

# Obama attacks US Supreme Court decision barring death penalty for child rape

By Patrick Martin  
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In an action that combines cynical political opportunism and outright reaction, Senator Barack Obama, the presumptive Democratic presidential candidate, has publicly denounced Wednesday's decision by the US Supreme Court outlawing the execution of people convicted of child rape.

The 5-4 majority, comprised of the four court liberals and conservative Justice Anthony Kennedy, who wrote the decision, held that the death penalty could only be applied for crimes in which the victim was killed. The court noted that only 6 states out of 50 permitted capital punishment for child rape, and held that this demonstrated a social consensus against such executions.

Commenting on the decision, Obama declared his support for the death penalty, both in principle and in the specific cases under consideration by the high court. "I have said repeatedly that I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes," he told a news conference in Chicago. "I think that the rape of a small child, six or eight years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances the death penalty is at least potentially applicable, that that does not violate our Constitution."

The Democratic presidential candidate argued that the high court had gone too far in restricting the powers of the states. If the court had "said we want to constrain the abilities of states to do this to make sure that it's done in a careful and appropriate way, that would have been one thing. But it basically had a blanket prohibition and I disagree with that decision."

This line of argument dovetails with the dissenting opinion of Justice Samuel Alito, signed by the other three arch-reactionaries on the court, Chief Justice John Roberts, Antonin Scalia and Clarence Thomas, which was based largely on states' rights. Alito wrote: "The harm that is caused to the victims and to society at large by the worst child rapists is grave. It is the judgment of the Louisiana lawmakers and those in an increasing number of other states that these harms justify the death penalty. The court

provides no cogent explanation why this legislative judgment should be overridden."

Obama's line-up with the four most right-wing justices is in stark contrast to his response last week when an identical 5-4 majority ruled against the Bush administration and upheld the habeas corpus rights of prisoners held at Guantánamo in the name of the "war on terror." Obama supported the majority, while his Republican opponent sided with the conservative minority. On the death penalty case, Obama and McCain came down on the same side.

During his years in the Illinois legislature Obama supported the death penalty, seeking only to limit it to the most heinous cases and to reduce the number of cases where innocent people were prosecuted, convicted and sent to death row.

In his most recent book, *The Audacity of Hope*, he wrote, "I believe there are some crimes—mass murder, the rape and murder of a child—so heinous, so beyond the pale, that the community is justified in expressing the full measure of its outrage by meting out the ultimate punishment." Obama's statement Wednesday goes considerably beyond this, and must reflect his political calculations about the upcoming presidential election, and beyond.

Press commentary presented Obama's statement as a deft political move that avoided a repetition of the supposedly disastrous stand taken by the Democratic presidential candidate 20 years ago, Michael Dukakis. During a debate with Republican George H.W. Bush, Dukakis was asked whether he would maintain his opposition to the death penalty even if his wife Kitty were raped and murdered. Dukakis said that he would, and came under ferocious attack from the Republican Party and the media as a result.

A nearer example for Obama, however, is the notorious conduct of Bill Clinton during the 1992 Democratic primary campaign, when he rushed back to Arkansas from the campaign trail to sign the death warrant for a mentally retarded black man, Ricky Lee Rector, who was subsequently executed. Clinton's display of cold-bloodedness was an important episode in

demonstrating to the American ruling elite that he would stop at nothing to defend their interests.

Obama faces somewhat similar circumstances as Clinton did in 1992—he enters the general election campaign with a lead in the polls, and seeks to assuage doubts in decisive sections of the ruling class about his ruthlessness and determination. Since he is not in an executive position like Clinton, who was governor of Arkansas when he first ran for president, Obama can demonstrate his willingness to shed blood only indirectly, by attacking the Supreme Court death penalty decision.

Wednesday's decision was the first Supreme Court ruling in more than 30 years on whether a crime other than murder can be grounds for capital punishment. In its 1977 decision in *Coker v. Georgia*, the court ruled the death penalty for rape unconstitutional in the case of a 16-year-old victim, but left open the possibility that the death penalty could be applied in cases where the victim was younger.

Louisiana became the first state to adopt such a death penalty provision in 1995, and two men have been convicted and sentenced to death. Both these sentences were set aside in the latest decision, *Kennedy v. Louisiana*. Five other states—Texas, Georgia, Oklahoma, South Carolina and Montana—have enacted similar laws, but no one has yet been convicted or sentenced under them.

The Supreme Court majority cited both constitutional and practical reasons for overturning the Louisiana law. The opinion written by Justice Kennedy declared, “The constitutional prohibition against excessive or cruel and unusual punishments mandates that the State’s power to punish be exercised within the limits of civilized standards.... The incongruity between the crime of child rape and the harshness of the death penalty poses risks of overpunishment and counsels against a constitutional ruling that the death penalty can be expanded to include this offense.”

Among the other concerns Kennedy cited were that extending the death penalty “may remove a strong incentive for the rapist not to kill the victim,” that such cases would involve “the special risks of unreliable testimony” from child victims, and that the sheer number of reported child rapes—5,702 in 2005 alone—would overwhelm the court system if the death penalty were at issue.

The Louisiana case demonstrates many of these problems. The man facing the death penalty, Patrick Kennedy, was convicted of raping his stepdaughter when she was eight years old. The child originally said that she had been assaulted by two neighborhood teenagers, but changed her story six years after the event and identified her stepfather as the perpetrator. Kennedy maintains his innocence.

Obama's rush to embrace the right-wing minority on the

Supreme Court is a clear demonstration of his political trajectory. Having become the presumptive Democratic presidential nominee—and given the overwhelming popular hostility to the Bush administration and the Republican Party, in a strong position to win the White House—he is moving rapidly to the right, seeking to demonstrate his reliability and fitness to govern from the standpoint of the financial aristocracy that really rules America.

In this context, the most pernicious role is played by those who bolster illusions in the “progressive” character of Obama and Democratic Party, even as their right-wing orientation is openly displayed. This is the stance taken by the *Nation*, the weekly liberal magazine whose web site has published a grotesquely distorted defense of Obama's death penalty comments. The magazine's Washington correspondent, John Nichols, writes:

“It ought to come as no surprise that, while McCain rushed to exploit the Supreme Court decision for political purposes, Obama was circumspect. He recognizes that the raw emotions associated with cases of this kind do not lend themselves to reasoned debate. And, while a Feingold might recognize this as a teaching moment, Obama is a more cautious player. But, on matters such as this, there is something to be said for a cautious response.”

No matter how far to the right Obama goes, liberal apologists like the *Nation* will find words to justify and excuse him. That is a measure of their own prostration before the American ruling class.

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