
In The Supreme Court Of The United
States

OCTOBER TERM, 1999

CHARLES THOMAS DICKERSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of
Appeals For The Fourth Circuit

BRIEF OF *AMICUS CURIAE* THE RUTHERFORD INSTI-
TUTE IN SUPPORT OF PETITIONER
With Appendix

Of Counsel:

John W. Whitehead, President
Maria E. Selig, Counsel
The Rutherford Institute
1445 East Rio Road
Charlottesville, VA 22906-2374

James Joseph Lynch, Jr.
(Counsel of Record)
2740 Howe Ave.
Sacramento, CA 95821
Office: (916) 488-7871
Fax: (916) 448-0549
Email: jjlynch@cwnet.com
Net: <http://users.cwnet.com/jjlynch/>

Issues Addressed by *amicus Curiae*

1. Whether the passage of 18U.S.C., § 3501 was an unconstitutional attempt by Congress to legislatively overrule the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966)?

Alternatively: Has Congress impermissibly gone beyond legislating enforcement of the 5th Amendment right to remain silent and 6th Amendment rights to counsel and a public trial to define the substance of the restrictions of those amendments as found to be the case in E.g., *Boerne v. P.F. Flores*, 521 U.S. 511 (1997).

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| Table of Contents | |
| Issues Addressed by <i>amicus Curiae</i> | i |
| Table of Contents | ii |
| Table of Authorities | iii |
| INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 3 |
| I. CONGRESS HAS BEEN GIVEN THE POWER “TO ENFORCE,” NOT THE POWER TO DETERMINE “WHAT” CONSTITUTES A CONSTITUTIONAL VIOLATION | 4 |
| II. <i>MIRANDA</i> SERVES AS AN ANCIENT, VENERABLE AND IMPORTANT PROPHYLACTIC PROTECTING AN ACCUSED’S 5TH AMENDMENT RIGHT TO REMAIN SILENT AND 6TH AMENDMENT RIGHTS TO COUNSEL AND A PUBLIC TRIAL | 9 |
| CONCLUSION | 15 |
| APPENDIX | 1 |
| Art. I, § 8, cl. 9 | A2 |
| Art. I, § 8, cl. 10 | A2 |
| Art. I, § 8, cl. 18 | A2 |
| Art. III, §§, 1 & 2 | A2 |
| Amend 5th | A2 |
| Amend 6th | A2 |
| Amend 14, § 5 | A3 |
| Magna Carta (1215), Art. 38 | A3 |

Table of Authorities

CASES

| | |
|---|------------------|
| <i>Aguilar v. Texas</i> , 378 U.S. 108 (1964) | 10 |
| <i>Bivens v. Six Unknown Agents of the FBN</i> , 403 U.S. 388 (1971)..... | 4, 12 |
| <i>Boerne v. P.F. Flores</i> , 521 U.S. 511 (1997)..... | i, 3, 4, 5, 7, 8 |
| <i>Bolling v. Sharpe</i> , 347 U.S. 497, (1954)..... | 4 |
| <i>Boyd v. United States</i> , 116 U.S. 616 (1886) | 10 |
| <i>Brown v. Mississippi</i> , 297 U.S. 278 (1936)..... | 11 |
| <i>Butz v. Economou</i> , 438 U.S. 478 (1975)..... | 4 |
| <i>City of Rome v. United States</i> , 446 U.S. 156 (1980)..... | 6 |
| <i>Davidson v. New Orleans</i> , 96 U.S. 97 (1878) | 9 |
| <i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)..... | 9 |
| <i>Escobedo v. Illinois</i> , 378 U.S. 478 (1964)..... | 11 |
| <i>Ex parte Virginia</i> , 100 U.S. 339 (1880)..... | 5 |
| <i>Ferguson v. Georgia</i> , 365 U.S. 570 (1961) | 9 |
| <i>Fitzpatrick v. Bitzer</i> , 427 U.S. 445, 455 (1976) | 6 |
| <i>Franks v. Delaware</i> , 438 U.S. 154 (1978)..... | 12 |
| <i>Harris v. New York</i> , 401 U.S. 222 (1971) | 11 |
| <i>Illinois v. Gates</i> , 462 U.S. 213 (1983)..... | 9 |
| <i>James Everard’s Breweries v. Day</i> , 265 U.S. 545 (1924)..... | 6 |
| <i>James v. Illinois</i> , 493 U.S. 307 (1990) | 11 |
| <i>Katzenbach v. Morgan</i> , 384 U.S. 641 (1966)..... | 5, 14 |
| <i>Lassiter v. Northampton County Bd. of Elections</i> , 360 U.S. 45 (1959)..... | 6 |
| <i>Logan v. Zimmerman</i> , 455 U.S. 422 (1982) | 10 |
| <i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)..... | 4, 8, 13, 14 |
| <i>McCulloch v. Maryland</i> , 4 Wheat. 316 (1819)..... | 4 |
| <i>Michigan v. Harvey</i> , 494 U.S. 344 (1990)..... | 11 |
| <i>Michigan v. Jackson</i> , 475 U.S. 625 (1986)..... | 11 |

| | |
|---|---------|
| <i>Mincey v. Arizona</i> , 437 U.S. 385 (1978)..... | 11 |
| <i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)2, 3, 4, 11, 12, 13, 14 | |
| <i>Murray’ Lessee v. Hoboken Land & Improvement</i> , 59 U.S. (18 How.) 272 (1856)..... | 9 |
| <i>Oliver, In re</i> , 333 U.S. 257 (1948) | 12, 13 |
| <i>Opper v. United States</i> , 348 U.S. 84 (1954)..... | 10 |
| <i>Oregon v. Mitchell</i> , 400 U.S. 112 (1970) | 6 |
| <i>People v. Disbrow</i> , 16 Cal.3d 101 (1976) | 11 |
| <i>People v. Duncan</i> , 51 Cal.2d 523 (19)..... | 10 |
| <i>People v. Haydel</i> , 12 Cal.3d 190 (1974) | 11 |
| <i>People v. Kurland</i> , 28 Cal.3d 376 (1959) | 12 |
| <i>People v. May</i> , 44 Cal.3d 309 (1988)..... | 11 |
| <i>People v. Pompa-Ortiz</i> , 27 Cal.3d 519 (1980)..... | 12 |
| <i>People v. Terry</i> , 99 Cal.App.2d 579 (1950)..... | 12 |
| <i>Screws v. United States</i> , 325 U.S. 91 (1945) | 12 |
| <i>South Carolina v. Katzenbach</i> , 383 U.S. 301 (1966) | 6, 7 |
| <i>Spinelli v. United States</i> , 394 U.S. 410 (1969)..... | 9 |
| <i>United States v. Cianfrani</i> , 573 U.S. 835 (1978) | 12 |
| <i>United States v. Felix-Jerez</i> , 667 F.2d 1297 (9th Cir., 1982) | 10 |
| <i>United States v. Henry</i> , 447 U.S. 264 (1980)..... | 12 |
| <i>United States v. Price</i> , 383 U.S. 787 (1966) | 12 |
| <i>Walder v. United States</i> , 347 U.S. 64 (1954)..... | 11 |
| <i>Warden v. Hayden</i> , 387 U.S. 294 (1967) | 10 |
| <i>Wayman v. Southhard</i> , 23 U.S. (10 Wheat.) 1 (1825) | 5, 7, 8 |
| <i>Wong Sun v. United States</i> , 371 U.S. 471 (1963) | 10 |

CONSTITUTIONS

| | |
|---------------------------|----------|
| United States | |
| Art. I, § 8, cl. 09 | 5, 2 |
| Art. I, § 8, cl. 10 | 5, 2 |
| Art. I, § 8, cl. 18 | 5, 14, 2 |

| | |
|-----------------------------------|---------------|
| Art. III, § 1..... | 5, 2 |
| Art. III, § 2, cl. 2..... | 5, 2 |
| 5th Amend..... | 4, 11, 13, 14 |
| 6th Amend..... | 11, 12, 14 |
| 14th Amend, § 5..... | 2, 5, 14 |
| 15 Amend, §2..... | 6 |
| Bill of Rights..... | 2, 14 |
| England | |
| <i>Magna Carta</i> of 1215..... | 3, 9 |
| <i>Magna Carta</i> , Art. 38..... | 9 |

CODES

| | |
|------------------------|-----------------------|
| United States | |
| 18 U.S.C., § 3501..... | 2, 3, 4, 7, 8, 13, 14 |

MISCELLANEOUS

| | |
|--|----|
| 1 Stephen, History of the Criminal Law of England, p. 350..... | 9 |
| 10 Halsbury's Statutes of England (4th ed) (Vol. 10), Constitutional Law, 25 Edw. 1 (<i>Magna Carta</i>)(1297), Notes ¶ 3..... | 9 |
| McKechnie, <i>MAGNA CARTA</i> | 10 |
| Barrett, et al, Constitutional Law, Cases and Materials (University Casebook Series, 4th ed., 1973), p. 591..... | 9 |
| McKechnie, <i>MAGNA CARTA; A COMMENTARY ON THE GREAT CHARTER OF KING JOHN</i> | 9 |
| Rotunda (Vol. 3) § 23.20..... | 10 |
| Rotunda, Treatise on Constitutional Law (Vol. 1) § 3.1, note 4;..... | 8 |
| Saltzburg, Stephen A. & Daniel J. Capra, <i>American Criminal Procedure</i> 545 (5th ed. 1996)..... | 4 |
| Schwartz, The Bill of Rights;..... | 8 |

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INTEREST OF *AMICUS CURIAE* ¹

The Rutherford Institute is an international legal and educational organization dedicated to preserving human rights and defending civil liberties. Deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people, The Rutherford Institute has emerged as a prominent leader in the national dialogue on civil liberties and equal rights.

¹ *Amicus Curiae* The Rutherford Institute files this brief with the consent of counsel for both parties. Counsel for the Rutherford Institute authored this brief in its entirety. No person or entity, other than the Institute, its supporters, or its counsel, made a monetary contribution to the preparation or submission of this brief.

The Institute, a nonprofit, nonpartisan organization whose international headquarters are located in Charlottesville, Virginia, is comprised of a full-time staff of 50 and a network of more than 1,000 volunteer attorneys across the United States. Institute attorneys handle a full range of cases in the realm of civil liberties and human rights. The Institute's multi-faceted approach of integrating litigation and educational opportunities has made it a formidable leader in defending and teaching the Constitution. The defense of civil liberties and human rights through litigation and education are at the heart of the Institute's purpose.

In this particular case, the status of the Miranda Doctrine is a deeply ingrained criminal defense tool. It ought not be discarded, if at all, on anything less than a full scrutiny of its origins, the purpose it serves, and the relationship between this Court, the Congress, and the limitations on Congressional power both in the Bill of Rights and Section 5 of the 14th Amendment. Because of the depth and breadth of knowledge on this subject, the Rutherford Institute Believes that the accompanying brief does in fact address areas related to the issues raised which this court ought to consider in reaching its decision.

SUMMARY OF ARGUMENT

Congress enacted 18 U.S.C., § 3501 in direct response to this Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) with the clear intent of restoring voluntariness as the test for admitting confessions in federal court. However, under our Constitution, the Federal Government is one of enumerated powers. The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." Congress' power under §5 of the 14th Amendment, however, extends only to "enforc[ing]" the provisions of the Bill of Rights. This Court has described this power as "remedial." The design of the Amendment and

the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Bill of Rights' restrictions. Legislation, which alters the meaning of the Bill of Rights, cannot be said to be enforcing them. Congress does not enforce a constitutional right by changing what the right is. It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation." Because Congress has attempted to redefine the rights of an accused under the 5th Amendment and 6th Amendment, it is neither remedial nor enforcing a right, but determine what rights the accused has, which is the exclusive domain of this court. E.g., *Boerne v. P.F. Flores*, 521 U.S. 511 (1997)

The *Miranda Doctrine* is an imbedded criminal defense doctrine whose roots are found in the *Magna Carta* of 1215. This court has struck statements of the accused, long before *Miranda*, on a mere showing that there was no corroborating evidence that the defendant gave the statement. *Miranda* serves as a prophylactic reminding not only the accused there are rights, but the officer that there are limitations on what may be done with, or to, the accused. Moreover, the prophylactic serves to protect important 6th Amendment rights to counsel and a public trial in that it assures the public that the accused is treated fairly at a trial, if that is the accused's choice, and not condemned in a "star chamber" inquisition. The rationale of this court has always been, and should always be, "better to allow a guilty person go free rather than chance convicting an innocent person on tainted evidence.

For the foregoing reasons, the court should reverse the 4th Circuit on its ruling that "Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting [18 U.S.C.] § 3501[and hence] § 3501, rather than *Miranda* governs the admissibility of confessions in federal court. Opinion at 166 F.3d 667.

ARGUMENT

I.

CONGRESS HAS BEEN GIVEN THE POWER “TO ENFORCE,” NOT THE POWER TO DETERMINE “WHAT” CONSTITUTES A CONSTITUTIONAL VIOLATION

The court of appeals found that Congress had the power to enact § 3501, without specifying where in the Constitution the power is possessed. Opinion below, 166 F.3d, at 687-88. The court looked only to see if the rule were constitutionally required. Ibid. At this juncture, for the sake of clarity and continuity, *Amicus* will assume that the rule is constitutionally required for sake of bringing out whether, if so, Congress can overrule *Miranda*. In the next part, *Amicus* will discuss *Miranda* and whether it is constitutionally mandated.

Congress enacted 18 U.S.C., § 3501 in direct response to this Court’s decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) with the clear intent of restoring voluntariness as the test for admitting confessions in federal court. Opinion below, 166 F.3d 667, 685-86 (1999), citing Stephen A. Saltzburg & Daniel J. Capra, *American Criminal Procedure* 545 (5th ed. 1996). Assuming *arguendo* that is the congressional intent, Congress crossed the line and did that which it may not do. E.g., *Boerne v. P.F. Flores*, 521 U.S. 511 (1997).

Under our Constitution, the Federal Government is one of enumerated powers. *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819); see also The Federalist No. 45, p. 292 (C. Rossiter ed. 1961) (J. Madison). The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the “powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803);). E.g., *Boerne v. P.F. Flo-*

res, 521 U.S. 511, 515 (1997).²

Whether the Congress relied on its powers under the "necessary and proper" clause or on the 14th Amendment in passing § 3501 is not all clear. Opinion below, 116 F.3d 667, 687-88. The Fourteenth Amendment provides,³ in relevant part:

“Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

The parties disagree over whether § 3501 is a proper exercise of Congress' power to enact § 3501. There are two source which, arguably support Congressional authority, to wit § 5 of the 14th Amendment “to enforce” by “appropriate legislation” the constitutional guarantee that no State shall deprive any person of “life, liberty, or property, without due process of law” nor deny any person “equal protection of the laws.” The other would be Art. I, § 8, clause 18, the so-called "necessary and proper clause."⁴

² The scope of protection afforded by the Bill of Rights is the same, whether asserted against state officials or federal officials.

³ While the 14th Amendment appears to be directed at the several states, it does not negate the right of Congress to enforce the Bill of Rights as against the federal government. *E.g.*, *Bivens v. Six Unknown Agents of the FBN*, 403 U.S. 388 (1971); *Butz v. Economou*, , 438 U.S. 478 (1975) (Abolishing distinctions in liability for federal government employees acting under color of law and state employees acting under color of law); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (Recognizing an "equal protection" element to the "due process" clause of the 5th Amendment)

⁴ Art. I, § 8, clause 9 grants Congress the power "to constitute tribunals inferior to the Supreme Court;" and clause 10 grants Congress the power "to define and punishment Piracies and Felonies on the high Seas, and offenses against the Law of Nations." Clause 18: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by

All must acknowledge that both Art. I, § 8, clause 18 and §5 of the 14th Amendment are “a positive grant of legislative power” to Congress, *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966); *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825). In *Ex parte Virginia*, 100 U.S. 339, 345—346 (1880) and E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 517 (1997), this court explained the scope of Congress’ §5 power in the following broad terms:

“Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against ... denial or invasion, if not prohibited, is brought within the domain of congressional power.”

Legislation which deters or remedies constitutional violations can fall within the sweep of Congress’ enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into “legislative spheres of autonomy previously reserved to the States.” *Fitzpatrick v. Bitzer*, 427 U.S. 445, 455 (1976). For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress’ parallel power to enforce the provisions of the Fifteenth Amendment, see U.S. Const., Amend. 15, §2, as a measure to combat racial discrimination in voting,

this Constitution in the Government of the United States, or in any Department or Officer thereof." Art. III, § 1, "The judicial Power of the United States, shall be vested in one supreme Court, and **in such inferior Courts as the Congress may from time to time ordain and establish.**" Art. III, § 2, clause 2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make.**"

South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966), despite the facial constitutionality of the tests under *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45 (1959). This court has also concluded that other measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States. *South Carolina v. Katzenbach*, *supra* (upholding several provisions of the Voting Rights Act of 1965); *Katzenbach v. Morgan*, *supra* (upholding ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting); *Oregon v. Mitchell*, 400 U.S. 112 (1970) (upholding 5-year nationwide ban on literacy tests and similar voting requirements for registering to vote); *City of Rome v. United States*, 446 U.S. 156, 161 (1980) (upholding 7-year extension of the Voting Rights Act's requirement that certain jurisdictions preclear any change to a " 'standard, practice, or procedure with respect to voting' "); see also *James Everard's Breweries v. Day*, 265 U.S. 545 (1924) (upholding ban on medical prescription of intoxicating malt liquors as appropriate to enforce Eighteenth Amendment ban on manufacture, sale, or transportation of intoxicating liquors for beverage purposes).

It is also true, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited." *Oregon v. Mitchell*, *supra*, at 128 (opinion of Black, J.); E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 518 (1997) (Opinion by Kennedy, J.). In assessing the breadth of §5's enforcement power,⁵ we begin with its text. Congress has been given the power "to enforce" the "provisions of this article." We agree with respondent, of course, that Congress can enact under §5 enforcing the constitutional rights of persons before the court, including the

⁵ It would appear that if § 3501 can pass § 5 scrutiny, it can also pass the "necessary and proper" clause scrutiny as well. On the other hand, if Congress has transgressed the 5th and 6th Amendments, then the law is not "necessary and proper," therefore failing that test as well.

accused. The “provisions of this article,” to which §5 refers, include the Due Process Clause of the Fourteenth Amendment. Congress’ power to enforce the various provisions of the Bill of Rights, and control the judicial business follows from this Courts’ holding in *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 518-19 (1997), and *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825).

Congress’ power under §5, however, extends only to “enforc[ing]” the provisions of the Bill of Rights. The Court has described this power as “remedial,” *South Carolina v. Katzenbach*, *supra*, at 326. The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Bill of Right’s restriction. Legislation which alters the meaning of any provision of the Bill of Rights cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. It has been given the power “to enforce,” not the power to determine what constitutes a constitutional violation. Were it not so, what Congress would be enforcing would no longer be, in any meaningful sense, the “provisions of [the Bill of Rights.]” E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 519 (1997), and *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825).

While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adapted to that end. Lacking such a connection, legislation may become substantive in operation and effect. History and our case law support drawing the distinction, one apparent from the text of the Amendment. E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 519-20 (1997), and *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825).

If Congress could define its own powers by altering the Bill of Right's meaning, no longer would the Constitution be "superior paramount law, unchangeable by ordinary means." It would be "on a level with ordinary legislative acts, and, like other acts, ... alterable when the legislature shall please to alter it." *Marbury v. Madison*, 1 Cranch, at 177. Under this approach, it is difficult to conceive of a principle that would limit congressional power. Shifting legislative majorities could change the Constitution and effectively circumvent the difficult and detailed amendment process contained in Article V. Generally, E.g., *Boerne v. P.F. Flores*, 521 U.S. 511, 529 (1997).

We now turn to consider whether § 3501 can be considered enforcement legislation under §5 of the Fourteenth Amendment.

II.

MIRANDA SERVES AS AN ANCIENT, VENERABLE AND IMPORTANT PROPHYLACTIC PROTECTING AN ACCUSED'S 5TH AMENDMENT RIGHT TO REMAIN SILENT AND 6TH AMENDMENT RIGHTS TO COUNSEL AND A PUBLIC TRIAL

The *Magna Carta* has always been regarded as the antecedent of our own Bill of Rights and looked to for meaning as to what the Bill of Rights was intended to protect against.⁶ Generally, (Schwartz, *The Bill of Rights; A Documentary History* (1971); 1 Rotunda, *Treatise on Constitutional Law* (Vol. 1) § 3.1, note 4; 3 *Id* § 20.53; Barrett, et al, *Constitutional Law, Cases and Materials* (University Casebook Series, 4th ed., 1973), p. 591; *Murray' Lessee v. Hoboken Land & Improvement*, 59 U.S. (18 How.) 272 (1856); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Davidson v. New Orleans*, 96 U.S. 97 (1878).)

⁶ See footnote 1 *supra*.

The *Miranda Doctrine* is an imbedded criminal defense doctrine whose roots are found in the *Magna Carta* of 1215. At common Law, "No bailiff for the future shall, upon his own unsupported complaint, but anyone to his 'law,' without credible witnesses brought for this purpose."⁷ (*Magna Carta*, Article 38; McKechnie,⁸ *MAGNA CARTA; A COMMENTARY ON THE GREAT CHARTER OF KING JOHN*.) In American *Jurisprudence*, corroboration by extrinsic evidence has been the rule, rather than the exception. (*C.f.*, *Spinelli v. United States*, 394 U.S. 410 (1969); [Corroboration existed]; *Illinois v. Gates*, 462 U.S. 213 (1983); [Extrinsic evidence based upon totality of circumstances]⁹ with *Aguilar v. Texas*, 378 U.S. 108 (1964); [corroboration lacking]; *Wong Sun v. United States*, 371 U.S. 471

⁷ At common law it was also true that the accused was required to conduct his own defense since he was neither allowed to call witnesses in his behalf nor permitted the assistance of counsel. *Generally, Ferguson v. Georgia*, 365 U.S. 570, 573-74 (1961); 1 Stephen, *History of the Criminal Law of England*, p. 350. In the 17th Century, the accused could call witnesses by statute, but accused could not testify. The general rationale was the defendant was an interested party and therefore disqualified. *Ibid.* This disqualification carried over to this country at its founding. Maine was the first state, in 1859, to discard the common law and allow interested parties to testify under oath in civil cases. The chief argument against the practice in criminal courts was perceived as how to protect the defendant's right to remain silent. Eventually, by 1961, the sole state left, which disqualified criminal defendants from testifying, was *Georgia. Ferguson, supra*, 575-77.

⁸ McKechnie is the recognized scholar on the original *Magna Carta*. (10 Halsbury's Statutes of England (4th ed.) (Vol. 10), Constitutional Law, 25 Edw. 1 (*Magna Carta*)(1297), Notes ¶ 3

⁹ *Gates*; does not overrule *Spinelli*; or *Aguilar*; as to extrinsic corroboration; rather it shifts the focus to demand the magistrate look to the totality of circumstances known to the officers to determine whether or not probable cause existed. In fact, the shift was not even required. On the facts of *Gates*, the officers themselves had corroborated what the informer said; and of course the informer was the extrinsic corroboration of the officers conduct, vis there was cross corroboration.

(1963), 488-489 [Extrinsic corroboration lacking]; *also, Opper v. United States*, 348 U.S. 84 (1954); *People v. Duncan*, 51 Cal.2d 523 (19), 528.) Both yesteryear and today, the requirement for extrinsic corroboration was designed for the protection of persons from the abuses of government. (McKechnie, *The Magna Carta*, pp. 370-377; 3 Rotunda (Vol. 3) § 23.20.)¹⁰ In *following Wong Sun, supra*, which had itself struck Toy's statement for lack of extrinsic corroboration, federal courts have consistently followed the rule. (*E.g., United States v. Felix-Jerez*, 667 F.2d 1297, 1299-1300.) The best evidence of what defendant said is a tape recording of the statement. The state may not take a statutory right from a person benefited by the statute. (*Logan v. Zimmerman*, 455 U.S. 422 (1982).)

Aside from the voluntariness of a confession, the courts have always held that Criminal confessions and admissions of guilt require extrinsic corroboration. (*Wong Sun v. United States*, 371 U.S. 471 (1963), 488-489; *United States v. Felix-Jerez*, 667 F.2d 1297 (9th Cir. 1982), 1299-1300.) McKechnie, *MAGNA CARTA; A COMMENTARY ON THE GREAT CHARTER OF KING*, Art. 38. Against this backdrop, this Court adopted two theories for dealing with confessions. *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966). A confession may not be used in the prosecution's case in chief where the confession was taken without giving the defendant

¹⁰ It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can be obviated by adhering to the rule that constitutional provisions for security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance" (*Boyd v. United States*, 116 U.S. 616 (1886), 635 (Harlan, J.)(emphasis added), *overruled other grounds Warden v. Hayden*, 387 U.S. 294 (1967) [Hot pursuit & exigent circumstance exception; Mere evidence rule].)

an advisement of defendant's rights, i.e. involuntariness was presumed. *Miranda v. Arizona*, 384 U.S. 436 (1966) (Statement taken in violation of 5th Amendment right to remain silent); *Michigan v. Jackson*, 475 U.S. 625 (1986) (Statement taken in violation of 6th Amendment right to counsel). However, statements taken in violation of *Miranda* may be used for impeachment purposes. *Walder v. United States*, 347 U.S. 64 (1954) (Violation of 5th Amendment); *Michigan v. Harvey*, 494 U.S. 344 (1990) (Violation of 6th Amendment). Such evidence may also be admitted if reliable and probative evidence would further the truth-seeking function and the likelihood that admission of such illegally obtained evidence would encourage police misconduct is only a "speculative possibility." *Harris v. New York*, 401 U.S. 222 (1971), 225.¹¹ Prosecutors may use such statements to impeach answers elicited on cross-examination of matters clearly within the scope of direct examination. *Harris, supra*. However, illegally obtained statements from the defendant may not be used to impeach other defense witnesses. *James v. Illinois*, 493 U.S. 307 (1990). An involuntary statement cannot be admitted for any purpose. *Mincey v. Arizona*, 437 U.S. 385 (1978), 397-98; *Brown v. Mississippi*, 297 U.S. 278 (1936); *People v. Haydel*, 12 Cal.3d 190 (1974), 196-199. Thus, *Miranda* itself has never been an absolute bar, but only a bar for use in the prosecutor's case in chief.

¹¹ Prior to Prop 8, statements taken in violation of *Miranda* could not be used to impeach. *People v. Disbrow*, 16 Cal.3d 101 (1976), 113. Since Prop. 8, *Disbrow* no longer applies. *People v. May*, 44 Cal.3d 309 (1988), 315. It is here suggested that the approach suggested in *Harris v. New York* should be followed: i.e., were the officers acting in good faith in violation of *Miranda*, or where they ignoring *Miranda* as a means of depriving the accused the chance to testify. Such evidence should not be admissible for impeachment purposes if (1) there is bad faith, (2) the evidence is of questionable probative value, and (3) there is no extrinsic corroboration: (a) that the defendant in fact made the statement; or (b) of the contents.

While the Fifth Amendment, guarantees the accused the right to **remain silent**. *Miranda v. Arizona*, 384 U.S. 436 (1966), the Sixth Amendment guarantees the accused the right to counsel and a **public** trial. *United States v. Henry*, 447 U.S. 264 (1980); *United States v. Cianfrani* (1978) 573 F.2d 835. Its function is to operate as an effective restraint on possible abuses of the judicial system. 573 F.2d, at 847. The requirement is recognized as "for the benefit of the accused, that public may see that accused is fairly dealt with and not unjustly condemned, and that presence of interested spectators (**counsel**) may keep his triers keenly alive to sense of their responsibilities and to the importance of their functions." *People v. Terry*, 99 Cal.App.2d 579 (1950), 222 P.2d 95; *People v. Pompa-Ortiz*, 27 Cal.3d 519 (1980), 165 Cal.Rptr. 851, 612 P.2d 941; *In re Oliver*, 333 U.S. 257 (1948); *Screws v. United States*, 325 U.S. 91 (1945); (Pre-trial detainee beaten to death); *United States v. Price*, 383 U.S. 787 (1966) (Certified judgments indicate that Deputy Sheriff Price was subsequently convicted of murdering the pre-trial detainees/civil rights workers); *Franks v. Delaware*, 438 U.S. 154 (1978); and *People v. Kurland* (1980) 28 Cal.3d 376, 618 P.2d 213 are but a few, of legions of, examples of what may transpire outside the presence of counsel, and point out the difficulty inherent in proving improper conduct hidden away from public scrutiny, the watchful eyes of diligent counsel, and witness the need to erect barriers to prevent abuse of pre-trial detainees. What have we gained if we have abolished the Star Chamber¹² in a building, only to erect it on our highways and byways, away from any scrutiny whatsoever? Nothing. We have lost the essence of liberty that a person make a knowing, intelligent, and voluntary choice. The court should adopt the reasoning in *Bivens v. Six Unknown Agents of the FBN*, 403 U.S. 388 (1971) (hereinafter, *Bivens Doctrine*), that there must be an effective deterrent to police abuse, and the best deterrence is the reading of *Miranda* Rights as a constant reminder to peace officers of

¹² *In re Oliver*, 333 U.S. 257 (1948);

their responsibility to uphold the law, but not to abuse.

Moreover, the prophylactic serves to protect an important 6th Amendment right to counsel and public trial in that it assures the public that the accused is treated fairly at a trial, if that is the accused's choice, and not condemned in a "star chamber" inquisition.¹³ The rationale of this court has always been, and should always be, "better to allow a guilty person go free rather than chance convicting an innocent person on tainted evidence." *Miranda*.

It is clear that under the 5th Amendment an accused cannot be compelled to testify against himself. The amendment is silent as to the issue of voluntariness. It is also clear that from time out of mind, the bailiff (i.e. peace officers) could not, without corroboration, present evidence against the defendant, i.e. put words into his mouth. In order to prevent the Star Chamber¹⁴ from coming into court, undermining the effectiveness of the adversary system, *Miranda* is a constitutionally compelled and necessary process that strikes the appropriate balance by preventing use of alleged statements by an accused, unless the defendant willingly, in public, waives his right to remain silent to take the stand. Congress therefore overstepped its powers.

Our national experience teaches that the Constitution is preserved best when each part of the government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. *Marbury v. Madison*, 1 Cranch, at 177. When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood

¹³ *In re Oliver*, 333 U.S. 257 (1948);

¹⁴ *In re Oliver*, 333 U.S. 257 (1948);

that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including *stare decisis*, and contrary expectations must be disappointed. § 3501 was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court's precedent, not § 3501, which must control.

It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Bill of Rights," and its conclusions are entitled to much deference. *Katzenbach v. Morgan*, 384 U.S., at 651. Congress' discretion is not unlimited, however, and the courts retain the power, as they have since *Marbury v. Madison*, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the "Necessary and proper" clause or Enforcement Clause of the Fourteenth Amendment, § 3501 contradicts vital principles necessary for the preservation of an accused's 5th Amendment rights not to be compelled to be a witness against himself, and 6th Amendment rights to counsel and to assure the public generally that the accused is treated fairly in a public trial, rather than an inquisition, to maintain separation of powers and the federal balance.

CONCLUSION


For the foregoing reasons, the court should reverse the 4th Circuit's ruling that "Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting [18 U.S.C.] § 3501[and hence] § 3501, rather than *Miranda* governs the admissibility of confessions in federal court", and such other and further relief as the court deems just and proper under the circumstances.

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Respectfully submitted,

Of Counsel:

John W. Whitehead, President
Maria E. Selig, Counsel
The Rutherford Institute
1445 East Rio Road
Charlottesville, VA 22906-2374



James Joseph Lynch, Jr.
Counsel of Record
2740 Howe Ave.
Sacramento, CA 95821
Office: (916) 585-5202
Fax: (916) 448-0549
Email: jjlynch@cwnet.com
Net: <http://users.cwnet.com/jjlynch/>

Counsel for *Amicus Curiae*
The Rutherford Institute

APPENDIX

A1

Art. I, § 8, clause 9: "to constitute tribunals inferior to the Supreme Court;"

Clause 10 "to define and punishment Piracies and Felonies on the high Seas, and offenses against the Law of Nations."

Clause 18: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Art. III, § 1, "The judicial Power of the United States, shall be vested in one supreme Court, and **in such inferior Courts as the Congress may from time to time ordain and establish.**"

Art. III, § 2, clause 2: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make.**"

Amendment 5: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself**, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment 6: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the **Assistance of Counsel** for his defense."

14th Amendment, § 5: " The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

Magna Carta (1215), Art. 38: " No bailiff shall in future put anyone to trial upon his own bare word, without reliable witnesses produced for this purpose."