COURT, 5-4, LIMITS RIGHTS IN LINE-UP

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Says Suspect May Demand Presence of Counsel Only if He Has Been Indicted

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WASHINGTON, June 7—The Supreme Court sharply limited a major liberal criminal ruling of the Warren Court today, holding 5 to 4 that suspects normally are not entitled to counsel at line-up identifications.

All four of President Nixon's appointees joined in the judgment as the Court limited the application of a 1967 ruling that suspects are entitled to lawyers at line-ups. President Nixon repeatedly criticized this doctrine during his campaign for the Presidency in 1968.

Justice Potter Stewart, who dissented in 1967 when the Warren Court declared that suspects were entitled to lawyers at line-ups, teamed up with the Nixon nominees and wrote the prevailing opinion today.

He said that the right to counsel at line-ups applies only after suspects have been indicted. The result is that as long as the police act before formal charges are brought, they may place suspects in line-ups or confront them with witnesses in face-to-face "show-

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ups" without having defense lawyers present.

However, Justice Stewart stressed that if suspects could show that they were identified in line-ups or show-ups that were unfair or slanted against them the identifications would not be admissible in court.

Today was the first time since the addition of Mr. Nixon's four appointees that the Court has had an opportunity to rule on any of the three controversial doctrines of the liberal Warren Court era. These doctrines are that in line-ups, interrogations and searches, the police must follow certain procedures or the evidence obtained cannot be used in court.

A Limited Ruling

Of the three, the line-up doctrine requiring the presence of counsel had been most heavily criticized by lawyers beyond the ranks of prosecutors, primarily on the ground that lawyers could do little for clients at line-ups.

In the appeal decided today, the Court was asked by prosecutors from Illinois and California to overturn the Warren Court's 1967 decisions, United States v. Wade and Gilbert v. California.

The majority's decision just to limit those decisions, plus the refusal of Justice Byron R. White to go even that far, indicated that even with four Nixon nominees, the Court will be slow to throw out recent liberal rulings of the Warren Court.

Although Justice White dissented against the two 1967 decisions, he noted today in a one-sentence dissent that those decisions require the opposite result of today's majority judgment.

Justice William J. Brennan Jr., who wrote the two 1967 decisions, wrote another dissent today, joined by Justices William O. Douglas and Thurgood Marshall. He said that an individual's right to counsel under the Sixth Amendment applies at any "critical stage" of a case, such as an identification, and that whether he has been indicted is irrelevant.

Justice Brennan said that the Court today had seized upon the unimportant circumstance that the defendants in the Wade and Gilbert cases had been indicted before their line-ups.

The decision today upheld the robbery conviction of two Chicago men, Thomas Kirby and Ralph Bean, who had been identified in a police interrogation room by a victim of a mugging on the day after the robbery. There was no line-up and the victim was simply asked if they were the muggers.

A Concurring Opinion

Chief Justice Warren E. Burger and Justices Harry A. Blackmun and William H. Rehnquist joined Justice Stewart's opinion. Justice Lewis F. Powell Jr. said in a brief concurring opinion that he agreed with the judgment because he "would not extend" the 1967 ruling.

Justice Stewart's opinion said that it would amount to an extension of the 1967 ruling to grant the right of counsel to line-ups held before the commencement of "formal prosecutorial proceedings."

However, a number of state and Federal courts had construed the 1967 ruling to require counsel at all line-ups, and in most large cities the public defenders' offices have, until today, routinely sent lawyers to observe scheduled line-ups.

The Court handed down 11 decisions today in an unusual Wednesday decision session. This left 55 appeals that have been argued and are yet to be decided this term. The Court has scheduled sessions for the next three Mondays and has not announced if it will have to extend its term into July to dispose of all the cases.