

Partners in Crime

The Justice Department abuses its power before conviction, and the Bureau of Prisons does the same afterwards.

by Conrad Black



In the president's well-crafted and well-delivered address to Congress last week, the most affecting section of his remarks was the reference to two African-American ladies who had served very lengthy time in prison, on life sentences, and whom the president had released. There was some question about the guilt of at least one of them, and both had, by any reasonable reckoning, been oversentenced. The principal point of this section of the president's remarks was the severity of the criminal-justice system, not specifically the egregious fact that American prosecutors win almost 99 percent of their cases, 97 percent without a trial, so one-sided is the ability of prosecutors to extort confected inculpatory evidence from witnesses who have invented their stories in exchange for non-prosecution and with immunity for prosecution for perjury.

This is, as Mr. Trump has said on other occasions, an outrage, and a current example of its operation is the ludicrous rollover of Michael Cohen on charges having nothing to do with the president, while improvising some tawdry tales at the expense of the president for whom he formerly said he "would take a bullet." Mr. Cohen is no more contemptible or credible than hundreds of thousands of other people who do essentially the same thing every year in the United States. The Supreme Court, unlike some commendable lower courts, has sat inert while the Fifth, Sixth, and Eighth Amendment rights to a grand jury as assurance against capricious prosecution, to due process, to absence of seizure of property without due compensation, and to prompt justice, an impartial jury, counsel of choice, and reasonable bail, were systematically denied the nearly one million Americans accused of crimes every year.

On this occasion, the president was addressing the even more fundamental subject of the purpose of the criminal law being to punish wrongdoing and protect the population from felons, not to destroy all hope and grind the lives of those who have made a mistake to eternal misery and social damnation; and to accept and encourage the right of sincere people to redemption and the right of those who have paid the reasonable legal penalty for their offenses to start again with a fair chance to make something of their lives. This was not an instance of Congress, or the president's fellow Republicans, applauding a universally sympathetic figure, such as the inspiring case of the man who was in a railway cattle car bound for a Nazi death camp when it was stopped by the U.S. Army and its passengers liberated. In the case of these two women, the entire Congress warmly applauded two ostensible felons who had been undaunted by their experience and had become members of the clergy and vital helpers to other inmates.

I know something directly about the U.S. criminal-justice system because, as many readers are aware, this column began

on NRO as I was reporting to prison for having been convicted on three counts of fraud and one of obstruction of justice (nine other equally spurious counts were acquittals, and four had been abandoned by the prosecutors). In due course, the U.S. Supreme Court unanimously vacated my surviving counts and I ultimately collected the largest libel settlement in Canadian history (\$5 million) from my original accusers. I had plenty of opportunity to appreciate the unevenness of the system, the dishonesty of the prosecutors, and the limitations of the nominally correctional system. And I developed a vivid appreciation of the lawlessness of former deputy attorney general James Comey's Justice Department, Robert Mueller's FBI, and the techniques of the U.S. attorney in Chicago, Patrick Fitzgerald, now Comey's lawyer. In any other serious jurisdiction, their acolytes would have been disbarred. If I had not been able to pay legal bills totaling over \$30 million, I might not have resurfaced at all. It is a fundamentally evil system.

While my presence in prison was and remains an outrage, I found it interesting and got on well with everyone except the chaplain, who was belligerent, bigoted, and by his behavior, a recruiting sergeant for fervent belief in atheism. I became a tutor, dealing with all those who did not succeed in the Bureau of Prisons' obligatory secondary-school-leaving examinations. With my two fellow tutors, we assisted all 204 of the students I dealt with to matriculate. Among the most gratifying experiences of my life were the graduation ceremonies of my students with their families and the invitations I received to be the only white person to address Black History Month at the low-security facility where I spent two years, in Coleman, Fla. I made many friends there and have maintained relations with a number of them. It was an honor to live out Thoreau's famous dictum that in a society that routinely incarcerates the innocent, just people belong in prison.

It was accordingly with great distress, but not great surprise, that I learned recently of the fate of my friend Pedro Rivera, who accompanied me to the gate when I came under a release order as a result of the Supreme Court's vacation of my convictions. Pete was diagnosed, from an out-of-facility CT scan, with carcinoma Fuhrman Nuclear Grade 2, a renal tumor, in November 2017, but was only advised of this, almost inadvertently, in March 2018. The scan had been administered and the result known four months before, but Pete was told that it was a hernia. The BOP plan of action was to stick with the anatomical fairy tale about the hernia, in a place where hernias do not occur, until it ceased to be its problem, by either the death of Pete or his release in November of this year, two years after diagnosis. Despite a year of importunity, this remains the BOP's plan. We are dealing with a non-violent first offender, not on a sex charge, who is a father and has been an ideal inmate and is scheduled to be released later this year. Pete has appealed through all available channels. The former counselor in my residential unit, a slightly erratic but generally fair-minded and often entertaining man, Tom Nowicki, sympathized entirely with Pete but said that all he could do was write URGENT on the application for treatment.

Continued failure by the Bureau of Prisons to act will constitute complicity in attempted manslaughter and malicious negligence with criminal consequences. A man's life is at grave risk needlessly, a good man who, if treated, will return to the world in less than nine months with a clean record, a family, the means to make an income, and fine prospects. This is typical of the Bureau of Prisons, I knew a number of other men who suffered similar fates. And it is in stark contrast to the spirit of the president's remarks on carceral matters in his State of the Union address last week, which was generously applauded by all the legislators of both parties. If Pete Rivera's life ends decades before it should, those responsible deserve to take his place in the prison whose warders will

have killed him. This is not a correctional service; it is a disgrace heading toward tragedy. It is an unfolding crime.

First published in