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Something is Rotten in Philadelphia

William Schweizer

December 4, 2001

Mumia Abu-Jamal and a large number of his supporters began early this year calling for his outright release from jail.

As many people know, Mumia Abu-Jamal is a political prisoner on death row in Pennsylvania for shooting a Philadelphia police officer, Daniel Faulkner, in December 1981. Faulkner was shot after stopping the car of Mumia's brother, William, and clubbing him. Mumia, who happened to be in the area, was himself shot and arrested. He was convicted and sentenced to death the next year in a legal proceeding fraught with irregularities. Twelve years before this Mumia had been a member of the Black Panther Party and a reporter for its newspaper. Later he became a freelance radio journalist in Philadelphia who exposed the racism, corruption and brutality which the established press refused to cover. In particular, he exposed the Philadelphia city government's long murderous war on the MOVE Organization, which culminated in 1985 with the bombing of MOVE and the incineration of an entire Black neighborhood. Although Mumia never had a criminal record before the shooting, the FBI had amassed a 700-page file on him.

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The reasons for the call to free Mumia are: (1) he is innocent; (2) the judicial system in Eastern Pennsylvania is so hopelessly politically corrupt that Mumia cannot get a fair hearing from it. This report primarily will be concerned with the second reason. In particular it will look at some of the points brought out in two of the amicus briefs which were filed in Mumia's behalf last year. It will examine the court decisions on those briefs. It will also look at the legal disposition of the sworn confession of Arnold Beverly, who says that he—not Mumia—was the real shooter of Officer Faulkner in 1981. Finally, this report will describe some of the movement with-in organized labor in support of Mumia. With the legal system hopelessly stacked against him, Mumia can only get justice from a struggle in the streets, and the power of labor is a critical part of that fight.

Altogether four amicus briefs were filed with District Judge William Yohn, Jr., who is presiding over Mumia's appeal into the federal courts. An amicus or friend of the court brief can be filed by anyone in support of one side or another in a civil court case. If accepted by the judge, the brief becomes part of the legal case record. Amicus briefs do not have to be accepted, but in recent years they normally have been.

These briefs were filed by the American Civil Liberties Union, the NAACP Legal Defense and Education Fund, the Chicano-Chicana Studies Foundation of California, and 21 members of the British Parliament. Among other things, two of the briefs dealt with two related issues at Mumia's original proceeding in 1982: (1) trial judge Albert Sabo's unconstitutional denial of Mumia's right to represent him-self; (2) Sabo's unconstitutional denial of Mumia's request to have MOVE organization founder John Africa sit as an adviser at the defense table. Both of these actions constituted structural defects in Mumia's original proceeding; that is, they were errors which so undermined the trial framework itself as to make it worthless.

if it faces a threat of no business as usual. I will leave it to the imagination of the readers of this piece to carry this out, but I will also point to the examples of the struggle of 1995 and the ILWU and Brazilian teachers as guides.

At the beginning of his trial Mumia had acted as his own counsel. He argued motions, questioned witnesses, and started jury selection. He also asked for John Africa to sit at his table. Only months before, John Africa had himself beat heavy charges while representing himself in federal court. However, shortly after Mumia's trial began, Sabo without prior warning accused Mumia of being disruptive and revoked his right to represent himself. In his place Sabo appointed attorney Anthony Jackson, who protested that he didn't want the case, was unprepared for it, and that Mumia didn't want him anyway.

At this point the proceeding was adjourned while strange things happened. First, there was a conference of Sabo, Jackson and the prosecutor from which Mumia was excluded. Then there apparently was an appeal made by Jackson to Justice McDermott of the Pennsylvania Supreme Court. Apparently this appeal was about Mumia's right to represent himself and his request for John Africa. However, there is no docket, transcript, or any record at all of any such hearing or ruling by McDermott, and Jackson and the prosecutor later disagreed as to what occurred at the apparent session. Nevertheless Sabo held that McDermott supported him and went on with his show.

Sabo's 1982 event cannot be characterized as a trial. A real trial has two sides. However, after Mumia's right to represent himself was revoked, there was only one side: the state's. Not only was Jackson unwilling and unprepared, but several times he actively collaborated with Sabo and the prosecutor to "clean up" the trial record so as to make it harder for Mumia to appeal. For example, in the transcript of the conference, there is the following exchange:

THE COURT (Sabo): What kind of strategy is that to sit back there and refuse to answer anything? What kind of strategy is that really?

MR JACKSON: Judge, I wish I could answer you—

...

THE COURT: Well, what you may have to do, if that's going to be his strategy, and every witness testifies, you may have to confer with him and then you may have to put on the record that you have conferred with Mr. Jamal—

MR. JACKSON: Fine.

THE COURT: —and he has instructed me not to ask any questions.

MR. JACKSON: Fine.

THE COURT: Maybe that's the way. I don't know.

MR. JACKSON: Judge, I think—

THE COURT: I really don't know. I think it's bad.

MR. JACKSON: I do too, Judge. But I think the Court is doing all it can do and in that way he can't come back and say, "I had ineffective representation," when it's clear that's what he wants. (Emphasis added)

Not only was Mumia's right of self-representation taken from him at a phantom hearing, but that session before Justice McDermott violated the Pennsylvania Supreme Court's own rules. Those rules state that any such appeal from a trial court must be made before no less than two justices. This was upheld some years ago by the same federal courts in Philadelphia which are now considering Mumia's appeal. The case then was *Yohn v. Love*, in which District Judge Clarence C. Newcomer threw out the conviction of Mr. Yohn (relation unknown to Mumia's present federal judge) on the grounds that only one Pennsylvania Supreme Court justice had heard an appeal of a major issue during his trial. Judge Newcomer's ruling was affirmed by the Third Circuit Court of Appeals in Philadelphia.

Judge Yohn was selected in 1998 to hear Mumia's federal appeals. As appellate judge, he had to consider the two amicus

of Left groups in the unions. Some of these people are anarchists. But these events also wouldn't have happened but for the systematic racism which permeates every corner of U.S. society and the shredding of due process which has marked Mumia's case from the beginning.

Most labor supporters of Mumia have taken a two-track approach in the unions. These tracks are not mutually exclusive. The first track is working with the rank and file, explaining, educating, and trying to get them involved directly in the struggle to free Mumia. In Oakland a group of rank and file teachers established a Mumia video lending library. In Chicago Mumia defenders and rank and file Teamsters passed out leaflets, ribbons and tapes of Mumia's commentaries at the Jefferson Street UPS facility. In New York a group of rank and file postal workers established Morgan for Mumia at the large Morgan processing center and held two similar days of action over the past two years.

The second track is working with sympathetic union leaders, pushing them to get the union to sponsor the same kinds of leafletting, video showings, etc., which rank and file supporters are doing on their own, plus events like lunch hour rallies. The results have been mixed. By far the biggest success was the ILWU port shutdown. But also significant has been New York Service Employees International Union Local 1199's support in sponsoring buses to demonstrations defending Mumia. Finally, the national APWU resolution went beyond a mere expression of support and mandated the national union to work with Mumia's lawyers in developing an amicus brief. However, these are exceptions; by far most union resolutions have been just that. The leaders of the vast majority of unions will not mobilize the rank and file.

Clearly such mobilization is what will be needed to get justice for Mumia. Twenty years of legal struggle have still not over-turned Mumia's conviction, much less freed him. The only way that the authoritarian and racist conspiracy will crack is

had been called in Philadelphia for the 12th, and a national day of civil disobedience for the 14th. Judge Sabo stayed Mumia's execution date. It is the only stay he has ever issued.

In 1995 groups of people took over streets and disrupted corporate conferences and television networks, among other things. Labor was quieter, but droplets of protest were forming. By 1999 these droplets were rain as the International Longshoremen's and Warehousemen's Union (ILWU) used a contract provision to shut down every West Coast port for a day in solidarity with Mumia. The support for this union brother, who is a member of the National Writers Union, has grown to the point where it now constitutes the biggest labor movement for a political prisoner since those that defended labor organizer Tom Mooney in 1916, the anarchists Nicola Sacco and Bartolomeo Vanzetti in the 1920's, or the accused atom spies Julius and Ethel Rosenberg in 1950-53.

Several things need to be said about this support. First, it is broad. Literally scores of union locals in the U.S. have passed resolutions demanding the justice which Mumia has never received. Unions are involved which are not normally thought of as in the being in the fore of social struggles, like the California state AFL-CIO and the American Postal Workers Union (APWU). Second, it is international. Not only did the West Coast dock-workers stop work in 1999; teachers in Brazil also put down their pens and chalk for several hours in solidarity with Mumia. Also, two international delegations of unionists visited a reluctant Justice Department last year in a vain effort to get that agency to investigate the egregious violations of Mumia's civil rights. Third, the movement has drawn in some of labor's new constituency groups, most notably the lesbian-gay group Pride at Work, which was present at the Justice Department, and the Asia Pacific American Labor Alliance.

Most of these events in the U.S. wouldn't have happened without determined organizing by members and ex-members

briefs just mentioned and the two others. If there was any hope that Judge Yohn would give a fair hearing to Mumia's appeal, it was smashed when Yohn rejected all four amicus briefs last year. He would not rule on their merits, but simply characterized them as "unnecessary and unhelpful" because in part they would add more paper-work to an already-controversial case. In this regard Judge Yohn differs markedly from the judges who recently reviewed the antitrust case against Microsoft. That controversial case was characterized by many amicus briefs. But then again the Microsoft case is not about racism or revolutionary political beliefs.

Judge Yohn's decision was appealed to the Third Circuit, which upheld his rejection in a sinister decision which held that Mumia's amicus petitioners had no automatic right to have their briefs accepted, an argument which Mumia's lawyers had never made. Instead what they had argued was that they did have a right to have their briefs evaluated on their merits. Apparently the Third Circuit also wants to keep exposure of the state's railroad job out of the legal record.

Since the Third Circuit's decision, the confession of Arnold Beverly has appeared. It was found in the files of Mumia's former attorneys, whom he dismissed in March 2001 in order to pursue a more hard-hitting defense strategy which claims innocence as well as procedural violations. The document was sworn in June 1999 but never filed with a court. In it Beverly asserts that he was part of a two-man hit team paid by organized criminals to assassinate Faulkner. Faulkner, according to Beverly, had been causing problems for the mob's drug, gambling and prostitution operations which they conducted in collaboration with a large number of corrupt police officers. Beverly swears that Mumia is totally innocent, a statement which is backed up by Mumia's own sworn affidavit made this year.

Mumia's new lawyers filed Beverly's statement last May together with a petition to depose him. In a deposition both Mumia's lawyers and the District Attorney's office would question

Beverly. The resulting transcript would become part of the legal record. However, Judge Yohn denied the petition. Like the Third Circuit's decision, Yohn asserted that Beverly's confession wouldn't "prove" Mumia's claim that the state suppressed evidence that the real shooter ran away. This was never argued. What Mumia's lawyers did hold was that Beverly's confession was circumstantial evidence supporting his claim. This is in addition to the obvious detail that the statement is from a man who admits that he was the shooter who ran away. Yohn also notes that Mumia has not first exhausted his appeals regarding Beverly's statement in state court and then proceeds to argue against the state court considering it also.

Finally, in his decision Yohn shows that at best he simply doesn't care about Mumia's life when he wrote twice that Beverly had confessed to shooting Mumia. Can a straight system arise from crooked facts?

Clearly the political rot which showed itself with Mumia's case in 1982 in the Pennsylvania courts has now exposed itself in the federal system. Although he was discussing Pennsylvania, it is worth quoting Judge Newcomer in the original Yohn v. Love decision: "...this Court cannot turn a blind eye to the fact that too often members of the Pennsylvania state appellate judiciary have shaken the confidence of the people in the fair and impartial administration of justice in this Commonwealth. This instance is but one of many in which the judges of Pennsylvania have appeared to act with more than the evenhanded application of the law in mind..."

Judge Newcomer notwithstanding, what all these tortured legal decisions amount to is an authoritarian and racist conspiracy to murder Mumia. Taken together, the denial of Mumia's bid to represent himself, the imposition of an unprepared, unwanted, and unwilling substitute lawyer, the denial of Mumia's choice of legal advisers, the use of improper and unrecorded appeal procedures, the refusal to admit amicus briefs dealing with these matters, the ratification of this refusal by the U.S. Circuit

Court, and the refusal to allow even a deposition of Arnold Beverly amount to such a conspiracy.

Byway of comparison, consider the case of Ira Einhorn, a man of European extraction, which has been in the Philadelphia court system for about as long as Mumia's. Einhorn was recently extradited to Philadelphia after being on the run for twenty years. He is accused of killing his girlfriend, Holly Maddux, in 1977 and then stashing her body in a trunk in his apartment for more than a year afterward. When arrested in 1978, he secured the services of Arlen Specter, ex-District Attorney in Philadelphia and now a U.S. senator. In an unusual action, Specter prevailed on the court to grant bail to the murder suspect. Einhorn promptly jumped it. Since being discovered in France in 1997, Einhorn has been in the news claiming without evidence that he is the victim of a government conspiracy. On the other hand there is Mumia Abu-Jamal, with no bail, no Arlen Specter, and no media coverage of the very real evidence of a state conspiracy to murder him.

Mumia's new lawyers have also petitioned the Pennsylvania state courts to reopen the Post Conviction Relief Act (PCRA) hearings which were held before Judge Sabo in 1995-96. At this writing a hearing on the question is scheduled, but its scope is unknown. It is highly unlikely, however, that the state has suddenly changed its mind to admit twenty years of politically corrupt dealing into its own legal records.

The struggle to free Mumia ultimately will be won or lost in the streets. To those who doubt this, consider the events of the summer of 1995. In early June, just as the PCRA hearings were to begin, Pennsylvania Gov. Ridge set an execution date of 17 August of that year. During the hearings it was obvious that Judge Sabo wanted to get through them before the execution date. But Sabo was thrown off schedule as tens of thousands of people began disrupting capitalist business as usual all over the world. Finally in early August, it became clear that he could not finish the hearings in time. A large national demonstration