all of the candidates, or all of the legislature—the maximum amount to both parties, the Republicans and Democrats—and pushed through this legislation. It was voted on, passed, and within a few months from when it was passed, Montana Power then decided to sell its generation portion of it. They put that up for sale, and Pennsylvania Power & Light bought it, and then a few months later, they decided to sell their transmission and distribution aspects of it, and going over the bids, they decided to sell it to Northwestern Public Service, for about $1.1 billion. Once that takes effect, which will probably be next year, after it has been approved by the Feds and the state, then you get two middlemen, basically doing what what one company did, and each of them will tack on their price increases, and then the public, in 2002, will suffer the consequences.

EIR: Would it surprise you to learn that the last new refinery in the United States was built in 1971?
Anderson: It doesn't surprise me, and I think the reason why one hasn't been built is because of the environmental regulations, and the ignorance on the part of the American public, taking for granted that their electricity, heating oil, natural gas, and fuel, are cheap. We have been so reliant on foreign crude, and foreign importation, we have become lax, and we've not educated ourselves.

EIR: What do you think should be done to ensure available and affordable energy this Winter in Montana?
Anderson: I think the government has to get in and regulate it. I think that it has to come from the Federal level. You can't rely on private industry to do it; they're out to make a profit, at whatever the cost—they're going to make a profit. It has to come from the Federal regulatory end of it.

EIR: Have there been layoffs in Montana as a result of the energy situation?
Anderson: Yes, this last Summer, some of the companies, early on, after the industry was allowed to go out and make contracts with the energy suppliers, had gone out and made commitments with other companies, thinking they could purchase power cheaper over a longer period of time. This Summer, when the prices went up, several of those companies were forced to lay off their employees because the price of power was too high. The contracts that they had entered into turned out not to really be a good deal, but have escalator clauses in them, that caused them to lay off people. Primarily, there was one in a copper-mining company in Butte, and I think some of the aluminum smelters, and in the timber industry also, in a lumber mill, I believe. But that has already started this Summer. Then, recently, 12 companies that had opted to go out and find separate power contracts, now want to get back in with Montana Power's power structure, having seen that it has been a failure when they have gone out and purchased power on their own.

DNA Testing Shakes Up U.S. Justice System

by Marianna Wertz

Two decisions with respect to post-conviction DNA testing in recent weeks—one by Virginia Gov. James Gilmore and the other by U.S. District Judge Albert V. Bryan, Jr.—have blown some holes in the Confederate-style control over the U.S. justice system; and the fitting irony is that the two decision-makers are among the leading flunkeys of that system.

The power of DNA testing, that it can irrefutably prove either the innocence or guilt of the accused, has forced Gilmore—reportedly the top candidate for Attorney General in a George W. Bush administration and a staunch advocate of "tough-love" criminal justice in the former capital of the Confederacy—to grant Virginia's first pardon to a death-row inmate. It also forced Bryan—the man who railroaded Lyndon LaRouche and six associates into prison on trumped-up charges in 1988-89, and who presides over the Alexandria, Virginia "rocket docket"—to issue a ground-breaking decision, ruling that inmates who claim that they were wrongfully convicted, have a right to go into Federal court and request DNA testing, even if the state-mandated time limit for their appeals has run out.

Gilmore Faced 'Utter Humiliation'

On Oct. 2, Governor Gilmore, faced with the prospect of "utter humiliation," as attorney Gerald Zerkin says in the interview pusblished below, granted an "absolute pardon" to former death-row inmate Earl Washington, a 40-year-old African-American with an IQ in the range of 69 (comparable to a child around 10.3 years of age), who has spent the last 17 years in a Virginia prison, ten of those on Death Row, for a rape and murder he didn't commit. As often happens under intense pressure, Washington had "confessed" to the crime in order to please his police captors, but, when he finally got competent legal help (as the interview with Zerkin indicates), the DNA evidence cleared him of guilt. Washington is the 88th person to be released from Death row because of innocence, since the United States reinstated capital punishment in 1976.

However, because Gilmore is who he is, Washington is still in prison, awaiting a decision by the parole board to free him, or till he "maxes out" his prior conviction next February. Gilmore not only didn't free Washington, after pardoning him, he refused even to admit publicly that Washington was

innocent, stating only that "a jury afforded the benefit of the DNA evidence and analysis available today would have reached a different conclusion regarding the guilt of Earl Washington."

On Sept. 29, Judge Bryan ruled in the case of James Harvey, 59, convicted in 1990 of rape, that the 14th Amendment and U.S. code allow state prisoners to file Federal civil rights suits seeking DNA testing. Virginia's 21-day rule, which prevents anyone from going back into court, even with new evidence, 21 days after conviction in the state court, had precluded Harvey's attorneys from getting a DNA test on the evidence in his case. While a district judge's decision is not binding on other courts, it may become a national test case. As Harvey's attorney, Peter Neufeld, states in the interview below, Bryan was "recognizing the realities of the time" in making this decision, i.e., the power of DNA testing to unveil the truth.

The U.S. Congress, in its closing days, has the possibility of passing the Innocence Protection Act of 2000, which would make post-conviction DNA testing part of Federal law, and the nation would be spared this piecemeal approach to reforming the criminal justice system. These two decisions simply underscore the urgency of passing that law, to begin to bring America out of its judicial Dark Age.

Interview: Gerald Zerkin

Gerald Zerkin, a Richmond attorney who represents former death row inmate Earl Washington, spoke with Marianna Wertz on Oct. 10.

EIR: What's your view of the situation around Earl Washington? Do you think it's resolved adequately?

Zerkin: No. I think he should have been out a week ago. Plainly, he was eligible for parole many years ago. With the pardon and the new calculation, he was eligible for parole many years ago. He clearly would have been paroled many years ago. The state almost killed him, and he has virtually maxed out his sentence anyhow. The just and decent thing to do would have been to commute his remaining sentence to time served, and let him out.

EIR: I looked at this decision, which was obviously very painful for Gov. James Gilmore to do, together with the decision on Sept. 29 by Judge Albert V. Bryan, as people under extreme pressure from a political movement that wants to see a change in the death penalty law. Do you agree with that?

Zerkin: No, absolutely not. I have no knowledge of the basis for Judge Bryan's decision. I've read the opinion, and it gives very little insight into his analysis of the legal position. Whether Judge Bryan felt he was under pressure because of a political movement or not, I have no basis for determining. I'd be surprised, but I just have no knowledge of it.

Governor Gilmore clearly is not motivated by anything having to do with the death penalty. I think Gilmore was confronted with the potential for utter humiliation, for not letting someone go. After all, Earl Washington was no longer sentenced to death, so the death penalty was not an issue. This is a question of someone who had proven his innocence, whether you were going to keep him in jail or not, and whether you were going to recognize the fact that the state had made a mistake.

Indeed, the state has granted pardons in nine capital cases using DNA evidence, who've proved that they weren't guilty. This is certainly not the first one of those. What I think is telling about Governor Gilmore's position, is that, even in the face of overwhelming evidence, I'd say conclusive evidence, that Earl Washington wasn't involved, he refused to concede the fact that he's innocent. Instead, he insists that he's granting a pardon simply because he wouldn't have been convicted if this evidence were presented to a jury.

I don't see how you can say he's given in to anti-death penalty pressure, when it's not even a death penalty case anymore. I don't think he's even given in to pressure at all. The pressure would have been to do the decent thing and let him out, and admit the state made a mistake. They won't admit they made a mistake, maybe because it is a capital case. In fact, the exact opposite. Maybe if it weren't a capital case, he would be able to admit the state had made an error. He's refused to do so because it *was* a capital case.

EIR: But it can now be truly said, that you can no longer say Virginia has never erred in a capital case.

Zerkin: I think you can't, but the spin that these people are putting on it is that Earl didn't prove his innocence. The Commonwealth Attorney is sitting out there, he's a new Commonwealth Attorney, but he's sitting out there saying, we think he's guilty. They just refuse to admit the fact that the system could make an error. They're saying, this proves the system works!

Mind you, Earl Washington would have been dead, to which the senior Assistant Attorney General testified at one point—that Earl Washington would have been executed way back in the mid-1980s, without having a lawyer for post-conviction, without ever filing a *habeas corpus* petition. They would have executed him back then. The only reason Earl Washington wasn't executed, was because of the involvement of [former death row inmate] Joe Giarratano, in obtaining a lawyer for him.

So for them to say they have a system and the *system* works is just horsesh—.

EIR: And Joe Giarratano is still sitting in prison.

Zerkin: Exactly.

EIR: How often does someone who's mentally ill or mentally retarded plead guilty to something he hasn't done; make a false confession?
Zerkin: First of all, I think people, whether mentally ill or, in Earl's case, mentally retarded, can falsely confess with some frequency, and not only because they're mentally retarded or mentally ill. With mentally retarded people, in particular, that is common, because of their coping mechanisms in their lives generally, which is very often to do what Earl did, which was to acquiesce to what people in positions of authority want. That's relatively common.

The fact is, that false confessions are given by people who do not suffer from mental retardation or mental illness, with surprising frequency. I have no numbers on how often that happens, but that is not that rare an occurrence. There are a host of reasons why people give false confessions, that have nothing to do with those factors.

Interview: Peter Neufeld

Peter Neufeld is the co-founding co-director of the Innocence Project at Cardozo Law School in New York City. The Innocence Project has been either involved directly or as of counsel *in about one-fourth of the 74 post-conviction DNA exonerations to date. He was interviewed by Anita Gallagher on Oct. 10.*

EIR: What do you think of the coincidence, or what was behind, Judge Albert Bryan's ruling that every person has a right to a DNA test if it might prove innocence, and Virginia Gov. James Gilmore's decision not to release the results of the DNA test on Earl Washington?
Neufeld: I don't think there is any coincidence between the two results. We have been trying to get DNA testing on a number of post-conviction cases in Virginia for a long time without success. What happened in the *Harvey* case, is that after I had personally tried for about three years to get the Commonwealth Attorney to agree to testing, without success, we went into Federal court to try to get relief there. We couldn't go into state court in Virginia, because they have a 21-day rule which prevents anybody from going back into court 21 days after a conviction in the state court. And Judge Bryan considered the issues, and felt that there is a Constitutional due process right to get testing which might lead to somebody's exoneration, and obviously that's the preferred approach in the country, and we think he did the right thing.

Governor Gilmore is a different story. Governor Gilmore would not have agreed to do any additional testing; he literally has gone kicking and screaming into the 21st Century. But the public sentiment has grown in the last couple of years; certainly an overwhelming majority of the country now believe that everyone should have the right to post-conviction DNA testing if they ask for it, and their position was simply untenable. So, Governor Gilmore had no choice but ultimately to allow the testing. Once he had the testing, he sat on the result for a couple of months before going public with it, and, frankly, the only reason he did that is that he was again being pressured by the court of public opinion.

EIR: Do you think that either of these rulings might have been influenced by the Innocence Protection Act, which is pending in the Senate?
Neufeld: Well, if the Innocence Protection Act is passed, there would be no reason to go to a Governor Gilmore any more. People will not be at the mercy of elected political figures; they will be able to seek redress in a court of law.

EIR: Yes, but do you think these decisions might have been an effort to allow people opposed to that, to say, "We don't need it . . ."
Neufeld: No, I don't think so.

EIR: You were the attorney for James Harvey?
Neufeld: Our office represented Mr. Harvey.

EIR: Judge Bryan is not noted for being a progressive ruling judge.
Neufeld: I'm not that familiar with him. But his decision here was certainly appropriate, and I think it was realistic. It was recognizing the realities of the time, being that we now have the scientific tool which can indicate quite effectively whether or not somebody was unjustly convicted in the first place, and we would be foolish not to avail ourselves of that tool. I think that is what he is saying, fundamentally.

EIR: Do you have any idea of the future of the Innocence Protection Act?
Neufeld: I do not. I would hope that it will be passed, but I think, given the fact that Congress is about to shut down for the elections, it looks like its success is very doubtful, at least this term, and I think it will probably have to come back in 2001.