Latest Supreme Court rulings rip up U.S. Bill of Rights

by Leo F. Scanlon

The United States Supreme Court is closing its 1991 term with a series of rulings which lay the framework for an attack on the fundamental concepts of individual sovereignty and liberty secured by the U.S. Constitution. In a rapid-fire set of rulings, the Court has expanded the power of government police agencies over the individual, while limiting the power of the federal courts to enforce the Constitution in the states. The rulings are the expression of a legal insurrection which is the most serious attack on the federal system since the days of the Confederacy.

From June 13-24, the Supreme Court handed down landmark decisions in:

- *NcNeil v. Wisconsin* (June 13)
- *Wilson v. Seiter et al.* (June 17)
- *Florida v. Bostick* (June 20)
- *Coleman v. Thompson, Warden* (June 24)
- *Ylst, Warden v. Nunnemaker* (June 24).

In the name of expeditious law enforcement, the Court has diluted the Fourth Amendment to the point that the government is virtually authorized to issue general warrants, the paramount evil to which the amendment was addressed. In order not to inconvenience prosecutors and court officials, it has narrowed the Sixth Amendment's guarantee that the accused shall be represented by an attorney when confronted by the state, and has specifically asserted that there is no right to an attorney in post-trial appeals. The majority argues that the Great Writ of Habeas Corpus imposes an undue burden on state courts, and strikes at the authority of the federal government to guarantee constitutional protections to defendants in local courts. Logically, the Court has also ruled that a prisoner incarcerated by the government is not entitled to even basic conditions of sanitation, shelter, and nutrition, if the provision of these necessities is too great a financial burden.

More is yet to come, as the decisions in several key cases have not been announced as this issue goes to press. Nonetheless, the Court took the occasion of the 25th anniversary of the famous Miranda decision, in which an arresting officer must inform a suspect of his rights, to issue a ruling which was widely seen as a symbolic "declaration of war" on an array of historic decisions which tried to contain, within the Constitution, the most powerful prosecutorial apparatus in the world. Symbolism is very big with this Court, and this is nowhere more apparent than when it argues that such tyrannical measures are necessary in order to prosecute the Bush administration's "war on drugs."

The domestic and international drug traffic has been de facto legalized by this administration, and the continuous expansion of prosecutorial powers is feeding a growing cancer of corruption within the law enforcement apparatus itself. The open advocates of legalization are counting on a backlash which will strike down the remaining juridical anti-drug prohibitions. This catastrophe is a certainty unless a political and legislative battle for the individual dignity and sovereignty of every human is joined by all friends of the Constitution.

Hitler's Berlin, Stalin's Moscow

An international alarm has been raised at the degeneration which is overtaking American constitutional law under the Bush administration. The British newspaper the *Guardian* recently ran an unprecedented attack on the U.S. justice system, chronicling the growth of what it called "an American gulag." Authoritative American publications such as *Legal Times* have editorialized against the "Police State of Mind" which dominates the Supreme Court. Loudest and most ominous of all have been the dissenting opinions, issued by a dwindling minority of the Court's justices, which point to the imminent emergence of an entirely new, and tyrannical, system of law in the United States.

The case of *Florida v. Bostick* is typical. A 6-3 majority of the Court ruled that armed law enforcement agents are entitled to randomly stop, question, and search the belongings of interstate travelers, without a warrant, and with no probable cause. The practice, which has dubious law enforcement value, is justified by police and the Court as a necessary evil in the "war on drugs." In his dissent, Justice Thurgood Marshall points out that the general warrant was a very effective law enforcement tool, but was nonetheless proscribed by the Fourth Amendment, as are other "effective" techniques which are routinely utilized by tyrannical governments.

He quotes a Florida judge who warns, "The evidence in this case has evoked images of other days, under other flags, when no man traveled his nation's roads or railways without fear of unwarranted interruption, by individuals who held temporary power in the government." The judge says, "This is not Hitler's Berlin, nor Stalin's Moscow," at least not

yet. Similarly a federal court in the District of Columbia expressed a view of such law enforcement practices which is echoed around the world, with the observation that "it seems rather incongruous at this point in the world's history that we find totalitarian states becoming more like our free society, while we in this nation are taking on their former trappings of suppressed liberties and freedoms."

Despite the hypocritical claims to the contrary, the Court majority is pursuing a legal agenda which has only a "symbolic" relationship to the issue of drug-based crime. Its underlying purpose is to shift the nature of the American legal system away from what is called the "accusatory" or "adversarial" system of justice. These terms refer to the concept, fundamental to the Constitution, that the state is composed of free citizens whose rights are "inalienable"—prior to and superior to those of the government or its agents—in all cases. Even in time of national emergency, such as a war declared by the elected representatives in Congress, some of these rights may be only temporarily suspended, and never overturned. (Needless to say, neither the "war on drugs" nor its cousin, "Desert Storm," enjoys such legitimacy.) In no case may the state restrict the citizen without his or her having the right to challenge (as an equal adversary) the actions of the state.

The Court's systematic restriction of protections against illegal search and seizure is part of this shift. The Miranda issue is subsumed by this and is one of a number of rulings by which the majority seek to restrict access to legal representation during the pre-trial period—the point at which the power of the state is potentially most arbitrary.

McNeil v. Wisconsin was a representative case. The majority ruled that police had the right to arrest the defendant on one charge, and then question him about another matter, even though he had requested, but not received, legal assistance. For technical reasons, the significance of the ruling was characterized by Justice Marshall as "symbolic" in its practical effects. But he pointed out that the symbolism was ominous, "because it reflects a preference for an inquisitorial system that regards the defense lawyer as an impediment rather than a servant to the cause of justice." He went on to emphasize that "whenever the Court ignores the importance of fair procedure in this context and describes the societal interest in obtaining 'uncoerced confessions' from pre-trial detainees as an 'unmitigated good,' the Court is revealing a preference for an inquisitorial system of justice."

Specifically, in an inquisitorial system, one person or group inquires into the acts of others, and the inquisitors possess the combined power of prosecutor and judge. The practical effect of the restriction of the Fourth and Sixth Amendment rights is just that—the individual can find himself arbitrarily detained by a power which denies him access to counsel while he is questioned and a charge is formulated.

In the cases of *Ylst v. Nunnemaker,* and the related case of *Coleman v. Thompson,* the Court majority moved to complete this process by hitting at the post-trial remedies available to an individual wronged by the prosecution. Coleman was convicted of murder in Virginia and sentenced to death. He presented an appeal which listed numerous claims to the Virginia appeals courts. Technical failures on the part of his attorney led to his claims being dismissed by the state, and yet he was never clearly told whether it was lack of merit or the faulty legal procedure which defeated his appeal. He filed a petition for *habeas corpus* review of the case on this and related grounds.

The Supreme Court has historically heard such cases precisely in order to force state courts to present explicit grounds ("fair statement") for denials of appeals. This time, a 6-3 majority abolished this requirement, observing that it is a "burden" on the state courts, and additionally argued that Coleman had no right to ask for relief based on the failures of his attorney. Since the Court does not recognize a guaranteed right to an attorney in a post-trial appeal, the majority reasoned, his attorney's failures did not deny him a right to a fair trial. Coleman will go to his death convinced that he never had a trial, as will many others. A large percentage of those sentenced to death in state courts have valid *habeas* claims, which now may never be heard.

Justice Harry Blackmun thundered in his dissent: "In its attempt to justify a blind abdication of responsibility by the federal courts, the majority's opinion marks the nadir of the Court's recent *habeas* jurisprudence, where the discourse of rights is routinely replaced with the functional dialect of interests. The Court's *habeas* jurisprudence now routinely, and without evident reflection, subordinates fundamental constitutional rights to mere utilitarian interests. See e.g. *McClesky v. Zant*. . . . Such unreflective cost-benefit analysis is inconsistent with the very idea of rights."

The 'price' of freedom

The utilitarian calculus which drives the legal system in the United States was presented in its most barbaric form with the ruling in the case of *Wilson v. Seiter*. An Ohio prisoner sued the warden of his facility, alleging that a number of the conditions of his confinement (overcrowding, excessive noise, inadequate heating and cooling, unclean and inadequate restrooms, unsanitary dining facilities and food, housing with mentally and physically ill inmates, and more) constituted cruel and unusual punishment.

Federal courts have been ruling against state and local prisons on such issues for years, putting whole state systems under direct court supervision, "even if the officials managing the institution have exhibited a conscientious concern for ameliorating its problems." Until today, the rule has been that if the state imprisons even the meanest criminal, cruel or inhuman punishment is forbidden, no matter what burden the cost of incarceration imposes on the state. That principle has gone by the boards in the U.S., and the Court has ruled that financial austerity imposed by the state on a prison can justify barbaric conditions of confinement.