a question, Puzanovsky voiced his personal preference for LaRouche's work, citing LaRouche's proposals for a new "Silk Road" and a development corridor down through the Adriatic region as particularly exciting proposals.

Sklyar was equally blunt in his assessment of the Russian crisis, which he described as a "crisis of our way of life." Every political institution, especially the office of the President, is at a low point of popularity, he said. "Criminals and speculators live best and there is a huge and growing polarization, with the poor becoming poorer and more numerous. . . . We cannot let Russia become a country of bandits and speculators."

Chukanov added his voice: "Russia must develop new institutions with new policies that are neither communist nor primitive monetarist."

Constitutional elections key

All three Russians emphasized the importance of the upcoming elections in Russia. In December, there are nationwide elections for the Duma, and sometime in 1996, a presidential election is to take place, according to the Constitution. Sklyar cautioned that the entourage surrounding President Boris Yeltsin are desperate to cling to power. "They know that the alternative to power is going to prison, and so they will fight hard to remain in power," he said.

If the elections go forward, the Russians predicted that a new center-left combination would emerge inside the Duma. Chukanov emphasized the role of the independently elected members of the Duma (as opposed to those who were elected as part of the party slates and linked to either Yeltsin or Vladimir Zhirinovsky), which now constitute the second largest voting bloc in the body. Chukanov is the co-chairman of a newly formed organization called the Regions of Russia Association, which represents three-quarters of the autonomous regions inside the Russian Federation. At a founding conference on Jan. 28, Chukanov was placed in charge of drafting a platform for the organization. He told the Press Club audience that he is working on a comprehensive set of tax and investment laws that would remove some of the onerous tax burden from private companies, would provide for investment tax credits to encourage Russian savings to be directed into industrial growth, and other measures.

All three men also emphasized that they would raise their concerns about the LaRouche prosecution during meetings in Washington. Chukanov noted ironically that in Russia, LaRouche is known as a leading critic of the monetarist policies that have wreaked havoc on the nation, but that it appears that criticism of monetarism is forbidden in the United States. He said that the use of the power of the courts and of the state to silence an opponent was a standard practice of the Soviet Marxist state, and that the treatment that LaRouche received in the United States is therefore not unfamiliar to Russians.

U.S. Supreme Court realignment puts Rehnquist in minority

by Edward Spannaus

Chief Justice William Rehnquist, who has sanctioned the execution of innocent prisoners and all but destroyed the U.S. Supreme Court as the guardian of constitutional rights, has recently found himself in the minority on a couple of important cases. With two new Clinton appointees—Associate Justices Stephen Breyer and Ruth Bader Ginsburg—the high court has taken a couple of small steps back from the bloodthirsty practices of Rehnquist and his allies which have dominated it for more than a decade.

In recent years, the Supreme Court under Rehnquist's domination was reversing precedents willy-nilly and throwing out fundamental constitutional rights, virtually destroying the constitutional function of the Supreme Court as the supreme and independent guardian of the rights of citizens under the U.S. Constitution and the Bill of Rights. Two of Rehnquist's favorite dogmas have been "finality of judgments" and "federal-state comity." This is just technical language for "states' rights"—meaning that if a state convicts a defendant, rightly or wrongly, the federal courts should not interfere by "second-guessing" the state courts. Never mind that this nation fought a bloody civil war to establish the principle that the federal Constitution and the federal Union are superior to the states. For Bloodthirsty Bill Rehnquist, it is better to permit a state to execute an innocent prisoner, than for the federal courts to "interfere" with the "finality" of the state's judgment.

This reached the point where, in 1992, even judges who supported the death penalty—Harry Blackmun, John Paul Stevens, and Sandra Day O'Connor—began to question whether it could be fairly applied because of the rulings of the Rehnquist majority.

A step in the right direction

The two recent rulings which indicate that the court is pulling back, if ever so slightly, from the extremes of the Rehnquist majority, came on Jan. 23 and Feb. 21.

In the first ruling, Clinton appointees Breyer and Ginsburg were part of a 5-4 majority issuing a ruling which slightly eased the standard for a showing of so-called "actual innocence"; this ruling came in a *habeas corpus* case involving a

Missouri death row inmate, Lloyd Schlup. Schlup had been granted a reprieve by the governor just nine hours before his scheduled execution, because a videotape was produced—which had never been brought to trial—showing that he was in a prison cafeteria food line just minutes after the murder for which he was convicted had been committed.

In overturning the lower court rulings, the U.S. Supreme Court said that Schlup should have an opportunity to persuade a lower court that his execution would be a "miscarriage of justice," by presenting new evidence of his innocence. In so doing, the high court slightly eased the standard of evidence which an inmate must meet before a *habeas corpus* petition could be granted. The lower court rulings had said that Schlup must show "by clear and convincing evidence" that "no reasonable juror" would have found him guilty except for a constitutional error at his trial. The Supreme Court opinion, written by Justice Stevens, said that, in order to gain a federal court hearing, Schlup should be required to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." The nuance is that "probably" is a less severe standard than that of "clear and convincing evidence."

Rehnquist, in the minority, wrote a dissenting opinion in which he accused the majority of adopting a "watered down and confusing" standard. Also dissenting were Justices Anthony Kennedy, Antonin Scalia, and Scalia's clone Clarence Thomas.

The second significant ruling, on Feb. 21, was also a *habeas* appeal, and it slightly eased the standard of "harmless error." This ruling was written by the newest Supreme Court Justice, Stephen Breyer, who said that a federal judge who finds that there was constitutional error in a trial, but who is uncertain as to whether it affected the jury's verdict, must give the benefit of the doubt to the defendant, and should not disregard the constitutional violation as "harmless."

It may not seem like such an extraordinary idea—to give the benefit of the doubt to someone who might otherwise be executed or spend his life in prison—but it marked a potentially significant shift in the tone of Supreme Court rulings from those of recent years.

Justice Breyer, who joined the court in late 1993, noted in his ruling that the purpose of *habeas corpus* is to protect against unconstitutional convictions and to ensure fair trials. He said that the rule he was enunciating—to require a judge who is in "grave doubt" over whether the constitutional violation affected the verdict, to side with the defendant—would protect against a person being wrongly convicted or executed.

Breyer said that the number of guilty prisoners who might win acquittals at new trials, would be small compared with the number whom the state "would wrongly imprison or execute" if judges could not give inmates the benefit of the doubt.

The Feb. 21 case involved an Ohio inmate, Robert O'Neal, whose jury trial ended in convictions for murder and kidnapping, and who is serving a life sentence in an Ohio state prison. O'Neal filed a *habeas corpus* petition in federal court, and the court found several constitutional violations. A federal appeals court disagreed on all but one of the findings of constitutional violation. The appellate court found that the jury instructions at his trial had been erroneous, but it nevertheless denied a writ of *habeas corpus* on grounds that the error had been "harmless."

When O'Neal appealed that ruling to the U.S. Supreme Court, the position of the State of Ohio—that the error was "harmless" and that O'Neal's petition should have been denied—was supported by 48 of the 49 other states, and by the U.S. Justice Department.

Procedure over truth

The effect of the *O'Neal* ruling is to limit the impact of a sharply contested 1993 ruling authored by Chief Justice Rehnquist in *Brecht v. Ambrahamson*, which limited the grounds for *habeas* appeals on the basis that they would undermine "the finality of convictions," i.e., exalting procedure over the search for truth.

Brecht was a 5-4 decision, with Rehnquist in the majority. Justice Byron White, in his dissent in that case, noted that the federal courts are supposed to play an independent role as the "guardians" of the constitutional rights of citizens, but that under the rulings of the majority, the interpretation of the federal Constitution was being left up to the states.

Justice O'Connor, also dissenting in the 1993 *Brecht* case, argued that the central purpose of the criminal justice system is to arrive at accurate determinations of guilt and innocence, but that this was being undermined by increasingly rigid standards for *habeas* review (much of which, incidentally, she had in the past supported). She commented sardonically that there are few errors which by now are not forgiven as "harmless."

Rehnquist didn't invent the idea of "harmless error," but he has extended it to absurd lengths. At first, no constitutional violation was considered harmless. Then, it came to mean that a constitutional violation would be considered harmless unless it could be shown to have affected the jury's verdict, or the outcome of the trial.

But in Rehnquist's hands, it came to mean that any constitutional violation is "harmless" if there is sufficient evidence of guilt. What this means in practice is that if the judge, or the appeals court, thinks you are guilty, *any* violation of your constitutional rights is tolerated, because you should have been convicted anyway.

In the Feb. 21 *O'Neal* ruling, Rehnquist again found himself in the minority, along with Scalia and Thomas. Clinton appointees Breyer and Ginsburg were joined in the new majority by O'Connor, David Souter, Stevens, and Kennedy.