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SUPREME COURT URGED TO UPHOLD LAW REVISING *MIRANDA* (*Dickerson v. United States*)

In a 50-page brief filed with the U.S. Supreme Court late last week, the Washington Legal Foundation urged the Court to uphold a 1968 law enacted by Congress that would allow voluntary confessions into evidence even if the suspect was not properly read his *Miranda* warnings by law enforcement officers. Supporting WLF's position were numerous briefs filed by national law enforcement organizations, U.S. Senators, Members of Congress, former U.S. Attorneys General, seventeen States, and several crime victims rights groups. The oral argument in this landmark case will be held on April 19, 2000.

Last December, the Supreme Court agreed to review a court of appeals ruling that agreed with WLF when it held that the voluntary confession statute, 18 U.S.C. § 3501, supersedes the Court's 1966 *Miranda* ruling that excluded confessions from evidence if the warnings were not properly read to suspects. Because the Justice Department, over the strong objection of its career prosecutors, sided with the suspected bank robber in the case, the Court appointed WLF's legal counsel, Professor Paul G. Cassell of the University of Utah Law School, to argue the case before the High Court as WLF had suggested in its earlier brief.

In *United States v. Dickerson*, the U.S. Court of Appeals for the Fourth Circuit had ruled in early 1999 that a suspected bank robber's voluntary confession can be used against him because of a relatively unknown law enacted by Congress in 1968, 18 U.S.C. § 3501. The *Dickerson* court agreed with WLF's arguments that Congress could constitutionally override the *Miranda* decision because the warnings themselves are not constitutional rights, but are merely judicially created rules of evidence. In its decision, the court noted that law enforcement will continue to have the incentive to inform suspects of their rights because Section 3501 provides that in determining whether a confession is voluntary, a trial judge will consider whether the rights were read to the suspect. However, if there is a technical violation of *Miranda*, the confession will still be admitted if it was otherwise voluntary based on all the circumstances. Indeed, the district court had found that *Dickerson's* incriminating statements were voluntary but excluded the statements anyway under *Miranda*.

The court of appeals had given WLF special permission to file written briefs as well as present oral arguments defending the constitutionality of Section 3501 because the Department of Justice (DOJ) refused to defend the law. In its opinion, the court accused DOJ of "elevating politics over the law" by refusing to defend the law, and for undermining efforts

of career prosecutors who had previously attempted to apply Section 3501 in other cases. In one such case, the career prosecutor's brief raising Section 3501 was ordered by the main Justice Department to be withdrawn and resubmitted with all references to Section 3501 deleted. In addition, a directive was sent from DOJ to all federal prosecutors ordering them not to invoke Section 3501.

WLF's victory came after five long years of persistent effort by WLF attorneys to get the courts to hear the merits of WLF's arguments. Working with Professor Paul Cassell, a former federal prosecutor who provided *pro bono* assistance to WLF, WLF initially argued in a brief filed in 1994 with the U.S. Supreme Court in *United States v. Davis* that Section 3501 should be applied in that case. While the Supreme Court found it unnecessary to address the Section 3501 issue, Justice Antonin Scalia, commenting on WLF's argument, issued a stinging rebuke of DOJ for not invoking Section 3501: the Justice Department's failure to use Section 3501 "may have produced -- during an era of intense national concern about the problem of runaway crime -- the acquittal and the nonprosecution of many dangerous felons, enabling them to continue their depredations upon our citizens. There is no excuse for this."

In addition to the suspected bank robber and the Justice Department, other groups opposing WLF's position in this case include the ACLU, the National Association of Criminal Defense Lawyers, the House Democratic Leadership, and other supporters of the *Miranda* decision.

Groups supporting WLF's position include the International Association of Chiefs of Police, National Sheriffs Association, National Association of Police Associations, FBI Agents Association, American for Effective Law Enforcement, National Organization of Parents of Murdered Children, Center for Community Interest, Justice For All, Anti-Violence Partnership, KlassKids Foundation, Criminal Justice Legal Foundation, Citizens for Law and Order, Center for the Original Intent of the Constitution, Maricopa County District Attorney's Office; the States of South Carolina, Florida, Delaware, Colorado, Nevada, Idaho, Virginia, Mississippi, Pennsylvania, Hawaii, Alaska, South Dakota, Tennessee, Alabama, Utah, Kansas, Nebraska, and the U.S. Virgin Islands; the Bipartisan Legal Advisory Group of the House of Representatives; U.S. Senators Orrin Hatch, Trent Lott, Don Nickles, Strom Thurmond, Bob Smith, Larry Craig, Paul Coverdell, Jeff Sessions, Jon Kyl, and Fred Thompson; and former U.S. Attorneys General William Barr and Edwin Meese III.

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For further information, contact Paul D. Kamenar, WLF Senior Executive Counsel at 202-588-0302.