

Judges Handicap
Law Enforcement

SUPREME COURT JUSTICES seem to think that criminals need protection from the police.

The Warren Court rewrote criminal law and police procedures in a series of cases, starting with *Escobedo v. State of Illinois* (1964), which dissenting Justice Stewart wrote “. . . frustrates the vital interests of society in preserving the legitimate and proper function of honest and purposeful police investigation.”

The most famous Warren Court interference with law enforcement was *Miranda v. Arizona* (1966). The *Miranda* warning doesn't seem so radical today, but it was at the time, and *Miranda* was then applied in a radical way to cripple law enforcement.

Consider the 1968 Iowa case of Robert Anthony Williams, who was arrested in connection with the disappearance of a young girl. He invoked his right to a lawyer, and while a couple of police officers were driving him to see his

lawyer, one policeman spoke what became known as the “Christian burial speech”:

I want to give you something to think about while we’re traveling down the road. . . . Number one, I want you to observe the weather conditions, it’s raining, it’s sleeting, it’s freezing, driving is very treacherous, visibility is poor, it’s going to be dark early this evening. They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl’s body is, that you yourself have only been there once, and if you get a snow on top of it you yourself may be unable to find it. And, since we will be going right past the area on the way into Des Moines, I felt that we could stop and locate the body, and that the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered. And I feel we should stop and locate it on the way in rather than waiting until morning and trying to come back out after a snowstorm and possibly not being able to find it at all. . . . I do not want you to answer me. I don’t want to discuss it any further. Just think about it as we’re riding down the road.

Williams subsequently led the police to the little girl’s body. The Supreme Court overturned Williams’s conviction in *Brewer v. Williams* (1977), saying that the case was tainted by police misconduct and the discovery could not be used as evidence. Nearly everyone else thought the police work was outstanding.

TRYING TO STOP CAPITAL PUNISHMENT

In spite of the fact that the Constitution specifically authorizes capital punishment, in 1972 the Supreme Court threw out three death penalty convictions in *Furman v. Georgia*, claiming they were violations of the Eighth and Fourteenth Amendments. The 5 to 4 decision called on the states to “rethink” their death penalty laws, effectively knocking out death penalty laws everywhere and halting all executions. *Furman* included two hundred pages of concurrence and dissent, with Justices Brennan and Thurgood Marshall arguing that the death penalty is unconstitutional in all cases.

Apparently the judicial supremacists thought that their rewriting of the Constitution on capital punishment would end the matter. But public resolve in favor of retribution for heinous crimes remained strong, and most states passed new death penalty laws for first-degree murder with aggravating circumstances.

In *Atkins v. Virginia* (2002), Justice John Paul Stevens rewrote the Eighth Amendment to outlaw capital punishment for those with low IQs. Stevens could not base his ruling on the Constitution, since it endorses the death penalty, so he relied on “evolving standards” and “polling data.”

Justice Stevens seems to think that laws can be made through his interpretation of public opinion polls. Justice Scalia rebuked him, retorting that *Atkins* was based on “nothing but the personal views” of the justices.

This ruling threw death penalty enforcement into chaos, as no one knows what are the IQ requirements for execution,

how and when IQ tests are to be administered, or what are the procedures for bringing a low-IQ claim. Even if there is a consensus that low-IQ murderers should not be executed, these issues should be resolved by the legislature, not by the courts ad hoc.

In *In re Stanford* (2002), four Supreme Court justices tried unsuccessfully to persuade a majority to hold that it is unconstitutional to execute a juvenile. They said: “Scientific advances such as the use of functional magnetic resonance imaging—MRI scans—have provided valuable data that serve to make the case even stronger that adolescents ‘are more vulnerable, more impulsive, and less self-disciplined than adults.’” MRI scans are very useful for medical diagnoses, but are not suitable for constitutional diagnosis.

The Court’s 5 to 4 decision in *Roper v. Simmons* (2005) outlawed capital punishment for seventeen-year-olds, taking off death row seventy-two criminals in twelve states who were under age eighteen when they committed their crimes. It was an about-face for the Court: it had rejected the same arguments just sixteen years earlier in *Stanford v. Kentucky*.

This decision is a prime example of liberal judges changing our Constitution based on their judge-invented notion that its meaning is evolving. Justice Anthony Kennedy presumed to rewrite the Eighth Amendment again. He excused juvenile killers because of “lack of maturity” and “impetuous” actions.

In fact, Christopher Simmons showed how calculating a juvenile killer can be. He told friends it would be fun to commit a burglary and then murder the victim, and he

explained how he would do it, assuring them they could “get away with it” because they were juveniles.

Simmons met his friend at 2 a.m., and they broke into Shirley Crook’s home as she slept. Simmons and his fellow teenager bound her hands, covered her eyes and mouth with duct tape, and drove her in her own minivan to a state park. They walked her to a railroad trestle, hog-tied her hands and feet with electrical wire, wrapped her entire face in duct tape, and threw her into the Meramec River where she drowned helplessly. Her body was found later by fishermen.

Showing no remorse, Simmons bragged about the killing, declaring that he did it “because the bitch seen my face.” He confessed quickly after his arrest and performed a videotaped reenactment at the crime scene.

A jury of Simmons’ peers listened to his attorney’s argument that Simmons’ age should mitigate punishment. The jury observed Simmons’ demeanor at trial and heard from a slew of witnesses. After an exhaustive trial and full consideration of age as a factor, the jury and judge imposed the death sentence as allowed by Missouri law. Nothing in the text or history of the Eighth Amendment denies Missouri juries and state legislatures the power to make this decision.

In dissent, Justice Scalia blasted the “updating” of the Eighth Amendment. He concluded, “The result will be to crown arbitrariness with chaos.” The terrorists and the vicious Salvadoran gangs that have invaded our cities will now be able to assign seventeen-year-olds as their hit men so they can “get away with it.”

SHELTERED FROM CRITICISM

Some judges arrogantly think they should be sheltered from criticism by the other branches of government. Congress passed an innocuous law asking the Justice Department to report on whether federal criminal sentencing is within the official guidelines. A federal judge in California declared the law unconstitutional (*U.S. v. Mendoza*, 2004) because the dissemination of information might generate criticism of the judiciary. It is ridiculous to think that the Imperial Judiciary may prohibit the legislature from asking the executive branch for some information just because the judiciary might be criticized. Whatever happened to freedom of speech?

House Judiciary Committee Chairman F. James Sensenbrenner Jr. made a blunt speech to the U.S. Judicial Conference on March 16, 2004, regarding congressional oversight of the judiciary:

In a letter to me dated November 7, 2003 this body (the Judicial Conference of the United States) objected to ‘the dissemination of judge-specific data on sentencing in criminal cases,’ and suggested that “Congress should meet its responsibility to oversee the functioning of the criminal justice system through use of this data without subjecting individual judges to the risk of unfair criticism in isolated cases.”

I have been perplexed as to why such furor has been raised over obtaining records from a judge’s publicly decided cases. Assuredly, federal judges in

a democracy may be scrutinized, and may even be “unfairly criticized.” Subject to removal from office upon conviction of impeachment, Article III judges have been given lifetime tenure precisely to be better able to withstand such criticism, not to be immune from it. That the Congress, the elected representatives of the people, may obtain and review the public records of the Judicial branch is both Constitutionally authorized and otherwise appropriate. Over 200 years of precedents show that the Judiciary as a collective body, or an individual judge, is subject to Congressional inquiry.

Unfortunately, Congress doesn't very often use its constitutionally authorized power over the judiciary.

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- In *Furman v. Georgia*, the Supreme Court invalidated capital punishment in Georgia and Texas and effectively overturned death penalty statutes everywhere else in the country. At least 41 jurisdictions were directly affected. The impact of this unprecedented decision was staggering. In Florida alone, the *Furman* decision had the effect of voiding 102 executions of criminals convicted of heinous crimes.

Despite overwhelming public support for the death penalty, California was unable to execute a single convicted murderer between 1967 and 1992, when Robert Alton Harris was finally sent to the gas chamber. He had killed two teenagers and finished off their half-eaten hamburgers afterwards. On parole for voluntary manslaughter when he murdered them, he reportedly laughed about his killing spree and did not dispute his guilt. Yet attorneys and courts delayed his original execution date in 1981 for over ten years, until finally the U.S. Supreme Court itself felt compelled to withdraw jurisdiction over the case from all lower federal courts in *Vasquez v. Harris* (1992).

LESSON EIGHT

JUDGES HANDICAP LAW ENFORCEMENT

QUESTIONS FOR DISCUSSION:

- ★ When did the Supreme Court start rewriting state laws about criminal law enforcement?
- ★ Since the Constitution approves capital punishment, how do Supreme Court justices have the nerve to think they can change the Constitution?
- ★ Do you think the Constitution prohibits applying the death penalty to someone simply because he was not yet 18 years old when he committed a gruesome murder?
- ★ Discuss how the Supreme Court changed the Eighth Amendment, which Justice Scalia said in dissent will “crowd arbitrariness with chaos.”
- ★ Does the Constitution give the courts any role in amending the Constitution?
- ★ What do you think about the judges’ demand that they be sheltered from criticism?
- ★ Is there anything wrong with Congress demanding to know how individual judges have sentenced criminals?
- ★ What do you think judges and liberals mean when they demand an “independent” judiciary? Does that really mean an unaccountable judiciary – and do we want unaccountable judges?