LEGAL DEFENSE TRUST TRAINING BULLETIN

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SUPREME COURT BREATHES NEW LIFE INTO MIRANDA V. ARIZONA

COURT ALSO LETS C.A.C.J. v. BUTTS STAND DECLARING COPS LIABLE FOR INTENTIONALLY VIOLATING MIRANDA

Does anybody remember when *Miranda v. Arizona, 384 U.S. 436* wasn't around? Well, there are probably a few–I was first hired as an officer within the year after the 1966 landmark United States Supreme Court case. But, I was in college in criminal justice studies when it came down, so I remember the shockwaves it sent through the criminal justice community.

The point is of course, that *Miranda* has been with us a long, long time. So why all the wringing of hands over *Dickerson v. United States*, No. 99-5525 (June 26, 2000), the high Court's latest twist in the winding road of cases (about 14) dealing with *Miranda* from the Supreme Court over the past 34 years? There are two reasons for this.

First, in this case (*Dickerson*) the Supreme Court declared a federal statute, 18 U.S.C. §3501, invalid and unconstitutional. *§3501* was passed by Congress in 1968. It was designed to obviate the need for the so-called "*Miranda* warning", by replacing it with a more general "voluntariness test" for confessions.

Now, why did the Supreme Court do this 32 years after *§3501* was passed? To answer this, we have to recognize the second reason for the hand-wringing: *Miranda* is a "constitutional rule" says the Court (for the first time). Now that's the big one. Remember when you learned about *Miranda*, maybe in college, or in the academy, or maybe in court, or even maybe in law school? Do you recall hearing it said that *Miranda* was merely a (judicially made) "prophylactic rule" to ensure that confessions and admissions by crooks would be voluntary? The Supreme Court never went so far as to say that *Miranda* rose to the level of a constitutional right (such as, for example, the Fourth and Fifth Amendments) until this past Monday. So all of those years you have been dutifully reading the *Miranda* admonition to suspects, you were actually applying a prophylactic device to make sure that the confessions you obtained (or admissions) would pass judicial scrutiny.

Well, if *Miranda* is indeed a constitutional right, now your confessions and admissions must pass constitutional muster (which also involves judicial scrutiny). The difference is now, you violate the Constitution if you fail to toe the *Miranda* line (not to be confused with the lesser-known Carmen Miranda Conga line).

Listen up all you good people! This can get ugly–especially when you reflect upon the denial

of certiorari in *California Attorneys For Criminal Justice (C.A.C.J.) v. Butts* (Santa Monica Police Chief Jim), which is discussed below, and which the Supreme Court also released on June 26th.

By declaring *Miranda* to be a constitutional right that is "part of our nation's culture", the Court held that Congress was powerless to enact a law, such as §3501, which established a different guideline for voluntariness.

As surprising as the 7-2 vote in *this* Supreme Court, was the way the votes lined up.

Constitutional scholars are floored that it was Chief Justice Rehnquist who authored the majority opinion, joined by Justices (O'Connor and Kennedy) who have in the past, expressed "strong doubts" that *Miranda* is a constitutional rule. Scalia wrote the dissent joined by Thomas.

Dickerson arose out of a 1997 bank robbery. The FBI agents who detained Dickerson did not "Mirandize" him, and the issue was then whether his statements passed the voluntariness test of *§3501*. Why did it take until 2000 for *§3501* to hit the high Court? Apparently, because federal prosecutors have rarely invoked it over the years since 1968.

On to the next development.

We wrote an article for you several months ago about the Ninth Circuit's decision declaring that intentional *Miranda* violations could subject police to liability for damages (yes, punitive, too) under 42 U.S.C. §1983 (Civil Rights Act). The Ninth Circuit felled the "trained interrogation technique" of intentionally taking a statement from a suspect after he invoked his *Miranda* rights, in the hope that he could be kept off the stand at trial through fear of impeachment with his "outside *Miranda*" statement. The Ninth Circuit held that this practice violates clearly-established constitutional rights of which a reasonable officer would know (i.e. officer has no immunity from suit). The Supreme Court, in *Butts v. McNally*, No. 99-1594, *sub. nom. C.A.C.J. v. Butts* denied certiorari, letting this Ninth Circuit case stand. The message is now, very clear: DON'T DO IT.

Stay safe!

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