

Mumia Abu-Jamal: “This Is No Victory”

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03.29.2008 The Third Circuit did uphold the elimination of Abu-Jamal's death sentence. This is no victory because the ruling upheld his conviction thus condemning Abu-Jamal to life in prison.

Observations and analysis of Linn Washington Jr. on the federal Third Circuit ruling in the Mumia Abu-Jamal case issued on March 27, 2008. Washington , is a journalist and university professor in Philadelphia who has written extensively about the contentious case since Abu-Jamal's arrest in December 1981.

OVERVIEW

The long awaited ruling by the Third Circuit Court of Appeals in the Mumia Abu-Jamal case released on March 27, 2008 again displays the dismaying pattern of US courts ignoring precedent to deny relief to this death row journalist whose plight generates international support.

Precedent in American law means courts following previous court rulings when determining specific legal issues.

Precedent is the bedrock of American law.

America law requires courts to follow precedent unless significant evidence and/or compelling rationales necessitate changing precedent.

This Third Circuit ruling changes precedent. This ruling changes precedent by applying legal procedures in a highly questionable manner to dismiss compelling evidence of injustice against Abu-Jamal.

The Third Circuit did uphold the elimination of Abu-Jamal's death sentence. This is no victory because the ruling upheld his conviction thus condemning Abu-Jamal to life in prison.

This ruling refused to grant Abu-Jamal a new hearing or new trial on three compelling issues: prosecutors using racism to exclude African Americans from the jury during Abu-Jamal's 1982 trial; the prosecutor making improper comments to that '82 jury at the end of the trial; and pro-prosecution bias by the '82 trial judge during a 1995 appeals hearing.

The Third Circuit previously granted relief to persons convicted of murder in Philadelphia after ruling that Philadelphia prosecutors had illegally excluded African Americans from juries.

However, in this Abu-Jamal case ruling, the court found no fault in evidence of exclusion of

African Americans from the jury in his 1982 trial.

Curiously, the evidence of exclusion at Abu-Jamal's trial is of equal or greater magnitude than proof of exclusion previously found acceptable for relief by the Third Circuit.

These previous rulings on jury discrimination formed the precedent on that issue for the Third Circuit.

That precedent stated it is wrong for prosecutors to discriminate against even one black potential juror. Additionally, that precedent stated defendants did not have to object to jury selection discrimination by prosecutors immediately when it occurred.

Yet, this ruling reversed precedent on those two points of legal procedure.

A week before this Abu-Jamal ruling, the US Supreme Court granted relief to a death row inmate in Louisiana because of a discriminatory jury selection process. That Supreme Court ruling was written by a Justice on that court who formerly served on the Third Circuit.

That Justice, Samuel Alito, had approved relief to Philadelphia murder defendants due to discriminatory jury selection practices by prosecutors. Alito, in a February 2005 Third Circuit ruling, stated prosecutors commit a violation by removing "any black juror because" of their race - a position similar to the position contained in that recent US Supreme Court ruling he authored.

THIRD CIRCUIT RULING

The Third Circuit's ruling rested on a procedural finding by two of the three judges on this appeal's court panel. This finding stated that lawyers for Abu-Jamal during the 1982 trial and the 1995 appeal hearing failed to follow the procedures legally required to properly raise the issue of prosecutors improperly using racism during the jury selection process.

The panel's majority asserted that "Abu-Jamal has forfeited his Batson claim by failing to make a timely objection" to improper procedures by prosecutors referencing the US Supreme Court's 1986 Batson ruling that outlaws the exclusion of black jurors for reasons rooted in racism.

Philadelphia area author and investigative reporter Dave Lindorff notes the absurdity of holding Abu-Jamal's lawyer responsible for not strictly following procedures during the 1982 trial that the US Supreme Court did not create until four years later in that 1986 Batson case.

No lawyer (or judge) in the United States could predicted what procedure the US Supreme Court would order four years in the future observes Lindorff, author of the seminal 2003 book on the Abu-Jamal case: "Killing Time..."

In reaching this conclusion against Abu-Jamal's jury discrimination claim, that Third Circuit panel's majority created a new standard for persons raising Batson claims in that court.

This standard requires that a Batson violation claim must be raised at the time of jury selection — a contemporaneous objection.

Interestingly, in reaching this conclusion of procedural errors by Abu-Jamal's attorney, the

panel's majority failed to note that this lawyer at 1982 trial was unfairly thrust into the jury selection process after that process was underway without the opportunity to do any preparation.

The trial judge granted the prosecutor's request to remove Abu-Jamal from selecting his own jury, a decision without merit that unfairly benefited the prosecutor and stripped Abu-Jamal of his right to represent himself. Plus, this action aggravated tensions between Abu-Jamal and his attorney.

Further, the panel's majority faulted an Abu-Jamal lawyer for not properly raising the jury selection racism issue during Abu-Jamal's first appeal in the late 1980s to the Pa Supreme Court without acknowledging a major error committed by the lawyer who filed that appeal.

That attorney prepared that appeal without ever reviewing the trial transcript.

There is no way that attorney could have prepared a legally valid appeal without knowing what specifically had happened at trial. (That appeal attorney was also suffering from what proved to be a fatal brain tumor, a medical condition that impaired that attorney's cognitive abilities.)

In creating this new standard, the panel's majority makes it harder to prove Batson violations. Plus, this standard changes that court's precedent on procedures needed to raise Batson claims.

The judge who dissented from his two colleagues faulted them for creating this new standard, a standard not ordered by the US Supreme Court.

"This case's newly created contemporaneous objection rule...goes against the grain of our prior actions, as our Court has addressed Batson challenges on the merits without requiring that an objection be made during jury selection in order to preserve" future appellate review, the dissenter said.

This judge, speaking specifically to changing precedent, said since Third Circuit precedent did "...not have a federal contemporaneous objection rule...I see no reason why we should not afford Abu-Jamal the courtesy of our precedents."

Additionally, this dissenter stated that jury discrimination practices displayed in a now infamous video-taped training session at the Philadelphia DAs Office gave "a view of the culture" of that office during the 1980s when Abu-Jamal was tried.

This dissenter criticized his two colleagues for failing to make the obvious connection between the discrimination instruction given at the taped session and discriminatory practices used by Philadelphia prosecutors before, during and after the 1980s.

"Indeed, given that Abu-Jamal's trial preceded Batson, it is not far-fetched to argue that the culture of discrimination was even worse," the dissenter declared.

Previously, the Third Circuit ordered new federal trial court hearings to collect more evidence to enable full and fair determinations on jury discrimination claims.

The Third Circuit's ruling rejected that procedure for Abu-Jamal.

MAJOR FLAWS IN COURT RULINGS

This practice of creating new court standards to only apply to Abu-Jamal was criticized in an Amnesty International report of the Abu-Jamal case controversy released in 2001.

AI criticized the Pa Supreme Court for altering its prior rulings – precedents – to reach results against Abu-Jamal.

In 1986, for example, the Pa Supreme Court overturned a Philadelphia death sentence after ruling that a prosecutor named Joseph McGill made improper comments to the jury during a trial presided over by Judge Albert Sabo.

McGill prosecuted Abu-Jamal in a 1982 trial presided over by Judge Sabo.

Abu-Jamal's attorneys had alleged that McGill engaged in jury selection discrimination – a claim documented by evidence but a claim that the Third Circuit panel's majority rejected. Sabo's rulings during that 1982 trial aided this documentable discrimination.

During Abu-Jamal's '82 trial, McGill made the same comments to the jury that the Pa high court faulted in its 1986 ruling. But when the Court upheld Abu-Jamal's conviction in 1989 it refused to find any fault with McGill making the same comments it had faulted him for in its ruling three years before.

Then, in 1990, the Pa Supreme Court reinstated its 1986 standard regarding prosecutors making improper comments like McGill made.

The Pa Supreme Court's flip-flopping on this form of prosecutorial misconduct led Amnesty International to state in its 2001 report that: "This contradictory series of precedents leaves the disturbing impression that the Court invented a new standard of procedure to apply it to one case only: that of Mumia Abu-Jamal."

McGill's improper comments to the jury faulted by the Pa Supreme Court in 1986 were an appeal issue before the Third Circuit Court. That federal court panel found no fault in McGill's comments, denying Abu-Jamal relief he should have received if those federal appeals judges fairly followed established law.

The Third Circuit panel also rejected allegations that Judge Sabo was biased during a major 1995 appeals hearing.

Sabo's biased antics during that 1995 proceeding were so outrageous this misconduct provoked strong, caustic criticisms from even Philadelphia's normally anti-Abu-Jamal media. An August 1995 editorial in the Philadelphia Inquirer blasted Sabo's "injudicious conduct" that included verbally badgering Abu-Jamal's attorneys and even briefly jailing one of those attorneys for objecting to one of his improper rulings.

Scores of newspaper articles from the New York Times to the ultra-conservative/law-&-order Washington Times reported on Sabo's pro-prosecution bias at that '95 appeal hearing.

The Pa Supreme Court curtly dismissed this widespread journalistic criticism by contending that the "view of a handful of journalists" did not convince that Court of Sabo's bias.

Five of the seven Pa Supreme Court justices that upheld Abu-Jamal's conviction in 1998

received campaign contributions from the lead group seeking Abu-Jamal's execution, Philadelphia's police union, the Fraternal Order of Police (FOP). One of those '98 justices was the ex-DA of Philadelphia who as DA fought to execute Abu-Jamal.

The Third Circuit agreed with the Pa Supreme Court's 1998 ruling that no evidence exists showing a "settled bias" by Sabo against Abu-Jamal. The Third Circuit panel made this assertion despite noting Sabo making a series of "intemperate remarks" against Abu-Jamal and his defense attorneys during that 1995 appeal hearing.

In another flip-flop ruling, the Pa Supreme Court in March 1988 found that a single statement uttered by the judge during the murder trial of a former Pa State Trooper "was extremely prejudicial" to this Trooper who killed a woman inside a judge's office.

Where the Pa Supreme Court granted a new trial to that killer cop because of that judge's one improper comment, one year later the same Court found no fault in numerous opinion laden statements Judge Sabo made during the Abu-Jamal trial.

Sabo rejected requests to remove himself from hearing that '95 appeal made by Abu-Jamal attorneys citing his pro-prosecution during the 1982 trial. News articles, editorials and commentaries all faulted Sabo for not removing himself stating his failure recuse himself graphically displayed unfairness in a proceeding where fairness was desperately needed.

Journalistic watch-dogs normally hostile to Abu-Jamal sought the face of fairness in that '95 proceeding both to follow established law and to quell critics claiming Sabo's unfairness against Abu-Jamal undermined fairness.

The federal panel's majority employed a legal procedure to sidestep Sabo's clear and illegal bias - an Achilles Heel of that federal ruling and this entire case.

It is incredible to contend that the widely condemned Judge Sabo who presided during most trial court proceedings in the Abu-Jamal's case did not violate any of Abu-Jamal's rights at any time - despite his history of violating rights in this case and other cases.

Judge Sabo handled 32 murder trials that ended in death sentences before his retirement. But 24 of those sentences in Sabo's courtroom had been vacated for errors as of June 2007 according to the American Civil Liberties Union (ACLU). Some of those death sentences were reverse due to misconduct and/or mistakes by Sabo.

Sabo had once ordered prosecutors to pursue a death penalty when the death penalty had been ruled illegal in Pennsylvania. Sabo's ordering that illegal procedure led to overturning that death sentence.

WHAT NEXT?

This March 2008 Third Circuit ruling leaves Abu-Jamal with few legal options to challenge his conviction.

Abu-Jamal can appeal the panel's ruling to the entire Third Circuit Court hoping for that full Court to overturn the panel's ruling. Further, he can appeal any Third Circuit ruling to the US Supreme Court.

There is a slight prospect of new action in Pa state courts.

The Third Circuit issued an order stating Abu-Jamal will receive a life-sentence unless Philadelphia prosecutors hold a new penalty phase hearing seeking to reinstate his death sentence within six months.

This mini-trial style hearing would allow Abu-Jamal to present evidence, including new evidence of innocence that has emerged like a flood since his first trial.

But it is unclear if prosecutors will pursue this route that could create evidence and procedure that could secure a new round of federal appeals for Abu-Jamal.

OVERLOOKED CRUX OF CASE

Sadly, the federal judges at the trial and appellate court levels, like judges in Pa state courts, have refused to uphold the most fundamental issue in the contentious Abu-Jamal case: the right to a fair trial.

Critics of Abu-Jamal's conviction from Philadelphia 's Francistown section to France all feel he was denied a fair trial.

Police and prosecutors blatantly engaging in misconduct to secure a conviction destroys fair trial rights. A trial judge openly biased towards police and prosecutors destroys fair trial rights. Court applying the law in the Abu-Jamal case differently from applied in other cases destroys equal justice rights.

The Pa Supreme Court declared in a 1959 ruling involving a Philadelphia murder case that every defendant is entitled "to all the safeguards of a fair trial...even if evidence of guilt piles as high as Mt Everest..."

Abu-Jamal was four-years-old when the Pa Supreme Court issued that 1959 ruling against judges and prosecutors cutting-corners during a trial.

Abundant evidence documents that corners-cut by the prosecutor and judge during Abu-Jamal's trial and by judges during his appeals corrupted his rights to a fair trial and equal justice - rights guaranteed by the US Constitution.

In June 2007, state courts in Pennsylvania overturned the 200th death penalty case since 1978 when that state reinstated executions, the ACLU stated.

It is incredible to contend that 200 death penalty cases contained errors egregious enough to be vacated but not a single element in the Abu-Jamal case warrants either a new hearing or a new trial.

-The End-

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