

JUSTICES EXPAND RIGHTS OF ACCUSED

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Assert States Must Assure
Confronting of Witnesses
—2 Convictions Voided

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WASHINGTON, April 5—

The Supreme Court held today that the Sixth Amendment's guarantee of the right of accused persons to be confronted with the witnesses against them applied to state criminal trials.

The Court said that the right was "fundamental" and was made obligatory on the states by the 14th Amendment.

The decision was another in a series of historic cases in which the Court gradually has been extending the protections of the Bill of Rights to state criminal proceedings.

Two years ago, the Court held that the Sixth Amendment's guarantee of the right to counsel was obligatory on the states. Last year it held that the Fifth Amendment's prohibition against self-incrimination also was made applicable to the states by the Fourteenth, which guarantees due process of law.

The Court announced the new doctrine in reversing a conviction in a Texas case, and then proceeded to apply it a second time in reversing a conviction in an Alabama case.

In both cases, under different circumstances, accused persons had been deprived of the right of cross-examination of witnesses against them.

The right of confrontation of witnesses has been held in past cases to include the right to

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cross-examine them. In the Texas case, Bob Granville Pointer was charged with having robbed Kenneth W. Phillips at gunpoint. Mr. Phillips gave testimony at a preliminary hearing at which Pointer was not represented by a lawyer. Mr. Phillips later moved from the state and was not present at Pointer's trial.

At the trial the prosecution introduced into evidence a transcript of Mr. Philip's testimony. The presiding state court judge overruled objections by Pointer's counsel to the procedure on the ground that Pointer was not being permitted to confront a witness against him.

The majority opinion in the Texas case, written by Justice Hugo L. Black, emphasized the importance of cross-examination. It also noted that in an earlier case the Court had held that to deprive the accused of this right was a denial of the 14th Amendment's guarantee of due process of law.

The opinion went on to say that in light of the Court's decisions making the Sixth Amendment's guarantee of the right to counsel and the Fifth's against self-incrimination obligatory on the states, statements in other cases "generally declaring that the Sixth Amendment does not apply to the states can no longer be regarded as the law."

"We hold the petitioner," the Court further said, "was entitled to be tried in accordance with the protection of the confrontation guarantee of the Sixth Amendment, and that guarantee, like the right against compelled self-incrimination, is to be enforced against

the states under the Fourteenth Amendment according to the same standards that protect those personal rights against Federal encroachment."

In separate opinions, Justices John M. Harlan and Potter Stewart agreed with reversing the conviction, but said they would do so only on the basis that the procedure followed had deprived Pointer of due process of law guaranteed by the 14th Amendment.

Justice Arthur J. Goldberg wrote a separate opinion concurring with the six-member Court majority. He did so to explain his views on the issue of whether provisions of the Bill of Rights were extended to the states by the 14th Amendment.

The Alabama case involved the conviction of Jesse Elliott Douglas on charges of assault with intent to murder. An alleged accomplice, whose appeal from a conviction in a separate trial was pending, refused on the ground of possible self-incrimination to answer questions about a confession he had purportedly made.

The Supreme Court, in an opinion by Justice William J. Brennan Jr., said that Douglas had been deprived of his right of cross-examination.

Justices Harlan and Stewart concurred with the reversal of the conviction in this case, also, but objected to the reasoning of the seven-member majority on the same ground as in the Texas case.

Orville A. Harlan of Houston argued the Texas case for Pointer and Gilbert J. Pena, an assistant state attorney general, for the state. Charles Cleveland of Birmingham argued the Alabama case for Douglas and Paul T. Gish Jr., an assistant state attorney general, for the state.

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