

Supreme Court takes steps toward fascism

by Nicholas F. Benton and Nancy Spannaus

The U.S. Supreme Court, whose interpretations of the U.S. Constitution are the criteria for all laws in the nation, took what many observers here believe was a bloody hatchet to many fundamental principles of that Constitution in decisions it announced at the end of its session during the last week of June. Taken as a whole, even without the final decision on the abortion case, *Roe v. Wade*, the series of decision amounts to a giant step toward judicial fascism in the United States.

All the headlines focused on the startling decision by the Supreme Court to establish that the burning of the U.S. flag was not a criminal offense. But far more important than this were landmark rulings by the court which cut deeply into the moral and legal fabric of the nation.

The most obviously heinous decisions were those which permitted the extension of the death penalty to 16- and 17-year-old minors and to the mentally retarded.

Both of these rulings were by a 5-4 vote of the nine Supreme Court justices, with three of the five majority votes supplied by appointments made to the Supreme Court by President Reagan—Sandra Day O'Connor, Antonin Scalia and Anthony Kennedy.

But the lesser publicized decisions on the scope of the Racketeer Influenced and Corrupt Organizations (RICO) prosecutions, and on the rights of those arrested and indicted, are equally ominous in their police state implications.

The death penalty for youth

In upholding the constitutionality of the death penalty for minors and the mentally retarded, the Supreme Court codified a standard of brutality not even legitimized, although undoubtedly practiced, in the Communist nations of China

and the Soviet Union. The United States now joins Iran, and a handful of other nations, in legitimizing such a penalty.

Amazingly, the majority in these rulings based their decisions not on principles of constitutional law, or of the natural law that underlies the U.S. Constitution, but on their perception of "national consensus."

This, alone, sets an ominous precedent for the future of law in the United States.

Writing the ruling in favor of the extension of capital punishment to younger teenagers, Justice Scalia said the prohibition against "cruel and unusual punishment" contained in the Eighth Amendment to the U.S. Constitution must be interpreted "in terms of our society's evolving standards of decency."

He said, "It is not the subjective views of the individual justices, but the views of modern American society as a whole" which must dictate this matter, he said. In writing the majority ruling in favor of the death penalty for the mentally retarded, Justice O'Connor used the same criterion. She said, "There is insufficient evidence of a national consensus against the execution of mentally retarded people."

In a strongly worded dissent to these rulings, Justice William Brennan correctly noted, "The purpose of the Bill of Rights (appended to the U.S. Constitution) was to withdraw certain subjects from the vicissitudes of public controversy, to place certain people beyond the reach of majorities."

He also challenged the majority's interpretation of the national consensus, noting that 14 U.S. states prohibit the death penalty altogether, and another 12 explicitly prohibit its use on persons under 18, adding up to a total of 26, or a

majority of the 50 states currently opposed to applying the death penalty to anyone under age 18.

Facilitating political prosecutions

The court's unanimous rulings on the constitutional application of the RICO law will facilitate the expansion of political prosecutions by the government, by legitimizing the targeting of corporations, and political groups, as "racketeering" organizations. The constitutionality of what is called "civil RICO," where one private corporation sues another, was also upheld by the court.

The RICO law, which was allegedly passed for use against organized crime and drug-trafficking networks, has been widely applied in civil lawsuits pitting one private company or entity against another on charges of conspiracy.

By upholding this civil use of the RICO statutes, the Supreme Court has opened the door to hundreds of lawsuits brought against churches, competitors in business, labor organizations, and almost any organized entity in the nation which can potentially be a target of legal action.

This ruling permits larger corporate entities, with the resources to carry out lengthy legal battles, to bankrupt entities it seeks to eliminate simply by draining their adversaries' resources in court.

Efforts at this have already been witnessed in the United States, in cases taken up against right-to-life organizations, for example, and even the campaign organizations of political figures.

The end of the Sixth Amendment

The other important RICO decision, which was passed by a divided court, upheld the right of the government to seize the funds of RICO inditees if they choose to, even if those funds are the only ones available for the legal defense of the inditee. As Justice Harry Blackmun said in his dissent, this decision fundamentally disrupts the adversarial relationship which characterizes U.S. law.

Put more bluntly, the ruling creates a situation in which, where an individual has been ruled by the government to have obtained his funds by "racketeering," he can be forced to rely on a court-appointed lawyer. Under such conditions, as some attorneys have noted, the government will have a stacked deck—controlling the prosecution, the judge, and the defense lawyer.

The ruling also flagrantly rips up the presumption of U.S. constitutional law that an indicted individual or entity is innocent until proven guilty. The government's freezing of the individual's assets before trial, is being done on the presumption that those assets were gained fraudulently, although that has not yet been proven in court.

What the court majority asserted, was that a dope dealer has no right to use his ill-gotten money to defend himself. But, is the guilt of the "dope dealer" self-evident? And what if the individual charged with "racketeering" is a labor organ-

ization—as in the case of the Association of Air Line Pilot—or a right-to-life group, as in the case of the groups carrying out anti-abortion demonstrations?

Other violations of due process

Nonetheless, the death penalty decisions by the court were merely the most stunning of a barrage of rulings that removed elements of so-called "due process" from U.S. law.

The Supreme Court also severely restricted access to persons sentenced to death and awaiting execution on so-called "death row" to have access to public legal counsel.

The case in point was one brought by the Commonwealth of Virginia, against a ruling by the Fourth Circuit Court of Appeals. Attorney General Mary Sue Terry, otherwise known for her political vendetta against LaRouche associates, sought to prevent the Commonwealth from having to provide lawyers after appeals to the state courts had been exhausted.

It is widely acknowledged that a large percentage, perhaps over 60% of those on death row who are able to appeal at that point, will defeat their death sentences. Yet Ms. Terry responded to the ruling by calling it a "victory" for the citizens of Virginia, and by expressing relief that now we won't see "additional rounds of legal challenges and even longer delays in the administration of justice."

The court also modified the so-called "Miranda Law" which requires that a suspect be told his rights under law by authorities at the point of his arrest. While many legal experts believe the law will eventually be thrown out, altogether, this week the Supreme Court said that authorities were not required to present precise wording to suspects when "reading them their rights."

Other rulings

Also of great import was the Supreme Court's ruling that the imposition of exorbitant "punitive damages" by juries, is not a violation of the Eighth Amendment to the Constitution, which forbids cruel and unusual punishment. The verdict which the court upheld was one in which a corporation was socked with \$50,000 in compensatory damages, but then was given a \$6 million fee of punitive damages. Such irrational awards have been stock in trade among U.S. juries in recent years. Observers have noted, however, that there will be further challenges to such awards under the due process clause of the Constitution.

The court, in another controversial ruling, upheld the right of purveyors of indecent pornographic telephone calls to continue their businesses.

So far undecided were two premier matters before the Court: a review of the constitutionality of the 1973 decision legitimizing abortion as a woman's right; and a petition for writs of habeas corpus for Lyndon LaRouche and the six associates politically imprisoned with him. The court announced that it will make its final rulings on July 3, but it is not clear that either of these are among them.