US Supreme Court to consider reversing Miranda decision

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The US Supreme Court Monday issued a long anticipated order that it would review the case of *United States v. Dickerson*, in which it could overrule the landmark *Miranda* decision. Such an action would have enormous political and legal consequences, eliminating much of the protection of the Fifth Amendment to the US Constitution, which protects against self-incrimination, and encouraging the brazen use of "third-degree" methods by the police to coerce confessions out of arrested persons.

The 1966 decision in *Miranda v. Arizona* marked high water for the Warren Court's expansion of democratic rights, a liberal phase of the usually reactionary High Court, which itself reflected powerful movements in the working class demanding recognition of basic civil rights. The *Miranda* rule is widely known, but imperfectly understood by many. It requires police to tell people who are already in custody, before interrogating them, that they have the right to an attorney and to remain silent. Statements obtained in violation of that rule are generally not admissible in subsequent court proceedings.

Miranda does not apply to many incriminating statements, such as those made before a person is arrested, those made "spontaneously," and those made after *Miranda* warnings are given. Despite initial opposition from police agencies, the *Miranda* rule has proven to be fairly easy to apply, and has gained widespread support from prosecutors as well as defense attorneys because of the certainty it brings to the admissibility of confessions.

Chief Justice Warren draped the *Miranda* opinion in the rhetoric of the eighteenth century democratic revolutions, reflecting fundamental values completely absent from majority Supreme Court decisions today. He wrote:

"Our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. [It is] but an explication of basic rights that are enshrined in our Constitution—that 'No person ... shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall ... have the Assistance of Counsel.' These precious rights were fixed in our Constitution only after centuries of persecution and struggle. And in the words of Chief Justice Marshall, they were secured 'for ages to come, and ... designed to approach immortality as nearly as human institutions can approach it.'"

Underlying the *Dickerson* case are the same kind of right-wing machinations that surfaced during the impeachment proceedings against Clinton. The case brings the *Miranda* issue before the Supreme Court despite the fact that both the prosecution and the defendant Dickerson argued in favor of upholding the traditional warnings.

Dickerson was picked up by the FBI and questioned as a suspect in a string of bank robberies. There was a dispute about whether *Miranda* warnings were given. The trial judge decided the FBI agent was lying, and suppressed certain statements Dickerson made.

On appeal to the Fourth Circuit Court of Appeal, the US government attorneys did not challenge the validity of *Miranda*, arguing that warnings were given. In a highly unusual move, the court allowed an outside party to the case, University of Utah Professor Paul G. Cassell, a former law clerk for Justice Antonin Scalia when he was a Court of Appeals judge, and a lawyer in the Reagan administration, to intervene and argue that a provision in a 1968 federal law-and-order bill, Section 3501 of the United States Criminal Code, had overruled *Miranda*.

This provision was adopted by Congress more than 30 years ago, in a flurry of law-and-order demagogy. Although there have been innumerable opportunities, administrations from Nixon to Clinton have refused to apply Section 3501 because of its obvious unconstitutionality. Disregarding three decades of precedent, two ultra-right-wing Fourth Circuit judges adopted Cassell's position and held that Section 3501 overrules *Miranda* in federal criminal cases.

Despite the right-wing trajectory of the Supreme Court, it is not a foregone conclusion that the Fourth Circuit will be upheld. Although the hard-core reactionary triumvirate of Rehnquist, Scalia and Thomas will undoubtedly vote to get rid of *Miranda*, there may not be the two other votes necessary. The case is expected to be argued next spring with a decision due out before July.

Ironically, the challenge to *Miranda* is surfacing at the same time as Los Angeles County prosecutors are being compelled to release one person after another because of frame-ups carried out by Los Angeles Police officers assigned to the Rampart division. All pled guilty to crimes they did not commit because of legal coercion. Over the last decade, advances in DNA testing have established that many “confessed” criminals—including some on death row—were factually innocent of the charges against them.

In other recent actions, the Court heard arguments in three important cases.

Tobacco company lawyers attacked the right of the federal Food and Drug Administration to regulate tobacco. Most observers concluded, based on statements by the Justices, that the FDA regulations would be struck down, further limiting federal power to control big business.

The State of Vermont challenged the right of people to bring “whistleblower” lawsuits, also known as *qui tam* actions. Under *Qui Tam* law, private citizens can file lawsuits against people or entities who misappropriate federal money. If successful, they can get legal fees and a cut of the recovery.

Although *Qui Tam* has been around since the founding of the United States, when the government lacked the legal resources to go after profiteers, the Supreme Court is considering throwing it out altogether on the basis that only government lawyers should be allowed to bring such suits. Such a ruling would insulate big business and local governments from being challenged for theft of federal money. The Court may also use the case to further expand the sovereign immunity of states, following the three reactionary decisions with which it ended the last term.

Finally, the Court is considering weakening the separation between church and state by allowing limited public funding of a parochial school computer program. Many observers feel that a decision for the religious school in that matter will lead to approval of school voucher programs, further undermining the public education system in the United States.