NOTE

UNITED STATES V. DICKERSON: UNCOVERING *MIRANDA*'S ONCE HIDDEN AND ESOTERIC CONSTITUTIONALITY

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I. INTRODUCTION

A message to the police and criminal suspects alike: The *Miranda* warnings are here to stay. On June 26, 2000, the

United States Supreme Court decided *Dickerson v. United States*[1] and ruled that the *Miranda* warnings are constitutionally mandated in police investigations.[2] In doing so, the Court decisively reaffirmed that the *Miranda* warnings are the touchstone safeguard to preventing self-compelled incrimination by suspected criminals.[3]

For thirty-five years, the *Miranda* warnings have been an integral component of proper police procedures used in dealing with suspected criminals.[4] And now, as a result of *Dickerson*, the warnings carry constitutional weight.[5] The Court's ruling essentially resolves any question regarding the minimal procedural steps that the police must follow to obtain a valid confession from a suspect in their custody. While this likely will not place a considerable burden on law enforcement, the ruling may place a substantial restriction on a prosecutor's ability to use tainted evidence in the limited forms that the courts have generally allowed in the past.[6]

By its holding in *Dickerson*, the Court not only made the correct decision, but it likely made the only sensible decision that would garner genuine acceptance by the American public. The *Miranda* warnings' obvious popularity and widely-held recognition[7] make any thought of the Supreme Court actually overruling the simple procedure seem ludicrous. However, there exist some challengers to the rule who had hoped that the warnings would finally meet their judicial demise.[8] While the

1. 530 U.S. 428 (2000).

2. *Id.* at 432.

3. *Id.* at 431–32, 435.

4. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) (holding that incriminating statements or confessions cannot be used in a court of law unless the confessing individual, prior to his statement to the police, is informed of his right not to talk and his right to have a lawyer present during the police interrogation).

5. *Dickerson*, 530 U.S. at 444 (concluding that "*Miranda* announced a constitutional rule that Congress may not supersede legislatively").

6. *See, e.g.*, Oregon v. Elstad, 470 U.S. 298, 318 (1985) (establishing that confessions taken in violation of *Miranda* can subsequently be cured, and thus admissible into evidence, by a suspect's voluntary waiver of rights following a careful and thorough administration of *Miranda* warnings); Oregon v. Hass, 420 U.S. 714, 722–24 (1975) (allowing prosecutors to use statements taken in violation of *Miranda* for impeachment purposes).

7. *See* Michael Edmond O'Neill, *Undoing Miranda*, 2000 BYU L. REV. 185 (2000) (noting the widespread recognition of the *Miranda* warnings).

8. A small sample of organizations opposed to the *Miranda* warnings include: (i) Americans for Effective Law Enforcement, Inc.; (ii) Arizona Voices for Victims; (iii) Citizens for Law and Order; (iv) Criminal Justice Legal Foundation; (v) Federal Bureau of Investigation Agents Association; (vi) National Association of Police Organizations; and (vii) Fraternal Order of Police. *See* Brief of Amici Curiae, Dickerson v. United States, 530 U.S. 428 (2000), *available at* http://supreme.lp.findlaw.com/supreme_court/docket/

Miranda warnings appear to be simple and straightforward, situations can arise in which the warnings inevitably lead to an inequitable result. Consider the following scenario:

A seventy-one year old woman's lifeless body is found in an open field—her death the result of two gunshot wounds to the head. The small community in which she lived is outraged. Pressure mounts as local authorities attempt to solve this brutal crime and bring the murderer to justice.

Fortunately, local detectives have gotten the break they had hoped for. Acting on a tip, the detectives have brought in a suspect, a teenage boy, for voluntary questioning about the crime. During his retrieval, the boy turned over much of the physical evidence that unquestionably linked him to the crime. The detectives are now confident that the young man sitting across from them in the interrogation room is their culprit.

> DETECTIVE A: "Nathan, you have given us some jewelry and a firearm linked to a crime recently committed in town. Resources indicate that you have some involvement in the case . . . . What I want you to do is be honest with me. The indication we have is that both you and your friend John are involved . . . . I know you were there. I wouldn't be here if I didn't know that. You know what I am saying?"
>
> NATHAN: "Yes sir."
>
> DETECTIVE A: Is there anything you want to tell me?"
>
> NATHAN: "Yes sir . . . ."

As the videotape recorder rolls, the boy offers the detectives his confession and, in the process, narrates a gruesome tale of the victim's last hours of life. The boy recounts the crime as follows:

He and his teenage friend had broken into the elderly woman's home hoping to rob her of some cash and other valuables. While committing the robbery, the boys had tied the elderly woman to a bed with a telephone cord and brutally raped her. To quiet the alarming pierce of her dog's frantic howls, they bludgeoned the woman's poodle to death with a crowbar. Fearing the woman would implicate them as the culprits, the boys forced the woman into a car whereby they drove her to a remote field. Once there, Nathan admits he executed the woman with a pistol he had found in her home. The boys' bounty for their crime: a small amount of the woman's jewelry and a mere $35 in cash. Subsequently the boys spend the stolen money at a local video

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arcade playing video games—oblivious to the horrendous crime they had just committed.

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Both detectives realize that they have just obtained the crucial piece of evidence needed to wrap up their investigation and pin the crime on Nathan. To proceed further with their questioning, the detectives now half-heartedly read the boy his *Miranda* rights.

> DETECTIVE B (to DETECTIVE A): "Why don't you let Nate know about his rights. I mean, he's already told us about going in the house and whatever. I don't think that's going to change Nate's desire to cooperate with us."
>
> NATHAN: "Am I, like, being placed under arrest?"
>
> DETECTIVE A: "No, no. I'm just reading you your rights at this time . . . ."

Looking no deeper into this case, the police seemingly have all the evidence they need to convict the confessing boy. They have his videotaped confession and physical evidence linking him to both the crime scene and the victim. It appears as if this is an "open and shut case" as they say on television police dramas.

This, however, is not the case. Notwithstanding the fact that he willingly agreed to cooperate with the police and admitted to the gruesome murder, the teenager's confession is inadmissible into evidence.[9] During their interrogation of the boy, the detectives made only a feeble attempt to read him his *Miranda* warnings, and they did so only after the boy had already confessed. Simply put, the detectives failed to correctly advise the boy of his constitutional right against self-incrimination prior to his statement.[10] His confession is worthless. His conviction overturned.[11]

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9. *See Miranda*, 384 U.S. at 444 ("The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.").

10. *See id.* at 460–61 (presuming that police interrogation in certain custodial circumstances is inherently coercive and, as such, statements made under those circumstances are inadmissible into evidence unless the police specifically warn the suspect of his constitutional rights prior to the interrogation, and the suspect then freely decides to waive those rights).

11. Unfortunately, the murder confession played out in the above hypothetical is not simply an imaginary situation, but is based on the facts of an actual criminal case in which the Florida Supreme Court overturned a confessing murderer's conviction on a procedural technicality. *See* Ramirez v. Florida, 739 So. 2d 568, 571–74, 578, 582 (holding that a murder confession of a seventeen year old boy was taken in violation of the boy's *Miranda* rights where sheriff's detectives procedurally misled the boy into waiving his

United States Supreme Court Justice Brennan once stated that "[g]overnments, state and federal, are . . . constitutionally compelled to establish guilt by evidence independently and freely secured, and may not [by] coercion prove a charge against an accused out of his own mouth."[12] This statement distinctly articulates one of the founding principles of American jurisprudence: An accused citizen's protection from unwilling self-incrimination is absolute.[13] Over the last thirty years, the *Miranda* warnings have been the procedural cornerstone that guarantees such protections during criminal investigations.[14] Created by the Warren Court's landmark decision in *Miranda v. Arizona*,[15] the warnings have not only been vigorously integrated into police investigation procedures, but also readily ingrained into American pop culture.[16] From police shows to movies on the big screen, most Americans can easily recognize the now famous warnings.[17] "You have the right to remain silent. Anything you say can and will be used against you in a court of law . . . ."[18] These warnings, and their variations, "have become one of the best known aspects of the American criminal justice system."[19]

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right against self-incrimination). *See also* Geoff Dougherty, *Court Overturns Murder Conviction in Pasco Case*, ST. PETERSBURG TIMES, July 10, 1999, *available at* 1999 WL 3330131 (discussing the Florida Supreme Court decision in *Ramirez*).

12. Malloy v. Hogan, 378 U.S. 1, 8 (1964).

13. Brown v. Walker, 161 U.S. 591, 630 (1896) ("The fifth amendment of the Constitution of the United States gives absolute protection to a person called as a witness in a criminal case against the compulsory enforcement of any criminating testimony against himself.").

14. *Miranda*, 384 U.S. at 444 (holding that statements obtained from a suspect during a police interrogation, without full warning of the suspect's constitutional rights, were inadmissible as having been obtained in violation of Fifth Amendment privilege against self-incrimination).

15. *Id*. at 444–45.

16. O'Neill, *supra* note 7, at 185 (noting the effects that the *Miranda* decision had on American criminal procedure and recognizing that "Miranda [sic] has so permeated the popular culture that not even my word processor's spell-checker picks it up").

17. United States v. McCrary, 643 F.2d 323, 330 n.11 (5th Cir. 1981) (suggesting that "[m]ost ten year old children who are permitted to stay up late enough to watch police shows on television can probably recite [the *Miranda* warnings] as well as any police officer"); United States v. Chapdelaine, 616 F. Supp. 522, 530 (D. R.I. 1985) ("[W]ith the popularity of police shows on television, there are few persons who are not familiar with the [*Miranda* warnings].").

18. *Miranda*, 384 U.S. at 479 (requiring that police interrogators follow a procedure by which a suspect "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires"). *See also* Rhode Island v. Innis, 446 U.S. 291, 297 (1980) (referring to "the now familiar *Miranda* warnings . . . or their equivalent").

19. Edward Walsh, *High Court Upholds Miranda Rights, 7-2; Rehnquist Calls Warnings Part of 'National Culture,'* WASH. POST, June 27, 2000, *available at* 2000 WL

But why are the *Miranda* warnings so critical in the determination of a valid confession? The *Miranda* warnings, in essence, remove all doubt that an accused individual was truly aware of his constitutional rights prior to his confession.[20] They ensure that the police respect every individual's right against self-incrimination as provided for in the Fifth Amendment to the United States Constitution.[21] The warnings are rooted in the idea that the protection against self-incrimination is only realized when an accused individual "is guaranteed the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will.'"[22]

Yet, the *Miranda* warnings, as a seemingly simplistic procedural measure, have not been instituted without criticism and controversy.[23] A mere two years after the 1966 *Miranda* decision, Congress enacted 18 U.S.C. § 3501.[24] This little known statute was created with the intent of legislatively overturning the Supreme Court's *Miranda* holding.[25] Congress had hoped to change the standard for admissibility of a confession in federal court by reviving the voluntariness test that had prevailed prior to the *Miranda* decision.[26] In doing so, Congress attempted to replace the warning-based test of *Miranda* with § 3501's "totality-of-the-circumstance" test.[27]

More recently, however, the attack on the *Miranda* warnings has shifted from the halls of the American legislature to the neighborhoods of public crime fighting organizations. Over the last few years, law enforcement agencies and victim's rights groups have

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20. *See Miranda*, 384 U.S. at 471–72 (suggesting that the police can ensure that a suspect understands his right against self-incrimination by reading him the *Miranda* warnings since "[n]o amount of circumstantial evidence . . . will suffice to stand in its stead").

21. *See* U.S. CONST. amend. V.

22. *Miranda*, 384 U.S. at 460 (citing Malloy v. Hogan, 378 U.S. 1, 8 (1964)).

23. *E.g.*, Patrick A. Malone, "*You Have the Right to Remain Silent*": Miranda *after Twenty Years*, *reprinted in* THE *MIRANDA* DEBATE: LAW, JUSTICE, AND POLICING 75 (Richard A. Leo & George C. Thomas, III eds., 1998) (1986) (listing the backlash from the *Miranda* decision which included a congressional push to impeach Chief Justice Warren and the introduction of a constitutional amendment to abolish the holding); Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on* Miranda's *Harmful Effects on Law Enforcem*ent, 50 STAN. L. REV. 1055, 1057 (1998) [hereinafter Cassell & Fowles, *Handcuffing the Cops*] (opining that "the United States Supreme Court ignited a firestorm of controversy with *Miranda v. Arizona*, which became its most famous criminal law decision").

24. *See* Yale Kamisar, *Can (Did) Congress "Overrule"* Miranda?, 85 CORNELL L. REV. 883, 888 (2000) (explaining the history of 18 U.S.C. § 3501).

25. *Id*. (surmising that § 3501 "purported to overturn the Warren Court's two most famous confession cases, *Escobedo* and *Miranda*").

26. *Id*. at 884–85.

27. *Id*.

been some of the most vocal critics of the *Miranda* decision.[28] These groups assert that the *Miranda* warnings place harmful restrictions on police interrogations, which, in turn, effectively reduce the number of criminal confessions obtained by the police.[29] This, they argue, essentially "handcuff[s] the police" and prevents them from solving crimes and ensuring that guilty parties are brought to justice.[30]

Both critics and proponents of *Miranda* will agree, however, that allowing the police to obtain confessions through physical and psychological coercion is unacceptable. Clearly, any medieval method of obtaining evidence has no place in a civilized society.[31] Hence, it is the process by which the judicial system prevents such police misconduct that has been at the center of the *Miranda* controversy since the Supreme Court's decision in 1966.[32] Critics of *Miranda* generally argue in favor of the more lenient "totality-of-

28. Refer to note 8 *supra*.

29. *E.g.*, Paul G. Cassell, Miranda*'s Social Costs: An Empirical Reassessment*, 90 NW. U. L. REV. 387, 389–90 (1996) (concluding that the social cost of *Miranda* is too high because "fewer persons will confess if police must warn them of their right to silence, obtain affirmative waivers from them, and end the interrogation if they ask for a lawyer or for questioning to stop"); Paul G. Cassell & Bret S. Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of* Miranda, 43 UCLA L. REV. 839, 871–72 (1996) (hypothesizing that the *Miranda* warnings have had the effect of significantly reducing the confession rate in criminal cases); Joseph D. Grano, *Criminal Procedure: Moving from the Accused as Victim to the Accused as Responsible Party*, 19 HARV. J.L. & PUB. POL'Y 711 (1996) (characterizing the *Miranda* warnings as helping "to defeat the truth-finding function of the criminal justice system").

30. *E.g.*, Cassell & Fowles, *Handcuffing the Cops*, *supra* note 23, at 1063–70 (citing FBI statistical data showing that the decrease in the number of criminal confessions as a result of the *Miranda* warnings has resulted in a greater number of unsolved and unprosecuted crimes). Professor Cassell, who argued *amicus curiae* against *Miranda* before the Supreme Court in *Dickerson v. United States*, 530 U.S. 428 (2000), has been one of the most out-spoken critics of the *Miranda* warnings. Brief of Court-Appointed Amici Curiae Urging Affirmance of the Judgment Below at 50, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-5525fo9b/brief/brief01.html. Professor Cassell's arguments center primarily on his belief that the technicalities over the administration of the *Miranda* warnings typically benefit the guilty. Paul G. Cassell, *Protecting the Innocent from False Confessions and Lost Confessions—and from* Miranda, 88 J. CRIM. L. & CRIMINOLOGY 497, 499, 503 (1998). Calling the result "lost confessions," Professor Cassell believes that an innocent person is more likely to waive his rights to clear his name, while a guilty individual, once informed that he does not need to speak, likely will be discouraged from offering a confession. *Id.* at 498, 503. The consequence, he argues, is a lost opportunity for a confession from a guilty criminal who would have voluntarily confessed *but for* the dissuasive effect of the *Miranda* warnings. *Id.* at 499, 503.

31. *See, e.g.*, Furman v. Georgia, 408 U.S. 238, 259–60 n.2, 272–73 (1972) (describing ancient methods of compelling a confession through the use of "the rack, the thumb screw, [and] the iron boot").

32. *See, e.g.*, JOSEPH D. GRANO, CONFESSIONS, TRUTH, AND THE LAW 202 (1993) (noting that *Miranda* warnings have "caused considerable mischief in law enforcement efforts and probably in the administration of the judicial system as well"); Lane V. Sunderland, *Self-Incrimination and Constitutional Principle:* Miranda v. Arizona *and Beyond*, 15 WAKE FOREST L. REV. 171, 204 (1979) (criticizing the Supreme Court's *Miranda* decision and its later interpretations of the holding as "not . . . well-reasoned nor well-supported").

the-circumstances test," as prescribed by § 3501, while *Miranda* proponents support the stricter warning-based approach.[33] The former method reveals a more pro-victim stance,[34] while the latter embraces a more individual rights position.[35]

Looking at Nathan's interrogation described in the example scenario above, one can recognize that the actual standard applied may change whether or not an admittedly guilty party goes free. *Miranda* requires a lock-step procedural process to ensure a valid confession.[36] Fail to follow these strict procedures, as evinced in Nathan's case, and the otherwise guilty suspect will possibly escape punishment.[37] Obviously, this creates an outcome that many would agree constitutes a shocking injustice.

In contrast to *Miranda*, a court's application of a "totality-of-the-circumstances test" might return a more equitable result. The court is free to find that, although the detectives made a procedural error in obtaining the confession, the overall actions by the detectives were non-coercive and, thus, the confession is voluntary.[38] Such a confession is then readily admissible into

33. *Compare* Brief of Amici Curiae Center for the Community Interest et al. at 5, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525) (positing that *Miranda*'s "exclusionary rule permits the guilty to escape justice"), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-525fo22/brief/brief01.html, *with* Brief of Amici Curiae The American Civil Liberties Union at 2, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525) (stating that the *Miranda* warnings were "a necessary response to the failure of the due process voluntariness test to protect adequately the core values of our accusatorial system of justice"), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-5525fo4/brief/brief01.html.

34. Brief of Amici Curiae Center for the Community Interest et al. at 1–2, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-5525fo22/brief/brief01.html.

35. Brief for Amici Curiae The American Civil Liberties Union at 2, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-55254fo4/brief/brief01.html.

36. Fare v. Michael C., 442 U.S. 707, 718–19 (1979) (referring to the *Miranda* warnings as a "rigid rule" for protecting an accused's Fifth Amendment rights).

37. Miranda v. Arizona, 384 U.S. 436, 444 (1966) (holding that inculpatory statements by an accused individual are unusable by prosecutors if the police have failed to follow "procedural safeguards" for safeguarding the suspect's Fifth Amendment right against self-incrimination).

38. 18 U.S.C. § 3501(a) states:

> In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

18 U.S.C. § 3501(a) (1994). *See also id.* § 3501(b).

evidence.[39]

The battle over whether to keep the warning-based approach of *Miranda* as the controlling standard or replace it with the totality-of-the-circumstances test prescribed by § 3501 recently spilled over into the Supreme Court. Although the right against self-incrimination is one of the most crucial principles known to American jurisprudence, the method for securing that right was constitutionally unsettled until the Supreme Court's recent holding in *Dickerson v. United States*.[40] At issue before the Court was whether the *Miranda* warnings are required by the Constitution, or whether they are more akin to a procedural safeguard that Congress is free to modify.[41]

This Note will examine *Dickerson v. United States*[42] and the analysis used by the Supreme Court to reach its decision. Part II provides a recitation of the facts behind *Dickerson* and presents the analyses used by both the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court. Part III will initially compare the background framework of the warning-based test, provided by the *Miranda* warnings, with the voluntariness test, provided by 18 U.S.C. § 3501. Part III will also discuss some of the possible ramifications of the *Dickerson* decision, both to law enforcement agencies and to government prosecutors. Finally, this Note will point out the most obvious conclusion to be gleaned from *Dickerson*'s reaffirmation of the *Miranda* warning: Police procedures will generally remain unchanged.

II. CASE RECITATION

A. Facts and Procedural History

On January 24, 1997, an individual "carrying a black leather bag robbed the First Virginia Bank in Old Town, Alexandria, Virginia."[43] Brandishing a silver semi-automatic handgun, the robber made off with approximately $876 of the bank's money.[44] A witness saw the individual leave the bank, sprint down the street, and enter a white Oldsmobile Ciera.[45] Almost immediately

39. *Id*. § 3501(a).

40. Dickerson v. United States, 530 U.S. 428 (2000).

41. *Id*. at 437.

42. *Id*. at 428.

43. United States v. Dickerson, 166 F.3d 667, 673 (4th Cir. 1999), *cert. granted*, 528 U.S. 1045 (1999), *rev'd*, 530 U.S. 428 (2000).

44. *Id*.

45. *Id*.

upon entering the vehicle, "the robber exited the car, placed something in the trunk, and then re-entered the car on the passenger side."[46] Prior to the robber fleeing the scene, an eyewitness noted the license plate number on the getaway vehicle.[47]

Using the license plate number during their ensuing investigation, the police discovered that the white Ciera was registered to Charles T. Dickerson of Takoma Park, Maryland.[48] On January 27, 1997, Federal Bureau of Investigation (FBI) agents and an Alexandria police detective went to Dickerson's apartment in Takoma Park to question him regarding the robbery.[49] Upon their arrival, the agents observed a white Oldsmobile Ciera parked on the street in front of the address with a license plate matching that of the getaway car used in the bank robbery.[50] An agent knocked on the door and, after some delay, Dickerson answered.[51]

The agents notified Dickerson that they were investigating a bank robbery, and requested that he accompany them to the FBI Field Office in Washington, D.C., for questioning.[52] Dickerson agreed and proceeded to retrieve his jacket from the bedroom.[53] As he reached for the jacket, one of the agents "noticed a large amount of cash on the bed."[54] Dickerson put the money in his coat pocket and explained to the agents that the money was gambling proceeds from Atlantic City.[55] Dickerson then refused a request by the agents to search his apartment.[56]

The agents did not formally place Dickerson under arrest as they escorted him to the FBI Field Office.[57] Upon questioning at the field office, Dickerson denied any involvement in the robbery, but he did admit that he was in the vicinity of the bank on the day of the crime.[58] Dickerson stated that he encountered an old

46. *Id*.
47. *Id*.
48. *Id*.
49. *Id*.
50. *Id*.
51. *Id*.
52. *Id*.
53. *Id*.
54. *Id*.
55. *Id*.
56. *Id*.
57. *Id*. Dickerson later testified that he felt that the agents were not giving him a choice as to whether he had to voluntarily accompany the agents to the field office in Washington. *Id*. at 673 n.2. The court found that he was not under arrest at this time. *Id.* at 673.
58. *Id*.

friend, and that he later drove the friend to a liquor store in Maryland.[59] As Dickerson was answering the agents' questions, the FBI obtained a federal warrant to search his apartment.[60] The warrant was based on Dickerson's admitted presence near the bank on the day of the robbery and the suspicious amount of cash seen in his apartment.[61] Because Dickerson was not formally under arrest, the agents feared that, upon release, Dickerson would go home and eradicate all the evidence from the robbery.[62]

The agents then notified Dickerson that they had obtained a search warrant and "were about to search his apartment."[63] In reaction to this news, Dickerson informed the agents that he wanted to make a statement.[64] In his statement, Dickerson admitted that he had been the getaway driver in a chain of bank robberies but identified another individual, Jimmy Rochester, as the actual bank robber.[65] Dickerson proceeded to provide the agents with facts about the Alexandria robbery that matched those given by eyewitness accounts on the day of the robbery.[66] The agents, however, failed to advise Dickerson of his *Miranda* rights until after he had completed his statement to them.[67]

As a result of Dickerson's confession, the police arrested Rochester who subsequently confessed to the crimes.[68] In his statement to police, Rochester admitted to robbing the First Virginia Bank in Old Town, Alexandria, in addition to three other banks in Virginia.[69] He also admitted robbing eleven banks in Georgia, four banks in Maryland, and an armored car filled with money.[70] He stated that he committed the Maryland and Virginia robberies with the help of Dickerson, who served as his getaway driver.[71] Unlike Dickerson's confession, the police properly advised Rochester of his rights prior to his statement.[72]

59. *Id*.
60. *Id*. at 673–74.
61. *Id*. at 673. The agent indicated that Dickerson had cash totaling $550 in his possession when the agents brought him in for questioning, and that he had paid his landlord $1350 in back rent earlier that same day. *Id*.
62. *Id*.
63. *Id*. at 674.
64. *Id*.
65. *Id*.
66. *Id*.
67. *Id*. at 675.
68. *Id*. at 674.
69. *Id*.
70. *Id*.
71. *Id*.
72. *Id*.

During the subsequent investigation, the police search of Dickerson's apartment and car yielded substantial physical evidence that implicated Dickerson in the Alexandria robbery.[73]

B. District Court—Eastern District of Virginia

A federal grand jury indicted Dickerson based upon the evidence found during the search of his residence and vehicle, Rochester's statement to police, and his own confession.[74] Dickerson was charged with one count of conspiracy to commit robbery, three counts of bank robbery, and three counts of using a firearm during a violent crime.[75] The prosecutor's key piece of evidence against Dickerson for his pending criminal trial was the confession he gave to the FBI agents during his initial questioning.[76] Prior to his trial, Dickerson filed a motion to suppress the statements he made to the FBI and the subsequent evidence that agents uncovered as a result of his confession.[77] Dickerson challenged the admissibility of the confession on the grounds that the FBI agents had failed to read him his *Miranda* rights prior to his confession.[78] The government submitted a brief in opposition stating that the agents did in fact read Dickerson his *Miranda* rights, which Dickerson subsequently chose to waive.[79]

After the suppression hearing on May 30, 1997, the district court ruled in favor of Dickerson and issued an Order and Memorandum Opinion suppressing his damaging confession.[80] The district court determined that the police had failed to correctly read Dickerson his *Miranda* warning and, therefore,

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73. *Id*. The police search of Dickerson's apartment and white Oldsmobile Ciera produced a silver .45 caliber handgun, dye-stained money, a bait bill from another robbery, ammunition, masks, rubber gloves, a black leather bag, and solvent for cleaning dye-stained money. *Id*.

74. *Id*.

75. *Id*.

76. *See id*. at 672, 674.

77. *Id.* at 674. Dickerson filed a motion to suppress: "(1) the statements he made at the FBI Field Office; (2) the evidence found as a result of his statements; (3) the physical evidence obtained during the search of his apartment; and (4) the physical evidence obtained during the search of his car." *Id*.

78. *See id*. at 675. Whether Dickerson was properly advised of his *Miranda* rights prior to his confession was a contested issue at the district court trial. *Id*. An FBI agent present at the confession testified that Dickerson was read his *Miranda* rights "shortly after" agents obtained the search warrant of his residence. *Id*. Dickerson, however, maintained that he confessed before being read, and subsequently waiving, his *Miranda* rights. *Id*. Dickerson claimed he was not read his *Miranda* rights until approximately thirty minutes after he was informed about the search of his apartment. *Id*.

79. *See id*. at 674–75.

80. *Id*. at 675.

coerced his confession during an improper police interrogation.[81] In addition to suppressing Dickerson's statement implicating both him and Rochester, the court also suppressed the evidence that police found during the search of his apartment.[82] The district court did not, however, suppress Rochester's statement that was obtained as a result of Dickerson's confession[83] or the physical evidence found in the trunk of Dickerson's car.[84]

The government filed a motion with the district court asking it to reassess its Order suppressing both Dickerson's confession and the physical evidence discovered in the police search of Dickerson's apartment.[85] In its motion, the government argued that Dickerson's confession was voluntary and, therefore, it should be admissible under 18 U.S.C. § 3501.[86] The district court denied the motion.[87]

C. United States Court of Appeals for the Fourth Circuit

The government filed an interlocutory appeal with the Fourth Circuit to review the district court's refusal to reopen the suppression hearing.[88] On appeal, the government did not raise the issue of the applicability of § 3501.[89] The court, however,

81. *Id*. The district court based its finding on the fact that the warrant that the FBI agents obtained to search Dickerson's apartment was issued at 8:50 p.m., while his Advice of Rights Form was not executed until 9:41 p.m. *Id*. The court determined that this evidence contradicted the testimony of the prosecution's lone witness, an FBI agent present during Dickerson's questioning, who testified "that he read Dickerson his *Miranda* rights 'shortly after'" the FBI obtained the warrant. *Id*. at 675 n.6, 676.

82. *Id*. at 676. The district court determined that the physical evidence obtained by the police during the search of Dickerson's apartment was inadmissible due to a "facially deficient" search warrant. *Id*.

83. *Id*. The district court relied on the Fourth Circuit's decision in *United States v. Elie*, 111 F.3d 1135, 1146 (4th Cir. 1997) (holding that evidence found as a result of the defendant's voluntary confession did not fall within the "fruit of the poisonous tree" doctrine and should not be suppressed unless it is "involuntary" within the meaning of the Due Process Clause of the Fifth Amendment). *Id*. Because Dickerson volunteered to tell the agents about his participation in the Alexandria robbery, the district court ruled that the evidence the agents obtained as a result of his confession was admissible at trial. *Id*.

84. *Id*. The court found that the warrant issued for the search of Dickerson's automobile was "sufficiently particular in describing the items to be seized," and was also "supported by the eyewitness accounts of the bank robbery." *Id*.

85. *Id*.

86. *Id*.

87. *Id*. at 677. *See also* United States v. Dickerson, 971 F. Supp. 1023–25 (E.D. Va. 1997) (holding that the government was not entitled to reconsideration of the trial court's order granting in part the defendant's motion to suppress, where the government did little more than introduce new evidence without asserting that such evidence was unavailable at the time of the previous hearing), *rev'd*, 166 F.3d 667 (4th Cir. 1999), *cert. granted*, 528 U.S. 1045 (1999), *rev'd*, 530 U.S. 428 (2000).

88. *Dickerson*, 166 F.3d at 677.

89. *Id*. at 680. The Fourth Circuit observes in its opinion that the failure to brief the

examined the issue *sua sponte*, noting that the Department of Justice's refusal to invoke § 3501 over the last thirty-five years had created an impediment to the enforcement of the law.[90] From its analysis of § 3501, the court determined that the statute superseded the applicability of the *Miranda* decision on the issue of the admissibility of Dickerson's confession.[91] The court based its interpretation of the statute on the statutory history of § 3501 and the common law cases applying the "voluntary test" prior to the *Miranda* decision.[92]

The Fourth Circuit stated four reasons why it found that the admission of confessions into evidence in federal court was controlled by § 3501 and not by the *Miranda* decision. First, the court noted that "Congress has the power to overrule judicially created rules of evidence and procedure that are not required by the Constitution."[93] Second, the Supreme Court's opinion in *Miranda* did not expressly establish that the *Miranda* warnings were a constitutional requirement.[94] Third, Congress's enactment of § 3501 was an answer to the Supreme Court's suggestion in its *Miranda* opinion that Congress and the states could provide their own procedural safeguards for protecting the Fifth Amendment privilege against self-incrimination.[95] Finally, the Supreme Court has "consistently referred to the *Miranda* warnings as 'prophylactic'" and not as specific rights protected by the Constitution.[96]

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issue of the applicability of § 3501 on appeal was "no simple oversight." *Id*. at 680–81. The court stated:

> The United States Department of Justice took the unusual step of actually prohibiting the U.S. Attorney's Office from briefing the issue. To be sure, this was not an isolated incident. Over the last several years, the Department of Justice has not only failed to invoke § 3501, it has affirmatively impeded its enforcement.

Id. at 681.

90. *Id*. at 680–82. Citing the Supreme Court's decision in *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439 (1993), the Fourth Circuit stated "[e]ven where the parties abdicate their responsibility to call relevant authority to this Court's attention, they cannot prevent us from deciding the case under the governing law simply by refusing to argue it." *Id*. at 682 (citation omitted).

91. *Id*. at 687–92.

92. *Id*. at 684–87.

93. *Id*. at 672 (citing Carlisle v. United States, 517 U.S. 416, 426 (1996); Palermo v. United States, 360 U.S. 343, 345–48 (1959)).

94. *Id*.

95. *Id.* In its *Miranda* decision, the Supreme Court had referred to the *Miranda* warnings as mere "'procedural safeguards' and invited Congress and the States 'to develop their own safeguards for [protecting] the privilege.'" Miranda v. Arizona, 384 U.S. 436, 444, 490 (1968).

96. *Dickerson*, 166 F.3d at 672 (citing New York v. Quarles, 467 U.S. 649, 654 (1984), *rev'd*, 530 U.S. 428 (2000), and Michigan v. Tucker, 417 U.S. 433, 444 (1974)).

Upon concluding that § 3501 controlled the admission of Dickerson's confession into evidence, the Fourth Circuit remanded Dickerson's case to the district court to proceed on the merits.[97] Dickerson then petitioned the Supreme Court for a writ of certiorari.[98]

D. United States Supreme Court

1. Majority Opinion. The Supreme Court, by a seven justice majority,[99] reversed the Fourth Circuit's holding on June 26, 2000.[100] Chief Justice Rehnquist, writing for the majority, held that the *Miranda* warning is constitutionally-based and, therefore, may not be legislatively superceded by § 3501.[101] The Court agreed with the Fourth Circuit that Congress, with its enactment of § 3501, had intended to overrule *Miranda*'s warning-based approach to controlling the admissibility of confessions.[102] Chief Justice Rehnquist concluded, however, that the Court's opinion in *Miranda* was more than a mere suggestion of a procedural safeguard to the Fifth Amendment.[103] Notwithstanding contradictory dicta within many of the Court's holdings following *Miranda*,[104] the majority believed that its

97. *Id*. at 695.

98. Dickerson v. United States, 528 U.S. 1045 (1999).

99. Chief Justice Rehnquist delivered the opinion of the Court, in which Justices Stevens, O'Connor, Kennedy, Souter, Ginsburg, and Breyer joined. Dickerson v. United States, 530 U.S. 428, 428 (2000). Justices Scalia and Thomas dissented. *Id*.

100. *Id*.

101. *Id*. at 444.

102. *Id*. at 436.

103. *Id*. at 438–41. This pronouncement by Chief Justice Rehnquist adds considerable weight to the majority's holding, considering he has been one of the Court's more outspoken critics of *Miranda*. *See, e.g.*, Withrow v. Williams, 507 U.S. 680, 700–05 (1993) (Rehnquist, C.J., joining J. O'Connor concurring in part, dissenting in part); Michigan v. Tucker, 417 U.S. 433, 444–46 (1974) (Rehnquist, J., writing for the majority). As an example, Chief Justice Rehnquist joined Justice O'Connor's partial dissent in *Withrow v. Williams*, in which they stated their position that "the exclusion of statements obtained in violation of *Miranda* is not constitutionally required." *Withrow*, 507 U.S. at 702 (Rehnquist, C.J., joining J. O'Connor concurring in part, dissenting in part).

104. *See* Davis v. United States, 512 U.S. 452, 457–58 (1994) (describing the *Miranda* decision as creating a two-layer "prophylaxis" for a suspect's right to counsel); *Withrow*, 507 U.S. at 690 (stating that "*Miranda*'s safeguards are not constitutional in character" and recognizing that the Court has previously "called the *Miranda* safeguards 'prophylactic' in nature") (citations omitted); Connecticut v. Barrett, 479 U.S. 523, 528 (1987) ("[T]he *Miranda* Court adopted prophylactic rules designed to insulate the exercise of Fifth Amendment rights."); New York v. Quarles, 467 U.S. 649, 653, 655–56 (1984) (holding that a criminal defendant whose statement was given prior to an officer reading him his *Miranda* rights was admissible under a public safety exception to the "literal language of the prophylactic rules enunciated in Miranda [sic]"); *Tucker*, 417 U.S. at 443–44 (stating that the warnings prescribed by the *Miranda* holding were a "series of

Miranda decision was, in actuality, an interpretation of the Constitution not subject to subrogation by Congress.[105] As a result of this, Congress was not free to modify or set aside the *Miranda* warning's procedural safeguards as it had attempted with the enactment of § 3501.[106]

To bolster the majority's contention that the *Miranda* warnings are constitutionally required, Justice Rehnquist pointed to the fact that the Court has required the states to accept *Miranda* as law, a result the Court could not have accomplished if *Miranda* was not commanded by the Fifth Amendment.[107] Noting that the Court has consistently renounced its authority to enforce supervisory rules over the states,[108] the majority concluded that *Miranda* must embody more than a mere prophylactic procedural rule.[109]

As further justification for its reluctance to overrule *Miranda*, the majority focused on the maxim of *stare decisis*.[110] The majority stated "[w]hether or not we would agree with *Miranda*'s reasoning and its resulting rule . . . the principles of *stare decisis* weigh heavily against overruling it now."[111]

The majority believed that the *Miranda* warning is a proven workable solution to protecting an accused from self-incrimination.[112] To support this conclusion, Chief Justice

recommended 'procedural safeguards' . . . [that] were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected").

105. *Dickerson*, 530 U.S. at 437–41.

106. In accord with the separation of powers, the Supreme Court has the supervisory authority to prescribe rules of evidence and procedure for the federal courts to follow. *See* Carlisle v. United States, 517 U.S. 416, 425–26 (1996). However, the Court may only exercise the power of creating non-constitutional rules in the absence of an expressed Congressional directive. Palermo v. United States, 360 U.S. 343, 353 n.11 (1959). While Congress reserves the ultimate authority to modify or set aside any non-constitutionally based judicial rule of evidence or procedure, it may not legislatively supersede the Court's holdings that interpret the Constitution. *See, e.g.*, City of Boerne v. Flores, 521 U.S. 507, 517–21 (1997).

107. *See Dickerson*, 530 U.S. at 438 (citing Miranda v. Arizona, 384 U.S. 436, 491–94, 497–99 (1966)). In justifying this conclusion, the majority points out that the Supreme Court applied *Miranda*'s warning-based approach in cases arising from Arizona, California, and New York state courts. *Id*.

108. *See* Smith v. Phillips, 455 U.S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."); Chandler v. Florida, 449 U.S. 560, 570 (1981) (declaring that the Supreme Court "has no supervisory jurisdiction over state courts, and, in reviewing a state-court judgment, [is] confined to evaluating it in relation to the Federal Constitution").

109. *Dickerson*, 530 U.S. at 438–40.

110. *Id*. at 443.

111. *Id*.

112. *See id*. at 443–44.

Rehnquist opined that the *Miranda* warning is now too entrenched in standard police practice to warrant its replacement.[113] He further noted that, despite the fact that there exist additional remedies available to curb police misconduct, many of which were not in existence at the time of the *Miranda* decision, such remedies, in combination with § 3501, are not "an adequate substitute for the warnings required by *Miranda*."[114] The majority believed that law enforcement agencies would have a more difficult time conforming to the totality-of-the-circumstances test, dictated under § 3501, than they presently do under the warning-based test provided in *Miranda*.[115] Similarly, the majority felt § 3501 would create problems with uniform judicial application.[116]

2. Dissenting Opinion. Justice Scalia dissented, accusing the majority of judicial overreaching by holding that the *Miranda* warnings are required by the Constitution.[117] In his dissenting opinion, joined by Justice Thomas, Justice Scalia argued that 18 U.S.C. § 3501 provides the same constitutionally acceptable result as the *Miranda* warning—namely, that both provide a bar against coerced self-incrimination.[118] Justice Scalia determined that the Fifth Amendment only forbids compelling a person "in any criminal case to be a witness against himself."[119] Focusing on this maxim, Justice Scalia concluded that forbidding the use of compelled confessions is "precisely" what Congress accomplished in passing § 3501.[120]

With regard to constitutionality, the dissent found little difference between the two proposed methods of protecting an individual's Fifth Amendment rights.[121] Justice Scalia found that using judicial determination under § 3501 to determine whether

113. *Id*. at 443 (recognizing that "*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture").

114. *Id*. at 442.

115. *Id*. at 444 (citing Haynes v. Washington, 373 U.S. 503, 515 (1963)).

116. *Id*.

117. *Id*. at 445–46 (Scalia, J., dissenting).

118. *Id*. at 452–53 (Scalia, J., dissenting). Justice Scalia points out that the majority focused on only the constitutionality of the *Miranda* warnings without regard to whether the totality-of-the-circumstances test prescribed under § 3501 is truly unconstitutional. *See id*. at 445 (Scalia, J., dissenting). Justice Scalia notes that "[o]ne will search today's opinion in vain, however, for a statement (surely simple enough to make) that what 18 U.S.C. § 3501 prescribes—the use at trial of a voluntary confession, even when a *Miranda* warning or its equivalent has failed to be given—violates the Constitution." *Id*. (Scalia, J., dissenting).

119. U.S. CONST. amend. V.

120. *Dickerson*, 530 U.S. at 445 (Scalia, J., dissenting).

121. *Id*. at 463–64 (Scalia, J., dissenting).

a confession is voluntary under the circumstances is no less effective at preventing an individual from involuntarily witnessing against himself as using a procedural warning of an individual's rights under *Miranda*.[122] Citing Justice White's dissent in *Miranda*, Scalia suggested that it is "preposterous"[123] for the Court to assume that "a response to the very first question asked, by a suspect who already *knows* all of the rights described in the *Miranda* warning, is anything other than a volitional act."[124] Justice Scalia sharply criticized the majority for what he believed was its unfounded disregard of a constitutionally sound act of Congress in an effort to preserve a prior contradictory decision of the Court.[125] Moreover, Justice Scalia asserted that the *Dickerson* majority overextended the power of the Supreme Court by creating a "prophylactic, extraconstitutional Constitution"[126] which effectively "[p]revent[s] foolish (rather than compelled) confessions."[127]

III. ANALYSIS

A. The Miranda *Warnings' Historical Background*

Historically, admissions into evidence of voluntary confessions against an accused individual have been reviewed under the privileges afforded to all Americans under the Fifth Amendment.[128] The Fifth Amendment to the United States

122. *See id*. at 450 (Scalia, J., dissenting) ("[A]ny conclusion that a violation of the *Miranda* rules *necessarily* amounts to a violation of the privilege against compelled self-incrimination can claim no support in history, precedent, or common sense, and as a result would at least presumptively be worth reconsidering even at this late date.").

123. *Id*. at 448 (Scalia, J., dissenting).

124. *Id*. at 448–49 (Scalia, J., dissenting) (citing Miranda v. Arizona, 384 U.S. 436, 535 (1966) (White, J., dissenting)) (disputing that "the very first response to the very first question following the commencement of custody must be conclusively presumed to be the product of an overborne will").

125. *Id*. at 444. "By disregarding congressional action that concededly does not violate the Constitution, the Court flagrantly offends fundamental principles of separation of powers, and abrogates to itself prerogatives reserved to the representatives of the people." *Id*. at 454 (Scalia, J., dissenting).

126. *Id*. at 461 (Scalia, J., dissenting).

127. *Id*. at 449 (Scalia, J., dissenting).

128. *See* Bram v. United States, 168 U.S. 532, 545 (1897) ("There can be no doubt that long prior to our independence the doctrine that one accused of crime could not be compelled to testify against himself had reached its full development in the common law."). *See also* United States v. Carignan, 342 U.S. 36, 41 (1951) (questioning "[w]hether involuntary confessions are excluded from federal criminal trials on the ground of a violation of the Fifth Amendment's protection against self-incrimination, or from a rule that forced confessions are untrustworthy").

Constitution provides that "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."[129]

*1. Pre-*Miranda *Confessions*. Prior to 1966, confessions by an accused individual could be used against him in a criminal trial if the confession was given voluntarily.[130] The Supreme Court first recognized this "voluntary test" as a guarantee under the Fifth Amendment's protection against self-incrimination in *Bram v. United States*.[131] The Court later expanded the scope of this Fifth Amendment protection by holding that involuntary confessions used against an accused individual in a criminal prosecution would also violate the Due Process Clause of the Fifth Amendment.[132] These proscriptions were later deemed incorporated under the Fourteenth Amendment and, thus, applicable to the states.[133] However, with the proliferation of the modern police station interrogation during the middle part of the twentieth century, judicial application of the "voluntary test" for determining the admissibility of confessions into evidence created numerous problems.[134]

*2. Post-*Miranda *Confessions*. In 1966, the Supreme Court recognized that the physical and psychological effects which accompany a police interrogation—generally conducted in custodial confinement and in isolation away from the public eye—were beginning to blur the line between involuntary and voluntary confessions.[135] To ensure that individuals in police

129. U.S. CONST. amend. V.

130. *Bram*, 168 U.S. at 542–43 ("A confession, in order to be admissible, must be free and voluntary; that is, [it] must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence."); Brown v. Mississippi, 297 U.S. 278, 286 (1936) (reversing a criminal conviction under the Due Process Clause because the trial court failed to exclude confessions that were not free and voluntary).

131. *See Bram*, 168 U.S. at 545, 548.

132. *Brown*, 297 U.S. at 281–87 (reversing murder convictions against three individuals obtained solely upon their torture-induced confessions because the convictions and sentences did not meet "the essential elements of due process").

133. *See* Malloy v. Hogan, 378 U.S. 1, 9 (1964) (holding that "as to the Federal Government the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an 'intimate relation' in their perpetuation of 'principles of humanity and civil liberty (secured)'").

134. *See* Miranda v. Arizona, 384 U.S. 436, 445–58 (1966) (discussing the advent and development of the modern in-custody interrogation of suspected criminals, and the effect that such interrogations have on the truthfulness of the confessions obtained as a result of such interrogations).

135. *See id*. at 445–48 (referencing the Wickersham Commission Report which states that use of physical force in police interrogations is not only unlawful, but raises the dangers of false confessions).

custody were protected from overzealous interrogators and guaranteed their constitutional right against self-incrimination, the court fashioned a procedural test for law enforcement agencies to follow.[136] This test is what we refer to today as the "*Miranda* warnings."[137]

Formulated by the Supreme Court in its historic decision in *Miranda v. Arizona*,[138] the warnings' intent was to help guarantee a citizen's Fifth Amendment protections from self-incrimination by way of police coercion.[139] The Court postulated that a citizen, who was thoroughly informed that he had no obligation to unwillingly talk to police, would be less likely to feel coerced as the result of a police station interrogation.[140] For the past thirty-five years, the admissibility of a suspect's confession in a criminal trial has been controlled by the "prophylactic" protection of the *Miranda* warnings.[141] In its *Miranda* decision, the Supreme Court mandated that police must give a suspect four warnings prior to any questioning of the individual for evidentiary purposes.[142] These warnings are: (1) that the suspect has the right to remain silent; (2) that any statements he makes can be used against him in a court of law; (3) that he has the right to the presence of an attorney during questioning; and (4) that an attorney will be appointed to him if he cannot afford one.[143] Once the police have advised the suspect of these rights

136. *Id*. at 444–45. The procedural safeguards were to be used in the absence of other effective means employed by police to ensure that accused persons were fully informed of their right of silence and the continuous opportunity to exercise that right. *Id.* at 444.

137. *Id*. at 436, 444.

138. *Id*. at 444–45.

139. *Id*. at 446–49 (noting that the source of the potential coercive nature of police interrogation practices could be analyzed through police manuals and texts in various parts of the country).

140. *Id*. at 460–61 ("An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion . . . cannot be otherwise than under compulsion to speak.").

141. Justice Powell, writing for the majority, first described the protection afforded by the *Miranda* warnings as a "prophylactic" rule in *Michigan v. Payne*, 412 U.S. 47, 53 (1973).

142. *Miranda*, 384 U.S. at 444.

143. *See id*. at 444–45. In spelling out the procedural safeguards of the *Miranda* warnings, the Court stated:

> [T]he following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The

and the suspect understands them, the suspect may then voluntarily waive his right to remain silent.[144]

3. 18 U.S.C. § 3501. Dissatisfied with the Supreme Court's rejection of the "voluntary test" in its *Miranda* decision, Congress enacted § 3501 as part of the Omnibus Crime Control and Safe Streets Act of 1968.[145] Section 3501 mandated that a confession given by an individual accused of a crime was admissible in federal court so long as the accused gave the confession in a strictly voluntary context.[146] Specifically, the statute stated that "a confession . . . shall be admissible in evidence if it is voluntarily given."[147] A confessed killer, in essence, could be tried and convicted on his confession even if his statements were offered in violation of *Miranda*.[148]

The statute provided guidelines for judges to follow when determining whether a confession was "voluntary" within the meaning of § 3501 and, thus, whether to admit such a confession into evidence.[149] For over thirty years, the constitutionality of § 3501 went unchallenged.

> mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

Id.

144. *Id*. at 444.

145. Pub. L. No. 90-351, 82 Stat 197 (1968) (codified at 18 U.S.C. § 3501 (1994)).

146. *Id*.

147. 18 U.S.C. § 3501 (1994). "Confession" is defined as "any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing." *Id*. § 3501(e).

148. *See id*. § 3501(a)–(b).

149. Section 3501 provides the following guidelines for determining whether to admit a confession into evidence:

> The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession. The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

Id. § 3501(b).

B. Ramifications of the Dickerson *Holding*

After years of construing its *Miranda* decision as a mere "prophylactic" measure,[150] the Court's *Dickerson* holding has given the *Miranda* warnings a new constitutional luster. No longer can the warnings be viewed as providing nothing more than simple procedural protection of one's Fifth Amendment rights. To the contrary, the warnings themselves are now considered constitutionally mandated.[151] Thus, when police fail to read a suspect his *Miranda* warnings prior to a confession, the confession shall be absolutely barred from admission into evidence.[152]

So what does this mean for law enforcement officers and government prosecutors? Probably very little in regards to properly obtaining confessions by the former. Prior to the *Dickerson* decision, a substantial majority of law enforcement agencies agreed that, regardless of whether the *Miranda* warnings were constitutionally mandated or whether they were a mere "prophylactic" rule, the police would continue to administer the warnings unabated.[153] The police appear to have adapted to *Miranda*'s mandate over the years and, consequently, have realized that an inadmissible confession does not automatically equate to a lost conviction if the entire investigation is conducted correctly.[154] While this may signal little change for the police, the same is likely not true for prosecutors. The Court's decision could substantially affect a prosecutor's ability to gain admissibility of seemingly tainted confessions or other forms of excludable

150. Refer to note 104 *supra* (listing cases that define the *Miranda* warnings as "prophylactic" in nature and not "constitutional in character").

151. Dickerson v. United States, 530 U.S. 428, 438 (2000) (holding that "*Miranda* is a constitutional decision").

152. *See id*. at 443–44 (declining to overrule *Miranda*, which holds that prosecutors may not admit into evidence any incriminating statement taken from a suspect who was not warned of his constitutional rights prior to such confession).

153. *See* Brief of Amici Curiae Americans for Effective Law Enforcement, Inc. et al. at 4, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525) (stating that the numerous law enforcement organizations supporting the constitutionality of § 3501 still believed that "law enforcement agencies and officers will continue to use the *Miranda* warnings, no matter what the Court's ruling [in Dickerson v. United States] may be"), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-5525fo1/brief/brief01.html.

154. An excellent example of this proposition is the final disposition of Charles Dickerson's case on remand from the Supreme Court. Using only the evidence correctly seized during the police investigation of Dickerson's involvement in the Virginia robberies, and excluding his invalid confession, the prosecutor still had enough evidence to obtain a twelve-year conviction against Dickerson. *See* Brooke A. Masters, *Winner of* Miranda *Ruling Still Gets 12 Years; Judge Says Defendant Has Reason to Appeal Convictions in Federal Robbery Case*, WASH. POST., Jan. 6, 2001, at B2.

evidence that have been historically granted limited use. To explore such problems, it may be helpful to analyze the implications of the *Dickerson* holding from the perspective of the law enforcement officer on the street fighting crime to the government prosecutor on the street seeking justice.

1. The Police. The *Miranda* warnings have in no way prevented the police from obtaining countless confessions every year.[155] If anything, the warnings may have assisted the police in streamlining their own investigation procedures. As one commentator argued, the "warnings may, in part, actually aid detectives in obtaining confessions because they foster[] the illusion that the suspect and investigator share a commonality of interest."[156] Likewise, the warnings provide the police with a "bright-line rule" which is difficult for a suspect to misconstrue, yet easy for a police officer to administer.[157] So long as investigators ensure that they read the warnings prior to the interrogation, they are essentially free to conduct suspect questioning with very little judicial oversight.[158] With the

155. *See* Stephen J. Schulhofer, Miranda's *Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500, 509–10 (1996) (summarizing a study demonstrating that the police "in the 1990s obtained confessions . . . [at a] rate much higher than most of the estimates available for the period prior to [the] *Miranda* [decision]").

156. *Id*. at 510 (internal quotation marks omitted) (quoting Richard Angelo Leo, *Police Interrogation in America: A Study of Violence, Civility and Social Change* 367 (1994) (unpublished Ph.D. dissertation, Univ. of Cal., Berkeley)).

157. *See* Charles D. Weisselberg, *Saving* Miranda, 84 CORNELL L. REV. 109, 112–15, 120–21 (1998) (recognizing the value of the *Miranda* warnings as a "precise test" for determining acceptable police behavior during suspect interrogations). *But see* Brief of Amici Curiae Fraternal Order of Police Urging Affirmance, Dickerson v. United States, 530 U.S. 428 (2000) (No. 99-5525), *available at* http://supreme.lp.findlaw.com/supreme_court/briefs/99-5525/99-5525fo15/brief01.html. The Fraternal Order of Police Officers (F.O.P.), the nation's largest law enforcement organization with over 277,000 members, would disagree with this proposition. *Id*. at 1. The F.O.P. believes that:

> American law enforcement agencies have not "learned to live with *Miranda*" in the sense that they find it no obstacle to their task of enforcing the Nation's criminal laws. To the contrary, the members of the F.O.P., who take on the front line of police work across the country, find one of the most frustrating aspects of their jobs to be the release of admitted criminals based on technical errors in administering *Miranda* warnings or securing a waiver of *Miranda* rights. By excluding even wholly voluntary admissions of guilt whenever there has been the slightest misstep in adhering to *Miranda*'s regime, *Miranda*'s rigid exclusionary rule hinders good faith, professional police work and makes it unnecessarily difficult to take criminals off the streets.

Id. at 2–3.

158. *See* W. Brian Stack, Note, *Criminal Procedure—Confessions—Waiver of Privilege Against Self-Incrimination Held Invalid Due to Police Failure to Inform Suspect of Attorney's Attempt to Contact Him*—State v. Reed, 25 SETON HALL L. REV. 353, 373 n.101 (1994) (citing authority "noting that despite *Miranda*'s intimation that the use of trickery or coercion would result in the per se invalidation of a defendant's waiver, lower

Supreme Court's *Dickerson* holding, the Court has reiterated its support for the warnings and, in doing so, has blessed the methods by which the police have implemented them.

In actuality, law enforcement agencies should be thankful that the *Miranda* warnings do not mandate any greater procedural hindrance than the Court created with its original decision. The Court noted in *Dickerson* that the *Miranda* Court left the door open for possible alternative methods for guaranteeing Fifth Amendment protections of accused individuals.[159] Legislatures could have answered this invitation and possibly returned with a harsher standard. Consider the result that may have occurred had the Court decided to take a more activist approach to police interrogations. The Court arguably could have imposed even greater restrictions on the police by expanding the scope of the warnings. Possible additional prescriptions could have included: (i) placing time limits on questioning;[160] (ii) requiring procedures to curb psychologically coercive practices;[161] (iii) employing strict mechanisms to prevent police deception or trickery;[162] or (iv) foregoing all police interrogations in favor of court supervised questioning.[163]

Other than *Miranda*'s four core components,[164] its warnings provide few legal obstacles that prevent the police from getting an uncontested conviction. Put more simply, as long as the police read a suspect the *Miranda* warnings prior to questioning, they

courts have not adhered to this directive").

159. Refer to note 95 *supra* (detailing the *Miranda* Court's invitation to Congress and the States to provide an alternative procedural safeguard which is at least as effective as the *Miranda* warnings for protecting a suspect's privilege against self-incrimination).

160. Gerald M. Caplan, *Questioning* Miranda, 38 VAND. L. REV. 1417, 1473–75 (1985) (suggesting that the *Miranda* Court could have established "[a] time limit for questioning suspects").

161. Amanda L. Prebble, *Manipulated By* Miranda*: A Critical Analysis of Bright Lines and Voluntary Confessions Under* United States v. Dickerson, 68 U. CIN. L. REV. 555, 580 (2000) (arguing that in reaction to the *Miranda* warnings requirement, law enforcement officers have "methodically and strategically . . . replaced physical coercion with psychological deception as one of the most prominent features of modern police interrogation").

162. Donald Dripps, Miranda *Caselaw Really Inconsistent? A Proposed Fifth Amendment Synthesis*, 17 CONST. COMMENT. 19, 24–25 (2000) (noticing that modern police interrogations do not significantly differ from those conducted in the pre-*Miranda* era, in that the police still rely on deception and manipulation to obtain a confession).

163. Irene Merker Rosenberg & Yale L. Rosenberg, *A Modest Proposal for the Abolition of Custodial Confessions, reprinted in* THE *MIRANDA* DEBATE: LAW, JUSTICE, AND POLICING, *supra* note 23, at 148–50 (proposing the abolishment of custodial confessions in favor of suspect questioning before a magistrate judge).

164. Refer to note 18 *supra* (listing the four warnings required under *Miranda*).

are more or less free to employ their experience and creativeness to induce a guilty party's confession.[165] Charles Dickerson's own attorney came to a similar conclusion when he pointed out that "[*Miranda* is] an easy rule to follow, and when police do, they can rest fairly assured that they will be able to use the confession."[166]

Additionally, the process of administering the warnings does not appear to slow or hinder the pace of a police investigation where time can sometimes be of the essence.[167] The process itself may actually help prevent a sloppy or hurried examination of a suspect. This, in turn, prevents flawed interrogations that many times lead to botched or incomplete confessions by guilty parties.[168] Likewise, it also prevents harmful intrusions into the privacy of innocent individuals. The act of reading a suspect his warnings forces the police to pause, compose themselves, and reflect on how they plan to obtain evidence from an individual prior to proceeding.[169] The actual investigative time which law enforcement officers waste in doing so would appear negligible; taking no longer to administer than the time it takes to read a pre-printed warnings card.

Moreover, the Supreme Court has even made an exception to the timing of the warnings in emergency situations. In *New York v. Quarles*,[170] the Court went so far as to hold that in cases where the public safety is immediately at risk, the police may question an arrestee without first administering the warnings.[171] Because

165. Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 434 n.10 (1998) (suggesting that during "the 31 years since *Miranda*, American police have developed, extended, and refined psychological methods of interrogation [and a]s a consequence, interrogation practices have become increasingly subtle and sophisticated").

166. Joan Biskupic, *Court Urged To Repeal 'Miranda'; Police Groups Target 1966 Rights Ruling*, WASH. POST, Apr. 9, 2000, *available at* 2000 WL 2295930 (interviewing James W. Hundley, lawyer for Charles Dickerson).

167. *See* Samuel R. Gross, *Lost Lives: Miscarriages of Justice in Capital Cases*, 61 LAW & CONTEMP. PROBS. 125, 140–41 (1998) (stating that "police are most anxious to solve," yet have the most trouble investigating "homicides, and especially the most heinous homicides . . . because the victim is dead").

168. *See* Daniel Yeager, *Searches, Seizures, Confessions, and Some Thoughts on Criminal Procedure: Regulation of Police Investigation—Legal, Historical, Empirical, and Comparative Materials*, 23 FLA. ST. U. L. REV. 1042, 1055–57 (1996) (reflecting on aspects of police criminal investigation procedures that result in obtaining flawed or incomplete confessions).

169. *See, e.g.*, Oregon v. Elstad, 470 U.S. 298, 311 (1985) (concluding that "a careful and thorough administration of *Miranda* warnings . . . cure[s] . . . condition[s] that render . . . unwarned statement[s] inadmissible").

170. 467 U.S. 649, 655–56 (1984) (creating a "public safety" exception to the procedural administration of the *Miranda* warnings).

171. *Id.* (dictating that the availability of this exception is not dependent on the motivation of the individual officers involved).

the warnings take only a brief moment to give, however, the need for such an exception would seem quite rare.[172]

The Court in *Dickerson*, while not quite so expansive, recognized that these very police procedures, developed over the thirty-five years of the *Miranda* warnings, have become too well "embedded in routine police practice" to change now.[173] As a result, the Court was reluctant to alter the status quo upon its review of *Miranda*.[174] Thus, little should change by way of law enforcement operations under *Miranda*'s new constitutional basis.

2. The Prosecutors. The Supreme Court's 7-to-2 confirmation and apparent expansion of the *Miranda* holding in *Dickerson*, while not overly obtrusive to police procedures, will likely have a greater impact on the legal mechanics in the courtroom. Similar to police investigators, government prosecutors also were affected significantly by the Supreme Court's 1966 decision in *Miranda*.[175] Now, however, prosecutors could have an even tougher time building the government's case against an accused individual using tainted confessions taken in violation of *Miranda*. This may hold especially true in their ability to impeach witnesses and to introduce evidence in court.

a. Impeachment with Un-Mirandized Statements. Following the *Miranda* decision in 1966, the government could no longer rely on using any statements in its case-in-chief against a defendant when such statement was obtained in violation of the defendant's *Miranda* rights.[176] While the prohibited use of an un-Mirandized confession to prosecute a defendant was absolute, the Supreme Court still allowed the government to use these same confessions for other valuable purposes.[177] One such valuable

172. Refer to note 18 *supra* (listing the four warnings that authorities must read to a suspect prior to interrogating him to comply with *Miranda*).

173. Dickerson v. United States, 530 U.S. 428, 443 (2000). "The meaning of *Miranda* has become reasonably clear and law enforcement practices have adjusted to its strictures; I would neither overrule *Miranda*, disparage it, nor extend it at this late date." *Id.* (citing Rhode Island v. Innis, 446 U.S. 291, 304 (1980) (Burger, C.J., concurring)).

174. *Id.* at 443–44.

175. *See, e.g.*, Aaron R. Pettit, *Should the Prosecution Be Allowed to Comment on a Defendant's Pre-Arrest Silence in its Case-in-Chief?*, 29 LOY. U. CHI. L.J. 181, 192–97 (1997) (discussing many of the problems that government prosecutors must address in determining the admissibility of a suspect's inculpatory evidence in accordance with *Miranda*).

176. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

177. Harris v. New York, 401 U.S. 222, 224 (1971) ("It does not follow from *Miranda* that evidence inadmissible against an accused in the prosecution's case in chief is barred for all purposes, provided of course that the trustworthiness of the evidence satisfies legal

purpose was the impeachment of a testifying defendant's untruthful testimony.[178]

In *Harris v. New York*,[179] however, the Supreme Court held that, while a statement obtained in violation of *Miranda* could not be used in the State's direct case, it could still be introduced for impeachment purposes if the defendant had willingly chosen to testify in his own defense.[180] The Court further expounded upon this exception a few years later in *Oregon v. Hass*.[181] Justice Blackmun, writing for the *Hass* majority, noted that to completely disallow all statements taken in violation of *Miranda* "would pervert the constitutional right into a right to falsify free from the embarrassment of impeachment evidence from the defendant's own mouth."[182] The Court later limited the admissibility of a defendant's technically deficient statement for impeachment purposes, mandating that the statement must still be offered voluntarily.[183]

These earlier decisions by the Court, however, were premised on the basis that the *Miranda* warnings were only a prophylactic rule.[184] As such, the *Miranda* warnings were nothing more than a procedural safeguard and "not themselves rights protected by the Constitution."[185]

Not so anymore. The Supreme Court re-evaluated and subsequently diluted these prior holdings in an effort to create its new classification of the *Miranda* warnings in *Dickerson*. While forced to acknowledge that much of the prior language was understandably a cause for confusion, the Court unreservedly

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standards.").

178. *Id*. at 225–26.

179. *Id*. at 222.

180. *Id*. at 225–26 ("The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.").

181. 420 U.S. 714, 722–24 (1975) (holding that prosecutors may impeach a defendant's testimony with incriminating statements elicited in violation of *Miranda* requirements so long as such statements were voluntary and reliable).

182. *Id*. at 723.

183. Mincey v. Arizona, 437 U.S. 385, 396–97, 401–02 (1978) (holding that involuntary statements, as opposed to statements made in technical violation of *Miranda*, are inadmissible for impeachment purposes); New Jersey v. Portash, 440 U.S. 450, 459–60 (1979) (holding compelled incriminating statements inadmissible for impeachment purposes).

184. Refer to note 104 *supra* (defining the *Miranda* warnings as "prophylactic" in nature and not "constitutional in character").

185. Michigan v. Tucker, 417 U.S. 433, 444 (1974). *See also* Michigan v. Harvey, 494 U.S. 344, 350 (1990) ("We have already decided that although statements taken in violation of only the prophylactic *Miranda* rules may not be used in the prosecution's case in chief, they are admissible to impeach conflicting testimony by the defendant.").

concluded that *Miranda* was indeed a constitutional interpretation and not a supervisory decision.[186]

With the *Miranda* warnings now given constitutional breadth, the required exclusion of unwarned statements in violation of *Miranda* has essentially been elevated from a "remedy" for addressing a violation of the Constitution into the realm of a "right" mandated by the Constitution.[187] To fully appreciate the scope of such an extensive upgrade, consider briefly the power of a right as opposed to a remedy. As one commentator has noted:

> The notion of a legal right suggests not simply a claim to something but a claim of substantial weight within the range of values protected by a legal system. It is at least theoretically possible for a right to be absolute. In classifying a right as absolute within a given legal system, one is saying that courts of that system will never treat either a single value or a cluster of values as sufficiently important to outweigh a claim to that right.[188]

With courts now compelled to view the exclusion of any statements offered in violation of *Miranda* as a matter of right,[189] it seems problematic to justify the use of such statements for impeachment purposes. The remedial conception of *Miranda* under the old "prophylactic" analysis easily permitted the use of suppressed evidence to prohibit perjury.[190] Since a remedy merely vindicates a right,[191] a prosecutor was forbidden to use unconstitutional evidence in its case-in-chief, but was free to apply it for impeachment.[192] This is because the prosecutor's later use of the volitional statement was not itself a continuing

186. Dickerson v. United States, 530 U.S. 428, 438–39 (2000) (concluding that *Miranda* was a constitutional interpretation since the Court has consistently mandated that the states follow the rule—a result that would have been impossible had *Miranda*'s holding been a supervisory decision).

187. *Compare* Oregon v. Elstad, 470 U.S. 298, 307 (1985) (surmising that "*Miranda*'s preventive medicine provides a remedy even to the defendant who has suffered no identifiable constitutional harm"), *with Dickerson*, 530 U.S. at 438 (stating that "*Miranda* is a constitutional decision").

188. William C. Heffernan, *The Fourth Amendment Exclusionary Rule As a Constitutional Remedy*, 88 GEO. L.J. 799, 803 (2000).

189. *Dickerson*, 530 U.S. at 440 n.5 (stating that *Miranda* protects constitutional rights).

190. Harris v. New York, 401 U.S. 222, 224, 226 (1971) (holding that a confession that is inadmissible against an accused in the prosecution's case-in-chief under *Miranda* is not barred for use to impeach the accused's testimony provided "that the trustworthiness of the [confession] satisfies legal standards").

191. *See* Heffernan, *supra* note 188, at 804.

192. Oregon v. Hass, 420 U.S. 714, 717–18 (1975) (allowing limited use of statements taken in violation of *Miranda* since such use would not eviscerate the deterrent effect of *Miranda*'s exclusionary rule).

infringement of the Constitution.[193] In other words, a volitional statement under the prophylactic standard meant that the constitutional harm was averted by keeping the defendant's coerced statement out of evidence and, thus, prevented the government from incriminating him at his future trial.[194] The defendant, however, would lose this absolute protection if he perjured himself on the stand.[195] Here, the Court would not allow *Miranda* to "be perverted into a license to use perjury by way of a defense."[196] The prosecutor's allowed use of the statement was merely a guarantee that the testifying defendant would fulfill his duty to speak the truth while on the stand.[197]

The *Miranda* warnings' new constitutional foundation afforded by *Dickerson*, however, calls such impeachment practices into question. One might argue that as a consequence of the Court's new characterization of *Miranda*, the harm that the suspect has suffered to his constitutional rights flowing from a coerced confession is irreversible or irreparable. Such an argument is based on the idea that the police cannot simply wipe clean any information unlawfully obtained from the suspect nor erase the resulting suspicious scrutiny focused on him as a result.[198] In other words, the violation of the suspect's *Miranda* rights, now a corollary of the Fifth Amendment, is repeated with each use of his statement. This method of viewing the *Miranda* warnings as a "right," however, would contradict the Court's previous annunciation of the concept of such "right" as exhibited in its holdings following the *Miranda* decision.[199] For example, on more than one occasion in the recent past, the Supreme Court has denied certiorari on the basis of harmless error in cases in which a prosecutor had used a statement taken in violation of

193. *See* Oregon v. Elstad, 470 U.S. 298, 303–05 (1985).

194. *See* O'Neill, *supra* note 7, at 280 (surmising that under the "prophylactic" concept, the *Miranda* warnings were anticipatory "because they do not cure a present violation; rather, they serve to avert a potential violation" of the Fifth Amendment right against self-incrimination).

195. *Hass*, 420 U.S. at 723–24.

196. Harris v. New York, 401 U.S. 222, 226 (1971).

197. *Id*. at 225.

198. *Contra Elstad*, 470 U.S. at 316–18 (describing situations in which the police attempt to cure a confession taken in violation of *Miranda* by later advising the suspect of his rights and having him restate the same confession, and holding that such confessions may be admitted into evidence); Leslie A. Lunney, *The Erosion of* Miranda*: Stare Decisis Consequences*, 48 CATH. U. L. REV. 727, 783 (1999) (discussing the Supreme Court's rejection of the "cat-out-of-the-bag" presumption of inadmissibility raised in *Oregon v. Elstad*).

199. Refer to note 104 *supra* (defining the *Miranda* warnings as "prophylactic" in nature and not "constitutional in character").

Miranda against an accused.[200] Because *Miranda* was formerly regarded as merely a remedy protecting an anticipatory violation of the Fifth Amendment and not a right itself, harmless error would appear to be an appropriate decision.[201]

In the wake of *Dickerson*, arguably, the violation of a suspect's rights occurs from the moment of "response to the very first question asked" when the suspect has not been properly read his *Miranda* warnings.[202] Accordingly, any use of such volitional statements exceeds merely harmless error and enters the realm of constitutional error.[203] A suspect's volitional confession, therefore, must be viewed in the eyes of the court before which he stands as hypothetically "never happening." If not, the court risks the consequence of continuing the abuse of his rights. If such is the case, the absolute suppression of the suspect's coerced statements never waivers, even after he perjures himself on the stand.

Therefore, when it was considered a remedy, the *Miranda* warning only prevented the future violation of a defendant's Fifth Amendment rights.[204] But as a right, the violation of the *Miranda* warning itself is a violation of the Fifth Amendment.[205] Following the Court's holding in *Dickerson*, impeachment with a suspect's un-Mirandized statements becomes a more difficult evidentiary procedure to constitutionally justify.

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200. United States v. Charlton, 565 F.2d 86, 92 (6th Cir. 1977) (holding that "where a confession, otherwise voluntary, is inadmissible for failure to comply with the strict procedural requirements of *Miranda*, reversal is not required if, upon the facts, the court can find beyond a reasonable doubt that its use at trial was harmless and could not have affected the outcome"), *cert. denied sub nom.* Jacek v. United States, 434 U.S. 1070 (1978); United States v. White, 607 F.2d 203, 209–10 (7th Cir. 1979) (holding same), *cert. denied*, 449 U.S. 1114 (1981).

201. *See* O'Neill, *supra* note 7, at 280 (describing *Miranda*'s "prophylactic" nature as a procedure for "avert[ing] a future violation of the Constitution, but not curing a present violation").

202. Dickerson v. United States, 530 U.S. 428, 448–49 (2000) (Scalia, J., dissenting).

203. Rule 52(a) of the Federal Rules of Criminal Procedure governs direct appeals from judgments of conviction in the federal system and provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Although this Rule by its terms applies to all errors where a proper objection is made at trial, the Supreme Court has recognized a limited class of fundamental constitutional errors that "defy analysis by 'harmless error' standards." Arizona v. Fulminante, 499 U.S. 279, 309–10 (1991); *see* Chapman v. California, 386 U.S. 18, 23 (1967). Constitutional errors of this type are so intrinsically harmful as to require automatic reversal (i.e., "affect substantial rights") without regard to their effect on the outcome. *Id*. For all other constitutional errors, reviewing courts must apply Rule 52(a)'s harmless-error analysis and must disregard errors that are "harmless beyond a reasonable doubt." *Id*. at 24.

204. Refer to note 194 *supra*.

205. *Dickerson*, 530 U.S. at 438.

b. The Exclusionary Rule. The Court's *Dickerson* holding also raises some unanswered questions about the future of its other historically important "prophylactic" rules, the most significant of which is probably the Fourth Amendment's exclusionary rule.[206] As the majority noted in the *Dickerson* opinion, the Court's repeated references to the *Miranda* warnings as "prophylactic" in nature gave the impression that the protections announced in *Miranda* were not constitutionally required.[207] Yet the Court held to the contrary.[208] So what does this mean for the exclusionary rule? Does it mean that it too may be constitutionally based, simply waiting for its validity to be challenged by an act of Congress?

In his *Dickerson* dissent, Justice Scalia chided the majority for what he believed was the Court's inconsistent application of its own constitutional rules that were the result of "reasoned decisionmaking" in the past.[209] As an example, Justice Scalia pointed to the Court's application of the exclusionary rule as an illustration of why he considered the *Dickerson* majority's characterization of *Miranda* flawed.[210] Justice Scalia had problems with the fact that in *Oregon v. Elstad*,[211] the Court had previously held that the exclusionary rule, and more specifically the "fruits of the poisonous tree doctrine,"[212] did not apply to evidence discovered as the result of a *Miranda* violation.[213] Justice Scalia drew attention to the irreconcilable inconsistencies

206. Weeks v. United States, 232 U.S. 383, 398 (1914) (holding that unlawful seizure by agents of the federal government violates the Fourth Amendment, and, therefore, must be returned to the defendant and excluded as evidence at trial).

207. *Dickerson*, 530 U.S. at 437–38 (conceding that the Fourth Circuit Court of Appeals' belief that the *Miranda* warnings were not constitutionally-based was warranted due to "language in some of our opinions that supports the view taken by that court").

208. *Id*. at 444 (reaffirming that the *Miranda* holding was constitutionally based).

209. *Id*. at 454–55 (Scalia, J., dissenting).

210. *Id*. at 455 (Scalia, J., dissenting).

211. 470 U.S. 298 (1985).

212. Justice Frankfurter coined this now famous phrase in *Nardone v. United States*, 308 U.S. 338, 339, 341 (1939), while referring to evidence obtained by the government as the product of an illegal wiretap. More recently, the fruits of the poisonous tree doctrine has become an expansion of the exclusionary rule. Wong Sun v. United States, 371 U.S. 471, 484–88 (1963). Writing for the *Wong* majority, Justice Brennan cited the phrase while referring to inadmissibility of evidence that had come to light as a result of illegal police actions. *Id*. at 487–88. This additional evidence—evidence that would not have been discovered but for the unconstitutional search by police—must now be considered inadmissible. *Id*. at 488. The poisonous tree doctrine also applies when the Fourth Amendment violation is a confession. Taylor v. Alabama, 457 U.S. 687, 690 (1982) ("[A] confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession.").

213. *Elstad*, 470 U.S. at 304, 306–08, 318.

between the *Elstad* and the *Dickerson* holdings by noting that "the only reasoned basis for their outcome [in *Elstad*] was that a violation of *Miranda* is *not* a violation of the Constitution."[214] Justice Scalia proposed that the Court must, as a result of its *Dickerson* holding, derive some type of explanation for the differences in light of *Miranda*'s new constitutional basis.[215]

Justice Scalia raised some interesting questions concerning the future of the exclusionary rule in the shadow of the *Dickerson* holding. Specifically, would the Court now consider the exclusionary rule as more than a mere procedural safeguard to the Fourth Amendment if Congress were to pass a statute that was in conflict with the rule, much like what happened with respect to § 3501? To analyze such a question, one must look at the background surrounding the exclusionary rule, the contemporary Court's construction of the rule, and any possible ramifications under the shadow of *Dickerson*.

The exclusionary rule was established by the Supreme Court in *Weeks v. United States*.[216] In *Weeks*, the Court recognized that an individual has a Fourth Amendment right to the return of his personal property when it is unlawfully seized by the government in an attempt to garner evidence for a criminal proceeding.[217] Over time, the exclusionary rule had emerged as a judicially created and enforced remedy that, like the *Miranda* warnings, could cause shockingly unjust results.[218]

The purpose of the exclusionary rule is to safeguard Fourth Amendment rights by deterring unreasonable searches or seizures.[219] The rule mandates that "evidence obtained in violation of the Fourth Amendment or the fruits of such evidence cannot be used in a criminal proceeding against the victim of the illegal search and seizure."[220]

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214. *Dickerson*, 530 U.S. at 455 (Scalia, J., dissenting).

215. *Id*. (Scalia, J., dissenting) (arguing that the Court's rationale for distinguishing *Elstad* from *Miranda* is inconsistent with the holding of *Elstad*).

216. 232 U.S. 383 (1914).

217. *Id.* at 388, 398.

218. In *People v. Defore*, 150 N.E. 585 (N.Y. 1926), Justice Cardozo comments on the exclusionary rule's sometimes harmful result, and notes that even in a situation where a law enforcement officer has discovered a murdered body in a guilty individual's home, albeit by an unlawful search, "[t]here has been no blinking [at] the consequences. The criminal is to go free because the constable has blundered." *Id*. at 587.

219. *See, e.g.*, Dunaway v. New York, 442 U.S. 200, 216–19 (1979) (finding that the Fourth Amendment protects unreasonable acquisition of self-incriminating statements when the suspect is forcibly detained and not under arrest); Brown v. Illinois, 422 U.S. 590, 600–02 (1975) (asserting that giving the *Miranda* warnings may not, by itself, fulfill the mandate of the Fourth Amendment).

220. United States v. Calandra, 414 U.S. 338, 347 (1974) (citing Weeks v. United States, 232 U.S. 383 (1914)).

In its past decisions, the Supreme Court has held that the exclusionary rule is "not a personal constitutional right,"[221] much like the way it had viewed the *Miranda* warnings prior to *Dickerson*.[222] In describing the exclusionary rule's purpose, the Court has stated that the rule "does not exist to remedy any wrong committed against the defendant, but rather to deter violations of the Fourth Amendment by law enforcement personnel."[223] In other words, one whose conviction rests on evidence obtained in a search or seizure that violated the Fourth Amendment is deemed not to be unconstitutionally detained.[224]

When examining the Supreme Court's interpretations of both rules in its past opinions, the exclusionary rule and the *Miranda* warnings have ground the same proverbial stone over the years.[225] The Court's dictum treatment of the rules, when considering their constitutional application, has drawn many prose-ridden similarities. First, as noted above, the exclusionary rule has been defined as merely deterrence against police misconduct.[226] Using similar language prior to its *Dickerson* holding, the Court also characterized the *Miranda* warning as a mere deterrence measure.[227] Thus, the Court exhibited a recurring inclination to refer to both rules as remedial measures

221. Stone v. Powell, 428 U.S. 465, 486 (1976).

222. *See* Oregon v. Elstad, 470 U.S. 298, 310 (1985) (establishing that mere failure to give *Miranda* warning does not violate personal rights); New York v. Quarles, 467 U.S. 649, 654 (1984) ("The prophylactic *Miranda* warnings . . . are 'not themselves rights protected by the Constitution' . . . ."); Oregon v. Hass, 420 U.S. 714, 721 (1975) (emphasizing that the "shield provided by *Miranda*" cannot be used as an absolute right); Michigan v. Tucker, 417 U.S. 433, 450–51 (1974) (clarifying the holding in *Miranda* to mean that the giving of *Miranda* warnings is not dispositive in a constitutional case).

223. Kimmelman v. Morrison, 477 U.S. 365, 392 (1986) (Powell, J., concurring).

224. *See Stone*, 428 U.S. at 494 (concluding that a state prisoner is not unconstitutionally detained or subject to federal habeas corpus relief when evidence obtained in an unconstitutional search or seizure is introduced at his criminal trial).

225. *See, e.g.*, Withrow v. Williams, 507 U.S. 680, 704 (1993) (stating that the application of the exclusionary rule is similar to the application of *Miranda*'s "prophylactic rule"); Duckworth v. Eagan, 492 U.S. 195, 224–25 (1989) (maintaining that the intended purpose of the exclusionary rule and the *Miranda* rule is the same in a jury setting).

226. *See Kimmelman*, 477 U.S. at 392 (Powell, J., concurring) (explaining that the exclusionary rule is used "to deter violations of the Fourth Amendment by law enforcement personnel"); James v. Illinois, 493 U.S. 307, 319 (1990) (concluding that the purpose of the exclusionary rule is to protect "privacy values through deterrence of future police misconduct"); *Tucker*, 417 U.S. at 447 (stating that a court's refusal to admit evidence gained as a result of police misconduct is an attempt to implant in police officers "a greater degree of care toward the rights of an accused").

227. Oregon v. Hass, 420 U.S. 714, 723 (1975) ("The deterrence of [*Miranda*'s] exclusionary rule . . . lies in the necessity to give the warnings."); Brown v. Illinois, 422 U.S. 590, 599–600 (1975) (concluding that the *Miranda* warnings' "purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it").

and not as inherent rights. This is an easy summation considering the similarities in both the rules' purpose and effect—the prevention of unconstitutional police conduct[228] and the suppression of evidence collected in violation of the Constitution, respectively.[229]

Another similarity between the exclusionary rule and the *Miranda* warnings is the actual terminology used by the Court in describing each rule. On numerous occasions, the Court has specifically referred to the exclusionary rule as "prophylactic" in nature.[230] As already noted, the Court's previous characterizations of the *Miranda* warnings have been rife with references to *Miranda*'s "prophylactic" characteristics.[231]

In an attempt to reconcile these peculiarities in the aftermath of *Dickerson*, one must note that the Court has previously distinguished between its two famous "prophylactic" rules. The Court indicated in *Brown v. Illinois* that "[t]he exclusionary rule, . . . when utilized to effectuate the Fourth Amendment, serves interests and policies that are distinct from those it serves under the Fifth."[232] These differences are most notable when a suspect's damaging confession occurs simultaneously, or in connection with an illegal search or seizure by the police. An example of this arises when the police illegally arrest a suspect without a warrant or probable cause, then proceed to conduct a custodial interrogation during which the suspect confesses to the underlying crime.[233] In such instances,

228. *See, e.g.*, Oregon v. Elstad, 470 U.S. 298, 306 (1985) ("The purpose of the Fourth Amendment exclusionary rule is to deter unreasonable searches, no matter how probative their fruits.") (citations omitted); United States v. Leon, 468 U.S. 897, 918–19 (1984) (noting that the principal purpose of the Fourth Amendment's exclusionary rule is to eliminate incentives for police officers to violate that Amendment); United States v. Calandra, 414 U.S. 338, 348 (1974) (explaining that the exclusionary rule is predominately "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect").

229. *Compare Elstad*, 470 U.S. at 307 (stating that "unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*"), *with* Mapp v. Ohio, 367 U.S. 643, 655 (1961) (noting that the application of the Fourth Amendment's exclusionary rule is based on the principle that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court").

230. Brewer v. Williams, 430 U.S. 387, 421 n.4 (1977) (Burger, J., dissenting) (referring to the "prophylactic exclusionary rule"); Schneckloth v. Bustamonte, 412 U.S. 218, 251 (1973) (Blackmun, J., concurring) (calling habeus corpus "the desired prophylactic utility of the exclusionary rule as applied to Fourth Amendment claims").

231. Refer to note 104 *supra* (summarizing Supreme Court cases in which the Court refers to the *Miranda* warnings as "prophylactic" in nature).

232. Brown v. Illinois, 422 U.S. 590, 601 (1975).

233. *See id.* at 602 (holding that a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession, so that the confession

the Court has noted that "a finding of voluntariness for purposes of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis."[234] Both the majority and the dissent in *Dickerson* addressed these differences in an effort to support their respective positions on the constitutionality of the *Miranda* decision.[235] However, as Justice Scalia noted in his *Dickerson* dissent, such recognition of the differences between the prophylactic purposes embodied in the Fourth Amendment's exclusionary rule and the Fifth Amendment's *Miranda* warnings provide very little insight into the constitutionality of *Miranda*.[236]

In sum, the fallout from the Court's constitutionalization of the *Miranda* warnings in *Dickerson* may encompass newfound challenges to the prosecutorial uses of tainted confessions and the admissibility of otherwise flawed evidence. As illustrated above, the use and exclusion of confessions in violation of the *Miranda* warnings has been historically founded on non-constitutional grounds.[237] Likewise, this holds true for evidence excluded from trial due to its unlawful seizure in violation of the Fourth Amendment's exclusionary rule.[238] Notwithstanding the separate constitutional amendments that each rule protects, the exclusionary rule and the *Miranda* warnings have striking similarities.[239] Yet, as the *Dickerson* dissent points out, the past holdings of the Court are no longer in agreement with the constitutionality of these former "prophylaxis."[240] If anything,

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is "sufficiently an act of free will to purge the primary taint"); Taylor v. Alabama, 457 U.S. 687, 689–90, 694 (1982) (reversing a conviction on the grounds that a confession obtained through the custodial interrogation of an unlawfully arrested individual should have been excluded because no "intervening events [broke] the causal connection between the illegal arrest and the confession").

234. *Taylor*, 457 U.S. at 690 (internal quotation marks omitted).

235. *Compare* Dickerson v. United States, 530 U.S. 428, 441 (2000) (supporting the majority position by distinguishing *Miranda*'s exclusionary rule from the Fourth Amendment's exclusionary rule), *with id.* at 455 (Scalia, J., dissenting) (challenging the majority's reasoning).

236. *Id.* at 455 (Scalia, J., dissenting). In his own attempt to discern why the majority felt that *Miranda* was a constitutional corollary while the Fourth Amendment's exclusionary rule is merely a procedural rule, Justice Scalia notes that "[t]o say simply that 'unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment,' . . . is true but supremely unhelpful." *Id.*

237. Refer to notes 184–85 *supra* and accompanying text (detailing the Court's past references to the Miranda warnings as a mere "prophylactic" to the Fifth Amendment and not actual rights themselves).

238. Refer to notes 217–20 *supra* and accompanying text (propounding that the Court has referred to the Fourth Amendment's exclusionary rule not as a constitutional right but as a remedy to deter police misconduct).

239. Refer to note 225 *supra* (discussing Supreme Court cases that have recognized the similarities between the *Miranda* rule and the exclusionary rule).

240. *Dickerson*, 530 U.S. at 454–55 (Scalia, J., dissenting).

Dickerson has demonstrated the Court's willingness to re-evaluate its previous constitutional position on rules that have historically fallen into the category of mere judicial rules of evidence or judicial procedure.[241] Now that *Miranda* has been suddenly transformed into a rule mandated by the Constitution, the exclusionary rule arguably could be ripe for its own constitutional entitlement. Conceptually, a re-evaluation of the Fourth Amendment's exclusionary rule could occur if the application of the rule is challenged by an act of Congress. Such a situation could arise if Congress were to create a largely conservative rule of evidence that is in contradiction with the past holdings of the Supreme Court. If challenged with such a rule from Congress, the Court would likely be forced to constitutionalize the exclusionary rule much like it did in *Dickerson* when confronted with retiring the *Miranda* warnings.[242]

IV. CONCLUSION

In *Dickerson*, the Supreme Court was faced with deciding whether it was appropriate to overturn, or possibly even expand, a precedent that has been effectively embedded in police procedures for over thirty-five years.[243] After years of chipping away at *Miranda*'s constitutional underpinnings with language of "prophylactic procedure," the Court reversed field and erased all doubt about the constitutionality of *Miranda*'s warnings.[244] In light of the *Dickerson* decision, a violation of *Miranda* is now clearly a violation of the Constitution and, thus, demands unconditional suppression of a resulting confession in both federal and state courts.[245]

So why after so many years of inserting the "prophylactic" dicta in its opinions has the Court finally made a constitutional stand on the *Miranda* warnings? The simplest answer is that to

241. *Id.* at 445–55 (Scalia, J., dissenting) (arguing that the majority's decision actually creates new, or expanded, constitutional law under the guise of interpreting an act of Congress).

242. *Id*. at 436–39.

243. *See id.* at 437 (addressing the issue of whether Congress can pass a law that effectively limits, or indeed nullifies, the application of the *Miranda* rule).

244. *Id.* at 432 (holding that, "being a constitutional decision," *Miranda* "govern[s] the admissibility of statements made during custodial interrogation in both federal and state courts").

245. *Id.* at 438–39 n.3 (concluding that *Miranda* was a constitutional interpretation based on the fact that the Court has consistently required both the federal government and the states to follow the rule).

hold otherwise, the Court would have overturned a simple, yet comforting legal procedure embraced by most Americans.[246]

As some commentators have noted, many Americans believe *Miranda v. Arizona* was one of the Supreme Court's most influential decisions in its modern era.[247] Considering *Miranda*'s popularity, imagine the enormity of the public backlash the Court would have received if it overturned such a distinguished decision. Making matters worse, few, if any, procedural rules can claim such wide recognition as the *Miranda* warnings wherein citizens, both young and old, can recite its protections verbatim.[248] Thus, Americans appear to favor the predictability accompanying the requirement that police recite the now-famous warnings upon a suspect's arrest.[249] While maybe only a product of television's gripping influence or the media's sometimes over-dramatizations, one might find familiar statements to the following effect: "*Aren't you going to read me my rights*?" or "*Don't I have the right to have my attorney present?*" In light of America's admiration of *Miranda*, how could true opponents effectively dispute the underlying rationale of its warnings? If the underlying goal of the *Miranda* warnings is the assurance that an accused is aware of his individual constitutional rights before incriminating himself, then the *Miranda* warnings' popularity has already achieved this goal.[250] In other words, the mere existence of the *Miranda* warnings themselves—words easily repeated by the majority of Americans[251]—is strong evidence that society as a whole is presently aware of its rights following an arrest. Thus, § 3501 becomes a bitter pill to swallow

246. Richard Carelli, *Court to Revisit its* Miranda *Decision*, ASSOCIATED PRESS, December 6, 1999, WL 12/6/99 APWIRES 10:19:00 (describing the *Miranda* warnings as "familiar to generations of Americans").

247. *See, e.g.*, Richard Carelli, *Court Upholds* Miranda *Warnings*, June 26, 2000, 2000 WL 23359955 (stating that *Miranda v. Arizona* is perhaps "the Supreme Court ruling many Americans know best"). *See also* Richard A. Leo, *The Impact of* Miranda *Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 671 (1996) (suggesting that "[t]he *Miranda* warnings may be the most famous words ever written by the United States Supreme Court").

248. *Miranda*'s effect is even more astounding when you compare the number of people who can actually recite the *Miranda* warnings yet cannot elicit the hallowed words of the Fifth Amendment.

249. *See* Leo, *supra* note 247, at 671–72 (opining that "Miranda has increased public awareness of constitutional rights," and that a generation of Americans has grown up aware that if brought to a police station for questioning, the police must respect their individual rights). "[A] national poll in 1984 revealed that 93% of those surveyed knew that they had a right to an attorney if arrested, and a national poll in 1991 found that 80% of those surveyed knew that they had a right to remain silent if arrested." *Id.* at 672 (citations omitted).

250. *Id.*

251. *Id.*

when considering the Court's historical adherence to *stare decisis* and Americans' familiarity with the warnings.

But the Court went further than simply noting the warnings' popularity in justifying the sudden reversal of its stance on *Miranda*'s constitutionality. Looking past the public's overwhelming acceptance of the rule, the Court laced its opinion with what would appear to be previously overlooked constitutional fundamentals espoused in the original *Miranda* decision.[252] In addressing such "rediscovered" underpinnings, one gets the feeling that the Court felt compelled to substantiate a decision it had made long before any arguments were heard on the issue, namely, that *Miranda* is a more workable (yet not necessarily more constitutional) standard than § 3501 at guaranteeing Fifth Amendment rights.[253]

In siding with *Miranda*, the Court may have harbored hidden fears that the re-establishment of the "totality-of-the-circumstances" test would place too much power back into the hands of law enforcement authorities.[254] Had the Court overturned its *Miranda* decision in favor of § 3501, law enforcement agencies would have garnered much more leeway in conducting custodial questioning of detained suspects.[255] Suddenly, the admissibility of a challenged confession, without the benefit of a signed rights waiver form under *Miranda*, would become a matter of reconstructing the stationhouse environment that was present during the suspect's confession.[256] Using § 3501 guidelines to determine exactly what the "totality of the circumstances" were at the time of a suspect's confession, a judge might be forced to decide who is more believable: (i) the group of officers present when the suspect "voluntarily confessed," who may have an over-enthusiastic interest in seeing the accused brought to justice, or (ii) the suspect, who may have felt subjectively coerced into speaking with police. This decision may not be that difficult to answer when the suspect is unquestionably guilty. The decision, however, becomes much

252. Dickerson v. United States, 530 U.S. 428, 437–44 (2000).

253. As Justice Scalia pointed out in his dissent, however, the majority never directly asserted that § 3501 was unconstitutional, only that its mechanics were in conflict with *Miranda*'s constitutional interpretation. *Id*. at 445 (Scalia, J., dissenting).

254. The Court noted that damage to an individual's constitutional rights is too heavy when weighed against the likelihood of a lower court overlooking an involuntary custodial confession taken unlawfully at the hands of the police. *Id*. at 442.

255. *Id.* at 436–37 (agreeing with the lower court that Congress's intent with § 3501 was to have it supercede *Miranda* and return to a "totality-of-the-circumstances" approach).

256. *See id*. at 434 (discussing the "totality of all the surrounding circumstances" standard).

more disturbing when it appears that the police were interrogating an innocent party. Obviously, in situations in which there is little credible information, distinguishing between the two situations can border on impossible.

In sum, § 3501 would have watered down the legal scrutiny currently applied to the admissibility of confessions by placing a substantial emphasis on the cleverness of the interrogating police officer[257] and less emphasis on the willingness of a properly informed suspect to confess. A shift such as this, had it come to fruition, would have perhaps opened the door wider for police corruption. The *Miranda* warnings, in contrast, provide an overtly easy-to-follow rule that allows police to make certain that a suspect is correctly informed of his or her rights before confessing.[258] This, in turn, *ensures* a truly "voluntary" confession.

By retaining the stricter of the two procedures in its reaffirmation of *Miranda*, the Court has maintained the harmonious balance of power that has existed for the past three decades between civil liberty and law enforcement procedures. By not bending to suggestions of allowing more lenient police interrogation procedures, the Court has recognized the wise adage surmising that "power tends to corrupt, and absolute power corrupts absolutely."[259]

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257. For an interesting discussion on many of the techniques employed by skillful interrogators, see, for example, Richard A. Leo & Welsh S. White, *Adapting to* Miranda*: Modern Interrogators' Strategies for Dealing with the Obstacles Posed by* Miranda, 84 MINN. L. REV. 397, 432–33, 440 (detailing interrogator's strategies including (i) delivering the *Miranda* warnings in a neutral manner, (ii) de-emphasizing the significance of the *Miranda* warnings, and (iii) offering *quid pro quo* benefits in exchange for *Miranda* waivers).

258. *See id.* at 431 (recognizing that *Miranda* "provide[s] the legal framework within which interrogators must operate").

259. OWEN CHADWICK, ACTON AND HISTORY 231 (1998) (discussing the effects of power throughout history).