Citizen Access to U.S. Courts Reduced

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Individuals seeking redress for grievances against their government have lost a series of Supreme Court decisions that have sharply reduced citizen access to the federal courts.

At a time when judges of lower courts are widely accused of interfering with schools, prisons and other realms of local, state and federal government, the high court is making clear that it, too, feels the federal courts are too active.

In recent weeks the court:

• Ruled that police may circulate arrest records and mugshots of individuals never convicted of a crime, brand them as "active shoplifters" and still not be held accountable in federal court.

• Ruled that prosecutors enjoy absolute immunity from civil suits in federal court for the knowing use of perjured testimony to convict an innocent person.

• Held that a pattern of police abuses of individual rights does not justify federal court orders requiring police to improve their procedures for dealing with citizen complaints.

• Overruled itself and held that open shopping centers may not be equated with city streets and sidewalks for purposes of deciding whether peaceful labor pickets and others can demonstrate there.

• Upheld a sweeping ban against political campaigning throughout the 55-square-mile, mostly unfenced expanses of Ft. Dix, N.J., in a decision that obliterated the court's own 1972 precedent in a case from Ft. Sam Houston in Texas.

• Affirmed, without explanation, a Virginia federal court decision that states may still make it a crime for consenting adults to commit homosexual acts in private.

Each of these decisions came over the full or partial dissents of Justices William J. Brennan Jr. and Thurgood Marshall, the outnumbered remnants of the Warren Court majority whose precedents have been overturned or severely cut back. In some of the cases the dissenters picked up a third vote.

What seems to be happening, a number of legal scholars said last week, is that the court is showing marked concern over possible inter-

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ference with law enforcement officers — a fear that their mistakes will result in sweeping judicial orders hamstringing good and bad officials alike.

At the same time, according to Prof. Paul A. Brest at Stanford Law School, there's an "indifference" to the claims of individuals, even those who can prove they were victims of official wrongdoing. At least there is a feeling that their favorite forums, the federal courts, need not be made available to them, he said.

"The results seem to reflect what Chief Justice [Warren E.] Burger is doing in publicly lobbying Congress to get certain cases out of the federal courts," said Brest.

At Duke University, law professor William Van Alstyne said the latest rulings displayed "a drift toward protecting the government, protecting the police, instead of protecting the individual."

He found the decision on police mugshots, which held that reputation was not a part of the "liberty" or "property" rights protected by the 14th Amendment to the Constitution, in sharp contrast to the value of reputation "when it is impugned by the press."

He noted that the court refused on March 2 to set aside a $100,000 libel judgment won by socialite Mary Alice Firestone, finding that Time magazine had inaccurately reported her divorce decree, even though the decree was ambiguous and the report was a national interpretation of it.

Van Alstyne said these decisions "put a squeeze on the First Amendment," and so did the rulings on shopping center picketing and military base politicking.

"It's a withdrawal of more and more forums where people can express themselves," the professor said. "In isolation, the decisions are debatable. As a pattern, they're closing in on the First Amendment."

Some of the scholars interviewed took special note that some of the most significant majority opinions were being delivered by Justice William H. Rehnquist, contrary to their early expectations of how he would perform or the court.

Rehnquist, 51-year-old former Phoenix lawyer and assistant attorney general in the Nixon administration, wrote the decisions in the police cases and the Firestone libel case.

Stanford law professor Gerald Gunther recalled that Rehnquist's early opinions, such as a lone dissent when the court expanded the rights of illegitimate children, had seemed to place him at the court's extreme conservative wing, "sort of a Bill Douglas of the right."

Gunther said Rehnquist "seems to be moving toward the center of the court" and a zone of influence. He said reports reaching him portray a justice increasingly concerned with getting widespread support for a legal principle rather than merely "sounding off" on views of his own.

That estimate was confirmed by court sources. One justice, who has differed with Rehnquist in the past and expects to differ with him in the future, called him a "team player." He said Rhenquist has earned widespread regard among his colleagues for sharing the court's workloads and dealing with disagreements respectfully and amicably.

Half a dozen legal experts sharply criticized the high court's handling of the homosexual case. Some disputed the result but all of them said the court was "injudicious" and wrong March 29 to affirm the lower court decision without explanation.

Gunther said the court thus failed "a basic test of whether it is acting like a court or not." A summary affirmance signifies "there's no real doubt" and no need either for a hearing or an explanation, he noted.

In fact, said Gunther, the court's action ran sharply counter to the direction of prior decisions sustaining private claims of privacy, including the controversial 1973 abortion decisions.

Ralph S. Spritzer of Pennsylvania Law School said the court's action may reflect a feeling that "nobody's really threatened" by rarely-enforced sodomy laws. If so, he said, "they should have explained it." Only Justices Brennan, Marshall and John Paul Stevens voted to set the case for a full hearing.

Harvard law professor Alan Dershowitz said he regretted decisions cutting off recourse to the federal courts during the same term in which the court is seriously considering cutting down use of the so-called "exclusionary rule" as a curb on police abuses.

Under that rule, courts, either to deter official misconduct or to avoid complicity in it, refuse to permit the use of illegally obtained evidence. Challenges to the rule are raised in pending cases.

"Sometimes cutting people off from the federal courts has the same effect as denying them any effective remedy at all," Dershowitz said.