

US Supreme Court escalates attack on rights of death row prisoners

John Andrews
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The Supreme Court decided November 8 to deny review in two death penalty cases in which the defendants were arguing that being kept on death row for more than two decades violated the Constitutional ban on cruel and unusual punishment. In one case, Florida inmate Askari Abdullah Muhammad, formerly known as Thomas Knight, was sentenced to die in 1974. In the second, Nebraska inmate Carey Dean Moore was sentenced to die in 1979. Some two dozen US prisoners have been on death row for more than 20 years.

On the previous Monday, November 1, the Supreme Court denied review in another death penalty case with far reaching implications, clearing the way for the State of Nevada to execute Michael Domingues, who was sentenced to death for a crime committed at the age of 16. The high court rejected the claim that the International Covenant on Civil and Political Rights, which prohibits capital punishment for crimes committed before the age of 18, applies to the 50 US states. The ruling means that the United States joins Iran, Nigeria, Pakistan and Saudi Arabia as the only countries on the planet allowing juvenile executions.

In two death penalty cases that the Court accepted for review, it seemed desirous of putting a more civilized face on the barbaric practice of state killing in order to insure that more executions can be carried out in America. The Supreme Court at the last moment halted the execution of Anthony Bryan, agreeing to decide whether Florida's use of the electric chair for executions constitutes "cruel and unusual punishment." The use of the electric chair has come under increasing fire since last July, when blood gushed from the face mask of Allen Lee Davis as he was executed.

Just one hour before his scheduled execution, the Supreme Court agreed to hear the claim of Virginia inmate Lonnie Weeks that the trial judge violated his rights when he refused to tell jurors they were not

required to vote for death just because they had made a certain factual finding during the penalty phase of the trial. Later the jurors told the judge they were confused by the sentencing instructions, but the penalty was affirmed anyway.

The Court accepted two other death penalty cases from Virginia concerning issues regarding the ability of condemned prisoners to raise legal challenges in *habeas corpus* petitions filed after their appeals are completed. The right to *habeas corpus*, which is explicitly guaranteed by the Constitution, is critically important because its procedures allow people to raise issues beyond the record of the original trial, such as newly discovered evidence or prosecutorial and judicial misconduct, and to present claims in the federal court system, where certain judges may be willing to enforce rights that were disregarded in the state court proceedings. The decisions in these cases may prove very important to Mumia Abu Jamal, the most well-known prisoner on death row, whose execution is presently under a stay order issued by a federal judge reviewing his petition for *habeas corpus*.

There have been more than 80 executions in the United States so far this year, a pace unmatched since the 1930s. In addition, there are over 3,600 people under death sentences.

The Supreme Court is also considering cutting back individual rights in non-death penalty cases. On November 2, the Court heard arguments in *Illinois v. Wardlow*, where the police are asserting that people can be detained for questioning and searched just because they run away when the police arrive. Given recent revelations about "racial profiling," the use of planted evidence and excessive force, a case could be made that anyone who doesn't run away from the police should be presumed incompetent.

The day before, the court accepted review of a similar case, *Florida v. J.L.*, threatening to reverse a ruling by

the Florida Supreme Court that police cannot stop and search people because of uncorroborated, anonymous tips. Both these cases threaten existing law, which requires police to have a “reasonable suspicion” that a person is engaged in criminal activity before detaining and searching them.

Even the continued vitality of the *Miranda* rule, which prevents police from extracting confessions without first advising a criminal suspect of the right to remain silent and to be represented by a lawyer, may be called into question. The Supreme Court has not yet decided whether to review a provocative decision of the Fourth Circuit Court of Appeals, *Dickerson v. United States*, in which it held that the rule does not apply because of a never used 30-year-old act of Congress purporting to overrule the *Miranda* decision. The appellate court ruling is so extreme that even the Clinton administration has asked the Supreme Court to reverse it.

The Court is considering other right-wing causes celebres. On November 9, 1999, for example, it heard arguments in *Board of Regents v. Southworth*, a case in which reactionary students are challenging the right of the University of Wisconsin to distribute student fees to various student groups they say are “engaged in political and ideological activities.” They list the offending organizations as the Lesbian, Gay, Bisexual Campus Center, the Campus Women's Center, the Madison AIDS Support Network, the International Socialist Organization, the Ten Percent Society, the Militant Student Union of the University of Wisconsin, and Students of National Organization for Women. The court members seemed divided on the issue. Some engaged in open red-baiting reminiscent of the McCarthy era. Associate Justice John Paul Stevens, now 79 years old and considered part of the “liberal” wing on the court, asked “suppose the school newspaper has been taken over by communists, which always seemed to happen when I was in school?”

Beyond these cases involving individual rights are a series of cases which provide the court with the opportunity to extend its campaign to resurrect the right-wing legal principles of “sovereign immunity” and “states’ rights.” While written opinions in the most important cases are usually issued close to the end of the term in June, the beginning is characterized by a raft of decisions on which cases will be accepted for review—the process of granting or denying petitions for *certiorari*—and oral arguments are held for the cases to be decided later in the term. These actions suggest directions the Court may be heading.

The most significant case under consideration is *Kimel v. Florida Board of Regents*, which threatens to deprive state employees of the right to sue for violations of the Age Discrimination in Employment Act, further eroding Congressional power to protect people from violations of federal laws by the states.

During the last term the court issued several 5-4 rulings which challenged the right of the federal government to impose obligations on the states. None of these involved civil rights claims against the states, which have always been considered to be protected by the Fourteenth Amendment, enacted after the Civil War, which gave Congress the power to protect people from state violations of their rights to “equal protection” and “due process.”

But on October 13, when the Supreme Court heard arguments on the case, Associate Justice Antonin Scalia—the leader of the Court's right wing—arrogantly claimed that since the Court never ruled that discrimination against older people violates the Constitution, that it was “extraordinary” that Congress “just went ahead” and did so on its own. He added that “to say it's unconstitutional boggles my mind.” Scalia is widely considered a “strict constructionist,” but for him the Fourteenth Amendment's guarantee of “equal protection” does not mean what it says.

Many commentators are predicting that the Supreme Court will soon strike down all suits against states under Title VII of the 1964 Civil Rights Act, the basic Federal law against employment discrimination, as well as those based on other civil rights laws such as the Civil Rights Act (42 U.S.C. § 1983), which allows victims to sue police for misconduct. Moreover, there is a trend to expand the definition of “states” so that it will include local governments and officials as well as the state government. The Court's trajectory points to the elimination of the right of people to sue for any violation of their constitutional rights by state and local authorities.



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