

UK Lawyers Petition US Appeal Court for Mumia Abu-Jamal

Written by Robert ID2851
Sunday, 16 July 2006 05:36 -

Over 130 of the UK's most distinguished lawyers are signatories to a letter initiated by Ian Macdonald QC and Legal Action for Women, to the US court of appeal highlighting the racism in the original trial and subsequent hearings of Mr. Mumia Abu-Jamal. After 24 years on Pennsylvania's death row, Mr. Abu-Jamal, an award winning journalist convicted in 1982 of killing a policeman, has been granted an appeal which if successful could result in a new trial. This would be the first time his side of the case against conviction would be heard by a jury.

The signatories include: many who are Queen's Counsel; leading criminal trial lawyers, in some cases household names such as Michael Mansfield QC, Helena Kennedy QC, Lord Gifford QC, Gareth Peirce, Clive Stafford Smith and Geoffrey Bindman; those with experience of doing appeals in the Privy Council in death penalty cases from the Caribbean; many experienced in race and gender discrimination cases; and a professor of law. On 20 July, Robert R. Bryan, lead counsel for Mr Abu-Jamal, will submit opening briefs for the appeal on issues such as prosecutorial use of racism in jury selection and the death penalty.

Ian Macdonald QC, criminal trial lawyer and leading authority in the UK on anti-racism and immigration law, says:

"This is a most unusual case: although it is taking place in a United States court, there is enormous concern among the legal profession here at the strikingly unfair trial that took place. As members of this distinguished profession, which claims to work for justice, we feel obliged to register our grave concern. There is no doubt that what happens in US courts affects the legal climate in the UK.

Drawing on the common legal heritage between the UK and the US which, "since the time of Magna Carta in 1215, has given pride of place to common notions of due process and a fair trial" to justify their intervention, the letter lists some of the more noteworthy outrages including: the prosecution's systematic removal of Black people from the jury and the blatant racist bias of trial Judge Albert F. Sabo. Not only was Judge Sabo overheard to say that he was going to help the prosecution "fry the nigger", he banned Mr. Abu-Jamal from crucial periods of his own trial and denied him the right to represent himself, he gave the prosecution leeway to slander the defendant, and showed unrestrained favoritism towards white candidates for jury selection.

The concern for Mr. Abu-Jamal to have a new trial comes also from opposition to the death

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penalty. His case is a key test of judicial murder. Thousands of lives depend on the outcome, starting with the 3370 people on death row who are disproportionately Black people and other people of color.* Mr. Abu-Jamal had no criminal convictions before his arrest. The determination of the police, prosecution and judge to deny him a fair trial and execute him strongly suggests that this outstanding campaigning journalist is being tried for his track record of exposing racism, police brutality and corruption in Philadelphia, and for his ongoing opposition to US government policies and practices. What does it mean for political opposition within the superpower if critics of government policies can be disposed of in this shameless anti-democratic way? When the standard of justice within the superpower is allowed to fall, the rest of the world is inevitably influenced.

The lawyers entreat the US courts to make right the actions of Judge Sabo, a racist hanging judge, lest he be taken as the face of US justice.

Legal Action for Women comments:

"We have supported Mr. Abu-Jamal's fight for a new trial for many years and last October had the first opportunity to visit him in prison. With Ian Macdonald we initiated this letter to help ensure that this remarkable man, who is in the greatest danger of judicial murder, and whose case against conviction has never been heard by a jury, gets what we are all entitled to: a fair trial." * NAACP-LDF Death Row USA (April 1 2006)

Background

Mumia Abu-Jamal is an award-winning journalist who, in the years leading up to his December 9, 1981, arrest, had actively exposed police corruption, racism, and violence against Black people and other people of color. Despite severe restrictions on contact with the outside, including how much written material he is allowed, he has continued his work from inside prison, recording weekly Dispatches From Death Row, incisive radio commentaries, for Prison Radio, which goes out on 100 stations. He also writes for other publications. He has written five books while in prison including: Live From Death Row and most recently We Want Freedom: a Life in the Black Panther Party.

The US government's determination to kill Mr Abu-Jamal has to be seen in the context of its

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treatment of other journalists, many of whom have been killed for trying to speak the truth. His work as a "jailhouse lawyer", regularly providing legal advice to other prisoners, led to recognition by the US National Lawyers Guild a prestigious organization of lawyers in the US whose aim is to eliminate racism and defend civil, legal and human rights. He tells the story of jailhouse lawyers like himself in a forthcoming book.

Mumia Abu-Jamal's fight for a fair trial has won the support of tens of thousands of people around the world including Archbishop Desmond Tutu, Nelson Mandela, the European Parliament, Alice Walker, Paul Newman, Sister Helen Prejean, Danny Glover, Rage Against The Machine, the Detroit and San Francisco City Councils, Amnesty International, and many others. Various cities including Paris, have bestowed on him honorary citizenship.

Accusations aimed at discrediting Mr. Abu-Jamal, for example, that he has never given an account for what happened on that night, ignore the evidence that he was shot in the chest and rendered unconscious shortly after approaching the scene and consequently knows nothing of what happened theret.

Mumia Abu-Jamal comments: "I remain innocent. A court cannot make an innocent man guilty. Any ruling founded on injustice is not justice."

Robert R. Bryan, lead counsel comments: "Mumia's case is now moving forward and may proceed at great speed. The authorities want to silence his voice and pen. In over three decades of litigating death-penalty cases, I have not seen one in which the government wants so badly to kill a client."

Garden Court Chambers 57-60 Lincoln's Inn Fields London, WC2A 3LS Learned Colleagues: We write about the case of Mr. Mumia Abu-Jamal, an award-winning journalist who has been on Pennsylvania's death row for nearly a quarter of a century, and who was recently granted a review by the United States Court of Appeals, Philadelphia. The review was granted by the Court on three issues, each clearly of enormous constitutional importance.

This is of great interest to us here in the UK because: (i) we share a common legal heritage which, since the time of Magna Carta in 1215, has given pride of place to common notions of due process and a fair trial;

(ii) These common notions guarantee all, citizen or alien, who come before our courts on serious criminal charges a trial by a jury of their peers and a judge who is both independent and unbiased.

Where our systems at present part company is over the question of the death penalty. The United Kingdom ended the death penalty for murder with the Murder (Abolition of Death Penalty) Act in 1965. Since that time the death penalty has been abolished or suspended in all countries in the European Union and all member countries of the Council of Europe, including the former Soviet Union.

In those parts of the Caribbean where the death penalty still operates, it has been held by the Privy Council, the supreme court of the British Commonwealth, that to keep a person on death row for more than five years is inhuman and degrading treatment, and therefore unconstitutional.

Furthermore, more recently, the Privy Council has ruled that the mandatory requirement to impose a death penalty for murder is incompatible with the right not to be subjected to inhuman or degrading punishment or treatment enshrined in the constitutions of the Eastern Caribbean, Jamaica and the Bahamas (see *The Queen v Reyes* (2002) 2 WLR 1034; *The Queen v Lambert Watson* (2005) 1 AC 472; (2004) 3 WLR 841; *The Queen v Bowe and Davis* [2006] UKPC 10).

In the jurisprudence of the European Court of Human Rights it has been held that extraditing a person to face the death row phenomenon amounts to inhuman and degrading treatment and is a breach of Article 3 of the European Convention of Human Rights (*Soering v United Kingdom* 1989 11 EHRR 439).

In our own legal developments, the greatest factors leading to abolition were:

(i) The discovery that innocent people had been convicted and executed, and

(ii) A series of unsafe convictions where trials were flawed by unfairness, bias or the withholding

of important evidence by the law enforcement agencies.

As regards bias, the requirement for trial by an "impartial tribunal" embodies the protection against actual and presumed bias, and applies equally to the judge and to the jury. In *Porter v Magill* (2002) AC 357, the House of Lords set out the test which applies in British courts. The court should first ascertain all the relevant circumstances, and then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased. So the reasons why we have become particularly interested in the review of Mr. Abu-Jamal's conviction and sentence are:

(i) because of the serious and disturbing allegations that the fairness of Mr. Abu-Jamal's trial was hopelessly compromised by racism; and (ii) because Mr. Abu-Jamal has become uniquely identified with the movement against the death penalty which is growing in every country, not least in the US itself, where it is practiced most. Thus interest in his case and concern for him transcend national boundaries.

The new development in Mr. Abu-Jamal's case is that for the first time in 25 years a court has rendered a decision which could eventually result in this admirable individual receiving a new and fairer trial, and his likely freedom.

We write as lawyers practicing in the UK who, sharing a common legal heritage with our counterparts in the USA, are disturbed by the serious allegations that this conviction is fatally flawed by the racism which seems to have permeated the case since the night of Mr. Abu-Jamal's arrest in 1981.

One significant issue before the court in this latest review is whether the prosecution's systematic removal of Black people from the jury undermined the fairness of the entire judicial process. The prosecution used peremptory challenges to remove qualified people whose only difference from other prospective jurors was the color of their skin. This appears to have been common practice especially for the prosecutor in this case. [1] That would never be allowed in our jurisdiction, and, as you know, the US Supreme Court held some years ago that such a practice is unfair. It is this precedent that is being relied on to mount a challenge in Mr. Abu-Jamal's case. We are aware, however, that since that ruling, in similar cases, lower courts have rationalized and excused racist manipulation of jury selection by the prosecution, ultimately resulting in the execution of the victim of this racism. We are concerned that in this case the law as laid out by the US Supreme Court will not be breached again by the racism of a

lower court.

Another issue which has been accepted for federal review involved the prejudicial conduct at the post-conviction hearing of the trial judge, Judge Albert Sabo, now deceased. In granting a review of this judge's behavior, the Federal Court has clearly shown proper concern about the blatant bias and racist conduct of the trial judge which permeated Mr Abu-Jamal's trial. It is widely understood in our profession that the racism of Judge Sabo was not confined to the occasion of the post-conviction hearing or indeed just to this trial, but that he had a reputation for bias and partiality, and was responsible for putting more people on death row than any other judge in the United States. It is said that it is no accident that nearly all of those prisoners were Black. Just as we object if the 18th century hanging judge, Judge Jeffries, is taken to be the face of British justice, no-one in your country would want Judge Sabo to be taken as the face of US justice. We understand that Mr. Robert R Bryan, Mr Abu-Jamal's lead counsel, has interviewed numerous people who were present not only at the 1982 trial but also at the subsequent evidentiary hearing in 1995, who all witnessed the racist conduct of the judge, which was both overt and subtle. Judge Sabo discriminated against Mr Abu-Jamal in ways that were clearly related to his race and gave vent to expressions of racist political beliefs.

The most blatant example was the judge's comment, overheard by a stenographer that he was going to help the prosecution `fry the nigger".

In addition, Mr. Abu-Jamal repeatedly insisted on his right to represent himself, since the court-appointed attorney was not prepared and had conducted very little in the way of an investigation. Judge Sabo denied the defendant this basic right. When Mr. Abu-Jamal protested, he was removed from the courtroom. As a result Mr. Abu-Jamal was not present during a large portion of his own trial and was thus essentially tried in absentia.

It seems to us to be a matter of some significance that Mr. Abu-Jamal was denied the right of self-representation at the very moment in the trial when he was questioning prospective jurors. The outcome is that the prosecutions were able to remove Black jurors, while Mr Abu-Jamal was denied the right to question key jurors.

Judge Sabo also allowed the prosecution to argue that Mr Abu-Jamal had been a member of the Black Panther Party [2] as if that was a crime and justified the death penalty. Witnesses also confirm that he showed favoritism towards white witnesses and jurors, allowing one white witness personal time off but denying the same request to a Black juror, leading to this juror

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leaving the jury. Witnesses reveal that the judge expressed his displeasure with those who were people of colour by the rolling of his eyes and in voice inflection, which was bound to have a terrible impact upon the jurors.

Other witnesses interviewed by Mr. Bryan confirm that the treatment of Mr. Abu-Jamal by the police was markedly racist. The police were heard by more than one witness to have referred to Mr. Abu-Jamal as "nigger, and after his arrest they ground his head into a post even though he was badly wounded, having been shot in the chest. [3] The police also made a blatant and clear demonstration to the jury of their support for a conviction by packing the court with uniformed police officers. We are not unfamiliar with either such police racism or the kind of court tactics used here – similar behavior led to some of the most notorious miscarriages of justice in the UK, where convictions were often not overturned by the Court of Appeal until many years later.

We know these issues are to be reviewed in this new appeal, which gives the courts a last chance to right these wrongs. Now that we are in the 21st century, we hope and trust that the court and the public in the United States are aware of the strong concern outside of the US that this racism is dealt with in the strongest and clearest terms. This is especially urgent in the light of the Katrina hurricane disaster in New Orleans, when television viewers in every country of the world witnessed an unparalleled display of racism on a massive scale, allowed (some would say enabled) by the US government.

You will want to know that the signatories to this letter have worked for many years in the judicial system, that all have worked in cases which challenged various forms of racism, and that some of the signatories are people of color. We are all profoundly aware of the impact on our personal and professional lives, and on the entire society, of racism in the US judicial system given the influence the United States exercises in every country.

We are also aware that the outcome of this appeal will have a great impact on all people of color who are at present facing the judicial system; their cases will be influenced, possibly even determined, by whatever legal but also moral precedents are set in the case of Mumia Abu-Jamal.

However, our general concerns do not override our particular worries for this gifted individual who has shown both before and since his incarceration that he is dedicated to the work of changing our world for the betterment of all.

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We ask that you consider most carefully the issue of racism in this particular case in the light of the above concerns.

Yours sincerely,

Full list of signers can be seen at http://www.iacenter.org/polprisoners/maj_london-petition0706.htm

Some facts about Mr. Abu-Jamal's 1982 trial

The policeman was killed with a .44 caliber gun. Mr. Abu-Jamal's gun, which he was licensed to carry as a night-time taxi driver, was a .38 caliber.

The police never tested Mr Abu-Jamal's gun to see if it had been recently fired. They did not even examine his hands to see if he had fired a gun.

It was claimed at trial that Mr. Abu-Jamal stated, at the hospital shortly after the shooting, that he fired the fatal shots. Yet, that was contradicted in a written police report by the officer who was with Mr. Abu-Jamal from the moment he was placed in the paddy wagon at the homicide scene until he went into surgery for removal of the bullet lodged near his spine. When asked about the long time spent guarding the defendant, the police office reported: "The negro male made no comment." A week later he was asked by the chief detective on the case if there was anything he wished to add to his statement, to which the officer replied: "Nothing I can think of now." He was hidden from the defense at the 1982 trial so did not testify to contradict what other police witnesses claimed was said. Incredibly, 13 years later the officer's memory "improved" and he claimed to have heard Mr Abu-Jamal state while lying on the floor at the hospital: "I shot him. I hope the motherfucker dies."

The treating doctor said that Mr Abu-Jamal was unconscious and said nothing. He reported that a nurse found police with loaded guns pointed at the suspect as he lay virtually lifeless in his hospital bed.

William Singletary, a Vietnam veteran and local businessman, saw the whole incident and said that Abu-Jamal was not the shooter. However, the police forced him to change his story and intimidated him into leaving Philadelphia. Over a decade after, he testified at an evidentiary hearing that Mr. Abu-Jamal did not shoot the cop and was innocent. The police had put pressure on him to corroborate their version of events. Other key witnesses, such as Veronica Jones who at the 1995 hearing, testified in support of Mr. Abu-Jamal, were harassed into initially giving false testimony. Two prosecution witnesses were given special favors, including exemption from criminal prosecution, for their testimony against him.

The defense lawyer did not interview a single witness in preparation for the 1982 trial, and lacked adequate funds for defending a capital case. Mr. Abu-Jamal could not afford to retain competent counsel, an investigator, nor needed experts in such fields as pathology and ballistics.

[1] Data collected from the period 1977-1986 by David Baldus, Professor of Law, University of IOWA found that the prosecutor in Mr Abu-Jamal's case, Joseph McGill, peremptorily struck Black jurors from a jury 74.14% of the time he had an opportunity to do so, compared to exercising peremptory strikes against white jurors 25.30% of the time. (Killing Time by David Lindorff, Common Courage Press 2003, p. ix)

[2]The Black Panther Party (BPP) was a prominent part of the Black movement of the 1960s-70s focused on racial dignity, self-reliance, and monitoring and protecting the Black community from police brutality, which was rife. Despite their demands of "land, bread, housing, education, clothing, justice and peace" and work which included running breakfast programs for Black children in Philadelphia from 1969 they (and Mr Abu-Jamal in particular) were the target of a specialist police unit, under the command of Police Commissioner Frank Rizzo (who later became mayor), which ran a campaign of surveillance, harassment, infiltration, break-ins and trumped-up charges against them. Mr Abu-Jamal's membership of the BPP was raised at the trial in order to fit him to a racist stereotype as a violent and anti-social individual,. (Ibid, pp.38-42)

[3] A third of the 35 police who played a role in Mr Abu-Jamal's arrest and conviction were later convicted on charges of corruption for incidents that preceded the shooting. (Ibid. p.35)

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Legal Action for Women, founded in 1982, is a grassroots anti-sexist, anti-racist legal service for all women and their families. LAW combines access to a network of sympathetic lawyers with experienced lay workers. Its insistence that no case is "hopeless", that something can always be done, has won LAW recognition including from distinguished legal professionals. LAW has helped prevent many injustices and set important precedents including for the first private prosecution for rape in England. Ian Macdonald QC is a criminal trial lawyer and a leading authority on immigration law, and author of the standard text Macdonald's Immigration Law and Practice used by immigration practitioners, officials, adjudicators and judges. Head of Garden Court Chambers until 2003 and known for notable cases such as the Mangrove Nine whose case against conspiracy was fought and won in the context of massive community support, and as author of the path-breaking report Murder in the Playground, an Inquiry into Racial Violence in Manchester Schools, following the murder of 13-year-old Ahmed Ullah by another pupil. He was leading counsel for Duwayne Brooks, friend of Stephen Lawrence and key witness in the government Inquiry into his racist murder.

Robert R Bryan became lead attorney for Mumia Abu-Jamal in 2003. He has specialized in death-penalty litigation for three decades, and is lead counsel in various murder cases pending at the federal and state level. Notable cases include representing Anna Hauptmann, widow of Richard Hauptmann executed in 1936 in New Jersey for the kidnap-murder of Charles A. Lindbergh, Jr. and Jimmy Eagle indicted for the killing of two FBI agents on the Pine Ridge Indian Reservation. He is legal commentator for ABC television in San Francisco and lectures widely on the death penalty and human rights in the US and Europe.

Download the Word Document at: <http://www.freemumia.com/UKPress.doc>

Press Conference, 19 July, 2006, 6.30pm Garden Court Chambers, 57-60 Lincoln's Inn Fields, London, wc2a 3ls

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