EIR Feature

Virginia: a case study in judicial barbarism

by Anita Gallagher and Paul Gallagher

The Commonwealth of Virginia has a double history. It produced many of the Founding Fathers of the United States of America, including George Washington, the first President. Yet in 1861-65 it was the capital of the Confederacy, the British-manipulated slave state deployed to destroy the American Republic. Today, Virginia is playing a leading role in the descent of the United States into judicial barbarism. The purpose of this report is to throw the spotlight of world opinion on Virginia and thus to force the reversal of its despicable practices.

This exposure is strategically timely. Ever since the Carter administration, the United States government has used the United Nations and the Anglo-American "human rights" groups to target and attack countries—from South Korea and the Philippines, to Kenya and Brazil—when U.S. administrations wanted to change those countries' governments or make them change their policies. Now the United States is demanding, as a condition of recognizing Ukraine, "assurances" about human rights "threats" in that country, where no observer—and there have been many—has reported finding any. These major international human rights groups—most flagrantly, Amnesty International—have studiously avoided "seeing" human rights violations in the United States and Great Britain, which are their sponsors.

Meanwhile, the American prison system, and in fact the entire American judicial system, has become the largest gulag in the free world. During the 1980s, as the country sank into economic and industrial depression, $40 billion was spent on building new prisons, and the number of Americans in prison nearly doubled to more than 1 million. The *proportion* of the American population in prison rose, during the 1980s, from less than 300 for every 100,000 people to 426, higher than any other nation. Among black male Americans, a staggering 3,109 out of every 100,000 are imprisoned.

The government has introduced, first at the Marion, Illinois federal prison, and now in many federal and state prisons, the practice of keeping some prisoners

This armored personnel carrier housed in Leesburg, Virginia, was used when 400 federal and state police raided the offices of companies associated with LaRouche in October 1986. Virginia Attorney General Mary Sue Terry (inset) sits at the center of Virginia police state justice, and boasts in campaign literature of her role in "getting LaRouche."

"locked down" 24 hours a day in small solitary confinement cells for weeks and even months at a time, sometimes also handcuffed or chained in the cell; this is to prevent riots as the prison population spirals upwards. This practice, like that of the hostage-holding terrorist groups in Lebanon who chained their prisoners to the walls of small cells, directly violates United Nations conventions on the treatment of prisoners, which the United States has signed, and even led in drafting.

In the United States in 1991, members of Congress argue at the top of their voices: Should police merely be allowed to conduct searches with illegal or improper warrants, and use the evidence in court—as the U.S. Supreme Court has allowed them to do? Or should they also be allowed to conduct searches without *any* warrants, and use the evidence to convict and imprison—as some versions of the new Omnibus Crime Bill would allow them to do? A police search without a warrant is conducted by police who have not even convinced a judge they have a *probable cause to look for* criminal activity. A nation that allows such searches is a nation far along on the road to a police state.

The Commonwealth of Virginia takes the lead

Virginia's crucial role in this national disgrace became evident when its Eastern Virginia federal court district—known nationally among lawyers as the "rocket docket," the fastest legal railroad in the country—and its state courts, began carrying out the unjust convictions of Lyndon LaRouche and his associates in 1988, while attempts to prosecute the LaRouche movement on similar, politically concocted false charges have failed in other states and federal courts all over the country.

The Virginia judicial system combines a brutal commitment to capital punishment and the elimination of *habeas corpus* appeals against it no matter how compelling the circumstances; legislative appointment of all judges by a legislature controlled by the same political party for 100 years; massively disproportional imprisonment of blacks; seeking the death penalty for the mentally retarded and for minors; and the selective use of law to target and prosecute political opponents. It adds the rare and arbitrary practice of sentencing by the jury in *all* jury trials. The severity of this practice has virtually eliminated the jury trial in the state (see box).

European countries have, in the past two years, started to withhold extradition of American prisoners, if they think the defendant would be tried for a capital crime in Virginia.

The history of Virginia justice adds context. The state played a leading role in the 1920s to force the implementation of racial purity laws, sterilization by law of those deemed "defectives," and general practices of Nazi law (see below). Not only long *before*, but even decades *after* Adolf Hitler, Virginia enforced these practices of law.

At the center of the "judicial barbarism" today in Virginia is attorney general and would-be governor Mary Sue Terry. Terry has campaigned for office on "get LaRouche" appeals while prosecuting LaRouche associates, and leads the nation

in rushing those convicted of capital crimes to the electric chair, no matter what doubts have been later cast on their convictions. Three times in the past year, an inmate of Virginia's death row has narrowly escaped execution despite severe and general doubts about his guilt in the first place; Terry has insisted on every "procedural" bar and trick to prevent those doubts from being reviewed in any court. (In the most recent case, even three justices of the United States Supreme Court, itself increasingly abandoning the U.S. Constitution's protections of defendants, nonetheless issued a warning statement citing the strong possibility that the prisoner awaiting execution is innocent.)

LaRouche case is the 'marker'

LaRouche's comment on his own case, observing from prison his appeals in 1989, was that if the fixed and contrived verdicts against him were upheld by the federal appeals courts and the Supreme Court, that action would confirm the shift of the U.S. judiciary toward imposition of police-state law on the American people.

LaRouche's appeal was rejected by the U.S. Supreme Court. Since then, the Court has made rapid and willful moves to drastically reduce the protections, *for both those engaged in political expression of opposition and those charged with crimes,* of all amendments of the Bill of Rights and of the Fourteenth Amendment provisions of due process of law.

Seven Supreme Court rulings in that time have shredded the constitutional rights of defendants, of people who are only "suspects," and of prisoners. The constant invocations of the "war on drugs" to justify these attacks on the Bill of Rights, are sick ironies, since no amount of statistical juggling can hide the fact that the U.S. narcotics trade is bigger and more successful than ever.

- In a series of cases over 1990 and 1991, the Court ruled that police could use evidence seized with an improper search warrant in court, if they "acted in good faith," and in some circumstances they can use evidence seized without any warrant, if a passenger on a train or bus "agreed" to the search at the time!
- In two 1991 cases, *Michigan v. Harvey* and *Arizona v. Fulminante,* the Court ruled that a "confession" obtained by force or coercion in a police station or jail, or from a defendant without counsel, could be used in court. Such "confessions," the hallmark of a police state throughout modern history, are at the center of many murder cases, including two in Virginia that have been spectacularly and mercifully overturned.
- In *Mu'Min v. Virginia,* the Court upheld the Commonwealth of Virginia and Mary Sue Terry, and ruled that jurors overtly and admittedly prejudiced against the defendant (from "trial by press" in advance) could be seated to judge that defendant: All jurors have to do is *to state* that they can put their prejudice aside in reaching a verdict.
- In the 1989 case *Caplin and Drysdale v. United States,* the Court allowed the seizure, before trial, of the assets of defendants facing Racketeering-Influenced and Corrupt Organizations (RICO) trials, or the accounts of lawyers retained to defend them, effectively wiping out the right of counsel in RICO prosecutions, the favorite means of prosecutors for targeting political opponents and elected officials for "corruption."
- In the 1991 case *Harmelin v. Michigan,* the Court upheld imprisonment for life without parole, after a conviction which involved a first offense—the possession of 1.5 pounds of cocaine. Drug money-laundering bankers have yet to fear such penalties.
- In *Coleman v. Thompson,* the Court agreed that death row prisoners could be denied *habeas corpus* appeals for simple mistakes and delays by their lawyers in following regulations; and in *Murray v. Giarratano,* that the prisoner enjoyed no constitutional right of *effective* counsel after his first round of appeals. Attorney General Mary Sue Terry and Virginia were involved in seeking both these decisions. In *McCleskey v. Zant,* the Court said that a prisoner could not have a second *habeas corpus* hearing, even if important new evidence were discovered after the first one. McCleskey was electrocuted without the new evidence being heard.
- In the *Wilson v. Seiter* case in 1991, the Court denied the right of prisoners to bring legal actions against *any* prison conditions of overcrowding, lack of medical care, or related abuses, unless they can prove the impossible—that prison officials are maintaining these conditions simply because they want to, and not for budgetary, regulatory, etc., reasons. The prosecutors of many of these prisoners did not have to prove any such "intent" in order to get their convictions.

Many of these rulings by the Supreme Court have been well publicized. Others have not. For example, one which directly involved and targeted the LaRouche movement, was the 1990 *United States v. Kokinda* decision, which ruled that the sidewalks in front of post offices were no longer areas in which members of the public could freely petition their fellow citizens and ask both political and financial support for a cause. Marsha Kokinda, whose arrest led to the decision, is an activist of LaRouche's movement; the decision so clearly targeted LaRouche that Justice Harry Blackmun asked the U.S. Solicitor General's representative arguing on the government's behalf, "You wouldn't be here if this was the Salvation Army, would you? This involves the LaRouche people."

LaRouche was right: The denial of a fair trial or appeal to him was a marker of judicial barbarism, signaling that it is as easy for prosecutors in this country to "get" their targets as in many police states of past and recent history.

Is anyone safe in Virginia?

If the LaRouche movement can be framed up in such a manner, what about the ordinary citizen in Virginia? And, since the United States Supreme Court has repeatedly ratified and thus nationalized Virginia Supreme Court "justice," is

anyone in the United States safe?

Consider the case of Joseph Roger O'Dell, a Virginia death row inmate, convicted of killing a woman in Virginia Beach in 1985. O'Dell was convicted and sentenced to death on the basis of three pieces of evidence: tire tracks at the scene "similar" to those left by O'Dell's car; bloodstains on his clothing that a technician testified were "consistent with" samples taken from the victim; and the testimony of a fellow inmate, who said that O'Dell had admitted to the murder.

After O'Dell was convicted, a DNA test—the strongest proof there is—proved that the blood on his clothing could not have been the victim's. The informant, whom O'Dell charged had made up evidence to qualify for release, was given probation. Yet, the Virginia Supreme Court refused to hear O'Dell's appeal because his lawyers filed a "Notice," rather than a "Petition" for Appeal.

Initially, Virginia Attorney General Mary Sue Terry's representative said that he would not oppose O'Dell's substituting the correct piece of paper. But, no doubt under pressure from Attorney General Mary Sue Terry, the prosecutor changed his mind and opposed having the case heard.

Where Mary Sue Terry never backed away from executing an innocent man, three justices of the U.S. Supreme Court—Harry Blackmun, John Paul Stevens, and Sandra Day O'Connor—have blinked. On Dec. 2, 1991, Blackmun, Stevens, and O'Connor authored a five-page recommendation to the federal court that will next hear O'Dell's *habeas corpus* petition, that, "Because of the gross injustice that would result if an innocent man were sentenced to death . . . O'Dell's substantial federal claims can, and should, receive careful consideration from the federal court with *habeas corpus* jurisdiction over the case."

The ruling was all the more extraordinary, because last year, a U.S. Supreme Court decision in the Virginia case of Roger Coleman, written by the same Sandra Day O'Connor, endorsed the Virginia Supreme Court's refusal to hear another substantial claim of innocence, because Coleman's lawyer inadvertently filed one day late!

In the mid-1980s, Virginia defendant Michael Smith was convicted and sentenced to death because a statement he made to a psychiatrist was used against him. Smith did not raise the issue in his appeal to the Virginia Supreme Court because Virginia's case law would have precluded success. The U.S. Supreme Court later issued a decision that would have upheld Smith's contention of the illegal use of the statement. Sandra Day O'Connor wrote a decision that acknowledged that the new ruling would mean setting aside Smith's conviction, but ruled that Smith, although facing execution, could not raise the issue, since it had not been raised with the Virginia Supreme Court.

Virginia Supreme Court ranks worst

Virginia's Supreme Court has the worst record in the nation of preventing executions through the process of direct appeal. On direct appeal, the Virginia Supreme Court has reversed only 9% of all capital convictions, compared to 44% in neighboring North Carolina.

On direct appeal, the Virginia Supreme Court has *never* found that a death sentence was "excessive, disproportionate, or the product of passion, prejudice or other arbitrary factors," on which basis the law requires the sentence be overturned. That is to say, the Virginia Supreme Court has never found those factors present in any case, despite the fact that national statistics show that *40% of all capital defendants in the United States are black, and a preponderance of them are accused of violent crimes against white women.* In Virginia, 21 of the 47 death row inmates are black—45%. A recent national study comparing the race of the victim and the race of the perpetrator, shows that a black defendant convicted of murdering a white person in the U.S. is *four times more likely* to be sentenced to the death penalty than any other racial combination of defendant and victim.

The Virginia Supreme Court is mandated by law to consider *aggravating* factors in death penalty cases—such as the vileness of the murder and future danger to the public—but also *mitigating* ones. Evidence in mitigation cannot be limited in any way, and includes such elements as mental illness, mental retardation, and age of the accused. *National statistics classify 70% of all death row inmates as retarded or borderline retarded.* The Virginia National Association for the Advancement of Colored People, for example, reports that not one death row inmate in Virginia has a high school diploma, and that every one of them is from an impoverished background. Yet, Virginia's Supreme Court shares with Kentucky (originally part of Virginia), the distinction of having *never found any death sentence reversible because of the absence of aggravation or the presence of mitigation.* To paraphrase Will Rogers, the Virginia Supreme Court never met a death sentence it didn't like.

On what has been called "the Great Writ of *habeas corpus,*" Virginia's Supreme Court has a *perfect* record of barbarity in capital cases. It is largely this writ (which recent Supreme Court decisions and the draft Omnibus Crime Bill want to limit to one attempt) which has resulted in overturning death sentences in over 40% of all capital cases.

Habeas corpus is the post-conviction proceeding which follows the failure of direct appeal. It is the avenue through which any claim of innocence may be pursued by any prisoner. In Virginia, it seeks a "writ of error" first from the trial court, then the Virginia Supreme Court, whose refusal can, in turn, be appealed to the U.S. Supreme Court. The next step, as in the O'Dell case, is to petition the federal circuit court with jurisdiction.

Though by law it has jurisdiction over every *habeas* petition filed in a capital case, the Virginia Supreme Court has never agreed to review, let alone reverse, a death penalty conviction. The only case in the modern history of Virginia where a trial court lifted the death sentence, although letting

the guilty verdict stand, was that of black death row inmate Jimmy Clark. In that one case, the only one it ever took up, the Virginia Supreme Court pounced on the commutation and reinstated the death penalty.

Besides the Virginia Supreme Court's absymal record on those capital cases it does consider, Virginia's laws *kill* these appeals at higher, federal levels.

The reason is that Virginia is one of a handful of states, including South Carolina, that makes no exceptions for procedural defaults in capital cases. If an attorney fails to object to a ruling at trial (i.e., enter a "contemporaneous objection"), that material, no matter how obvious or clearly exculpatory, and despite the fact that a verbatim transcript exists, cannot be raised by the defendant in any state or federal appeal, even if it proves his innocence and would save him from execution.

Thus the performance of counsel, always a crucial issue in capital cases, takes on even greater importance in Virginia. Yet Virginia has never had a competence standard for counsel in capital cases, which present an extraordinary degree of difficulty. Frequently, capital cases are handled by lawyers who are raw novices. A competence standard for attorneys

U.N. conventions also torn up

United Nations conventions and treaties on the standards for a fair trial, sanctimoniously promoted and in some cases written by American diplomats, are being violated in the United States. A special Committee on the Administration of Justice of the United Nations Human Rights Commission, consisting basically of an American and a "Soviet" delegate, insists on *the defendant's right to have sufficient time, with counsel, to prepare a defense*. This is regularly violated by the Alexandria, Virginia federal "rocket docket" and other courts.

In the "rocket docket," LaRouche and his codefendants had 37 days from indictment, to obtain counsel and prepare to start trial. Pre-trial motions were summarily dealt with during the same 37 days. The LaRouche case involved potentially millions of documents, and the government had spent years preparing it! The defense lawyers repeatedly protested to the judge that they could not even fully acquaint themselves with the case, let alone prepare to defend it.

The special U.N. body insists that "independence of the judiciary and fairness of trials make unacceptable any interference or attempt to exert pressure by authorities or persons not involved in the case": Judges are to be disinterested, on guard for any and all attempts to influence them, and will immediately make public to all involved any such attempt, sternly rebuking the offending party. Both federal Judge Albert Bryan in Alexandria, and the ADL-corrupted Clifford Weckstein, the Virginia judge who is running the state LaRouche trials, arrogantly violated this requirement for an independent, impartial judge (see below).

One of the foremost American, and now, universal principles of law—the Fifth Amendment prohibition against trying and punishing an individual twice for the same acts—has been rejected and modified by the Supreme Court, despite its clear and plain language LaRouche's two trials in Boston and Alexandria federal courts violated that clear principle; LaRouche's associate Michael Billington was tried by the state of Virginia for "securities fraud" for exactly the same charges for which he served two and one-half years in federal prison, under the label "mail fraud." Virginia's courts held that the state was a "dual sovereign" to the U.S. government, and therefore could try Billington in what was admitted to be double jeopardy in strict terms.

The same U.N. committee says that "The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair." Judges in the LaRouche trials in Virginia courts have repeatedly ruled out precisely those defenses they knew the accused would rely on, especially the defense of *government interference with the LaRouche movement*, which defense resulted in the failure of the "get LaRouche" prosecution in Boston. These judges have denied subpoenas for witnesses and requests for documents that would back this line of defense.

Again, the (American-dominated) U.N. committee states that, because of the presumption of innocence, "It is the duty of all public authorities to refrain from prejudging the outcome of a trial," clearly including prosecutors. Virginia Attorney General Mary Sue Terry and then-U.S. Attorneys William Weld and Henry Hudson, leaders in the LaRouche prosecution, not only encouraged trial by press, they have made themselves the stars of the media trial of the LaRouche movement.

The same committee states that everyone convicted shall have the right of review and appeal. Virginia does not grant such a right: Those convicted must petition for it, and three-quarters of these petitions are denied. The Virginia Supreme Court recently contemptuously refused a hearing to a death row prisoner, because his attorney filed the wrong piece of paper.

The committee states that anyone "facing the death penalty should be provided adequate assistance of counsel at every stage of the proceedings, above and beyond

in capital cases is scheduled to go into effect in Virginia *for the first time* in July 1992.

The public often hears that prosecutors simply want to save money by cutting back on endless appeals. The actions of Mary Sue Terry show that the aim is not judicial economy (which is trivial compared to taking an innocent life), but vindictiveness. *It is the position of Virginia Attorney General Mary Sue Terry to oppose the appointment of any attorneys who request appointment to a specific capital case.* The goal is to keep out the most skilled attorneys, who have interest and expertise.

Four of those currently on Virginia's death row, minimally, have strong claims of innocence: Joseph Roger O'Dell, Roger Coleman, (whose cases are discussed above), Earl Washington, and Herman Bassett. Earl Washington is a severely retarded black man whose survival mechanism when he is outside his family is to propitiate authorities. Washington repeatedly changed the details of his confession to please the detectives prompting him. Herman Bassett, also black, was convicted solely on the testimony of co-perpetrators of the crime, despite the fact that the physical evidence points away from Bassett.

The United States is the only industrialized country in the world that inflicts capital punishment. The United States not only applies it in a racist fashion to the mentally retarded, but also to juveniles. In Virginia, the law permits the execution of anyone 15 years of age. That is the lowest age arguably permissible under recent U.S. Supreme Court decisions.

Virginia has executed more prisoners than any other state in the nation since use of the electric chair was initiated.

The Virginia gulag

The incarceration rate of blacks is disproportionately high in Virginia, as it is all over the United States. While 19% of Virginia's population is black, approximately 63% of its prison population is black.

Virginia's prisons exceed the national average of 115% of capacity for state prisons; state prisons are where 90% percent of all prisoners in the United States are housed.

Virginia state prisons, where the most serious offenders are housed, are currently at 122% of capacity, while local jails are at 147% of capacity as of Dec. 5, 1991. Although county jails are intended only to be used to house prisoners with sentences of *one year or less,* currently prisoners with *six-year* sentences are serving their terms in jails because the state prison system is packed. From 1983 to 1989, Virginia's inmate population grew at an average annual rate of almost 9%.

One reason Virginia's prisons are full is that a whopping 40.1% of inmates have sentences of 20 years or longer—far above the national average. In fact, the average jail sentence in Virginia is 24.1 years (*1990 Corrections Yearbook,* Criminal Justice Institute). Additionally, Virginia ranks near the bottom nationally when compared to the rates of discretionary parole in other states, as a recent study by the state's own Joint Legislative and Audit Review Commission reports.

Some states are required by court order to initiate emergency release when the prison population reaches a certain threshold. All states can use the federal 1986 Emergency Powers Act for this purpose. But no court orders or directives from the state legislature have ever mandated relief of overcrowding in Virginia, as has been done even in Texas and Tennessee—hardly trendsetters for humane conditions.

The state's General Assembly did mandate of the Virginia Parole Board to "establish parole policies which result in the earliest possible release of inmates who are deemed suitable for discretionary parole and whose release is compat-

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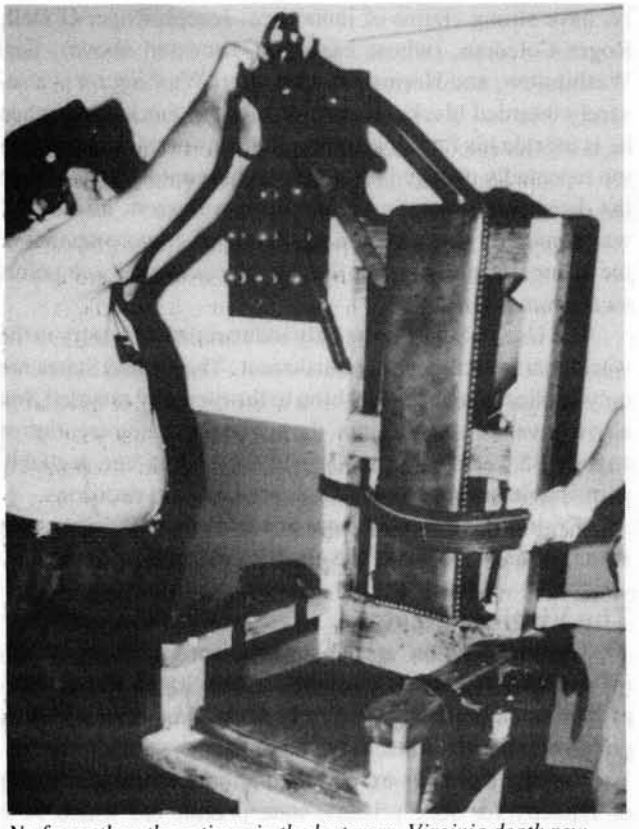
the protection afforded in non-capital cases."

The U.S. Supreme Court, egged on by Virginia, has explicitly ripped up this right which the U.S. government preaches to other nations (very few of which practice capital punishment at all). Most accused of capital crimes in the U.S. are miserably represented even at their first trial and appeal, as everyone knows, and may not be represented at all after that. Innocent people are executed, inevitably, as the result.

In 1989 the Supreme Court ruled that new laws, new decisions on procedures, etc., cannot be used retroactively to challenge convictions or sentences, and cannot even apply to trials that are ongoing when the changes occur. Through the U.N. Committee on Administration of Justice, American delegate William Treat proclaims precisely the opposite to the rest of the world: "If subsequent to the commission of an offense, a provision is made for the imposition of a lighter penalty, the lighter penalty shall benefit the offender."

That committee also ruled that when Uruguay held a student prisoner incommunicado for 15 days, Uruguay had "violated her right to humane treatment under Article 10" of the U.N. Convention on fair trial procedures. Today in the "special detention" or "punishment cells" being set up in the U.S. on the model of the Marion, Illinois federal prison, inmates are "locked down" continuously without visitors for significantly longer periods. In the windowless "Q Wing" of Florida State Prison at Starke, some inmates have not been outside for seven years.

In many of these cited sections of its 1990 and 1991 reports, the U.N. Committee is not merely stating the conclusions of its American and Soviet "rapporteurs," but referring to articles of international conventions on fair trials. The United States has signed these conventions, and in some cases led the way in drafting them. But the U.S. judicial system now ignores them, in its mission to "fill the jails, build more jails," and facilitate political prosecutions or silence dangerous opponents of government policies, such as Lyndon LaRouche.



No fewer than three times in the last year, Virginia death row inmates have narrowly escaped execution, despite severe doubts raised about their guilt.

ible with the welfare of society." Yet the current report by that General Assembly's Review Commission found that "the Parole Board does not appear to equate parole eligibility with suitability for release." The Commission on Prisons and Jail Overcrowding reported that 37% of the inmates denied parole in 1989 were classified as "relatively low risk."

The Review Commission found that parole "examiners' assessments of inmates can be a subjective and at times visceral process."

The 1991 Virginia State Crime Commission examined the state's one prison for women. This facility, designed for 289 inmates, now houses 660. In terms of medical care, inmates receive a pap smear test and a mammogram upon entry, but not thereafter unless specifically prescribed, regardless of the inmate's age. The Crime Commission's Interim Report states: "Adequate facilities for mentally ill inmates are unavailable, so that they are frequently housed in maximum security units and isolation cells. Extreme cases are sent to Central State hospital, but these women are returned to the prison as soon as feasible. One pyschiatrist and two psychologists are on staff to treat inmates, meaning that even women badly in need of counseling may wait weeks before seeing a mental health professional." The commission criticizes the fact that the library is open only one day per month; the chapel is open only one day per week; and that at the maximum two-hour per week visit, the inmate and her visitor must sit side by side, rather than facing each other.

The November 1991 report, "Prison Conditions in the United States," by Human Rights Watch, discusses the case of Gwendolyn Miltier, who was incarcerated at the Portsmouth, Virginia city jail on Jan. 9, 1985, and subsequently complained of chest pains and shortness of breath. She was transferred to the state women's prison because of her medical condition. There, the physician recommended she be referred to the Medical College of Virginia cardiology unit, but instead, Miltier was transferred back to the general prison population. On June 16, 1986, after futilely seeking admission to the clinic on a number of occasions, Miltier was assigned a bed in the clinic. At 4 p.m., Gwendolyn Miltier suffered a heart attack due to arteriosclerotic heart disease, and died (*Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990).

Such shameful tragedies do not only occur in Virginia. Prison litigation like that initiated in Virginia's Mecklenburg Correctional Facility to stop the beating and gassing of inmates by guards, has occurred all over the United States. Nonetheless, the target of all prison litigation that seeks to establish United Nations Standards in the United States itself, is the doctrine originating in Virginia case law that a prisoner has the status of a "slave of the state," with no constitutional rights whatsoever. The 1871 Virginia case *Ruffin v. Commonwealth*, propounds precisely that slave status for prisoners.

Political selection of judges

Virginia's judges are selected by a process used in only one other state, South Carolina: selection by the state legislature. Twenty-nine states elect their judges; elsewhere, in general, judges are chosen by nominally non-political independent bodies.

In Virginia, this practice is compounded by the fact that one party has dominated the legislature for 100 years, and thus has approved every judge selected. Politically selected judges make political decisions, as the *Richmond Times-Dispatch* recently scathingly editorialized about two November 1991 Virginia Supreme Court decisions, one on pension tax refunds, and another about local issuance of revenue-backed bonds. As Virginia's own Legislative and Audit Review Commission's 1992 Report states: "Inconsistencies in sentencing practices have been a particular problem in the State of Virginia." Such inconsistencies, if they are widespread, are a violation of the constitutional guarantee of equal protection under the law.

Nazis cited Virginia law at Nuremberg

Perhaps the incident which exemplifies Virginia "justice" is the case of Carrie Buck, a poor, white working woman who was sterilized as a mental defective in Virginia in 1927, a case that was carefully documented in *The Sterilization of Carrie Buck*, by J. David Smith and K. Roy Nelson. Carrie

Virginia practice of jury sentencing

Unlike most states, in which a jury only determines the guilt or innocence of a defendant, Virginia's law allows a jury to set the sentence. This causes harsh sentences which stand out even in the American gulag. Only six states retain jury sentencing, which the American Bar Association Standards call "an anachronism that has outlived its original justifications*. . . . The most telling argument against jury sentencing is that a proper sentencing decision calls on an expertise which a jury cannot possibly be expected to bring with it to the trial, nor develop for the one occasion on which it will be used."

The ABA standards make these compelling arguments: 1) Jury sentencing erodes the basic principle of due process, by tempting the jurors to compromise the requirement to be convinced "beyond a reasonable doubt" or else acquit, with the expedient of imposing a light sentence because they are in doubt. 2) A defendant cannot simultaneously argue his innocence and argue why he should receive a lesser sentence, which implies he is guilty. 3) A jury has no idea what sentences have been given in similar cases, unlike a judge. 4) Jury sentencing results in reduced use of probation; e.g., in Virginia, the jury is *prohibited* from giving a sentence of probation. 5) Jury sentencing penalizes the defendant on appeal, because a jury never gives reasons for its sentence; when a judge does, such reasons may result in the sentence being overturned on appeal.

Because of powerful reasons cited in the ABA standards when they appeared in 1968, Pennyslvania, Illinois, Indiana, Georgia, Tennessee, Florida, North Carolina and Mississippi abolished jury sentencing, leaving it extant in only six states.

Though a judge has the power to reduce the nightmarish results of jury sentencing, such adjustments are extraordinary occurrences. This remains true despite the fact that Virginia's new "Sentencing Guidelines" require judges to conform jury sentences to the statewide statistical average sentence for a given crime, or else give a reason for their failure to do so. In 1991, the first year of the existence of *any* Sentencing Guidelines in Virginia, 75% of the judges in jury trials have refused to lower jury sentences as the guidelines direct.

Thus, a defendant in Virginia is intimidated from the exercise of his right to a jury trial, by the risk of a runaway, emotional jury and the virtual certainty that the judge will refuse to lower the jury's sentence. For example, in Judge Clifford Weckstein's court, LaRouche associate Michael Billington was sentenced to 77 years by a runaway jury, and Judge Weckstein refused to lower it. Statistics for 1989 showed only 4.6% of Virginia defendants risked exercising their right to trial by jury; a high 25.8% chose judge (bench) trials instead, and 45.7% plea bargained; the remaining cases were disposed of administratively.

*The original reason for jury sentencing was the American colonists' distrust of British judges, and desire to limit their power; in Texas, in its early days as a territory under Mexican jurisdiction, the same sentiments prevailed respecting Mexican judges. (ABA Standards).

Buck's case was used by Virginia authorities as the test case to obtain the infamous U.S. Supreme Court decision, *Buck v. Bell,* legalizing the involuntary sterilization of those deemed "defectives." Supreme Court Justice Oliver Wendell Holmes declared that the same principle which allowed the state to order vaccinations gave it the authority to sterilize those whom quack race science held to be morons.

Carrie Buck's sterilization occurred in 1927, and over the next 10 years, 27,000 compulsory sterilizations were performed in the United States. Ultimately, 50,000 American citizens met this fate, one-sixth of them in Virginia. Thirty state governments passed the eugenical sterilization law later made infamous by the Nazis—but those states—and Hitler—were only following Virginia.

Adolf Hitler implemented the very Virginia law, the "Model Sterilization Act" developed by Harry Laughlin of the Eugenics Record Office of New York for the Carrie Buck case, and made it law in Nazi Germany on July 14, 1933. Between 1933 and 1945, two million Jews, Catholics, gypsies, and others in Germany were sterilized as "not worthy" to reproduce, authors Smith and Nelson report.

Professors Smith and Nelson also make the connection between Virginia's "Act to Preserve Racial Integrity," outlawing interracial marriage, (passed by Virginia in 1924, the same year legal proceedings were initiated to sterilize Carrie Buck), and the 1935 Nuremberg Laws which banned intermarriage between Germans and Jews.

At the postwar Nuremberg War Crimes Tribunal, the Nazis in the dock defended themselves as only following Virginia laws and precedents, and cited the Carrie Buck case.

Carrie Buck was, in fact, a member of an old family that arrived in Virginia in 1635. Her mother, Emma Buck, after being widowed and left with Carrie, later bore two children without marrying their father. Although Carrie was declared a defective, interviews cited by the authors show that persons who knew Carrie Buck could not believe it. Carrie's own daughter, referred to in Oliver Wendell Holmes' declaration that "three generations of imbeciles are enough," was an

When the jury is prejudiced

The following is excerpted from the transcript of a juror being questioned in the Leesburg, Virginia trial of LaRouche associate Rochelle Ascher, showing what the U.S. Supreme Court has upheld in ruling that juries can now be made up of persons openly prejudiced against the accused.

Q: You've read something about LaRouche, is that correct?

A: Yes . . . the *Washington Post,* I imagine *Newsweek,* TV.

Q: To what effect?

A: Lyndon LaRouche . . . there are accusations that he was soliciting monies. He has a house in Leesburg. It was like a fortress and mansion. Many guards. He believed that he was going to be assassinated by the United States government, I think that's what I read.

Q: Have you discussed Mr. LaRouche with your wife, your colleagues. . . ?

A: Yes. . . . Basically that he's very extreme, right-wing . . . that the man was . . . potentially, if he had the support of the people, he would be a threat to the country.

Q: You believed him to be anti-Semitic?

A: . . . I believe he is anti-Semitic, also racist.

Q: . . . Do you believe you could fairly listen to all the evidence in this case with an open mind. . . ?

A: Yes.

This juror was seated for the trial.

honor roll student until she died of measles at age eight.

After World War II, the Nazis and their backers, like the Averell Harriman family-funded Eugenics Record Office that played a crucial role in the success of *Buck v. Bell,* became silent, lest they be executed for "crimes against humanity," as provided in the Nuremberg war crimes statutes. But not in Virginia. Virginia not only kept its eugenical sterilization law on the books; it was used until 1974.

In 1980, the American Civil Liberties Union commenced a successful lawsuit in which Carrie Buck's half-sister, Doris Buck, was a plaintiff, on behalf of those involuntarily sterilized. In the 1985 settlement, Virginia magnanimously agreed to inform the victims that they had been sterilized and to offer them counseling. Almost before the ink was dry, a prominent Virginia official who had formerly been a state legislator and state treasurer, publicly proposed to sterilize all of Virginia's welfare recipients in 1986.

So, both before and after Hitler, there was Virginia.

Home of the 'Get LaRouche' strike force

Virginia is the venue that the national "Get LaRouche" task force selected as the ideal spot for a successful frameup of Lyndon LaRouche and his movement. In October 1991, federal Judge Stanley Harris of Washington, D.C., responded to evidence of government "forum shopping" by ordering Henry Hudson, the former U.S. Attorney of the Eastern District of Virginia, and Frank McNamara, the former U.S. Attorney from Boston, to turn over all documents relating to their discussions of the reasons for moving the failed federal prosecution of LaRouche from Boston to Virginia.

On May 4, 1988, the federal government's first attempt to prosecute LaRouche for "credit card fraud" in Boston ended in a mistrial. The trial judge had granted several of LaRouche's requests for "classified documents," including a subpoena for then-Vice President George Bush's files, which showed to the jury that a pro-Kissinger government faction had framed up LaRouche. The Boston trial judge consumed three full weeks in selecting a jury, carefully probing for bias. At the time of the mistrial, the jury had heard only the prosecution's case. Yet the jury's foreman announced to the press that the jury *would have acquitted all the defendants on all charges,* because there was too much evidence of government misconduct "creating the crime." While LaRouche characterized the result as being "robbed of an acquittal," the prosecution plotted to preclude any semblance of a fair trial again, by moving the case to Virginia.

The meetings on where best to "get LaRouche" between U.S. Attorneys Frank McNamara of Boston and Henry Hudson of Alexandria, Virginia, became the subject, years later, of Judge Harris's order to disclose information. When LaRouche was tried a second time, in Alexandria, all evidence of government misconduct was barred in advance by an *in limine* order, preventing LaRouche and his associates from presenting their defense: that the government had created the crime to frame up the LaRouche movement. This defense had *convinced* the Boston jurors, as they told the Boston newspapers.

Once in the Virginia venue, the LaRouche case was rushed to trial in 37 days, before Judge Albert Bryan, a "national security" insider whose family owned the biggest arms-selling firm in the country. The foreman of LaRouche's jury, who got through the two-hour jury selection process without having to answer a single question, was the Agriculture Department representative to the secret "Continuity of Government" (national security emergency) apparatus which included LaRouche's enemy Oliver North, as well as Vice President Bush. The disclosure of the illegal targeting of LaRouche by the "secret, parallel government" network in the Boston trial had caused the jury to be ready to acquit him;

in Virginia, this political enemies' list was represented both on the judge's bench and in the jury.

The state of Virginia's proceeedings to prosecute LaRouche's associates, which began in early 1986, mirrors the illegalities of the federal prosecution of LaRouche in Virginia. Where attempted state prosecutions of the LaRouche movement had failed or been struck down in five other states (Illinois, California, Maryland, Minnesota, and Pennsylvania), they thrived in Virginia. As of this writing, six LaRouche associates have been sentenced by Virginia juries to prison terms for "securities fraud" averaging *36 years*. Eight others are still being tried. None had any criminal record, had ever been a "securities broker," or had any idea that when they raised contributions and loans for LaRouche's political campaigns they were "selling unregistered securities."

The political motivation of the federal prosecution of LaRouche is far outpaced by that of Virginia Attorney General Mary Sue Terry, as is shown by a memo from the Alexandria office of the Federal Bureau of Investigation (FBI) to FBI Headquarters, discussing preparations for the Oct. 6-7, 1986, Grenada-style raid on the offices of several LaRouche-associated publications in Leesburg, Virginia.

Despite the fact that it could jeopardize a successful prosecution and result in "a high risk of potential civil liability," the FBI states that Terry's fixation on leading the armed raid by 400 state and federal troopers in October 1986 was absolutely politically motivated:

"The State Attorney General's Office was adamant in being the lead agency for the purpose of entering and securing the two locations, which was construed to be for politically motivated reasons on behalf of the Virginia State Government Administration, rather than for the successful prosecution of state and federal cases."

No impartial judge

As in the federal case against LaRouche, a judge who is a part of the prosecution's network was installed in the Virginia state prosecutions to try all the cases except one.

The Anti-Defamation League of B'nai B'rith was admitted to be a part of the LaRouche prosecution "task force," a fact conceded by prosecutors themselves in pre-trial hearings in the state circuit court in Roanoke. The ADL, with a long history of defending organized crime (its national chairman until 1989 was Robert Vesco's lawyer) is long-time, publicly declared enemy of LaRouche, and has sought prosecutions of him since 1974.

Judge Clifford Weckstein of Roanoke, when presented with a legal motion requiring him to disclose his connections to the ADL, admitted that *he himself had initiated a correspondence extending to 11 letters with the ADL*. The correspondence draws the ADL's attention to the fact that the LaRouche movement attacked him as biased. The ADL responded by sending the judge slanderous material on LaRouche, and indicating a mobilization of its "good friends." Finally, one letter encloses a resolution by the ADL to fill the next Virginia Supreme Court vacancy with a Jewish judge—a barely concealed proffer to Weckstein to hang the LaRouche defendants and reap the ADL's support for the job.

The judge himself had initiated this correspondence with the defendants' adversaries, and disclosed, under duress, only part of it. Although judges frequently recuse themselves from cases on quite superficial grounds, since the standard is not proof of bias, but merely the possible appearance of bias to a reasonable person, Judge Weckstein refused to remove himself from the LaRouche cases.

Sentences imposed by Judge Weckstein on the five defendants who have exercised their right to a jury trial in his court are 77, 25, 39, 34 and 33 years, an average of 41 years per defendant.

Did the state "create the crime," as the Boston jury described the federal government's acts in that case? Although Judge Weckstein followed Judge Bryan in disallowing evidence of the government's targeting of LaRouche, the Virginia state government created the crime in the following astounding way.

Although 16 LaRouche associates were indicted by the state of Virginia on Feb. 17, 1987 for "knowingly and willfully, and with an intention to commit fraud, selling unregistered securities," in fact, there had never been any civil finding in Virginia that the LaRouche political loans were securities—a preposterous idea on its face. When then-State Corporation Commissioner Elizabeth Lacy was asked to rubber stamp the indictment by ruling at the same time that the loans were securities, she declared instead that the question was "a case of first impression."

Enormous pressure was brought to bear, with the *Richmond Times Dispatch* quoting one member of the prosecution that if the loans were not declared securities, "this case is going down the tubes." In March, after a promotion to Virginia's Supreme Court was mooted for Commissioner Lacy, she ruled that the loans were securities. How could the defendants possibly "knowingly and willfully" sell securities, when the commissioner herself was in the dark? Later, Judge Weckstein, and his predecessor, Judge Carleton Penn in Loudoun County, would refuse to even instruct the jury that a defendant had to know that the loan was a security—in fact, just the opposite instruction was given.

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