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Demjanjuk should be freed and restored to his American citizenship.

Put the real criminals behind bars

Evidence now under review by the Sixth Circuit suggests that there were indeed serious crimes committed in the Demjanjuk case, but those crimes were carried out by officials of the U.S. Department of Justice, the Israeli government, and the ADL.

One senior DOJ official who was earlier involved in the railroad prosecution and jailing of Lyndon LaRouche, Assistant Attorney General Robert Mueller III, has been cited by the court for his stonewalling on the Demjanjuk documents between January and June of this year, during a period when Demjanjuk was under a sentence of death by hanging in Israel. Despite repeated efforts by Sixth Circuit Clerk Leonard Green to obtain copies of the DOJ's files and status of its internal investigation of possible criminal misconduct by OSI officials, Mueller refused to answer phone calls or letters. Had Demjanjuk been executed in Israel, Mueller would be have been complicit in murder—along with the ADL.

On June 3, after being stonewalled by Mueller since Jan. 7, the Sixth Circuit, in a highly unusual move, reopened the Demjanjuk case on its own initiative.

Calls for probe of the OSI

A week after the Sixth Circuit action, Rep. James Traficant (D-Oh.), who along with Rep. Mary Rose Oakar (D-Oh.) has called for a House Judiciary Committee probe of the OSI, issued a blunt attack on the OSI in the *Congressional Record:*

"Mr. Speaker, a great crime was committed in the Demjanjuk case relative to the trial where he was charged with being the infamous Ivan of Treblinka. The criminal, as it turns out, was not Demjanjuk, a retired auto worker from Cleveland. It was a crime of the U.S. Justice Department that knew as early as August 1978 that the real Ivan [the Terrible] was Ivan Marchenko, not Demjanjuk.

"Our Justice Department chose to prosecute, more like persecute, Demjanjuk for that count. This is not wrongful prosecution, Members. This is a felony.

"And Alan Ryan and Neal Sher of the Office of Special Investigations can sue me, but I say they should go directly to jail for what they did to that man."

Ryan and Sher should be joined behind bars by the top officials of the ADL who not only helped conduit the false, KGB-manufactured evidence into all-too-willing U.S. and Israeli judicial systems, but who organized the lynch-mob climate in which Demjanjuk, along with a score of other falsely accused "Nazi war criminals," were deprived of their citizenship and sent to their deaths either behind the Iron Curtain or inside Israel. (One OSI-ADL target who beat the ADL in court, Tscherim Soobzokov, was assassinated in Paterson, New Jersey by Israeli killers who to this day have never been even indicted.)

'Neo-Taney' Supreme demolition of the U.S.

by Edward Spannaus

As it reached the end of its 1991-92 term, the U.S. Supreme Court reached new depths in its assaults on the fundamental freedoms of American citizens. Patriotic observers could only breathe a sigh of relief as the court's term ended on June 29, in that at least the court could do no more damage to the U.S. Constitution until it reconvenes the first Tuesday in October.

Indeed, under the leadership of Chief Justice William Rehnquist, the court's majority is reversing previous precedents willy-nilly in their rush to destroy the role of the federal courts as the guardians of constitutional rights, particularly as those rights are encroached upon by the states.

The Rehnquist court is properly described as a "neo-Taney" court, in the sense that it is following in the footsteps of the evil Roger B. Taney, chief justice from 1835 to 1864, and author of the infamous *Dred Scott* decision, who destroyed much of the nation-building accomplishments of the Supreme Court under John Marshall. (For this, Rehnquist has praised Taney as a "first-rate legal mind" who used his states' rights doctrine to undermine the "nationalist constitutional jurisprudence of the Marshall Court.")

The Rehnquist court is a court which has lost any moorings in the principles of the Constitution. Its death penalty rulings are driven by pure blood-lust. Its assaults on the First Amendment betray the most fundamental principles of the Bill of Rights. Its most publicized decision, that in the *Casey* abortion case, was an unprincipled mélange of opinions. The so-called emerging "moderate" bloc—that of Justices David Souter, Sandra Day O'Connor, and Anthony Kennedy—justified its continued upholding of the *Roe v. Wade* ruling legalizing abortion, on the grounds that to give in "under fire" and overrule it would damage the Supreme Court's prestige. Those in the so-called conservative bloc who would overturn *Roe,* would do so only to leave the decision up to the individual states whether to permit abortion on demand, or to outlaw it.

The hypocrisy of the court's "pro-life" conservatives is best seen in their rulings on the death penalty. We will first review these rulings, and then survey the court's assaults

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Court speeds Constitution

on the First Amendment during its last week of the just-concluded session.

Blackmun warns about death penalty

For a number of years, the Supreme Court has been narrowing the ability of prisoners—especially those on death row—to obtain review of their convictions in federal courts. In the court's June 22 ruling in the case *Sawyer v. Whitley,* this process reached the point where a number of pro-death penalty justices issued strong attacks on the reasoning of the Rehnquist-led majority.

In his concurring opinion in the *Sawyer* case, Associate Justice Harry Blackmun expressed his serious doubts that the death penalty can be fairly applied any longer, because of the Supreme Court's constriction of the ability of the federal courts to remedy constitutional errors via *habeas corpus* review. Blackmun said that he had always had a "personal distaste" for the death penalty, and he doubted that it performs any effective deterrent, yet he thought it was a matter to be resolved by state legislatures.

His own ability to enforce the death penalty, wrote Blackmun, "has always rested on an understanding that certain procedural safeguards, chief among them the federal judiciary's power to reach and correct claims of constitutional error on federal *habeas* review, would ensure that death penalty cases are fairly imposed. Today, more than 20 years later, I wonder what is left of that premise underlying my acceptance of the death penalty."

By refusing to consider constitutional violations unless a prisoner can prove "actual innocence" to the court's satisfaction, said Blackmun, "the court undermines the very legitimacy of capital punishment itself."

By the end of the week, rumors were circulating in Washington, D.C. that the 83-year-old Blackmun, the oldest member of the high court, was about to resign. However, press reports of these rumors fail to connect one of the most compelling pieces of evidence pointing this way: Blackmun's attacks on the direction of the Supreme Court's death penalty rulings. Blackmun's attacks bear a certain resemblance to Thurgood Marshall's swan song a year ago, upon his own resignation.

'Perverse double standard'

In another concurring opinion in the *Sawyer* case, Justice John Paul Stevens attacked Chief Justice Rehnquist's reasoning as creating a more difficult standard of proof for capital cases than non-capital cases.

"The court's ruling creates a perverse double standard," wrote Stevens. "While a defendant raising defaulted claims in a non-capital case must show that constitutional error 'probably resulted' in a miscarriage of justice, a capital defendant must present 'clear and convincing evidence' that no reasonable juror would find him eligible for the death penalty. It is heartlessly perverse to impose a more stringent standard of proof to avoid a miscarriage of justice in a capital case than a non-capital case."

One of the remarkable features of the unusually harsh separate opinions written by Blackmun for himself, and Stevens for himself and Justices Blackmun and O'Connor, is that they are *concurring,* not dissenting, opinions, from justices who generally support the death penalty.

'Bloody Bill' Rehnquist

In the *Sawyer* case, Chief Justice Rehnquist, writing for the court's majority, continued chopping away at the rights which a death row inmate has to bring a *habeas* petition into federal court. In doing so, Rehnquist adopted the stringent legal standards applied by the federal circuits in the deep South (the 5th and 11th Circuits), covering states from Florida to Texas.

In the *Sawyer* decision, Rehnquist explicitly further extended the barbaric line of reasoning shown in the earlier cases involving inmates Warren McClesky and Roger Coleman. Rehnquist declared that a constitutional violation is of no concern, unless the prisoner can show that he is "actually innocent" of the offense charged, and therefore the federal courts should ignore the constitutional violation and refuse to entertain a *habeas* petition. Unless the prisoner can show that, except for the constitutional error, *no* reasonable juror could have found him guilty, the courts will pay no heed to the constitutional error.

The argument made by Blackmun, Stevens, et al., is that "a fundamental miscarriage of justice occurs whenever a conviction or sentence is secured in violation of a federal constitutional right." Since 1986, says Blackmun, the Supreme Court has shifted the focus of *habeas* review of certain categories of cases—those it calls "procedurally defaulted" (i.e., one day late), or "successive" or "abusive" (i.e., bringing a second *habeas* petition when new evidence is discovered).

Thus, for example, even if the prisoner can prove that the prosecution suppressed exculpatory evidence, or that witnesses lied, or that his own confession was coerced, he will

not get a hearing unless he can prove to the satisfaction of the federal court that he is "actually innocent." Legally, this is an almost impossible standard to meet (since some contradictory or circumstantial evidence exists in virtually all cases); so the sentence will stand and the prisoner can be executed—notwithstanding the constitutional violation.

The "actual innocence" standard also unconstitutionally shifts the burden of proof. In a criminal case, the burden of proof is on the *government* to prove that a defendant is guilty beyond a reasonable doubt, not on the defendant to prove that he is innocent beyond *all* conceivable doubt.

The Supreme Court has not yet decided pending cases on the issue of whether "actual innocence" itself is a bar to execution. Such a case is before the court and will be argued next fall. But the June 22 *Sawyer* ruling already sets a standard which is almost impossible for any prisoner to meet, and which will result in more rapid killings of the more than 2,500 prisoners now on death rows in the United States.

Court mangles First Amendment

The court also took aim at the First Amendment in a series of bizarre rulings at the end of the term. The First Amendment was intended to protect freedom of speech and free exercise of religion; it prevents only the state coercion of religious beliefs or practices, and bars the establishment of an official state church.

Turning the First Amendment on its head, the high court found in the case *Lee v. Weisman* that a non-denominational prayer offered at a junior high school graduation ceremony violated the Constitution. On the other hand, the Supremely irrational Court then upheld a ban on religious and political speech in the public areas of airport terminals.

A tip-off that First Amendment protections were being reevaluated came in the Minnesota "hate crimes" ordinance case. All nine Supreme Court justices agreed that the St. Paul ordinance was unconstitutional; but they disagreed as to why—so that there were three separate concurring opinions expressing the differing views of five justices. The libertarian reasoning of the majority opinion, written by Justice Antonin Scalia, was attacked by five justices (a majority of the court!) as overthrowing the Supreme Court's traditional approach to First Amendment issues, and as actually *weakening* protections for freedom of speech.

Justice Stevens said that Scalia's reasoning overthrew the traditional hierarchy of protection of speech, in which political speech had always had the highest protection, and obscenity and "fighting words" the least protection. Justices Blackmun and White noted that Scalia's unusual reasoning "weakens the traditional protections of speech." (One should undoubtedly be on guard when Rehnquist appears to be on the side of freedom of speech.)

Rehnquist then led the charge in the June 26 decision banning sales of literature and solicitation at airport terminals. Rehnquist's rationale was simple: Airports are not "public forums," as that principle has been established in the evolution of constitutional law. (I.e., since airports are a relatively recent development, how can a 200-year-old Constitution be applied to them?)

The airport case

Rehnquist's main complaint was that the exercise of free speech in airports is an "inconvenience" to travelers. Unlike a majority of the court, Rehnquist would have gone so far as to have banned even leafleting outside airports. "The weary, harried, or hurried traveler may have no less desire and need to avoid the delays generated by having literature foisted upon him than he does to avoid delays from a financial solicitation," wrote Rehnquist.

Three justices (Souter, Blackmun, and Stevens) noted appropriately that the First Amendment "inevitably requires people to put up with annoyance and uninvited persuasion." Souter, writing for these three, also destroyed Rehnquist's alleged concern about the possibilities for fraud during airport solicitations. Saying that "the evidence of fraud here is virtually nonexistent," Souter noted that there had been only eight unsubstantiated complaints of fraud over an 11-year period, and there had not been a single claim of fraud or misrepresentation since 1981.

All this might lead one to conclude that the real target of the court's ruling was not the Hare Krishnas against whom the suit had been brought, but associates of Lyndon LaRouche, whose organizing tables are a well-known institution in many U.S. airports. Indeed, the *New York Times* followed up with a prominent article next day, featuring a photograph of LaRouche associates organizing at a New York airport, and demanding that the Port Authority throw them out at once.

Bible-banning

With the so-called moderates in the lead, the Supreme Court continued 45 years of misinterpretation of the Constitution by ruling that a non-denominational prayer at a public school graduation ceremony violated the separation between church and state. Justice Kennedy, writing for the majority, said the prayer was a state-sponsored religious activity forbidden by the First Amendment.

The court's adoption of this essentially freemasonic policy of the "wall of separation between church and state" dates back to the 1947 ruling in *Everson v. Board of Education,* written by ex-Klansman Hugo Black. The "wall of separation" doctrine was drawn from private correspondence of Thomas Jefferson, and has nothing to do with the intent of the framers of the U.S. Constitution and the First Amendment.

The fallacy of the "wall of separation" nonsense is shown by the Northwest Ordinance, passed in 1787 and re-adopted in 1789, which provided that "religion, morality, and knowledge being necessary to good government and the happiness

of mankind, schools and the means of education shall forever be encouraged." And, in his Farewell Address to the nation in 1796, George Washington declared that "religion and morality are indispensable supports [for] political prosperity," and he further warned that we could not expect "that national morality can prevail in the exclusion of religious principle."

(Undoubtedly, these would also be found to be unconstitutional by our modern-day Supreme Court. However, in all fairness it should be noted that Justices Rehnquist, Scalia, Thomas, and White have challenged the "wall of separation" doctrine and dissented from Kennedy's school prayer ruling.)

A few days after issuing the graduation prayer ruling, the Supreme Court let stand a ruling holding that the Constitution prohibits an elementary school teacher from silently reading the Bible to himself during class time while his students read secular books. The court declined to review a decision of the 10th Circuit Court of Appeals that a fifth-grade public school teacher in Denver violated the Constitution by reading the Bible to himself during the classroom's "silent reading period."

The 10th Circuit had ruled that even having the Bible on the top of the teacher's desk in sight of the students violated the First Amendment, as did the inclusion of two Christian books—*The Bible in Pictures* and *The Story of Jesus*—in his 240-volume classroom library.

In another case, the Supreme Court let stand a decision that an Illinois town had violated the Constitution's mandate of separation of church and state by sponsoring a Roman Catholic mass as part of a festival celebrating Italian culture. Two summers ago, the Village of Crestwood hosted "A Touch of Italy" festival, which was to include a mass celebrated by an Italian-speaking priest, in a town park.

And in still other cases, the court refused to hear an appeal brought by the Illinois communities of Rolling Meadows and Zion, thereby letting stand lower court rulings that their municipal seals unconstitutionally endorse a particular religion. However, in a Texas case, the court let stand a controversial decision that the permanent logo of the city of Austin—which includes a cross—does not violate the Constitution.

Rob Sherman, a member of American Atheists who challenged the seals in the Illinois case, said the contradiction is not as great as it would seem. He said the crosses are the "focal point" on the Rolling Meadows and Zion seals, but that on the Austin seal is only incidental to the family crest of the town's founder. "I feel wonderful. What a blessing the Lord has bestowed on me today," Sherman said. "It proves the adage that if there is a god, she must be an atheist."

Rolling Meadows city manager Bob Beezat said he wondered whether the ruling could force changes in the names of Corpus Christi, St. Paul, or St. Louis. "What do you do with Los Angeles, the city of angels?"

Court in business of 'abortion umpiring'

by Linda Everett

On June 29, the last day of its term, the U.S. Supreme Court handed down a sharply fragmented decision in the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey,* a decision that, as Justice Antonin Scalia writes, will be "keeping us in the abortion-umpiring business." The court's 7-2 decision upheld most of the provisions of Pennsylvania's Abortion Control Act as constitutional, while reaffirming 5-4 the "central holding" of *Roe v. Wade,* the 1973 Supreme Court decision that gave women the "constitutional right" to abortion.

The majority ruling was written jointly by Justices Sandra Day O'Connor, Anthony M. Kennedy, and David H. Souter, in which Justices Harry Blackmun and John Paul Stevens concurred in part, and dissented in part. The ruling, one of five opinions comprising 165 pages, was both hailed and denounced by those hundreds of state legislators, U.S. congressmen, and medical, religious, pro-life, pro-abortion, and zero-growth groups who entered friend of the court briefs on both sides of the issue.

Kate Michelman of the National Abortion Rights Action League (NARAL) called the decision "devastating to women." Pennsylvania Gov. Robert Casey (D), the respondent in the case, said, "The decision moves the country sharply away from abortion-on-demand and begins to reestablish in our law, in a balanced and reasonable way, the historic and traditional rights . . . of the family, of women, their unborn children, parents."

Provisions of the Pennsylvania law

At issue are five provisions of Pennsylvania's Abortion Control Act which was passed overwhelmingly by both Houses of the General Assembly, with strong bipartisan support, and signed into law by Governor Casey. The law's provisions require a woman's informed consent prior to an abortion, a mandatory 24-hour waiting period after she is given certain medical and other information and before the abortion occurs, and spousal notification. It also requires that minors under the age of 18 receive informed parental consent or a judge's permission for the abortion. These requirements are exempted in medical emergencies. Also, abortion facilities must file medical and other reports.

Although many of its own clinics already complied with the new provisions, Planned Parenthood of Southeastern Pennsylvania brought suit in federal District Court, which