

ture of free elections. This case has just been filed with the U.S. Court of Appeals for the Second Circuit for reconsideration of the crucial issues involved.

In *Donahue* last December, Judge Jacob Mishler, Chief Judge of the U.S. District Court for the Eastern District of New York, refused to issue a preliminary injunction to stop certification of the Carter electoral slate in New York State. Mishler also dismissed a complaint alleging fraud substantial enough to overturn the election.

For the first time in a civil rights suit involving voting rights, the judge ruled that to substantiate their claim, plaintiffs would not only have to show that their votes had been diluted by enough fraudulent votes to change the outcome of the election, but also that the election officials who allowed those fraudulent votes to be recorded did so from criminal intent rather than negligence! According to the *Donohue* Appellate brief "the plaintiff must bring in proof showing the hand in the cookie jar."

The *Donohue* complaint was initiated by the U.S. Labor Party; the Rockland County Conservative Party; Lyndon LaRouche United States Labor Party candidate for President; a Republican candidate for state assembly; and several individual voters. It was based largely on a scientific sampling of registered voters in the election. This demonstrated that a large percentage of non-existent or falsely registered individuals voted; it was further substantiated by numerous affidavits demonstrating chaos at the polls, intimidation, multiple voting and other irregular practices.

An official of the National Scientific Corp., asked about the problems of vote fraud where computers are used to count votes, replied, "Fraud is an emotional issue. No one has ever proved fraud." But no one has ever demonstrated that the problems in proving fraud mean it does not occur. Judge Mishler, in his order for an evidentiary hearing, stated terms of proof which were impossible to accomplish.

Carter's margin of victory in New York was 250,000 votes. In addition to requiring that the plaintiffs show enough fraudulent votes to change the outcome of the election,

Judge Mishler stated, "The burden which the plaintiffs must meet is a heavy one.. ordering a new election in New York State for President could involve the most serious consequences, raising the question of 'whether the relief, if given, might do more harm than good'... the claimants must come forward with the most clear and convincing evidence that state officials or persons acting under color of state law, by intentionally depriving qualified voters of the right to vote, altered the outcome of the election... this standard implies conduct of a most egregious nature, approximating criminal activity."

Judge Mishler also noted that the press of time in an electoral case is a major factor. In the usual course of events, a plaintiff demonstrates fraud in an election by showing improperly cast votes and criminal prosecution follows. For example, in state court in Louisiana, in *Moreau v. Tonry*, contesting the outcome of a Democratic Congressional primary this year, Edward Moreau showed numbers of improperly cast votes. Although the court did not overturn the primary, U.S. Attorney Gallinghouse has since obtained twenty-three criminal indictments against the election officials involved.

In *Donahue*, the plaintiffs randomly sampled 2434 voters mainly from New York City, with a small sample drawn from the four other large cities in the state, Buffalo, Rochester, Syracuse and Albany. Five percent of those voters, representing a population of a little more than half the New York State voters in the November election, could be definitively shown not to exist. Another 6 percent could not be found by the most strenuous search. (See table). On the basis of the survey, over 320,000 votes were cast fraudulently *in the parts of the state surveyed*.

The most important vehicle conveying these non-existent voters into the voting booth was mail registration.

Besides overwhelming city boards of election with tens and hundreds of thousands of new registrations to verify (which the boards of election made little effort to do), mail registration provided the cover for huge amounts of tombstone voting. In the large cities, Carter supporters

### Statistical Summary Of Vote Fraud In New York State

The above data, as analyzed by Dr. Steven Bardwell, was presented as testimony in the case of *Donahue vs. New York State Board of Elections*. Minimum number of irregular votes indicates researchers proved registrants did not exist. Maximum number indicates voters could not be found after extensive search.

POPULATION SIZE	MIN. % OF IRREGULAR VOTES (CONFIRM. FRAUDS)	MIN. OF IRREGULAR VOTES	LARGER % OF IRREGULAR VOTES CONFIRM. & UNCONFIRM. FRAUDS	LARGER NO. OF IRREGULAR VOTES
209,040	6.67%	13,797	13.48%	28,220
685,133	7.23%	50,015	20.55%	141,137
1,272,413	4.18%	53,434	9.12%	115,789
<u>655,083</u>	<u>3.21%</u>	<u>20,961</u>	<u>7.41%</u>	<u>48,541</u>
2,821,669	4.9 %	138,207	10.8%	333,687