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## COURT: COERCED CONFESSIONS MAY BE 'HARMLESS' APPEALS PROCESS NOT GUARANTEED

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contributed to this story.*

The Supreme Court, overturning decades of precedent, ruled 5-4 Tuesday that some criminal defendants can be convicted even though their coerced confessions were used against them at their trials.

In numerous past cases, the high court had said a conviction based partly on an involuntary confession was a constitutional error of such major proportions that it automatically required a reversal on appeal.

But Tuesday a conservative majority, led by Chief Justice William Rehnquist and including new Justice David Souter, declared that use of a coerced confession is "harmless" -- if other evidence is strong enough to convict the defendant. "The admission of an involuntary confession is a 'trial error,' similar in degree and kind to the erroneous admission of other types of evidence," Rehnquist wrote.

The decision represents a major change in the law, said **Jack Swerling**, a prominent Columbia criminal defense lawyer. A judge's decision to admit a coerced confession as evidence had automatically entitled a defendant to a new trial.

"For the first time, it means the court can choose to uphold convictions, even if a coerced confession was allowed into evidence," **Swerling** said. "By its nature, a coerced confession is an affront to our court system and an infringement on our constitutional rights."

**Swerling** said the state Supreme Court is not bound by the higher court's ruling and can decide whether it also wants to change the law on coerced confessions in deciding an appeal.

"The reason why the courts have always been willing to exclude coerced confessions is to provide a safeguard against improper investigation by law enforcement," **Swerling** said. "I have a real concern about how this will be interpreted by law enforcement because it encourages them to take chances on getting a confession in order to secure a conviction."

In other decisions, the court:

Ruled, 6-3, that U.S. citizens working in foreign nations for U.S. companies are not protected by a federal law banning bias against women and minorities.

Removed a major threat to the government's efforts to police the savings and loan industry by ruling unanimously that federal regulators may not be sued over their alleged negligence in handling the day-to-day operations of ailing thrifts.

The court acted in the case of Oreste Fulminante, who had been convicted and sentenced to death for murdering his 11-year-old stepdaughter, whose body was found in the desert east of Mesa, Ariz., in 1982.

While in a federal prison in New York, he confessed to Anthony Sarivola, an FBI informant masquerading as a mob figure, after Sarivola promised to protect him from angry inmates aware of rumors that Fulminante was a child murderer.

In three different 5-4 votes, the Supreme Court justices said:

Fulminante's confession was coerced.

Coerced confessions may be used at trials if they are "harmless."

Fulminante's confession was not "harmless" and thus was used unconstitutionally to help convict him.

So the justices, agreeing with the Arizona Supreme Court, said Fulminante is entitled to be retried without the use of his confession to Sarivola.

"We lost the battle, but we won the war," the prosecutor said.



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