

The future of The Fifth

Coercion endangers fair trial rights

It seems the fears of aging Supreme Court liberals may be coming true — the court, through 11 years of Republican appointments, has begun to turn back the clock on civil rights.

Since 1897, the court had barred involuntary confessions from criminal trials because they violated the constitutional guarantee against self-incrimination.

But last Tuesday, the court went against 94 years of court rulings and decided that using a coerced confession in a criminal trial does not automatically require reversal of the conviction.

In a 5-4 vote engineered by the court's conservative majority, the justices decided in a case involving an Arizona man that using a coerced confession could be "harmless error" if there were enough other evidence to convict a defendant.

Writing the majority opinion, Chief Justice William Rehnquist wrote that some error is inevitable in the trial process, but it frequently is insignificant. The focus should be "on the underlying fairness of the trial," he said.

In theory, the Rehnquist opinion sounds fair. If there is still enough evidence to prove guilt without an illegally obtained confession, the confession simply should be ignored. The defendant is guilty under law regardless of the confession.

But the impact of a confession — coerced or not, inadmissible or not — affects the whole fabric of a case.

Justice Byron White said, "A defendant's confession is probably the most probative and damaging evidence that can be admitted against him."

The protection against the use of involuntary confessions is among the constitutional rights that are "so basic to a fair trial that their infraction can never be treated as harmless error," he said.

White is right about the power of a confession of guilt, regardless of later determinations of its validity. Court records of personal confession can be erased. It's much harder to erase a confession of guilt from a juror's memory.

The narrow margin in another vote in the Arizona case is an equally disturbing indicator of the court's potential agenda. In another 5-4 decision, the court ordered a new trial for the Arizona man who had been sentenced to death for the 1982 killing of his 11-year-old stepdaughter.

The court decided that Oreste Fulminante's confession to a government informant in federal prison had been coerced, and that other evidence used at his trial was insufficient to convict him.

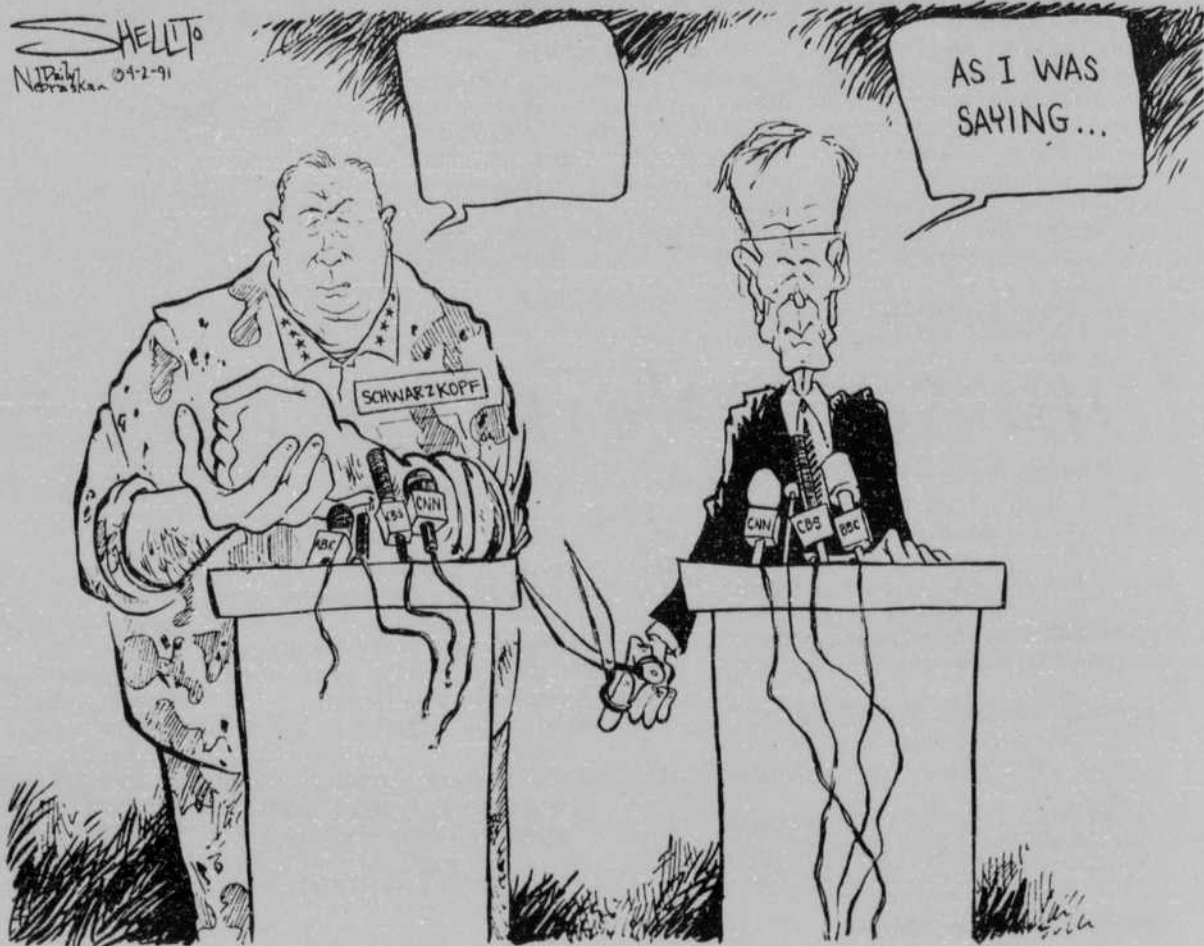
The informant reportedly offered to protect Fulminante from violence by other inmates if he related the truth about the child's slaying.

In dissent, four justices said that offering protection from prison violence was not a form of coercion. They did not believe someone could change facts about a murder to avoid getting maimed or killed by fellow prisoners.

The court voted correctly in ordering a new case. What's disturbing is the slight margin that won Fulminante a new trial.

Both the 5-4 vote in favor of "harmless errors" such as coerced confessions and the near miss on Fulminante's life by four justices may be a frightening harbinger of future Supreme Court decisions. With six years of Republican appointing nearly guaranteed, the 21st century could see a very different Fifth Amendment.

— B.N.



LISA DONOVAN

Looking back over the hill

It was another biggie: 70 years old. Only I had hit so many of the biggies by now — 30, 40, 50 and 60 — that my relatives were sick of planning parties, buying me perfume and powder sets and spending the money to fly in for a weekend.

I didn't blame them. I was sick of birthdays.

I remember when my dad turned 70 in late March a long time ago. He didn't much like for us to make a big deal out of birthdays.

"Now, don't go out and get presents. Just come home and have some cake," he told us before the big day.

There was something sad about that, but I couldn't quite figure out what.

So this year I decided to celebrate my birthday a bit differently. I flew into Lincoln, with my daughter and granddaughter, for a sorority reunion.

My daughter pledged the same sorority I did, as did her daughter. It was a nice tradition.

The first night of the reunion we went to the house and had dinner. I looked around and noticed that many of the "sisters" who were my age were not in attendance.

I should have been happy that I lived such a long and relatively healthy life, but instead was sad. And for once, I thought that maybe they were the lucky ones.

"Mother?"
"Yes, dear?" I stretched out my hand and put it on hers.

"You've got a piece of olive stuck between your teeth."

"Yeah, well, a cold belt at the bar will wash that right out."

My granddaughter and a couple of her friends laughed.

"I can't believe she said that. I mean, how old is she anyway?" one of the girls at the table whispered to my granddaughter.

"I'm older than water, just leave it at that. Older than water."

Everyone gave a courtesy laugh and I thought, God, that's exactly what my father used to say.

So I asked the five women sitting at the dinner table, including my daughter and granddaughter, what they thought of growing old.



So I sat and enjoyed my pint of dark beer as I had so many times before. An old man approached my table, excused himself and sat down, as had happened so many times before.

"I considered about working in an old people's home once but it would be so depressing," one of the women said.

I asked her why.

"Well, it seems to me that all these people are stuck in these homes just waiting to die. And some of the people are so lonely, I would just end up taking it home with me."

My granddaughter said she thought that maybe more Americans should take the problems of the elderly home with them.

"In Asia and many European countries, the elderly live with their children and are held in high esteem."

After dinner, we headed downtown and eventually happened on the bar.

In nearly 50 years, not much had changed.

My daughter was off talking to her friends, as was her daughter.

So I sat and enjoyed my pint of dark beer as I had so many times

before. An old man approached my table, excused himself and sat down, as had happened so many times before.

"Happy birthday," he muttered.

"How in the world would you know that?"

"Your wrinkles convey a certain glow."

He sort of smiled.

"No, I'm kidding. Listen, are you just sitting here thinking about your Dad? Don't just hang out alone and fret. It's your birthday, show them your ID. Get a free drink."

"Sure, sure."

"Let's see. Your father turned 70 during your last year of college, right in the middle of your Spring Break. The one you spent in Lincoln."

"Oh yeah. Wait a minute . . ."

"You made dinner, bought a cake and you, your mom and dad spent a quiet evening at home."

"Yes."

"He joked about you taking care of him and your mother. About all the money you would make once you were a famous writer and how you would come by in your chauffeur-driven Cadillac and drive them all around town, just to look at the sights and eat soft-serve ice cream."

"Uh huh."

"And then you were all watching 'The Simpsons.' Remember that?"

"Barely."

"Yeah, well it was that real goofy show. And on that episode, the family was learning about how to deal with Homer's father. Bart, Maggie and Lisa didn't like to go visit their grandfather. They didn't like the way he smelled and took up their time. They thought he was a burden on society, and more importantly, a burden on them."

"It's pretty sad."

"Hmm. So tell me, where do you live?"

"I live in a —"

My daughter interrupted.

"She lives in a lovely retirement home in Santa Clara, California. Excuse me, sir, I didn't mean to break in on the conversation. Have we met?"

Donovan is a senior news-editorial major and a Daily Nebraskan senior reporter and columnist.

LETTERS TO THE EDITOR

Gasoline tax should be used

I find it hypocritical of an institution that places strict bans on the use of tobacco to be so ready to call for cigarette tax funds to support its budget shortfall. If one wishes to attack air pollution through taxation, why not ask for a share of the gasoline tax to meet the university budget? We know the university does all it can, within

the limits of its land holdings, to accommodate people who drive trucks and automobiles to campus.

Jon Nelson
curator
Center for Great Plains Studies Art
Collection

EDITORIAL POLICY

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