

US Supreme Court narrows right to counsel in criminal cases

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The same 5-4 Supreme Court majority that voted last December to halt the vote recount in Florida, thus handing the presidency to George W. Bush, issued a decision April 2 seriously undercutting the right to counsel for people accused of a crime. This basic right is stipulated in the Sixth Amendment to the US Constitution. The new rule is that police can question a person already charged with a crime and represented by a lawyer, so long as the questioning is technically directed at a different offense than the one charged.

In *Texas v. Cobb*, the defendant was facing a burglary charge, in connection with which he had obtained legal counsel. The police developed information that the defendant may have killed two people during the burglary and buried their bodies. Rather than contacting the attorney to arrange an interview, as required under the old rule, the police spoke to the defendant directly and obtained a confession.

Applying established precedents, the Texas Court of Criminal Appeals threw out the confession on the well recognized and logical ground that once a criminal defendant is represented, he cannot waive his right to counsel and speak directly to the police without first having access to the lawyer's advice. Any other rule would make the right to counsel meaningless.

The Supreme Court overturned the Texas appeals court decision. Writing for the majority, Chief Justice William Rehnquist declared that the Sixth Amendment did not apply to the case because the defendant was charged with burglary, and even though the murders were alleged to have occurred during the burglary, they were a separate offense. Announcing a new doctrine according to which the Sixth Amendment is "offense specific," Rehnquist stated that so long as police officers ask about a crime other than the one charged, they can ignore the accused's lawyer altogether.

The dissent, drafted by Associate Justice Stephen Breyer, pointed out that Rehnquist's new rule "threatens to diminish severely" the right to counsel because a single criminal act can always be charged as several different offenses, and the "majority's rule permits law enforcement officials to question those charged with a crime without first approaching counsel, through the simple device of asking questions about any other related crime not actually charged in the indictment."

Breyer concluded with an emotional appeal that revealed the Court's deep divide. "What Sixth Amendment sense--what common sense--does such a rule make? What is left of the 'communicate through counsel' rule? The majority's approach is inconsistent with any common understanding of the scope of counsel's representation. It will undermine the lawyer's role as 'medium' between the defendant and the government. And it will, on a random basis, remove a significant portion of the protection that this Court has found inherent in the Sixth Amendment."

Most disturbing was the short shrift Rehnquist gave to two express constitutional provisions: the Fifth Amendment guarantee that no one "be compelled in any criminal case to be a witness against himself," and the Sixth Amendment right of the accused "to have the assistance of counsel for his defense." Rehnquist elevated above these principles something not even mentioned in the Constitution—"society's interest in the ability of police to talk to witnesses and suspects, even those who have been charged with other offenses."

Allegedly free confessions were the main evidence of despots from the Spanish Inquisition to the Star Chamber, and were a principal concern of the US Constitution's framers. Nevertheless, Rehnquist wrote in his April 2 opinion that "the ready ability to obtain

uncoerced confessions is not an evil but an unmitigated good.”

This ruling, like many others authored by the right-wing majority on the Court, exemplifies the hypocrisy of the judicial reactionaries who purport to be “strict constructionists” and claim to base their constitutional interpretations on the “original intent” of the framers. In practice, when it comes to expanding the powers of the police at the expense of democratic rights, they have no difficulty ignoring the clear wording and intent of the Constitution.

Associate Justice Anthony Kennedy wrote a concurring opinion, joined by the High Court's most extreme right-wingers, Associate Justices Antonin Scalia and Clarence Thomas, that favored the elimination altogether of the rule requiring police to contact a criminal defendant's lawyer before interviewing him about crimes.

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