

# Supreme Court Acts to Bolster

The Supreme Court held yesterday that judges or prosecutors cannot comment at a state criminal trial on the silence of a defendant who invokes his right against self-incrimination.

The ruling is the latest in a series extending the standards of protection for defendants in Federal trials to state criminal proceedings.

However, the impact of this decision is more limited. In a footnote to his opinion for the Court, Justice William O. Douglas said that 44 states—including Maryland and Virginia—already regard comment on a defendant's failure to testify as "an unwarrantable line of argument."

## 6 States Affected

Comment by the judge or prosecutor is permitted by California, Iowa, New Jersey and Ohio. Connecticut permits comment by the judge alone and New Mexico by the prosecutor.

The decision reversed a ruling by the highest court of California affirming the conviction of Eddie Dean Griffin, a Californian, for the 1961 murder of Essie Mae Hodson in Los Angeles. He was sentenced to death.

After the conviction was affirmed, the Supreme Court

ruled that the guarantee of the Fifth Amendment against a defendant being compelled to testify against himself applied in state criminal proceedings.

The question posed by the Griffin case was whether comments on his silence by the trial judge and prosecutor violated that ruling.

By a vote of 6 to 2, the Supreme Court held that it did. Justice John M. Harlan concurred "with great reluctance." Justice Potter Stewart, joined by Justice Byron R. White, dissented. Chief Justice Earl Warren abstained.

## Majority Opinion

Douglas said for the majority that "comment on the refusal to testify is a remnant of the 'inquisitorial system of criminal justice' . . . which the Fifth Amendment outlaws.

"It is a penalty imposed by courts for exercising a constitutional privilege," he went on. "It cuts down on the privilege by making its assertion costly." He also said:

"What the jury may infer given no help from the court is one thing. What they may infer when the court solemnizes the silence of the accused into evidence against him is quite another."

In dissent, Stewart said that

the concept of compulsion underlying the Fifth Amendment was being stretched by the Court "beyond all reasonable bounds, and that whatever

compulsion may exist derives from the defendant's choice not to testify, not from any comment by court or counsel."

## the 5th

THE WASHINGTON POST

Thursday, April 29, 1965 A 11

The reluctance with which Harlan concurred with the majority was based on his view that the decision "exemplifies the creeping paralysis"

with which recent Court decisions have been "infecting the operation of the Federal system."