Will The Supreme Court Rewrite The Bill Of Rights?

by Phyllis Schlafly Apr. 5, 2006

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The most controversial case for the new Roberts-Alito Supreme Court this term does not concern abortion, gay rights, the death penalty, or even the detention of enemy combatants. No, the hottest legal issue is based on an argument between Hershel Hammon and his wife about their daughter going to a boyfriend's house.

For this, the Bush Administration filed a special friend-of-the-court brief, and even insisted on participating in oral argument before the Supreme Court despite the complete lack of any federal issue at stake.

The decisions in this case, Hammon v. Indiana, and in a very similar case heard the same day, Davis v. Washington, will reveal whether the justices believe that Americans are entitled to all the rights spelled out in the Bill of Rights, or believe that the Supreme Court can push the delete button on one of those rights.

The Sixth Amendment promises Americans that "in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." As Justice Scalia mentioned in the oral argument, the prosecutors in these two cases are seeking to get the Court to create an exception to this Confrontation Clause for the benefit of any woman who makes an accusation against a man.

Police had made an unsolicited visit to the Hammon couple (presumably after a call from a neighbor). Finding that the Hammons' argument had ended, the

policeman asked both husband and wife what happened, and each said the argument was over and everything was fine.

Not willing to accept the couple's own resolution of the dispute, a policeman then interrogated the wife separately to get her side of the argument, which predictably was different from her husband's. The policeman handed the wife a preprinted legal form containing special legal terminology, and had the wife fill in some blanks and sign it as though it were a sworn affidavit.

The wife did not press charges and never showed up in court. Undeterred, without ever putting the wife on the witness stand, the prosecutor obtained a conviction of the husband based on the signed legal paper.

Hershel Hammon received a one-year prison sentence, for which he spent 20 days in jail. His home was ruined and, with this serious conviction on his record, his ability to support his family was substantially diminished.

The Davis case heard by the High Court the same day was a similar case where the prosecutor ignored the Confrontation Clause. The prosecutor obtained a conviction of the man without ever putting the woman on the witness stand or allowing the man to confront his accuser.

A 911 operator had called back to a household and elicited allegations about domestic violence. The jurors heard only a tape-recording of a 911 operator prodding a woman to give her side of the story without the boyfriend telling his side on the tape.

Why are overzealous prosecutors trying to put men in prison for an alleged crime which no one will corroborate in court and which the alleged victim may not want prosecuted or punished? The answer to this question is prosecutors' acceptance of the radical feminist doctrine that women are naturally victims and men are

naturally batterers, and that a man can be denied his Sixth Amendment right to confront his accuser.

The Violence Against Women Act, funded by the federal taxpayers to the tune of nearly a billion dollars a year, holds training sessions for law enforcement officers, prosecutors and judges to teach them anti-male and anti-marriage notions, and how to bypass men's constitutional rights. The radical feminists have lobbied state legislators to pass laws that require a policeman to arrest someone any time they are called for an alleged domestic violence happening.

States have also passed laws that require prosecution even if the woman does not want to prosecute or testify. Unwanted and unnecessary arrests and prosecutions obviously prevent reconciliation and private resolution of family disputes.

The feminists argue that men's constitutional rights should be overridden in order to protect women who are afraid to testify against their husbands or boyfriends. At oral argument, Justice Ruth Bader Ginsburg appeared to espouse this view.

However, Ginsburg wrote in her 1977 book "Sex Bias in the U.S. Code" that what she calls "the equality principle" requires repeal of the federal Mann Act, which prohibits the transportation of women across state lines for immoral purposes. She wrote that this law "is offensive because of the image of women it perpetuates" of "weak women" needing protection from "bad men."

But when the feminists deny a man his constitutional right to confront his accuser, they are precisely locking in stereotypes about weak women, bad men, and foolish choices.

The issue is, which comes out on top: the Constitution or the feminist agenda?