditionally in all cases, considering it to be the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International has campaigned actively against the reintroduction of the death penalty and the resumption of executions by US states. It has published a number of reports documenting its concerns regarding the application of the death penalty in practice in the USA.[13] Amnesty International has frequently expressed concern at evidence that the death penalty is applied in a racially discriminatory manner, and that those under sentence of death include many prisoners who are mentally ill or mentally retarded.

In July 1992 some 45 American Indians were under sentence of death in 13 US states (see Appendix I). This compares with a total death row population in excess of 2,600 inmates across the country. It has not been possible to obtain the exact number of American Indians under sentence of death in all states owing to the failure of some to maintain accurate records of defendants' race of origin. In California, for example, there may be more Indians under sentence of death than the 13 listed in Appendix I. Much depends on the ethnic classification given them at the time of indictment: in some instances American Indians have been incorrectly classified as "Hispanic" or "other." It has not been possible to verify how many American Indians are under sentence of death in Texas.

Amnesty International has reviewed the cases of 27 of the 45 Native Americans currently under sentence of death in the USA. It also examined the cases of three prisoners whose death sentences were later overturned. One was acquitted of murder at his retrial; one was granted executive clemency shortly before he was due to be executed because of remaining doubts about his guilt, and the third was found to have committed the murder on Indian land so that the state in question, Oklahoma, had no jurisdiction

[13] See: *USA: The Death Penalty,* (AMR 51/01/87), published in February 1987; a series of updates on developments, available for 1987 through 1991 (AMR 51/01/88; AMR 51/01/89; AMR 51/46/89; AMR 51/13/91 and AMR 51/01/92). See also: *The Death Penalty and Juvenile Offenders,* October 1991, (AMR 51/23/91).

over the case and should not have prosecuted him. These three cases are described in detail below.

Amnesty International was able to establish the race of the murder victims in 37 cases. In the great majority the death penalty had been imposed for murders involving white victims (33 cases). In 22 of these cases there was a single white victim, and in 11 cases there was more than one victim. In only four cases were American Indians under sentence of death for the murder of members of an ethnic minority, including their own.

In three cases, two Indians were tried for the murder of a single victim. In Montana, two brothers, Lester and Vern Kills on Top, were tried separately for their involvement in the murder of a single white male victim. Both had their trial venues changed to districts where the population was predominantly white, and both were convicted and sentenced to death by all-white juries.

Amnesty International's inquiries indicate that American Indians under sentence of death, while convicted of very serious crimes, come overwhelmingly from acutely deprived backgrounds. In many cases there is evidence of physical abuse, neglect and abandonment as children. The majority of the Indian death row inmates in North Carolina and Oklahoma were found to be of below-average intelligence.

An Indian defendant with an IQ of 68 was described at his trial as illiterate, unable to use a public phone without help, and having difficulty controlling his own bodily functions. At the sentencing phase of his trial for murder in 1985 the jury twice deadlocked 11-1 over whether or not to impose the death penalty. They eventually returned a death sentence after the trial court threatened to reconvene the jury to continue its deliberations the following day, which was the last Saturday before Christmas.

In many of the 27 cases reviewed there was evidence suggesting the defendants suffered from mental illness or brain damage. An Indian defendant in California was convicted of raping and murdering a white woman shortly after being released from close confinement in a mental hospital. He had been diagnosed at an early age as a mentally disordered sex offender and a chronic schizophrenic. At the age of five he had been hit by a truck and spent 29 days in a coma; he sustained serious, irreversible brain damage as a result of this accident. He required large doses of antipsychotic drugs to treat his condition. At his trial in 1982 the defence argued that the state had been negligent for releasing him from hospital in view of his long, well-documented history of mental illness. His death sentence was affirmed on direct appeal to the California Supreme Court in 1988. One judge, Stanley Mosk, dissented from the imposition of the death penalty. In Judge Mosk's opinion, "his personal moral culpability is not sufficiently grave as to allow the state to inflict on him the ultimate sanction" given that the prosecution and defence

experts were all in substantial agreement as to the defendant's mental illness prior to and on the day of the crime.[14]

Foetal Alcohol Syndrome (FAS): physical and mental impairment caused by the mother drinking alcohol while pregnant, was an issue of concern in several cases. Damage to the baby can range from subtle to severe. It may cause clumsiness, behavioral problems, stunted growth, disfigurement or mental retardation. Robert Alton Harris, who was executed in California on 21 April 1992, was believed to have suffered from FAS. His mother was an American Indian. Both parents were alcoholics and Mrs Harris continued drinking alcohol throughout her pregnancy.There is evidence that Robert Harris' exhibited some of the physical and cognitive characteristics of FAS.

In at least two of the 27 cases reviewed, Indians who had seen combat duty in the Viet Nam war suffered serious mental illness after they returned to the USA, and the murders of which they were convicted appeared to be directly attributable to this fact (see case of Darias Cravatt, described below). Despite numerous social problems including extreme poverty, several of the Indian defendants had only minor prior criminal records.

Alcohol dependency, drug abuse and addiction to inhalants and other chemical substances were found to be factors present in the commission of most of the crimes. One Indian defendant had begun inhaling paint and glue fumes at the age of ten. His medical history showed extensive evidence of mental illness, head injuries, organic brain damage and retardation. His chronic drug and alcohol abuse led to blackouts, suicide attempts and psychosis. His father was a violent alcoholic who beat his children. The family grew up in abject poverty: at one time ten children and two adults lived in a one-room apartment. His 1984 conviction and death sentence for the murder of an elderly white woman was reversed on technical grounds in 1988. Doctors then found him to be mentally ill and incapable of assisting his lawyer in the preparation of his defence. However, four months later he was declared to be suffering from "a chronic mental illness which was currently in remission." He was said to be restored to competency provided he remained on medication. His retrial proceeded in 1989 and he was again convicted and sentenced to death.

In most of the cases examined, the Indian defendants were represented at trial by court-appointed lawyers. In some cases juries were not given an opportunity to consider the defendant's impaired mental capacity, or impoverished or abused background as reasons not to impose the death penalty because the relevant information was not presented at the trial. In some cases little or no mitigation evidence was introduced.

[14] People v. Joseph Carlos Poggi, 45 cal.3d 306 (May 1988) at 349.

Almost invariably, later investigation of cases by lawyers representing defendants in post-conviction appeals revealed extensive new information about the defendant which should have been presented at the time of the trial.

Many of Amnesty International's findings in the cases of Indian defendants facing the death penalty also apply to other prisoners under sentence of death in the USA. US capital punishment laws contain safeguards intended to ensure that the death penalty is fairly applied and imposed only for the worst crimes and most culpable offenders. But the 27 individual cases reviewed for this report provide further evidence that these safeguards have not been met in practice. In particular, they provide further support for the argument that the death penalty is sought and obtained most often in cases involving the murders of white victims.

The death penalty denies the right to life. It is a cruel and inhuman punishment, brutalizing to all who are involved in the process. It serves no useful penal purpose and denies the widely accepted principle of rehabilitating the offender. It serves neither to protect society nor to alleviate the suffering caused to the victims of crime. It is irreversible and, even with the most stringent judicial safeguards, may be inflicted on an innocent person.

Amnesty International calls for commutation of all death sentences. In view of the special concerns raised about American Indian capital defendants as a group (concerns which include acute deprivation, inadequate legal representation at trial, mental illness, mental retardation and chemical dependency), Amnesty International urges state governments to grant a general commutation of the death sentences of Indians now on death row, and urges that no further death sentences in any case be imposed or carried out. It also urges that commissions of inquiry be established to examine the effect of racial discrimination and other adverse factors, such as economic and social deprivation, on the application of the death penalty.

Ronald Lee Deere, a Sioux-Choctaw Indian, was sentenced to death in California in 1982. He was convicted of shooting dead three members of his girlfriend's family. He was reportedly in a state of depression and despondency over the termination of their relationship and under the influence of drugs or alcohol at the time of the crime. He later expressed deep remorse, plead guilty, waived his right to a jury at the sentencing phase of his trial, asked for the death penalty and attempted to ensure that he would receive it by refusing to allow his trial lawyer to present any mitigating evidence to the court. His lawyer complied with his wishes. Deere's death sentence was reversed on appeal for the failure to present mitigating evidence at trial. At Deere's resentencing trial in 1986 some mitigation was presented: a psychiatrist was of the opinion that the murders had not been premeditated and that Deere had suffered a "rage reaction" triggered by stress and drugs. He was again sentenced to death and his conviction and

death sentence were affirmed on direct appeal in 1991. Deere dropped his appeals and asked to be executed but was persuaded to pick up his appeals again. Lawyers now representing him say Deere has suffered from a variety of impairments including mental retardation, paranoia, organic brain damage, drug addiction and alcoholism.
(Photo: Los Angeles Times)

The case of Anson Avery Maynard (North Carolina)

Anson Avery Maynard, a Coharie Indian from Dunn, North Carolina, was granted executive clemency and his death sentence was commuted to life imprisonment without parole on 10 January 1992. Maynard was due to be executed on 17 January by lethal injection for the murder in 1981 of Steven Henry, a white man. He would have been the first American Indian executed under current US state death penalty laws. Governor James Martin granted executive clemency because of doubts about Maynard's guilt. He said no physical evidence linked him to the crime and the only eyewitness to testify was an admitted participant in the murder who was granted immunity from prosecution.

This was the first time a North Carolina governor had commuted a death sentence since the death penalty was reinstated in 1976. North Carolina has executed five prisoners under its current death penalty law, including one woman.

Steven Henry was murdered on 13 June 1981. According to reports, he was last seen alive while being driven by Gary Bullard in Bullard's truck and was shot dead at Bullard's residence. His body was found in the Cape Fear River. On being arrested, Bullard admitted his involvement in the murder but said that Anson Maynard had carried out the actual killing. In a highly unusual move, Bullard, a white man, was granted immunity from prosecution in exchange for which he testified against Anson Maynard, who was the only person prosecuted for the murder.

Anson Maynard consistently maintained that he was innocent. Prior to his trial for capital murder he refused the state's offer of a chance to plead guilty to second degree murder – which would have eliminated any possibility of a death sentence and would have rendered him eligible for parole after ten years.

The prosecution case rested on the testimony of Gary Bullard, his wife and others who admitted their own involvement in the crime. In return for their testimony these witnesses were granted immunity from prosecution. Four witnesses for the defence testified that Anson Maynard was at a bar in Fayetteville, not at the crime scene, at the time of the murder.

Gary Bullard's wife, Bonnie, whose trial testimony against Mr Maynard was consistent with that of her husband, moved to recant her testimony in 1982 and allegedly told several people that her husband had carried out the murder. She reportedly indicated an intention to come forward with the truth about Mr Henry's death but before she could do so she and Gary Bullard were killed in a car crash.

On 10 January 1992, in a statement announcing the commutation, Governor James Martin said: "After extensive review of all of the claims and counterclaims, I am not convinced that Anson Maynard pulled the trigger to kill Stephen Henry. Nor am I convinced that Anson Maynard is totally innocent...I appreciate the efforts of the jury to arrive at the truth. There was much conflicting evidence presented to them in 1981 and we all respect the decision they reached at that time, based upon what they saw and heard. It is only with the benefit of additional time, and with information that they may not have had available, that my decision modifies their sentence. There is reasonable doubt in my mind as to whether the degree of involvement of Anson Avery Maynard in the murder of Stephen Henry is sufficiently clear to justify the death penalty. For that reason, I have commuted Anson Maynard's death sentence to life in prison without parole. It is for cases like this that the power of clemency is given to the governor."

Anson Avery Maynard
c. Fayetteville Observer

The case of Darias Cravatt (Oklahoma)

Darias Cravatt, a Chicasaw Indian, was sentenced to death on 1 May 1986. He was convicted of the murder of James Burnett, a white man, who was killed on the Cravatt family's land on 23 October 1985.

Some time after Cravatt's' trial in state court, a federal district court judge presided over a civil suit regarding an unrelated issue occurring on the same land. The federal judge realized that the state of Oklahoma had no jurisdiction over this land (Indian allotee land) and should not have sought to prosecute Darias Cravatt for a crime committed there. In February 1992 after lengthy court deliberations, Darias Cravatt's conviction and death sentence were reversed by the Oklahoma Court of Criminal Appeals with directions to dismiss charges. The case was transferred to the federal court system and Cravatt is not in jeopardy of receiving the death penalty again.

On 23 October 1985, James Dale Burnett (white) was shot dead. Burnett had made an arrangement with Darias Cravatt's father to cut wood on the family's land. However, Darias Cravatt, who was mentally ill, allegedly threatened Burnett on various occasions and repeatedly told him to leave their land. On the night of the crime, in a highly disturbed state and while under the influence of alcohol, he shot Burnett and killed him.

Darias Cravatt plead not guilty by reason of insanity and evidence was introduced at his trial regarding the deterioration in his mental state and behaviour after he returned in 1970 from four years' active service as a US Marine in the Viet Nam war. Before being drafted he had reportedly been a normal young man who had successfully attended school and college. However, he returned from the war addicted to alcohol and drugs. Over the 14 years between his return from Viet Nam and the murder of James Burnett he suffered from deep depression, flight of ideas, psychosis and paranoid delusions. He heard voices and claimed the television set was talking about him. He would laugh and giggle inappropriately and was easily provoked to aggressive behaviour. He could not sustain a coherent conversation.

His mother, Erie Cravatt, testified at the trial that after his return from Viet Nam Darias was unemployable and lived at home with them. On one occasion he had tried to choke her and had attacked his father several times. They had sought medical help from various sources and Darias was admitted to a mental hospital for six weeks. A pretrial psychiatric examination concluded that he was badly in need of care and treatment. The jury nevertheless sentenced him to death on a finding that the murder was especially cruel, heinous and atrocious and that Cravatt would probably pose a continuing threat to society.

During Cravatt's six years on Oklahoma's death row his mental condition remained very poor. He was unable to care for himself and reportedly spent periods naked and dirty in his cell, with his hair unwashed, and long, dirty fingernails. Frequently incoherent, he did not appear to understand where he was, or that he was under sentence of death.

The case of Patrick Croy (California)

Patrick "Hooty" Croy and his sister, Norma Jean Croy, (both Shasta-Karuk Indians), were convicted of the 1978 murder of Jesse Joe Hittson, a white police officer, who was shot dead in Yreka, Siskiyou County, in Northern California.

Patrick and Norma Jean Croy were tried jointly for the crime in May and June 1979. Norma Jean Croy was convicted of first-degree murder in August 1979 and sentenced to an indeterminate term of seven years to life. On appeal, issues including alleged insufficiency of the evidence to support her conviction were rejected and her conviction was affirmed by the court of appeal.

Patrick Croy alone was charged with two special circumstances: the intentional killing of a police officer, and "willful, deliberate and premeditated" murder during the course of a robbery. He was sentenced to death. However, on 31 December 1985, the California Supreme Court reversed his conviction and death sentence on the grounds that the jury had not been properly instructed on the law of aiding and abetting. The Siskiyou County District Attorney's office decided again to seek the death penalty at Croy's retrial.

After hearing testimony that anti-Indian prejudice was endemic in Northern California the trial venue was changed. Judge Richard L Gilbert ruled that "The potential for residual bias against the defendant from preconceived notions about Native Americans...raises a risk that prejudice will arise during the presentation of evidence."

The retrial was held in San Francisco County and lasted from July 1989 until May 1990. This time Patrick Croy was acquitted of all charges.

The prosecution's theory was that Patrick and Norma Jean Croy had planned ahead of time to murder a police officer; that they had robbed a liquor store and stolen ammunition, and that officer Hittson had been deliberately murdered. But, in the light of evidence presented for the first time during Patrick Croy's retrial, the jury rejected the prosecution's theory that Hittson's murder had been deliberate or premeditated. The retrial defence testimony and evidence suggested that the five Indians may have been planning to go hunting deer on the night in question, and sought ammunition for that purpose. All were under the influence of alcohol at the time. The jury accepted that Patrick Croy honestly and reasonably believed that his life was in danger when he fired the shot that killed officer Hittson; also that the police had used unreasonable or excessive force in response to what had initially been a minor incident at a liquor store.

The defence case, as presented at Patrick Croy's retrial, was as follows. In the early hours of 17 July 1978, there was an altercation between the Indians and the owner of a liquor store. The owner alerted the police who then pursued the group in a car chase to a remote area outside the town of Yreka, near a log cabin belonging to the Croys'

grandmother. The ensuing firefight reportedly involved 27 police officers in 15 squad cars. The police used semi-automatic weapons as well as shotguns and pistols. By their own testimony they shot at "anything that moved" on the hillside. Patrick and Norma Jean Croy, their cousin, Darrell Jones and two others were shot at by Yreka City police officers as they fled up a hillside. Norma Jean was shot in the back; Darrell Jones was shot in the groin; Patrick Croy was shot in the back and the arm by police officer Hittson, who was himself shot and killed by Croy.

It was established that officer Hittson was under the influence of alcohol at the time of his death and ought not to have been on-duty, especially in a situation where firearms were being used. Patrick Croy told the retrial jury that Hittson shot him twice from behind without warning as he tried to enter the cabin to check on the welfare of his grandmother and aunt (who were allegedly inside). Evidence was presented that, after Patrick Croy notified the police of his desire to surrender, they opened fire on him with automatic weapons.

Extensive testimony was permitted at the retrial concerning racial tensions between the white and Indian communities in Yreka dating back to the mid-1800s when gold was discovered and non-Indian settlers and miners invaded the area. Witnesses for the defence described a concerted campaign in the area to "exterminate" Indian people, with the government allegedly paying $5 for each Indian scalp. During a twenty-year period beginning in 1848, it was said some 120,000 Indian people were murdered - an atrocity still talked of in Yreka's Indian community today.

At the close of Patrick Croy's retrial on 1 May 1990 after the jury had acquitted him, the trial court judge, Edward Stern, stated, "this Court believes that had Norma Jean Croy been tried in the case I heard, Norma Jean Croy would have been found not guilty...I want the record to be clear that this is my judgment, my opinion, having heard the evidence in this case."

There was no evidence that Norma Jean Croy used a gun during the shooting. Testing of her hands and face for gun powder residue rendered negative results. According to her testimony at the first trial, she was shot in the back while running up the hill away from the police. She said she was afraid to surrender for fear of being shot again. She said she was not in contact with her brother on the hillside. She eventually turned herself in because it was getting cold and she was in pain from her gunshot wound. Her conviction for first-degree murder rested on the theory that she had aided and abetted her brother. She was also convicted of two counts of attempted murder (against two other police officers), four counts of assault, and one count of robbery. Norma Jean Croy remained in prison at the time of writing. A petition for a new trial was filed on her behalf in November 1991.

American Indians and the federal death penalty

The majority of criminal offenses carrying the death penalty are committed in violation of state laws and are therefore prosecuted in the state courts. The 45 Native Americans now under sentence of death were convicted under state laws. The federal penal code covers offenses falling within the federal jurisdiction: crimes against federal agents, on federal property, or against national security. Indian reservation land falls within federal jurisdiction.

Although a number of death penalty provisions remain on the federal statute books, they are considered to be unconstitutional in that they do not contain safeguard procedures for weighing aggravating and mitigating circumstances, as required by the US Supreme Court in *Furman v Georgia* (1972). At present, the only death penalty provision under federal civilian law which also contains the procedural safeguards required to conform to US Supreme Court guidelines is an amendment to the *Anti-Drug Abuse Act* (1988). This allows for the death penalty in cases involving murder committed by, or solicited by, major narcotics traffickers; also the drug-related murder of a law enforcement officer. At the time of writing, one non-Indian was under sentence of death under this death penalty provision.

All attempts in recent years to pass broad federal death penalty legislation have failed to complete the Congressional approval stages necessary before they can become law. The *Comprehensive Violent Crime Control Act of 1991* (not enacted), proposed, among other things, to expand the number of offenses for which the death penalty can be imposed to more than 50 federal crimes covering a wide range of offenses including first-degree murder and other crimes not involving homicide.[15]

If such legislation were to pass its primary impact would be on American Indians charged with crimes arising on reservations. The crime most likely to result in a federal death penalty charge is first-degree murder. A review of federal first-degree murder indictments for the statistical years 1988 and 1989 (1 July 1987 to 30 June 1989) showed that 64 percent of the defendants were American Indians. According to the US Sentencing Commission's 1988 Annual Report, 77.8 percent of all persons sentenced for homicide in the federal courts were American Indians and Native Alaskans.

[15]For details of the 1991 legislation see *USA: Federal Death Penalty - 1991 Crime Bill*, 20 August 1991 (AMR 51/26/91) and *USA: Death Penalty Developments in 1991*, February 1992 (AMR 51/01/92), pp 12-14.

In New Mexico, Arizona, North Dakota, South Dakota and several other states, state governments have no criminal jurisdiction over Indians on Indian land. An Indian charged with a major crime occurring on a reservation in such a state is prosecuted in federal court.[16] In certain other states, such as Minnesota and Wisconsin, there is federal jurisdiction over some reservations but not others.

Some states where the federal courts have jurisdiction over crimes on Indian land, such as North Dakota, Minnesota, Wisconsin and Kansas, do not have a state death penalty. If a broad federal death penalty bill were to be enacted, American Indians in those states would be subject to the death penalty whereas non-Indians charged with murder elsewhere in the state (ie off the reservations) would not be subject to the death penalty.

In Minnesota two tribes on the Red Lake and the Bois Forte Reservations are subject to federal jurisdiction, but all the other tribes are subject to state jurisdiction. Thus, members of these two tribes could face the death penalty even while other Indians in the state, as well as non-Indians would not. In Wisconsin, which also has no state death penalty, the Menominee Indians are subject to federal jurisdiction, whereas other tribes are not, and the same disparate situation would occur there.

In states like New Mexico which have a state death penalty applicable only in limited instances of first-degree murder, Indians could be subject to the death penalty in circumstances where other New Mexicans would not be. A pre-meditated first-degree murder would carry a federal death penalty for a reservation Indian but not for an off-reservation crime prosecuted in state court.

Congress has been told that if it passed legislation reinstating a broad federal death penalty for first-degree murder, unconstitutional discrimination would result because the great majority of defendants subject to the death penalty would be American Indians living on reservations. Most Indian murder cases involve family members or acquaintances where both the defendant and the decedent were intoxicated at the time of the death.[17]

Faith Roessel, testifying on behalf of the Turtle Mountain Chippewa Tribe of North Dakota (a state without the death penalty), told the Senate Judiciary Committee in September 1989 that "imposing a federal death penalty on Indian defendants interferes with our self-government, disproportionately penalizes Indian defendants, lacks a rational basis and serves no deterrent effect for crimes committed in Indian country." Arguing that

[16] Prosecuted under the Major Crimes Act, 18 USC Section 1153.

[17] Testimony of Tova Indritz, Federal Public Defender for the District of New Mexico, before the US House of Representatives Subcommittee on Crime, 23 May 1990.

the death penalty does not deter crime Roessel added, "Alcohol abuse is the biggest contributing factor in the criminal behaviour of our members. Only rehabilitation and treatment will address the disease of alcoholism and make our society whole again, not a death penalty."

In June 1991, during its debate on the 1991 Crime Bill, the US Senate voted in favour of a provision to allow Indian tribal governments decide for themselves whether the death penalty should apply to offenses committed within their jurisdiction. The provision was opposed during the debate by Senator Strom Thurmond on the grounds that it could prompt "every other special interest group" to seek to exempt themselves from criminal statutes.

DEATH ROW CONDITIONS

In December 1991, Amnesty International wrote to inquire about the recently opened Unit H Block of the Oklahoma State Penitentiary in McAlester, which is designated to house prisoners under sentence of death. Amnesty International expressed concern at the design of the unit and cells and at the prolonged cellular confinement to which inmates are subjected.

In his reply, James Saffle, Southeastern Regional Director of the Oklahoma Department of Corrections, assured Amnesty International of the Department's commitment to providing offenders with a "safe, humane, living environment." He clarified certain points regarding the unit and its regime, but confirmed that prisoners are confined in two-person, windowless cells for 23 hours per day.

Amnesty International remained concerned that certain aspects of Oklahoma's Unit H Block are in violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners which provide that prison cells shall have windows large enough to allow sufficient natural light for work or reading and that prisoners shall be allowed at least one hour's exercise in the open air daily.

Oklahoma has the second highest death row population per capita in the country (after Nevada) with 38 death row inmates per million inhabitants. Ten percent of those under sentence of death in Oklahoma (12 inmates out of 120) are American Indians.

ILL-TREATMENT OF PRISONERS

Montana State Penitentiary

Inmates at Montana State Penitentiary (MSP), including a number of American Indians, were severely ill-treated by prison personnel following a riot in the Maximum Security Unit

on 22 September 1991. During the disturbance, which lasted some four hours, prisoners took control of the Maximum Security Unit and killed five protective custody inmates. Indians make up about four per cent of Montana's overall population, but they number 18 to 20 per cent of the 1200 prisoners held at MSP. The Maximum Security Unit, where the riot and subsequent prisoner ill-treatment took place, houses some 65 inmates.

MSP commissioned an independent Administrative Inquiry Team from the National Institute of Corrections (a branch of the US Justice Department) to investigate the circumstances surrounding the riot. In December 1991 the Inquiry Team issued an 104-page report highly critical of MSP prison personnel. It found repeated breaches of security, abuse of inmates before the riot and mistreatment of prisoners afterwards.

According to the Inquiry Team's findings, when prison staff regained control of the Maximum Security Unit, prisoners were stripped naked and handcuffed behind their backs. Many suffered glass cuts to the bottoms of their feet while being evacuated along corridors thick in broken glass. The prisoners were made to run through a gauntlet of some 60 to 70 officers who punched, kicked, tripped and swung batons at them. They were then left, still naked and handcuffed, face down on the ground in an outdoor area for six to seven hours. Some were kicked as they lay on the ground. Aside from acute physical discomfort, prisoners suffered sunburn and later became cold as the temperature dropped that evening.

During the next few days, the prisoners were housed in a reception area without clothes or mattresses; they were denied showers and hygiene items, and denied phone calls, mail, visitors or contact with lawyers. Meals consisted of cold sandwiches twice a day for three weeks. Showers were not permitted until 15 October.

The Inquiry Team was shocked by the treatment of six inmates suspected of planning a further disturbance. On 9 October 1991 they were stripped naked, hog-tied[18] and left on the floor of their cells for 23-24 hours. One inmate who wriggled to remove pressure on his wrists and ankles was hog-tied for an additional 24 hours as punishment. Serious injuries resulted from the hog-tying. One inmate reportedly hyperventilated, passed out and vomited but was revived by medical personnel and placed back in the hog-tie restraints. Two weeks after the restraints had been removed a physician identified substantial handcuff wounds and indications of probable injury to superficial nerves on the hands of four inmates. The Inquiry Team could not accept that there were not safer and more humane ways to immobilize the inmates.

[18] Hog-tying involves being handcuffed behind the back, with leg-irons on the ankles, and the leg-iron chain passing up through the handcuffs, forcing the body to bend backwards.

Some inmates were denied timely medical treatment for their injuries. One inmate, Donald Spotted Elk (a Northern Cheyenne Indian), reported later that his requests for glass to be removed from his foot were ignored for two and a half months. "My foot around where there was glass turned black in the middle of October, I could not walk without it cutting deeper into my foot. Finally, on December 4, 1991 I was taken to a doctor to surgically remove a chunk of glass from my infected foot. The doctor said it was embedded pretty deep because of me walking on it and nothing being done for so long."

The Inquiry Team's report concluded that the Maximum Security Unit was badly run and that living conditions for inmates were unreasonable. It described the atmosphere in the Maximum Unit before the riot as highly-charged and negative. Angry, frightened, frustrated inmates tried without success to find remedies for numerous grievances relating to the harsh prison regime. Some had been confined in the Maximum Security Unit continuously for four years or more with no education, training or recreation activities and 23-hours per day in-cell time. The September 1991 riot was prompted primarily by conditions within the Maximum Unit.

According to the Inquiry Team, another contributory cause of the riot was the death of an Indian prisoner, William Wade Brown, who hanged himself in his cell on 16 August 1991. Prisoners asserted that guards had been slow in responding to Brown's suicide attempt and could have saved his life. Two inmates testified at the inquest that guards had stood by and watched Brown choke to death. This was apparently because of a policy requiring back-up staff to be present before a cell door could be opened. An inquest jury concluded on 10 February 1992 that Brown's death had been self-inflicted and had not involved staff negligence.

The Inquiry Team noted that prison guards (predominantly white) had on occasion taunted prisoners and engaged in other demeaning behaviour. Amnesty International has received a number of complaints that Native American prisoners in MSP have been verbally abused and are treated more harshly than other inmates. The Inquiry Team noted that criteria for placement into the Maximum Security Unit were "at best, subjective," and the criteria for getting out were equally ambiguous. The Inquiry Team identified one Indian prisoner with a non-violent history, sentenced for a property crime, who was initially classified as Minimum 1 (the lowest security classification), but after he swore at a prison guard he was reclassified as "Maximum" and sent to the Maximum Security Unit.

Amnesty International is aware of the serious nature of the disturbance which occurred in the prison on 22 September 1991 and the acts of extreme violence perpetrated by some inmates. However, the authorities retain a responsibility at all times to ensure that security measures do not conflict with the requirement that inmates be treated humanely. Amnesty International believes that the treatment of the prisoners in the Maximum Security Unit following the riot amounted to torture or cruel, inhuman or

degrading treatment in contravention of Article 5 of the Universal Declaration of Human Rights. Such treatment is also prohibited under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been ratified by the USA.

The treatment also contravened several of the standards cited in the United Nations Standard Minimum Rules for the Treatment of Prisoners. Article 31 states that "...all cruel, inhuman or degrading punishment shall be completely prohibited as punishment for disciplinary offenses," and Article 33 states that "Instruments of restraint, such as handcuffs, chains, irons and straight-jackets, shall never be applied as punishment." Articles 71 to 78 emphasize the need to provide work, vocational training, educational and recreational facilities for sentenced prisoners.

In late January 1992, state corrections officials confirmed that seven prison guards had been disciplined for violations of policies in connection with the riot. The names of those suspended or demoted were not released. The Federal Bureau of Investigation and the Civil Rights Division of the US Justice Department undertook their own investigation into the prison riot and its aftermath. Their report, expected to be released in early 1992, had still not been made public by October 1992.

On 3 February 1992, murder and other criminal charges relating to the riot were filed against 14 inmates, four of whom are Native American. According to press reports, prosecutors announced they would seek the death penalty against those charged in connection with the five murders.

Amnesty International wrote to the Director of Montana's Department of Corrections in February 1992 to place its concerns on record. Amnesty International commended the Department for commissioning the independent agency's inquiry, and urged that The Inquiry Team's recommendations concerning the grievance and disciplinary systems, the use of force policy and measures for reviewing and alleviating conditions in the Maximum Security Unit be implemented as a matter of priority. Amnesty International also asked Montana's authorities to make it clear that the torture or other cruel, inhuman or degrading treatment of prisoners will not be tolerated under any circumstances.

Replying to Amnesty International, Fritz O. Behr, a senior administrative assistant to the Governor, said many of the recommendations made by the Inquiry Team had already been implemented while others were being studied for possible future implementation. He informed Amnesty International that several parallel inquiries were being conducted by state and federal agencies. They included the US Department of Justice (Civil Rights Division) which was investigating alleged violations of prisoners' civil rights.

Amnesty International received a letter in August 1992 from James M Gamble, Administrator of the Corrections Division of Montana's Department of Corrections and

Human Services. He assured the organization that "we are working to correct the problems that exist within the system." To these ends the Department of Correction had developed a Mission Statement incorporating seven "Core Values" to direct all staff within the agency and to which all staff would be accountable. These covered the areas of individual rights and responsibilities and the need for cooperation, communication and ethical management.

Conditions in Navajo tribal jails lead to lawsuit

On 31 July 1992 the DNA-People's Legal Services filed a lawsuit in the Navajo Supreme Court in Arizona to protest at conditions in five tribal jails within the Navajo Indian reservation. Tribal officials openly acknowledged that they were appalled by conditions at the Chinle and Tuba City Tribal Jails in particular, but said they did not have the $50 million estimated to be needed to rebuild them. The Bureau of Indian Affairs also reported that it lacked the funds to address the problem. The other jails cited in the lawsuit are in Shiprock and Window Rock (Arizona) and Crownpoint (New Mexico).

According to reports, Chinle jail routinely holds 40 or 50 detainees at weekends although the facility was built to contain just eight prisoners. And when a fair or rodeo is held in the community the jail population has sometimes exceeded 100, forcing inmates to literally sleep on top of each other. The lawsuit cited the absence of heating in winter, or ventilation in summer, inadequate shower facilities and meals of less than 200 calories.

Many inmates claimed they lost weight after serving more than a week in one of the tribal jails. One former jail inmate reportedly lost 22 pounds in weight after serving 28 days in the Window Rock jail. There have also been complaints at the lack of proper sanitation in the Tuba City jail where inmates are said to have slept on the floor in raw sewage for several months when a toilet leaked.

Religious rights in prison

Indian prisoners in Oklahoma filed suit against the state Department of Corrections after a new "grooming code", introduced in February 1986, banned below collar-length hair, beards and headbands. The lawsuit was resolved in the prisoners' favour in January 1992. The prisoners argued that the grooming code exemption procedure was unreasonable and violated their right to religious freedom. The author of the suit, Ben Carnes, explained, "To the Native Americans, the growth of hair represents many things that are spiritual and it is against our beliefs to cut our hair unless we are in mourning."

Before the suit was resolved at least ten inmates were placed in disciplinary segregation for refusing to have their hair cut. They included Joe Gaines (Choctaw), who was unable to obtain documentation to meet a requirement that inmates provide written proof from a verified church leader that theirs was a recognized religion. He was confined

for ten days in disciplinary segregation after he refused to cut his hair. According to another inmate, when Gaines continued to refuse to cut his hair he was restrained by guards and his head was forcibly shaved.

A number of Indian inmates submitted to having their hair cut in violation of their religious beliefs. They included Jerry Pelley, an Osage and Comanche Indian, who had applied for a religious exemption and was told orally that his exemption was approved, but was forced to have his hair cut when his exemption was not confirmed in writing.

Inmate Jerry Pelley, a Comanche Indian, has his hair forcibly cut by an inmate barber at the Joseph Harp Correctional Center in Lexington, Oklahoma, October 1991. (Photo: Rodney Witt)

On 7 January 1992, a US District Court judge ruled that the Oklahoma Department of Corrections was wrong to force Indian inmates who wore their hair long for religious reasons to have it cut. Although the DOC had argued that long hair was a security risk and could be used to conceal contraband, the court found that these security concerns were not based on any actual difficulties the DOC had experienced. Judge David Russell said the DOC's concerns were "so hypothetical and speculative that they simply do not

justify denial of the plaintiffs' right to exercise religious beliefs which the defendants concede are sincere."[19] The ruling was not appealed.

In recent years, positive steps have been taken to permit Indian religious ceremonies in prisons. Len Foster, a Navajo Indian, who directs the Navajo Nation Correction Project in Arizona, used litigation, negotiation and legislation to persuade Utah, Colorado, New Mexico and Arizona to allow Indian prisoners the same right of access to religious ceremonies as was allowed for Christians and other religious groups. Foster cited evidence that Indian religious activities in prison have had a positive influence for many inmates. One study suggested that the recidivism rate of Indians who had participated in traditional ceremonies while in prison was only seven percent, as compared with an overall recidivism rate of 30 percent among Indian offenders.

Indian inmates at the Las Cruces penitentiary, New Mexico, constructing a sweat lodge, May 1989.

[19] Lefors v Maynard, ruling of US District Court for the Western District of Oklahoma, filed 7 January 1992.

c. Zigy Kaluzny/Gamma Liaison.

POLICE BRUTALITY AGAINST AMERICAN INDIANS

The videotaped beating of Rodney King, a black man, by members of the Los Angeles Police Department in March 1991, brought the subject of police brutality to the forefront of US attention. In recent years, Amnesty International has received and investigated complaints across the USA in which it was charged that police had ill-treated suspects during arrest and while in custody. In June 1992 Amnesty International published a report, *United States of America: Torture, ill-treatment and excessive force by police in Los Angeles, California*, in which it found police and sheriffs' deputies had resorted to excessive force sometimes amounting to torture or cruel, inhuman or degrading treatment. Amnesty International concluded that the use of excessive force had included physical brutality and lethal force, in violation of international standards. Police dogs were apparently used to inflict unwarranted injury on suspects, particularly in black or latino neighbourhoods. In many cases officers appeared to have acted with impunity or received only minor disciplinary sanctions. The evidence suggested that racial minorities, especially blacks and latinos, had been subjected to discriminatory treatment and were disproportionately the victims of abuse.[20]

In response to Rodney King's beating the Senate of California's Judiciary Committee set up a Subcommittee on "Peace Officer Conduct," chaired by California Senator Art Torres. This held hearings throughout the state between September and December 1991. One of the subjects on which the subcommittee sought testimony was American Indian relations with law enforcement officers in California.[21]

During two days of hearings in Arcata and Redding in December 1991, the subcommittee heard numerous accounts of ill-treatment, harassment and brutality against Indians by the police and sheriffs departments in northern California. It was apparent from the testimony given that procedures for filing complaints against police officers left much

[20]See USA: Torture, ill-treatment and excessive force by police in Los Angeles, California, June 1992 (AI Index: AMR 51/76/92), Conclusions and Recommendations, pp. 45-46.

[21]The following details are taken from the rough draft of the verbatim transcript of two days of hearings by the California Senate Subcommittee on Police Officer Conduct: on 3 December 1991 at Humboldt State College, Arcata and on 4 December 1991 in Redding, California.

to be desired and the system was failing adequately to investigate and bring to justice perpetrators of attacks against American Indians in California.

Professor Jack Norton of Humboldt State University spoke of "a long, bleak and brutal history" of abuses by law-enforcement officers against Indians in the counties of Humboldt and Siskiyou. Incidents in which Indians were treated more harshly than non-Indians had heightened a perception that "Indians could not receive justice in Northern California." He called for a statewide commission to look into the many cases of brutality in the area.

Doctor Royal Alsup, with 15 years' experience working in the field of Indian mental health, criticized "over-zealous" police officers for taking children out of classrooms to interrogate them without their parents or a teacher present. He alleged that police had sometimes sought to punish Indian children by beating them. As a result, Indian children were at risk of developing school phobias, paranoia and distrust of those in authority. "We don't have slavery, but we do have psychological enslavery continuing through these practices," he told the subcommittee.

Others expressed concern at the felony conviction rate among young American Indian males. This was felt to be excessive by comparison with the sentencing rate of non-Indians and suggested a "double standard of justice." It was alleged that Indians were harassed by police but the incidents were seldom reported; and American Indians were the victims of negative stereotypes and were denied the same employment opportunities as non-Indians. One witness concluded, "Indian males do not live long in the United States. As a matter of fact...there is very little to live for if your future is bleak."

A staff attorney with the Eureka office of the California Indian Legal Services, testified that criminal cases involving Indian victims were "poorly handled, with resources of the system being minimally applied. In contrast, cases involving Indians as defendants were expected to result in vigorous investigation, prosecution and sentencing." Police officers were viewed by the Indian community as "hostile authority figures" who tended to target relatively harmless and helpless individuals such as chronic alcohol abusers. She told the Subcommittee, "Many of us hear stories of the drunk in public constantly being arrested while much more serious offenders are virtually ignored." In her experience the abuse towards individual Indians ranged from harassment and constant monitoring to actual physical beatings.

A deputy public defender for Humboldt County described a police practice of using violent restraining techniques to force a detainee suspected of being intoxicated to give a blood sample. This involved putting the detainee on the floor of the jail cell while handcuffed and in leg irons while officers put their knees in the detainee's back and forced their head back. The public defender said two of her clients who had been subjected to this treatment now suffered with back problems. Under California law, people have the

right to refuse to submit to a blood test. It was alleged that this right had been denied to some Indian detainees suspected of driving under the influence of alcohol.

An Indian victim of police brutality testified to the Subcommittee that his arm was broken and now remained useless, and his wife was bruised and her clothes ripped by Shasta County Sheriff's Deputies. He said police had stopped their car on 17 October 1991 as they were driving home from a bar, and both were beaten with batons and billy clubs by the officers. The man required hospital treatment. He was not charged with any crime but his wife was charged with resisting arrest. He did not file a complaint against the officers.

A Captain with the Siskiyou County Sheriff's Department suggested that "It doesn't do any good to characterize and sterotype law enforcement as being brutal and overly violent and disrespectful of the public. It makes no more sense to do that than it would be to stereotype all Native Americans as drunken Indians. Neither one are true. Neither one should be permitted." He emphasized how important it was for victims of police brutality to report what had happened to them. "We have many systems in place to deal with abuses of power by peace officers, both at the state and federal level. As police administrators there's no way that we will condone any kind of misconduct, particularly racism. But we can't take action against anyone unless we're made aware of it." However, others stated that victims were often too frightened of reprisals to come forward to denounce the treatment they had received. According to a public defender in Imperial and Shasta Counties, "If there are no other remedies than to complain to the very people that are threatening to put you in prison, then that's not a very good remedy."

It was clear from the hearings that the California Senate Judiciary Subcommittee was troubled by what it heard, and was committed to addressing the problem of police brutality. Its interest in the treatment of American Indians by law-enforcement officers was warmly welcomed in the communities in which the Subcommittee held hearings. There were calls for more training for law-enforcement personnel in cultural sensitivity.

In its report in 1992, the Subcommittee on Peace Officer Conduct concluded that law enforcement agencies were "under a state of siege" due to social disintegration, and officers were unprepared to cope with the underlying causes of crime. Seeking to effect more arrests as a "politically expedient solution" to the crime problem, officers increasingly treated entire communities as suspect and were in some instances functioning as a "paramilitary occupational force." This response to crime had proved ineffective. The Subcommittee urged that peace officer forces be "professionalized" via better employment selection methods; recruitment of minorities and women; better career opportunities and pay; and training in "contemporary cultural and ethnic realities." Existing remedies for police abuses were found to be "clearly inadequate." A new method of processing citizen complaints was needed.

A bill (SB 1335) was under consideration by the California Senate Judiciary Committee in mid-1992. This proposed the creation of a Special Prosecutor within each county to review and prosecute felony complaints against law enforcement officers. The system for making a citizen's complaint against police officers would be simplified, with standardized complaint forms made easily available. The bill would also require law enforcement officers to receive training in racial and cultural diversity, and to follow strict new "use of force" guidelines. The bill was opposed by the US Department of Justice and a number of California police departments.

OTHER CASES OF CONCERN: LEONARD PELTIER

Leonard Peltier, an Anishinabe-Lakota Indian and a leading member of the American Indian Movement (AIM), is serving two consecutive life sentences for the murders of two Federal Bureau of Investigation (FBI) agents who were killed on the Pine Ridge Indian Reservation in South Dakota in 1975. The FBI agents, Ronald Williams and Jack Coler, were shot at point-blank range after being wounded in a gunfight with Indian activists on the reservation, during which an Indian also died. Peltier fled to Canada. He was extradited to the USA and convicted of the murders in 1977.

Peltier was born in 1944 in North Dakota and grew up on the Turtle Mountain Reservation. His involvement with the militant American Indian Movement (AIM) began in 1970. In February 1973, the "traditional" Oglala Indian community in South Dakota asked for AIM's assistance in dealing with violence on the Pine Ridge Indian Reservation. The conflict was a complex one between supporters of the elected tribal government and the "traditional" Indian communities. One of the issues in dispute was land use, in particular whether the tribal government could allow a large tract of its land to be used for uranium mining without the full consent of the Indian inhabitants.

An armed paramilitary group which supported the tribal government was reportedly responsible for a campaign of terrorism directed against the "traditional" communities and Indian activists. AIM was called on by the "traditionals" to protect their communities on the reservation although the presence of the armed Indian activists led to mounting tensions, especially with the FBI. On 28 February 1973 several hundred "traditionals," AIM members and supporters occupied the village of Wounded Knee as a protest gesture.[22] They demanded hearings on treaties and an investigation of the Bureau of Indian Affairs. They were besieged for 71 days by heavily armed FBI agents, US marshals and the US military. The siege ended in May 1973 with an agreement by the US government to negotiate on treaty issues.

Between 1973 and 1975 alone, more than 60 Indians were killed and hundreds more assaulted and harassed, allegedly by the tribal government's paramilitary squads. During this entire period the FBI apparently failed to obtain a single conviction for the murders of AIM activists, and complaints of assault and harassment went uninvestigated. During this period, Leonard Peltier was involved in providing security support for local people.

[22]Wounded Knee was the site of a violent massacre of unarmed Sioux Indians, including many women and children, by the soldiers of the Seventh Cavalry in December 1890.

On 26 June 1975, the two FBI agents entered the reservation to locate four individuals wanted on charges of assault and theft. Peltier does not deny that he was present during the firefight that ensued, nor that he fired a gun. But he did deny killing the already wounded agents by firing on them at close range as alleged by the prosecution at his trial. Two other AIM leaders, Darelle Butler and Robert Robideau, who were also charged with the Pine Ridge killings, were tried separately and acquitted on self-defence grounds. They argued successfully that there was an atmosphere of such fear and terror on the reservation that the move by the Indians to shoot back at the two FBI agents constituted legitimate self-defense.

Peltier fled to Canada. His extradition to the USA from Canada in 1976 was granted on the basis of evidence which the FBI later admitted it had fabricated. A mentally disturbed Indian woman, Myrtle Poor Bear, said in affidavits that she had seen Leonard Peltier shoot the agents. Her statement was crucial to the case against Peltier at the extradition hearing since hers was the only eyewitness account of the murders. However, her statements were later shown to be false, given under pressure from the FBI. She retracted all of her testimony in 1977. A US prosecutor, Evan Hultman, acknowledged in 1978 that there "was not one scintilla of evidence that showed that Myrtle Poor Bear was there, knew anything, did anything." Her affidavits were not used during Peltier's trial.

Unlike Butler and Robideau, Peltier was not permitted to present evidence concerning the atmosphere of terror on Pine Ridge, or information on the role of COINTELPRO[23] and FBI misconduct in other cases. Defence attorneys were not allowed to question FBI agents on discrepancies between their written reports and their testimony. Perhaps most importantly, Myrtle Poor Bear was not allowed to describe before the jury how she had been coerced by the FBI into signing false affidavits implicating Peltier, on the grounds that her testimony "could be highly prejudicial" to the government.

Amnesty International sent observers to Leonard Peltier's trial in 1977 and to subsequent appeal and evidentiary hearings in 1978, 1983, 1984 1985 and 1991. The organization remains concerned at certain irregularities in the proceedings which led to Peltier's conviction which, it is felt, may have prejudiced the fairness of his trial. In 1980, as a result of a Freedom of Information Act suit, 12,000 pages of FBI documents were released to Leonard Peltier's lawyers. It emerged that evidence which might have assisted

[23]Counter-INTELligence PROgram: an FBI surveillance operation which targeted a number of domestic political groups in the late 1970s and early 1980s, including AIM and the Black Panther Party.

Peltier's case had been withheld from the court by the prosecution at the trial. The evidence included a 1975 telex from an FBI ballistics expert which stated that Peltier's gun had a "different firing pin" from that of the gun used to kill the agents. But at a court hearing in 1984, an FBI ballistics expert testified that the telex had been merely a progress report and that a bullet casing tested later had been found to match "positively" with Peltier's gun. This second bullet, the prosecution claimed, had been fired at point-blank range.

An appeal court found that the prosecution had indeed withheld evidence which would have been favourable to Leonard Peltier, but considered that it would not have materially affected the outcome of the trial. A motion for a new trial was denied by the court in September 1986. Upholding Peltier's conviction, the court said "We recognize that there is evidence in this record of improper conduct on the part of some FBI agents, but we are reluctant to impute even further improprieties to them."

Leonard Peltier now has the support of Judge Gerald Heaney, a senior federal judge on the Eighth Circuit Court of Appeal, who was a member of the panel which considered and turned down Peltier's appeal. In April 1991, in a letter to Senator Daniel Inouye, chair of the Senate Select Committee on Indian Affairs, Judge Heaney put forward several points he hoped President Bush might consider in determining whether to "take action to commute or otherwise mitigate the sentence of Leonard Peltier." Judge Heaney wrote,

> "First, the United States government over-reacted at Wounded Knee. Instead of carefully considering the legitimate grievances of the Native Americans, the response was essentially a military one which culminated in a deadly firefight on June 26, 1975 between the Native Americans and the FBI agents and the United States marshals.
> Second, the United States government must share the responsibility with the Native Americans for the June 26 firefight. It was an intense one in which both government agents and Native Americans were killed. While the government's role in escalating the conflict into a firefight cannot serve as a legal justification for the killing of the FBI agents at short range, it can properly be considered as a mitigating circumstance."

Heaney also expressed the opinion that "the FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the Peltier case." He concluded, "At some point, a healing process must begin. We as a nation must treat Native Americans more fairly. To do so, we must recognize their unique culture and their great contributions to our nation. Favorable action by the President in the Leonard

Peltier case would be an important step in this regard." In June 1991, a presidential legislative aide told Senator Inouye that the White House was investigating the matter.

The circumstances of his extradition and trial lead Amnesty International to conclude that justice would best be served if the US authorities were to grant Leonard Peltier a retrial. Others seeking a new trial for Leonard Peltier include 50 members of the US House of Representatives, 51 members of the Canadian Parliament (including the Solicitor General at the time of Peltier's extradition), the Archbishop of Canterbury (United Kingdom), Bishop Desmond Tutu (South Africa) and other political and religious leaders.

On 5 July 1992 a riot broke out in Fort Leavenworth prison in Kansas where Leonard Peltier is confined. Information from several sources, including an official incident report, indicated that while other inmates threw objects at prison staff Peltier did not participate in the riot. He was reportedly protected by other Indian inmates on a stage in the prison auditorium and then crouched on the floor to escape the effects of tear gas. Nevertheless, Peltier was charged and found guilty as an "active participant" in the riot, was put in solitary confinement (along with 53 other inmates), and was threatened with a disciplinary transfer to a different prison. The riot was video-taped by the prison. When US news and current affairs programmes sought to view the footage, the prison administration refused permission. The prison announced on 16 July that, after reviewing the tape, they had concluded that Peltier was "not really involved" in the incident. He was released back into the prison's general population.

Leonard Peltier

Julian Pierce
(Associated Press)

EVENTS IN ROBESON COUNTY, NORTH CAROLINA, 1988

The murder of Julian Pierce

Julian Thomas Pierce, a Lumbee Indian activist and director of a legal aid organization for the poor in Lumberton, North Carolina, was shot dead in the early hours of 26 March 1988. He received three shotgun wounds at close range, apparently after opening his door to a caller. At the time of his death he was a candidate for the Democratic nomination for Superior Court judge in Lumberton (a newly created judgeship to give minorities a better chance of electing a judge). Shortly before his death it seemed likely that he would defeat the only opposing candidate, Joe Freeman Britt, Lumberton's district attorney for 14 years, who is white.[24] Pierce would have been the first Lumbee Indian to serve as a judge in Robeson County. Although Britt was the automatic winner of the primary election on 3 May 1988, there was a high turnout, with a majority of voters casting a symbolic vote for the deceased Pierce, who won the election by 1,897 votes. (In the aftermath of Julian Pierce's murder the North Carolina legislature created another Superior Court judgeship for Robeson County and Governor James Martin appointed Lumbee Indian Dexter Brooks to the post.)

Pierce's campaign workers had reportedly received a warning that a threat against Pierce existed, but had not taken it seriously. Pierce had been highly respected by blacks, Indians and whites in the local community. He was a member of the Ad Hoc Committee on Indians and the Criminal Justice System, which produced a major report on the subject, published by the North Carolina Commission of Indian Affairs in October 1987. His supporters speculated that he was killed "because someone did not want a Lumbee Indian to be a judge."[25] Police initially described the crime as an "assassination," but three days later ruled out a political motive and said it was "just another murder." On Tuesday 29 March police charged one Indian man with the murder while another Indian suspect, John Anderson Goins, allegedly committed suicide as he was about to be arrested. Lumberton's sheriff, Hubert Stone, announced to a press conference on 29 March 1988 that Goins had

[24]Pierce's victory in the election seemed assured when, on 8 March 1988, Indians, blacks and poor whites in the county formed an electoral majority and succeeded in passing a referendum to merge the county's five racially segregated school systems into a uniform system. The school merger victory led many to anticipate that the same alliance of voters would elect Pierce to the superior court judgeship.

[25]As quoted in the New York Times, 28 March 1988.

apparently killed himself with a self-inflicted shotgun wound to the head. The first suspect, Sandy Chavis, was charged with first-degree murder. However, in June 1990 he was given a five years' suspended sentence in exchange for pleading guilty as an accessory to murder.

Sheriff Stone indicated on 29 March 1988, three days after the crime, that he would look no further for conspiracy in the killing. Many local residents were unsatisfied with Stone's decision. Amidst considerable community unease and distress at Julian Pierce's death, the Lumberton-based Center for Community Action asked Congress for an immediate hearing and investigation "regarding corruption, drug trafficking, unsolved murders, the murder of Julian Pierce and other civil rights violations in Robeson County." No such inquiry was forthcoming. The official police finding was that Pierce's murder was the result of a domestic incident but widespread concern persisted within the Lumbee community which has continued to pursue its own investigation into the matter. Its findings are pending.

Amnesty International is unable to reach a conclusion as to whether or not Julian Pierce's murder was politically motivated. However, the organization is concerned at suggestions that Julian Pierce may have been killed because of his community leadership role and to prevent him from winning election as a judge. The case was "solved" with great rapidity and no further investigation was deemed necessary despite the threat Pierce had received. The circumstances surrounding the death of the suspect John Goins were not fully clarified. Given the overall context of events in Robeson County at the time of Pierce's murder, Amnesty International believes that a full independent investigation should have been undertaken by the FBI and the North Carolina authorities.

Hazel Pierce, left, and Connie Pierce Oxedine at the Church of God Cemetery, Aberdeen, North Carolina, after Julian Pierce's funeral, 31 March 1988
(Associated Press)

Background to Robeson County, North Carolina

Robeson County is a rural region. It is the second-largest county, located in the Southeast corner of North Carolina, bordering on South Carolina. Its population of just over 100,000 is divided almost evenly between white, black and Indian inhabitants. More than half of North Carolina's 65,000 Indians reside in Robeson County. Robeson County is the home of the Lumbee: the largest non-federally recognized tribe of Indian people in the USA and the largest Indian nation east of the Mississippi River.

The county is poor: the median income of its residents ranks 96th in the state. A number of recent studies have indicated that Indians are 50 percent more likely than whites to be the victims of an accidental death, and are more than twice as likely to be murdered as are whites or blacks. A review of the 1,183 Indian deaths in Robeson County between 1982 and 1986 showed that one out of every six deaths was violent.

A research study of Robeson County court records in 1984 showed that a disproportionately large percentage of defendants (80 percent) were non-white, with 52 percent being American Indian. In 1980, Robeson County's incarceration rate of 433 persons per 100,000 population, was almost three times the national average and 70 percent higher than the state average.[26] Local government and the criminal justice system is dominated by whites.

The local district attorney (prosecutor) for 14 years until he became a Superior Court Judge at the end of 1988, was Joe Freeman Britt. Britt is said to have won more

[26] Research by the Legal Justice Project of the Center for Community Action, Lumberton, North Carolina.

death penalty cases than any other prosecutor in the country. By the time he left office the figure stood at over forty. In a 1987 magazine interview, Britt described how he sought to persuade juries to impose the death penalty rather than the alternative penalty of life imprisonment, saying, "In every prospective juror's breast there beats the flame that whispers, 'Preserve human life.' It's my job to extinguish that flame." All five American Indians currently under sentence of death in North Carolina come from Robeson County and were prosecuted by Joe Freeman Britt's office.

In the 1980s the Indian community in Robeson County began to organize itself politically to protest against alleged unfair practices in local government, the education system, and in the criminal justice system. In November 1986 an unarmed Lumbee Indian, James Earl Cummings, was shot and killed by a Robeson County sheriff's deputy after he was stopped for a traffic violation. A coroner's jury found that the killing was either an accident or self-defense. A thousand people marched on the courthouse to protest.

In October 1987 a committee appointed by the North Carolina Commission on Indian Affairs found that Robeson was the county "most in need of change." It called for a task force to monitor the treatment of minorities; revision of pretrial release policies to increase use of unsecured bonds for indigent defendants not charged with serious offenses; new procedures to ensure that defendants are not required to spend unnecessary days in court; and the hiring of more Indians in the criminal justice system.

On 1 February 1988, Eddie Hatcher, and Timothy Jacobs, two Tuscarora Indians, seeking attention for allegations of corruption in local government, took hostages at *The Robesonian* newspaper in Lumberton, the county's main town. The siege ended after ten hours when Governor James Martin agreed to appoint a group of officials to investigate charges that law enforcement was biased against members of minorities and that drug traffickers had haven in the county.

Hatcher and Jacobs stood trial in federal court in late September 1988, charged with hostage-taking and weapons offenses. On 14 October 1988 the jury of nine blacks and three whites found both defendants not guilty on all counts. But in December, a North Carolina grand jury indicted Hatcher and Jacobs on 14 counts of second-degree kidnapping. Both Hatcher and Jacobs fled from North Carolina. Their lawyers called the state indictments "an ugly, vindictive prosecution designed to punish [Hatcher and Jacobs] for being acquitted."

Timothy Jacobs was extradited to North Carolina from New York in March 1989. In May 1989, he plead guilty to the charges in exchange for a six-year prison sentence. In July 1989, Eddie Hatcher was returned to North Carolina from Idaho where he had sought sanctuary. After lengthy legal proceedings, in February 1990 he agreed to plead guilty to the 14 counts of second-degree kidnapping in exchange for an 18-year prison sentence.

CONCLUSIONS AND RECOMMENDATIONS

1. The Death Penalty:

The death penalty denies the right to life. It is a cruel and inhuman punishment, brutalizing to all who are involved in the process. It serves no useful penal purpose and denies the widely accepted principle of rehabilitating the offender. It is irreversible and, even with the most stringent judicial safeguards, may be inflicted on an innocent person.

Amnesty International has examined in detail 27 of the 45 cases of Indians now under sentence of death in the USA and is concerned that they serve only to confirm the organization's previous conclusion that the death penalty as applied in practice in the USA is arbitrary, discriminatory and unjust. The evidence suggests that judicial safeguards designed to ensure that the death penalty is applied fairly and is reserved only for the most culpable offenders have not been met in practice.

The evidence suggests that race – especially that of the victim – has an important bearing on the eventual likelihood of a death sentence. Amnesty International believes this is a matter for serious and urgent concern. Of 37 Indian defendant cases where the race of the murder victim was known, 33 involved white victims and only four involved the murder of members of an ethnic minority group.

All Indian defendants currently under sentence of death in the USA were convicted under state law. Although the federal government does not have a direct role in state law enforcement, it does have a duty to ensure that all laws within its territorial jurisdiction conform to minimum international standards, and it has a responsibility to promote respect for human rights standards. Amnesty International respectfully calls on the federal government to use its influence with a view to eliminating the death penalty from its country's statute books. A commission of inquiry at the federal level should be conducted into the effect of racial discrimination and other adverse factors, such as economic and social deprivation, on the application of the death penalty across the country.

The death penalty should not be reinstated in federal law. This would be contrary to international human rights standards which encourage governments to restrict progressively the use of the death penalty, with a view to its ultimate abolition. A broad federal death penalty law for first-degree murder would be likely to have a disproportionate impact on Indians convicted of murders committed on Indian reservations.

Amnesty International calls on state government to commute all death sentences. In view of the special concerns raised about American Indian capital defendants as a group (concerns which include acute deprivation, inadequate legal representation at trial, mental illness, mental retardation and chemical dependency), Amnesty International urges state governments to grant a general commutation of the death sentences of Indians now on

death row, and urges that no further death sentences in any case be imposed or carried out.

2. Prison ill-treatment:

Amnesty International was concerned at the ill-treatment of prisoners, including Indian inmates, in Montana State Penitentiary in September 1991, and continues to investigate allegations of ill-treatment of prisoners elsewhere in the country.

Prison authorities are responsible for ensuring that prison personnel are fully aware of the requirement that inmates be treated humanely at all times, in accordance with the provisions of international standards including the Convention Against Torture and the *United Nations Standard Minimum Rules for the Treatment of Prisoners*. Amnesty International urges prison authorities to make it clear that the torture or other cruel, inhuman or degrading treatment of prisoners will not be tolerated under any circumstances.

Amnesty International commended the Director of Montana's Department of Corrections for commissioning an independent agency inquiry into the September 1991 prison riot, and urged that The Inquiry Team's recommendations concerning in particular the grievance and disciplinary systems, the use of force policy and measures for reviewing and alleviating conditions in the Maximum Security Unit be implemented as a matter of priority.

Amnesty International is concerned that conditions in five Navajo tribal jails, if confirmed, would be in clear violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and could amount to cruel, inhuman and degrading treatment of prisoners.The federal government should ensure that funds are made available to bring the Navajo tribal jails into conformity with minimum international standards for the treatment of prisoners.

3. Ill-treatment by police:

Amnesty International's findings regarding ill-treatment by police in Los Angeles, California (published in June 1992) suggested that there have been a disturbing number of cases in recent years in which law enforcement officials in Los Angeles resorted to excessive force, sometimes amounting to torture or other cruel, inhuman or degrading treatment. The evidence suggests that racial minorities, especially blacks and latinos, have been subjected to discriminatory treatment and are disproportionately the victims of abuse.

Although unable to verify the accounts of ill-treatment given to the California Senate Judiciary Sub-Committee on "Peace Officer Conduct" during two days of hearings in Arcata and Redding in December 1991, Amnesty International is concerned at reports

of ill-treatment, harassment and brutality against Indians by the police and sheriffs departments in northern California. It was apparent from the testimony given that procedures for filing complaints against police officers left much to be desired and the system was failing adequately to investigate and bring to justice perpetrators of attacks against American Indians in California.

Amnesty International welcomes moves by the California legislature to address this serious issue and urges that police leadership and other responsible authorities throughout the country should make it clear that torture and other cruel, inhuman or degrading treatment will not be tolerated. The authorities should take steps to incorporate the *United Nations Code of Conduct and Basic Principles on the Use of Force by Law Enforcement Officials* into their codes of practice. Strong disciplinary measures should be undertaken and, where appropriate, criminal prosecutions, for the abusive use of force and firearms, in accordance with international standards.

3. The case of Leonard Peltier:

Amnesty International takes no position in relation to the activities of domestic intelligence agencies or irregular government conduct unless these result in violations of human rights which Amnesty International exists to uphold. The organization is concerned, in Leonard Peltier's case, that a combination of official misconduct and intelligence activity may have jeopardized the fairness of his trial. The circumstances of both his extradition from Canada and his trial were such as to lead Amnesty International to conclude that Leonard Peltier should, in the interests of justice, be granted a retrial. Amnesty International urges the federal authorities to review his case in order to bring this about.

Amnesty International sent observers to Leonard Peltier's trial in 1977 and to subsequent appeal and evidentiary hearings in 1978, 1983, 1984 1985 and 1991. The organization has also documented misconduct by the FBI in its intelligence investigations in the late 1970s and early 1980s into the activities of domestic political groups. Amnesty International identified instances where Indian activists and others appeared to have been falsely charged with criminal offenses, selectively prosecuted or deprived of due legal process for reasons of race or political activities.

4. The case of Julian Pierce:

Amnesty International is unable to reach a conclusion as to whether or not Julian Pierce's murder was politically motivated. However, the organization is concerned at suggestions that Julian Pierce may have been killed because of his community leadership role and to prevent him from winning election as a judge. Given the overall context of events in Robeson County at the time of Pierce's murder, Amnesty International believes that a full

independent investigation should have been undertaken by the FBI and the North Carolina authorities.

APPENDIX I: AMERICAN INDIANS UNDER SENTENCE OF DEATH IN THE UNITED STATES OF AMERICA, JULY 1992

ARIZONA: 3 out of 102

NAME	DATE SENTENCE	RACE OF VICTIM	COMMENTARY
Darrick GERLAUGH	11 February 1981	White male	Aged 19 at crime. Two co-defendants did not receive death penalty.
Sean RUNNING EAGLE		White	
Eldon SCHURZ	21 Sep 90	American Indian male	Aged 26 at crime. Drug addict. Alcoholic. Murder of fellow-transient after street brawl. American Indian co-defendant given probation in exchange for testimony against Schurz at trial.

ARKANSAS: 1 out of 33

Daniel REMETA	September 1986	White female	Also under death sentence in Florida. Diagnosed mentally ill. Childhood abuse alleged.

CALIFORNIA: 13 out of 331

Clarence Ray ALLEN (Cherokee)	22 November 1982	1 Hispanic female; 2 White males	Crime date: 5 Sep 80. Allen aged 52. Co-defendant also sentenced to death.
Pedro ARIAS	22 February 1990	1 White male	Aged 24 at time of crime. Crime date: 23 May 1987.
Fernando CARO (Apache-Yaqui)	5 January 1982	1 White male 1 White female	Aged 32 at time of crime. Crime date: 20 August 1980.
Dean CARTER (Eskimo)	30 January 90 9 Sept 91	3 White females 1 White female	Aged 29 at time of crimes.
Ronald DEERE (Sioux/Choctaw)	9 November 82 (vacated) 28 July 1986	2 White female 1 White male	First death sentence reversed for failure of defence to present any mitigating evidence (at Deere's request). Testimony at second penalty trial that Deere a drug addict and alcoholic. In deep depression at time

			of crime. Plead guilty, waived penalty phase jury, asked for death penalty.
Raymond GURULE	19 December 1990	1 White male	Aged 24 at time of crime. Crime date: 16 May 1982. Crime unsolved four years.
Martin KIPP (Blackfeet)	18 Sept 1987 24 Feb 1989	1 Black female 1 White female	Two death sentences.
Kenneth LANG (Sioux)	5 December 1984	1 White male	Aged 24 at time of crime. Crime date: 18 August 1983.
Joseph POGGI (Papago)	12 November 1982	1 White female	Severe, irreversible brain damage from accident as young child; long history mental illness; chronic schizophrenia; mentally retarded. Released from mental institution shortly before crime committed.
Alejandro RUIZ (Chumash)	21 February 1980	2 Hispanic females 1 Hispanic male	Crime dates: 1975 and 1978.
N.I. SEQUOYAH	28	2 white	Crime dates: 7 December

/ Billy Ray WALDEN (Cherokee)	February 1992	females 1 white male	1985 and 20 December 1985
Douglas STANKEWITZ (Mono)	12 October 78 (vacated) 18 Nov 83	1 White female	Aged 19 at crime. Offence date: 8 Feb 78. Low IQ. Childhood beatings, neglect, foster homes.
Larry WEBSTER	9 June 1983	1 White male	Viet Nam war veteran: personality changed after two tours of combat duty.

DELAWARE: 1 out of 6 (James Allen RED DOG)

FLORIDA: 1 out of 319

Daniel REMETA	3 June 1986	1 White male	Also under death sentence in Arkansas. History child abuse and mental illness. Substance and alcohol dependency.

MISSOURI: 1 out of 82 (Emmett NAVE)

MONTANA: 2 out of 8

Lester KILLS ON TOP		Both convicted of murder of same victim: 1 White male	All white jury after venue change to predominantly white area
Vern KILLS ON TOP			All white jury after venue change to predominantly white area

NEBRASKA: 1 out of 12 (Randolph REEVES)

NORTH CAROLINA: 5 out of 110

Elwell BARNES	20 December 1985 (with Henry Hunt)	1 White male 1 Black male	IQ of 68. Illiterate. Remanded by NC Supreme Court for resentencing 1991
Jerry Ray CUMMINGS	10 July 1987	1 White male	Alcoholic. Illiterate. Remanded by NC Supreme Court for resentencing 1991

Henry Lee HUNT (Lumbee)	20 December 1985 (with Elwell Barnes)	1 White male 1 Black male	Defence presented no mitigation evidence at trial. NC Supreme Court affirmed sentence 1992
William H PORTER (Lumbee)	9 December 1986	1 American Indian female	Aged 61 at crime. IQ of 71. Ten Indian prospective jurors challenged by prosecutor. Remanded for resentencing May 1990.
James Earl WILLIS (Lumbee)	2 November 1987	1 White male	Aged 19 at crime. Low IQ. Three white male co-defendants sentenced to prison and since released.

OHIO: 2 out of 118 (Alfred MORALES and Billy SLAGEL)

OKLAHOMA: 12 out of 120

Gary Thomas ALLEN			Death sentence vacated; awaiting resentencing trial
John Walter	3 May 1984	2 White	Grew up in great

CASTRO	1 April 1985	female	poverty. Two death sentences.
Jerald Wayne HARJO (Seminole Creek)	September 1988	1 White female	Low IQ. Aged 24 at crime. Family history of alcoholism. No prior felonies.
Terrance A JAMES	5 January 1984 (With Sammy Van Woudenberg)	Male (prison inmate)	Denied state post-conviction relief.
Barney MARSHALL (Creek)	17 May 1991	1 American Indian female	Physical abuse and neglect as child. Low IQ. Aged 21 at crime.
Howard MARQUEZ (Apache/Yaqui)	23 May 1988	1 White male 1 White female	Case pending on direct appeal
James Glenn ROBEDEAUX	7 July 1986		Case pending on direct appeal
Maximo SALAZAR	30 June 1988	1 White female	IQ 65-81. Neglected, beaten as child.
Thomas Benjamin TIGER (Creek)		1 White male	Discharged from military for alcohol abuse. Case pending on direct appeal

Sammy Van WOUDENBERG (Seminole)	5 January 1984 (with Terrance James)	1 Male (a fellow prisoner)	Low IQ. Poverty. Violent home environment. Mother drank alcohol while pregnant. Possible Foetal Alcohol Syndrome.
Forrest Kinzer WADE (Choctaw)	pending resentencing	1 American Indian male 1 White male	Great poverty. Violent home environment. Father alcoholic. Date of crime: 5 July 1986. Pending resentencing
Stephen Vann WHITE (Creek/Ute)	2 June 1989	1 White female	Long history mental illness; solvent/alcohol abuse. Violent family background, neglect. Schizophrenic.

TENNESSEE: 2 out of 104 (Donald STROUTH, Michael HOWELL)

TEXAS: Uncertain: at least 1 out of 356 (Danny Dean THOMAS)

APPENDIX II: AMERICAN INDIAN FEDERAL AND STATE INCARCERATION RATES 1988

Incarceration rates for American Indians, Alaskan Natives and Pacific Islanders as a percentage of total inmate populations - (1988). Source: US Department of Justice, *Correctional Populations in the United States, 1988*. The table includes only those states with an American Indian inmate population of 0.1 percent and above.

State	Indian population in state	Percent of total population	Total inmate population 31 Dec 1988	Indian inmate population	Indian inmates as percentage of total inmate population
Alaska	179,603	16.0	2,588	849	32.8
Arizona	153,463	5.6	12,095	440	3.6
California	224,455	0.9	76,171	not reported	(estimated 0.5)
Colorado	18,929	0.6	5,765	74	1.2
Connecticut	4,710	0.1	8,005	15	0.2
Hawaii	118,268	12.3	2,300	1,301	56.6

Idaho	10,839	1.1	1,581	57	3.6
Illinois	17,346	0.2	21,081	35	0.2
Iowa	5,637	0.2	3,034	51	1.6
Kansas	15,751	6.0	5,817	95	1.6
Maine	4,145	0.4	1,277	5	0.4
Mas'chusetts	8,117	0.1	6,757	32	0.8
Michigan	40,849	0.4	27,612	116	0.4
Minnesota	2,187	0.9	2,799	219	7.8
Miss'ippi	6,510	0.2	7,384	17	0.2
Montana	37,405	4.8	1,272	247	19.4
Nebraska	9,355	0.6	2,156	69	3.2
Nevada	13,917	1.7	4,881	103	2.1

New Mexico	106,336	8.2	2,825	87	3.0
New York	41,148	0.2	44,560	196	0.4
North Carolina	65,491	1.1	17,078	439	2.6
North Dakota	20,204	3.1	466	77	16.5
Oklahoma	169,974	5.6	10,448	627	6.0
Oregon	28,802	1.1	5,991	152	2.5
Pennsylvania	10,291	0.1	17,900	26	0.1
Rhode Island	2,969	0.3	1,906	11	0.5
South Dakota	45,013	6.5	1,020	256	25.0
Utah	20,100	1.4	1,969	50	2.5
Washington	63,780	1.5	5,816	284	4.8
West Virginia	1,684	0.1	1,455	2	0.1

Wisconsin	29,882	0.6	6,353	149	2.3
Wyoming	7,196	1.5	945	52	5.3
Federal	--	--	49,928	1,265	2.5

APPENDIX III: US CULTURAL AREAS AND TRIBAL LOCATIONS