Ruling upholds Miranda rights: deep divisions on the US Supreme Court

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28 June 2000

The United States Supreme Court on June 26 released its decision in the closely watched case Dickerson v. United States, rebuffing by a 7-2 vote an orchestrated right-wing challenge to the landmark 1966 decision in Miranda v. Arizona. The Miranda decision established the requirement that police inform those being held as criminal suspects of their right to remain silent and their right to legal counsel prior to any interrogation.

The case decided by the Court last Monday arose as a result of a legal attack on the Miranda rule spearheaded by a close associate of Justice Antonin Scalia, who has emerged as the most consistent and extreme advocate of attacks on democratic rights of the nine high court justices.

Chief Justice William Rehnquist, who has been an outspoken critic of Miranda since he joined the Court almost 30 years ago and generally sides with Scalia and Associate Justice Clarence Thomas in an ultra-conservative block, wrote the majority opinion. He affirmed the basic principle that Miranda warnings were devised to counter abusive police questioning and are needed to protect the Constitution's Fifth Amendment guarantee against self-incrimination. He held that both federal and state police must follow the Miranda guidelines, and that Congress cannot pass laws cutting back on that protection.

Scalia issued an angry dissent, which was joined in by Thomas. Scalia repeatedly referred to recent court decisions—many written by Rehnquist—which chiseled away at Miranda's foundations. His disgust at his right-wing colleagues for their failure to join with him in throwing Miranda out altogether pervades the dissent, which is replete with explicit references to prior positions taken by Rehnquist as well as Associate Justices Anthony Kennedy and Sandra Day O'Connor, who usually vote with him on issues restricting civil liberties.

The notion that the police are required to give the four Miranda warnings—"You have a right to remain silent; what you say can be used against you; you have a right to counsel; if you cannot afford an attorney, one will be appointed"— has become deeply embedded in public consciousness. Many believe that police cannot legally arrest someone without at the same time reciting the warnings. That is not the case, however. Police are only required to recite the warnings before interrogating an arrested person.

Often people arrested are not interrogated. The Miranda rule provides that, subject to certain exceptions, statements made by persons under arrest, without the warnings first being given, or after the right to remain silent or to consult a lawyer has been invoked, are inadmissible in a subsequent criminal case.

Although generally loathed by the police, the Miranda rule has widespread support from prosecutors as well as defense attorneys because of the increased certainty it brings to the admissibility of confessions. Opponents of Miranda claim that its application has resulted in criminals escaping conviction due to a mere "technicality." But public support for Miranda is high. Most people feel instinctively that the rule protects them against notorious "third-degree" interrogation techniques.

Right-wing hostility to Miranda is bound up with opposition to a series of Supreme Court rulings from the 1950s and 1960s, under Chief Justice Earl Warren, curtailing police and prosecutorial practices that flagrantly violate constitutionally protected civil liberties. After Miranda, the next logical target of right-wing zealots is the Warren Court's "exclusionary rule," which prohibits the use in criminal trials of evidence illegally seized by the police.

The machinations behind the Dickerson case suggest the possibility of support by Scalia for a legal attack aimed at short-circuiting traditional procedures to eradicate Miranda. United States attorneys prosecuted Dickerson

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for his alleged involvement in a bank robbery that netted less than $1,000. The trial judge found that certain statements Dickerson made to FBI interrogators could not be used at trial because Miranda warnings had not been given. The government lawyers appealed, claiming that proper warnings had been given. They did not argue that Miranda should be overruled, but disagreed over whether its guidelines had been violated in this case.

It is a fundamental juridical principle of Anglo-American law that when both sides to a legal dispute agree on an issue, there is no controversy for a court to decide. But this case went to the Fourth Circuit Court of Appeals, which covers Virginia, West Virginia, North Carolina, South Carolina and Maryland. This court has distinguished itself over the last several years as a pillar of the extreme right in the federal judiciary, issuing, for example, several death penalty rulings which even the Rehnquist Supreme Court had to disavow.

In the Dickerson case, the Fourth Circuit ignored the principle that the parties must disagree about an issue before a court can decide it, by inviting a complete outsider to argue a position—for the overthrow of Miranda—disavowed by both sides to the dispute. That outsider was University of Utah Professor Paul G. Cassell, who began his legal career as a law clerk for Scalia when the latter was a Court of Appeals judge.

Cassell based his challenge to Miranda on the claim that Congress legislated away the Miranda requirements in a 1968 federal law-and-order bill passed for the purpose of negating the Miranda holding. The provision in question, Section 3501 of the United States Criminal Code, states that warnings are not required for a suspect's statement to be admitted in evidence, so long as the confession is "voluntary."

This law had been dormant on the books for more than 30 years because every federal administration, from Nixon to Clinton, considered it an unconstitutional infringement on the power of the Supreme Court to define civil liberties.

In 1994, Scalia issued a concurring opinion lambasting the executive branch for failing to raise Section 3501 in Miranda cases, and suggesting that the Court should reach out and decide the issue itself. Cassell and the Dickerson case provided a useful vehicle to do so. The Fourth Circuit provided a sympathetic forum for Cassell's arguments, and one of its three-judge panels held, in a 2-1 decision, that Section 3501 nullified Miranda.

The Supreme Court accepted review. Because the Clinton administration, which is prosecuting Dickerson, supports Miranda, the Supreme Court invited Professor Cassell to defend the Fourth Circuit ruling. He, in turn, recruited police agencies and advocacy groups to file "friend of the court" briefs supporting his position.

Many commentators expressed dismay at the possibility that the Supreme Court would dismantle such an established and popular precedent. At the oral argument earlier this year, however, the two "swing" justices, O'Connor and Kennedy, indicated that they intended to join the four "liberals" and vote in favor of Miranda, suggesting that Cassell's attack would fail.

In his majority ruling, Rehnquist disavowed the argument that language in certain recent cases—much of which he drafted—meant that the Constitution did not require Miranda warnings. He reaffirmed that Congress is powerless to enact laws depriving people of constitutional rights established through decisions of the Supreme Court.

In any event, the Dickerson case had the opposite effect desired by Scalia. Rather than eliminating the precedent, the decision has, at least for the present, shored up Miranda, removing any doubt about its constitutional status. This development was underscored by another July 26 ruling by the Supreme Court. It denied review of a case arising in southern California which ruled that people can sue for violations of their civil rights when the police question them without having read them their Miranda rights.

The split between Rehnquist and Scalia in the Dickerson case, though bitter, suggests a difference over tactics rather than principle. In essence, Rehnquist and those conservatives who voted with him rebuffed an aggressive move by Scalia and his side-car Clarence Thomas to take the radical course of directly overturning one of the key decisions of the Warren Court. This does not, however, indicate a basic change in course by the right-wing high court majority, which has for years attacked the foundations of Miranda and other legal safeguards of civil and democratic rights.

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