

Discussion: The Threat to Constitutional Law

State Rep. Coy Pugh: Thank you, Mr. Chairman, and thank you, Judge and Senator for affording us this opportunity to spend some time with you.

Judge, you referred to this bureaucracy. Could you elaborate on who makes up this permanent bureaucracy?

Judge Ira Murphy: Essentially, it's in the Office of Internal—I think it's called Internal Security. These are officials who are not appointed by the Attorney General; they are the ones who have civil service status. They go from administration to administration. I don't have my notes with me on the point, but I believe it's in Internal Security.

And I might mention that the last victim was, of course, State Rep. Ben McGee [of Arkansas], who was alleged to have had improper conduct, but he was really just a lobbyist for an organization of the state, but they were in some way able to twist that into a criminal act, and they're just criminalizing acts that have been nothing more than business as usual, and they've taken them and turned them into criminal acts.

Representative Pugh: Well, I don't know if you're familiar, or have watched politics in Chicago, but there were several Fruehmenschen-type of projects. I think that one that's significant is the Silver Shovel. One of the individuals that survived that, happened to be a Latino Representative, and he was exonerated, but he made a statement on the House floor one day, that at any given time, the FBI can convict any elected official of a series of various crimes, because the nature of politics, the nature of what we do as elected officials, is corrupt. And so, I don't think it's so much a matter of the business as usual; it's who does the business as usual. And it's usually the minority representatives, or elected officials, that get caught up in crossing that line, that nebulous line.

Judge Murphy: Well, as Senator Mitchell has indicated in some correspondence, it's really selective prosecution. And it's selective prosecution for the most aggressive and visible minority politician. If you're highly visible, if you're a threat to the system, if you can move something, if you can change something, or you're a threat to something, then you are a target. You are a target.

State Sen. Theo Mitchell: If I may add something on this. In South Carolina they set up a so-called sting operation in 1989, shortly after I announced I was running for governor. And out of that, they caught over half of the Black Caucus, literally destroyed the seniority that the members had worked for. They set it up, tried to bait me. By God's grace, I didn't bite. But a few of the majority legislators took some of the

bait. Consequently, 27 people were convicted and went to jail.

After I ran for lieutenant governor in 1994, and was looking quite successful, then they went back eight years on a transaction I did as a lawyer, and brought it to the forefront, and threatened my staff and me with jail for money-laundering. Consequently, I had to take the fall on a misdemeanor, and a Republican judge gave me 88 days, and I was stripped of my seat in the Senate, without a hearing, on a misdemeanor charge.

Jack Keeney, Sr., the Deputy Assistant Attorney General, is in charge of this. He, along with J. Edgar Hoover and Richard Nixon, formulated this policy, put it in place. And I sent a letter to the National Association for the Advancement of Colored People—some of you have seen that letter—outlining in part the African-Americans and Latinos who actually had been victimized by this nefarious program. What it does is, it puts a glass ceiling over minorities' heads, to where if

The Speakers Roster

The following is the full list of those who presented testimony to the Ad Hoc Hearings on June 22. Several of the speakers also served on the panel of legislators. Affiliations are for identification purposes only.

Panel I. The Economic Crisis

Terri Bishop, director, Community for Creative Non-Violence Homeless Shelter, Washington, D.C.

Greg Blaska, director, National Dairy Board; local director, Wisconsin Farm Union; Sun Prairie, Wisc.

George "Bill" Burrows, member, State Committee of the Farm Service Agency, Adams, Nebraska.

Robert Cebina, vice president, UAW Local 723, CAP Council Representative; Monroe, Michigan.

State Sen. Carlos Cisneros, chairman, Senate Ways and Means Committee, New Mexico Legislature; Questa, N.M.

State Rep. Thomas Jackson, chairman, Agriculture, Forestry, and Natural Resources Committee, Alabama Legislature; vice-chairman, Agriculture Committee, National Conference of State Legislatures; Thomasville, Ala.

E. Martin "Marty" Jewell, chairman, Richmond Coalition on Housing, Virginia.

Lyndon H. LaRouche, Jr., Democratic Presidential pre-candidate; economist; *EIR* Contributing Editor.

V.B. Morris, National Secretary, American Agricultural Movement, Texas.

you're going to become a threat to the system, then the system squeezes you like an orange, and puts you out of business, and destroys you, if it can, and will put you in Federal prison. That is a system that is alive and well. The NAACP literally turned its back on my proposal for them to do something about it, and they didn't.

And since that did come up, as the judge said, [former HUD Secretary] Alexis Herman was the latest. Ben McGee, of course we know about that, and to point out, [Transportation Secretary] Henry Cisneros of Texas. You can go down the list. You've even got Alcee Hastings, a seated Federal judge, among many other legislators, members of Congress, and city councils, and mayors, and what have you.

These are fascists, these are Nazis, these are people who have stood behind that young Keeney, Jr. to turn the clock back, to maintain the status quo, and to destroy any and all African-Americans, Latinos, and other minorities, who dare

raise their hand, their voices, on issues, and show that they are human beings, and have a sensitivity for people. This is a very vicious, vile, and evil system, that must be destroyed.

State Rep. Ernest Newton: Thank you, Senator Mitchell, it's good to see you. And I do recall '89. I was a newly elected Representative, and had the privilege to go to Miami. And the things that the FBI did down there, were despicable, where they bugged our rooms, and they did all kinds of things to catch some of our colleagues.

My question is: Has the Congressional Black Caucus, seeing that most of them came from the National Black Caucus of State Legislators — and, as you're aware, we've tried to address this issue at our conventions — have they done anything, seeing the kinds of things that are happening, to try to address this issue on the Hill?

Senator Mitchell: Not to my knowledge. The only one who

Melvin Muhammad, State President, AFSCME, Nebraska.

Randy Sauers, dairy farmer, Middletown, Maryland; Executive Board, Mid-Atlantic Egg Council and Executive Board, Maryland/Pennsylvania Dairymen's Association.

State Rep. Ed Vaughn, first vice chairman, Michigan Legislative Black Caucus; Detroit.

Louis Whitehead, president, Portsmouth Central Labor Council, AFL-CIO; Portsmouth, Virginia.

Panel II. Health Care

Dr. Kildare Clarke, MD, associate director, Emergency Room, Kings County Hospital, Brooklyn; Doctors Council, New York.

Alphonso Coles, National Black Leadership Initiative on Cancer, Washington, D.C.

Joe Jones, City Councilman, Cleveland, Ohio.

Dr. Abdul Alim Muhammad, MD, Medical Director, Abundant Life Clinic Foundation; Minister of Health, Nation of Islam; Washington, D.C.

Dr. Ray Terry, Director of Health Research, University of Maryland.

State Rep. LeAnna Washington, member, Health and Human Services Committee; Judiciary Committee, Pennsylvania Legislature; Philadelphia; chair, Philadelphia Black Elected Officials.

Chet Wray, former State Assemblyman; chairman, United Auto Workers Retirees, California.

Panel III. Constitutional Law and Justice

Congressman Mervyn M. Dymally, former chair-

man, Congressional Black Caucus, Los Angeles, Calif.

John Gilliam-Price, National Speaker, Campaign to End the Death Penalty, Baltimore.

Most Rev. Thomas Gumbleton, Roman Catholic Auxiliary Bishop, Detroit.

State Rep. Harold James, chairman, Subcommittee on Crime and Corrections, Judiciary Committee, Pennsylvania Legislature; Philadelphia.

Father Richard McSorley, S.J., director, Center for Peace Studies, Georgetown University, Washington, D.C.

State Sen. Theo Mitchell, former Democratic nominee for governor of South Carolina; Greenville.

Judge Ira Murphy, former State Rep., former General Sessions Judge; Memphis, Tennessee.

State Rep. Ernest Newton, Deputy Majority Leader, Connecticut Legislature; Bridgeport.

State Rep. Coy Pugh, chairman, Revenue Committee; member, Committees on Human Services; Appropriations-Public Safety, Illinois Legislature; Chicago.

Delegate William P. Robinson, chairman, Transportation Committee; member, Judiciary Committee, Virginia House of Delegates; Norfolk.

Barry Scheck, Esq., professor, Benjamin N. Cardozo School of Law; co-founder, Innocence Project; member, National Commission on the Future of DNA Evidence; New York City.

Bryan Stevenson, executive director, Equal Justice Initiative of Alabama; assistant professor, New York University School of Law; Montgomery, Ala.

William Taft, National Juneteenth Observance Foundation, Washington, D.C. representative and legislative affairs chairman.

did anything was Congressman Dymally. And I understand that there are several members of the Black Caucus who did not run again, from some of the states that some of you represent, because they were told by the FBI, that if you run for re-election, we're going to launch an investigation, and we're going to indict you. Some of you know some of the people I'm talking about. And they choose other paths to follow.

As had been stated, at any point in time, dirt can be dug up where a "t" hasn't been crossed, or an "i" hasn't been dotted, on us, and that's why a lot of members of the Congressional Black Caucus, and the National Black Caucus of State Legislators, are silent.

Judge Murphy: I think Senator Mitchell made a valid point. Several of our distinguished Congressmen have not run, because of the threat. And this is the evilness of this whole Department: the intimidation. It's the intimidation first, of the black minority community, and intimidation of future officials. And they've squeezed out some of our distinguished and influential people, whose names you would know.

Senator Mitchell: Debra Freeman just reminded me, that when Congressman Ford was put on trial the second time, some members of the Congressional Black Caucus did go to the Justice Department, to complain about the forum-shopping, for the lynching. They were threatened with being indicted for obstruction of justice.

State Sen. Joe Neal: Mr. Mitchell, you mentioned the Voting Rights Act, and the nullification of that particular act, and for my friends who are on this panel, who were elected as a result of that act, would you further elaborate for us, just what you mean about the nullification of that particular act?

Senator Mitchell: Certainly. The argument advanced by attorney, Keeney, Jr., was that from a dissenting opinion that was written by Justices Scalia, Rehnquist, and "Uncle Tom" Thomas, wherein they raised the question of the constitutionality of the Voting Rights Act. And Judge Sentelle bought this argument. He was the chief judge presiding on the panel, and consequently wrote the opinion, wherein it was stated that the Democratic Party was a private club; it could choose anyone it wanted. It bought the idea that, like the Jaybird primaries of the '40s and the '50s, or the all-white primaries in the South, and particularly how they impacted against the minorities—that they didn't have to take anybody in, that they could exclude anyone they wanted to, and consequently, while not ruling that it was unconstitutional, the court bought the argument of this lawyer, which, with two more judges on the Supreme Court, could, in fact, have it declared unconstitutional. So, the seed has been planted in the Supreme Court, about this particular act, and how it was raised by a Republican representing the Democratic National Committee, and Don Fowler, and ironically, the Democratic Party.

Senator Neal: Am I correct in understanding that along

about 1968, thereabouts, that certain provisions were slipped into the Federal statute, to allow them to interpret this to say that that act was repealed? Is that what is happening here? I see Mrs. Freeman shaking her head, "no."

Senator Mitchell: I don't think it was. It has to be renewed every ten years. And it's always a fight. Always a fight to renew it—it's every ten years.

Senator Neal: Has the act been renewed?

Senator Mitchell: It has been renewed twice. It will be up in the next couple years, I believe. When will it be up again? It was in '65 that it passed—'75, '85—so, it's been renewed three times. It would be 2005.

Senator Neal: I guess, it must have been something I was reading—I don't recall at the moment—but some law professor was researching this particular act, and he found that the act was repealed. I think it came out of the University of . . . one of the western states, I believe it came out of the state of Utah, that interpreted some statute—I don't recall the citation of the statute—that somehow this act had gotten repealed. But, that was not the case?

Senator Mitchell: Not yet. It hasn't been. It would die automatically, if it wasn't renewed.

Senator Neal: On what basis? Well, answer this question for me. On what basis, then, was it determined that the Democratic Party is a private club?

Senator Mitchell: That was the argument that was advanced in 1948, during the Jaybird primaries—

Senator Neal: I understand that—

Senator Mitchell: —when blacks tried to get into the party, and it was called a private club doctrine. And this is the argument that was advanced by Keeney, and was bought by the court. And the court called it a private club, similar to a private club.

Senator Neal: And that simply then means, I gather then, that whoever is controlling that club, determines what policy that the club would operate under?

Senator Mitchell: The chairman of the Democratic National Committee has the power to be able to determine who is a Democrat, and who isn't. Who can run for President, and who can't. And can nullify anyone elected to represent someone that they call "unfavorable," someone who they don't want. Like Lyndon LaRouche. And don't seat them at their state conventions, and strip them of their credentials. And just this past week, Arkansas is in court now, because LaRouche had 53,000 votes, and the chairman of that particular party sent out his edict: If you seat any of them, they're going to be stripped of their credentials, and not seated at the state, nor at the national, Democratic Convention. And that was the letter,

that was the act taken by Don Fowler, who was then chair of the Democratic National Committee, in 1996, when he sent this letter to all members of the Democratic Central Committee, and said that if you seat anybody that supports Lyndon LaRouche, you can't be seated as a delegate.

Senator Neal: Let me ask another question if I may, Mr. Chairman. If it has been decided that the Democratic Party is a private party on the national level, does it then necessarily follow that the state parties become branches of that particular party?

Senator Mitchell: That's in essence what that decision said, yes.

Senator Neal: So! Well, I just wanted to get that clear.

Senator Mitchell: We're in trouble this year, in November.

State Rep. Erik Fleming: Are there any other questions for the gentlemen? . . . We thank you all for coming. We appreciate all that you do. And we're going to allow you to be excused at this point, and we're going to go on. . . .

Preventing Convictions of Innocent People

by Bryan A. Stevenson

Mr. Stevenson is the executive director of the Equal Justice Initiative of Alabama, and assistant professor at the New York University School of Law. His testimony was previously presented to the U.S. Senate Judiciary Committee on June 13, under the title "Post-Conviction DNA Testing and Preventing Wrongful Convictions of the Innocent." We publish excerpts here. Footnotes have been omitted.

I greatly appreciate the opportunity to address the important legislation pending before this Committee. The "Innocence Protection Act" or Senate Bill 2073, is an enormously important step forward in the effort to improve the administration of criminal justice in the United States. The advent of DNA testing technology has dramatically advanced forensic science as applied to law enforcement and criminal investigations. However, notwithstanding our ability to now identify some innocent people who have been wrongly convicted of a crime, there are several procedural and technical obstacles that prevent many imprisoned people from proving their innocence through DNA evidence. By creating an appropriate and efficient mechanism for post-conviction testing and by affording indigent people with the essential assistance

of counsel, S. 2073 provides much-needed reform in a critical area where the demands of justice are most compelling.

DNA Testing

It is now clear that DNA testing is a highly accurate method of identification. It is significantly more accurate than blood, hair or semen tests, which were the primary methods of scientific identification used before DNA testing became widespread. As a result of improved DNA testing techniques and more reliable testing protocols, forensic scientists and lab investigators can now make definitive determinations about the identity of someone's blood, hair, semen, and other genetic evidence. This technological advance has revolutionized pre-trial and trial proceedings in criminal prosecutions in the last five years. Forensic scientists can offer dramatically greater assurances in some cases that the accused is guilty of the crime for which he or she has been charged. Similarly, in the last several years, DNA testing has prevented hundreds of wrongful prosecutions against people suspected of committing a violent crime who were in fact innocent. Law enforcement agencies across the country now routinely send DNA samples to the Federal Bureau of Investigation for testing in any case involving the arrest of someone for rape or rape-murder. As has been previously reported, of the first 18,000 results analyzed by the FBI labs, DNA testing excluded the suspect in 26% of the cases. This evidence of error regarding those whom the police wrongly suspected of committing a serious violent crime compels more effective use of DNA testing in the post-conviction context and makes the elimination of testing barriers absolutely crucial.

As an attorney who has primarily represented capital defendants and death row prisoners for 15 years, I am very impressed with the revealing influence of DNA testing in some capital cases. In new capital cases, it is rare that an aggravated rape-murder or sexual assault case is prosecuted without some effort to introduce DNA test result evidence. There have also been dozens of cases where people suspected of capital crimes have been cleared pre-trial as a result of DNA tests.

Post-Conviction DNA Testing

In the post-conviction context, DNA testing has proved somewhat more complicated. Because DNA testing was not readily utilized in many jurisdictions until after 1994-1995, there are many people who have been wrongly convicted of crimes in the 1970s and 1980s who are still in prison. Some of these wrongly convicted prisoners could be exonerated by DNA testing if a procedural mechanism were available to assist both in facilitating a test and in providing the necessary relief if the test result revealed that the imprisoned applicant was not guilty. While dozens of imprisoned people have already won their release after DNA testing established