Supreme Court decides Sixth Amendment dead

by Leo F. Scanlon

The Supreme Court ruling in the case of *Mu'Min v. Virginia* has breached the Sixth Amendment guarantee of a fair trial "by an impartial jury," and given a green light to the tyrannical use of the news media to railroad a conviction by poisoning the jury. The ruling marks another step in this Court's campaign to celebrate the 200th anniversary of the Bill of Rights by destroying it. It even prompted Justice William Kennedy, usually in the majority in such cases, to dissent. Justice Thurgood Marshall stated flatly that the ruling "turns a critical constitutional guarantee . . . into a hollow formality."

The ruling followed the pattern of this Court of utilizing death penalty cases to execute the Constitution as well as the convict. Dawud Mu'Min was a prisoner in a Virginia penitentiary, serving time for a murder he committed in 1973, when he evaded the lax security measures on a work detail, and raped, robbed, and brutally murdered a local store owner.

The incident occurred at the height of the national controversy in the case of Willie Horton, and intersected a heated local political race which focused on complaints about prison administration. Pre-trial publicity was massive and continuous up to the trial, and included widespread publication of a confession which Mu'Min made to authorities. In addition, Mu'Min's past record of convictions and trouble in prison was well publicized.

The issue was not simply whether the jury had been exposed to inflammatory and prejudicial coverage—the trial judge presumed that every juror knew the details of the case. In fact, 8 of the 12 jurors who sentenced Mu'Min to death admitted exposure to the coverage, and one of them was an acquaintance of the victim. Nor is there much indication that any jury would have failed to convict Mu'Min of the crime. It is these very circumstances which make the subsequent actions of the trial judge, and the Supreme Court's affirmation of them, so dangerous.

Despite the defense attorney's request for individual *voir dire,* the judge simply asked groups of jurors if they could "be impartial." No one admitted to prejudice—a not surprising reaction, and one which is recognized in the virtual entirety of the case law dealing with the *voir dire* process (whereby a juror's bias may be ascertained and judged). Justice Kennedy's dissent points out that "findings of impartiality must be based on something more than the mere silence of the individual in response to questions asked *en masse*."

Justice Marshall points out that a juror can be impartial even if he has been exposed to certain types of publicity, but that is a matter for the trial judge to determine, based on substantive questioning of the jurors. It is axiomatic that an individual is unlikely to recognize his own prejudice, and certain types of publicity have been recognized to taint even the most fair-minded persons. This case demanded that the court set standards for this process, and the majority—rejecting a long line of cases leading to this point—refused.

Constitution 'burdens' government

Worse, the court once again asserted that constitutional protections are superseded by the interests of the state. Justice Sandra Day O'Connor argued that a truly fair examination of the jurors would be an "administrative burden on the court." This contempt for the rights of American citizens is expressed in this Court's repeated battering of the Fourth and Sixth amendment protections, and is coherent with the Department of Justice's (DoJ) plan for destroying the Bill of Rights.

That scheme is articulated by the DoJ Office of Legal Policy in a series of monographs entitled "Truth in Criminal Justice." These papers are indebted to Jeremy Bentham, a leading opponent of the American Constitution, and reject the idea that a criminal trial must not only ascertain the facts of a case, but must judge the *mens rea* or mental state of the individual accused of the crime. It is the trial judge, not the potential juror, who presumably possesses the experience and judgment necessary to determine if a jury is tainted.

Apologists for the DoJ argue that this and all other protections which shield the citizen from tyrannical actions by the state, are simply a boon to criminals.

Justice Marshall points out that this sophistry finds no support in the rules currently followed by those U.S. courts which have not sunk to the level of the State of Virginia. He says: "Numerous Federal Circuits and States have adopted the sorts of procedures for screening juror bias that the majority disparages as being excessively intrusive. Additionally, two other States guarantee criminal defendants sequestered *voir dire* as a matter of right in all capital cases. . . . In short, the majority's anxiety is difficult to credit in the light of the number of jurisdictions that have concluded that meaningful steps can be taken to insulate the proceedings from juror bias."

These standards, enacted by state legislatures and honest courts, are not threatened by this ruling, and should be jealously protected. As Marshall indicates, this ruling has nothing to do with "fighting crime," but rather is aimed at sanctifying the type of political frame-ups for which Virginia is notorious. As with the show trials conducted against Lyndon LaRouche and his associates, it is precisely the pre-trial events, and especially the media coverage of flamboyant actions by the prosecutors, which make a sham of the jury trial system.