No. 99-5525

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES THOMAS DICKERSON
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

BRIEF OF *AMICI CURIAE* NATIONAL DISTRICT ATTORNEYS ASSOCIATION, VARIOUS STATE PROSECUTING ASSOCIATIONS, AND THE POLICE EXECUTIVE RESEARCH FORUM IN SUPPORT OF THE JUDGEMENT BELOW

Filed March 9, 2000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

TABLE OF AUTHORITIES – Continued

Page

STATE CASES

TABLE OF AUTHORITIES – Continued

INTEREST OF THE *AMICI CURIAE*[1]

The National District Attorneys Association is the sole organization representing local prosecuting attorneys across the United States. Since its founding in 1950, the Association's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all citizens. NDAA members are responsible for the vast majority of criminal prosecutions in this country. They are concerned that the suppression of voluntary statements – in the name of a rule that is supposed to protect against involuntary statements – is detrimental to the victims of crime, the efforts of law enforcement to solve and prosecute crime, and the fundamental principles of the criminal justice system. The NDAA is joined on this brief by numerous state associations, representing the attorneys responsible for prosecuting most of the criminal violations in the United States.

The Police Executive Research Forum (PERF) is a national association of progressive law enforcement professionals who are dedicated to advancing innovative policing practices through research, leadership and debate. PERF's police executive members serve more than 50 percent of the nation's population. The association is a non-profit organization based in Washington, D.C. that

---

[1] This *amici curiae* brief is filed with the written consent of all parties, which is on file with the Clerk of the Court. The parties' counsel did not author the brief in whole or in part, and no person or entity outside of the organizations and attorneys listed on the brief has made a monetary contribution to its preparation or submission. *See* Supreme Court Rule 37.

also includes categories of membership for individuals who are criminal justice practitioners, academicians and others interested in improving how police serve their communities.

SUMMARY OF ARGUMENT

The briefs in support of petitioner, including the Solicitor General's, devote considerable energy to the argument that law enforcement likes *Miranda* suppression, that police and prosecutors want a world where the only permissible way to achieve voluntary confessions is through the giving of formulaic warnings, deviation from which requires suppression.

That is simply untrue, as demonstrated by the many *amicus curiae* briefs filed in support of the decision below. These filings represent an unusually broad and deep consensus, among both police and prosecutors, that the criminal justice system should work from the ground up to develop appropriate practices for ensuring voluntary statements, rather than from the top down to impose a single way.[2]

[2] An *amicus* brief has already been filed by Americans for Effective Law Enforcement, joined by the International Association of Chiefs of Police and the National Sheriffs Association. Although nominally "in support of neither party," that brief fully supports the Fourth Circuit's decision.

In addition to this brief on behalf of NDAA and PERF, other prominent law enforcement organizations filing *amicus* briefs in support of the decision below include the Fraternal Order of Police, the National Association of Police Organizations (NAPO), the FBI Agents Association, and the Federal Law Enforcement Officers Association (which will be joining the NAPO brief).

Still more organizations, while not all filing *amicus* briefs, have stated their clear support for the positions taken here. Letter of The Law Enforcement Steering Committee, January 20, 2000, on behalf of Federal Law Enforcement Officers Association, Fraternal Order of Police, International Brotherhood of Police Officers, Major Cities Chiefs, National Association of Police Organizations, National Troopers Coalition, and Police Executive Research Forum ("We are not suggesting that *Miranda* warnings be eliminated, only that those warnings be part of a voluntariness test that will ensure that victims are not re-victimized and that we can join with prosecutors to stop repeat and serious offenders. For true fairness, the criminal justice system should address the significant number of cases in which criminals who voluntarily confess are released or the case is never brought to trial because of a technical violation in issuing *Miranda* warnings. Section 3501 properly resolves those issues").

The imposition resides not in the notion of warnings per se, but in the penalty of suppression for any violation of the warnings edict, even where it is perfectly clear that the statement is nonetheless voluntary. No matter what the outcome of this case, some variety of warnings will continue to play a valuable role in police interrogation practices. But the suppression of even concededly voluntary statements, because of the violation of a rule that exists for the sole purpose of guaranteeing voluntary statements, is the height of costly hypertechnicality.

And that cost is considerable, in the judgment of the law enforcement professionals who are charged with vindicating the concerns of victims and implementing the criminal statutes. There is much academic debate about

the degree to which warnings may discourage statements. But there can be no debate that, when a criminal is let free because his voluntary confession was not preceded by full warnings, the victim is wounded and society is harmed. The perception that these are a relatively small portion of cases is small comfort. The release of a rapist or murderer endangers the community. It simply cannot be justified on the ground that his statement was actually voluntary yet constructively involuntary.

While such a paradoxical rule reigns, true innovation is stymied. New techniques such as videotaping, not contemplated at the time of *Miranda*, are slow to spread, in part because they cannot solve the *Miranda* quandary: no matter how good police and prosecutors become at ensuring and proving the voluntariness of statements they take, their efforts are legally irrelevant in the face of a single mistake in applying the warnings requirement. The voluntary statement must still be suppressed.

Petitioner's supporters argue, in effect, that no innovation is necessary, because mandated warnings are the pinnacle of development, properly enshrined for all time, providing an easy checklist for police and courts that virtually eliminates messy litigation about voluntariness. But case law shows otherwise. The reporters are replete with cases in which defendants choose to challenge voluntariness aside from warnings, prosecutors are forced to defend, and courts are required to adjudicate. These non-*Miranda* claims infrequently succeed – not because warnings were administered, however, but because the assertions that police used physical or mental force fail on credibility grounds, or do not constitute coercion as a matter of law.

The *Miranda* exclusionary rule does not ensure voluntariness; it is distinct from voluntariness. It denigrates victims and jeopardizes the public even in situations where its ostensible concern – voluntariness – is not in question. It is imposed on police and prosecutors to the exclusion of other beneficial interrogation practices. It rewards confessed criminals with a windfall that undermines every objective of the criminal justice process. Contrary to the representations made to this Court, the majority of the law enforcement community does not welcome suppression of voluntary confessions.

ARGUMENT

THE *MIRANDA* RULE OF AUTOMATIC SUPPRESSION – AS DISTINCT FROM THE GIVING OF WARNINGS IN THEMSELVES – DISSERVES THE VICTIMS OF CRIME AND FRUSTRATES THE EFFORTS OF POLICE AND PROSECUTORS TO SECURE PROPER, PROBATIVE STATEMENTS FROM CRIMINAL SUSPECTS.

Since this case arose, the mantra of *Miranda* defenders has been that we have learned to live with the decision. The public knows the warnings, we are told; police have become used to reciting them; prosecutors are happy to present them into evidence.

And all that might be important, if the question were one of policy for police agencies seeking to determine whether to include warnings as part of their interrogation procedures. We believe that warnings are generally advisable when questioning criminal suspects, and should be

embodied in police practices regardless of the result in this case.

But of course that is not the question. The issue instead is whether this Court, by invoking precious constitutional authority, should compel all law enforcement officers in the United States to address the issue of voluntariness in exactly one and the same way: by reciting a specific set of warnings, dictated by this Court, on pain of suppression of any resulting statement – even where the evidence shows, or indeed where a court has found, that the confession was entirely voluntary.

Other briefs will address whether the Court truly has the constitutional power to craft such a mandate. This brief discusses the claim that law enforcement would welcome that result.

On the basis of their professional experience, the majority of law enforcement members reject the idea that the costs are nil and the benefits great when courts suppress voluntary confessions. Suppression has a dramatic impact on the victims of these crimes, and endangers other citizens. The rule of suppression, moreover, is a powerful deterrent to the development and adoption of new techniques to ensure voluntariness outside the strict confines of *Miranda*. Yet the claimed payoff is illusory: the warnings requirement does not simplify voluntariness challenges to statements; it simply adds another, independent layer of litigation, and provides the criminal defendant with a second shot at excluding probative evidence.

In analyzing the impact of *Miranda* suppression, the starting point must be with the victims and potential victims of crime. The criminal justice system was not created as a giant civics lesson to teach the public about the rights of suspects; its primary function is to protect the weak from the strong by administering a perceived disincentive to the use of illicit force. When a self-acknowledged assailant escapes proper punishment because his voluntary confession is excluded, the impact is not theoretical, not prophylactic.

These are some of the cases that represent the face of *Miranda* suppression:

George Harpster

The defendant was extradited from another state for the rape of a twelve-year-old girl. He was not warned upon arrival, because the receiving officer believed that the suspect had been given his rights during transit. The defendant began complaining about the victim, stating that she got what she deserved from him, but that the police would not be able to use this admission against him, because he had never been read his rights.

As the defendant had anticipated, the court suppressed his confession, ruling that warnings should have been given before the defendant began speaking. Because of the reduced evidence against him, the defendant was allowed to plead guilty to the lesser charge of child molestation, and was soon paroled. He has since violated

parole for failure to comply fully with conditions concerning contact with adolescent girls.[3]

Carlos Sampson

The defendant reported to police that his daughter had been kidnapped. When questioned, he admitted that he had killed the child following a custody dispute, and led police to the victim's body.

The court suppressed the statement, ruling that under the totality of the circumstances the defendant was in custody when he confessed, and that he had at least equivocally invoked his right to counsel. The court held that, although the defendant was "clearly guilty," suppression was constitutionally required under *Miranda*, and the physical evidence recovered from discovery of the body was the product of the constitutional violation. The prosecution was thereafter withdrawn.[4]

Thomas Bennett

The defendant and his cohorts forced their way into the victim's house, where they shot him to death and took his wallet. The defendant was informed that he had the right to remain silent, that anything he said could be used against him in court, and that he had the right to an attorney. Because *Miranda* had not yet been decided at the time, however, the defendant was not told that, if he could not afford one himself, an attorney would be

---

[3] *State v. Harpster*, Information No. 97-1-00026-8, Jefferson County, Washington.

[4] *State v. Sampson*, Case No. 890327, Salt Lake County, Utah.

appointed for him. The defendant confessed and was convicted of murder in the first degree.

On appeal, the court held that *Miranda* had been violated, and reversed the conviction. On retrial, without the defendant's confession, he was acquitted.[5]

Ruple Smith

The defendant abducted and raped a fourteen-year-old girl. After the crime he called police because of his similarity to a composite sketch circulated in the community. He was questioned in a patrol car outside his residence and eventually acknowledged his conduct.

The court suppressed the statement, ruling that the course of the questioning reasonably led the defendant to believe at some point that he was not free to leave the patrol car, and that warnings therefore should have been administered. The case is pending on appeal.[6]

Erika Arroya

The defendant called police to report that her three-year-old son had drowned in the bathtub. She was given *Miranda* warnings and questioned. At one point, when she became upset, the detective asked her if she wanted to take a break. The defendant said she would like to stop talking. After the break, questioning resumed and the defendant admitted that she had killed the child. The entire interrogation was recorded on videotape.

---

[5] *Commonwealth v. Bennett*, No. 928 July Term 1968, Philadelphia County, Pennsylvania.

[6] *State v. Smith*, Trial Court No. 3KN-94-1024 CR, Kenai Peninsula Borough, Alaska.

The court granted suppression. The court found that the interviewing detective had maintained a "gentle" tone throughout the questioning, and had been "repeatedly solicitous" of the defendant's condition. Nonetheless, held the court, the defendant's statement that she wanted to stop required the cessation of all further interrogation, whether or not she was actually willing to resume after the break. As a result of the suppression, the murder charge was dropped and the defendant pleaded guilty to a lesser offense.[7]

Robert Power

The defendant participated in the robbery/murder of a ninety-five-year-old man, who was shot three times during the crime. When contacted by police, he agreed to give them a statement. He was transported to the station and all questioning was tape recorded and transcribed.

The court suppressed the incriminating statement, ruling that the defendant was in custody at the time and that his reference to an attorney should have halted the questioning. The court specifically rejected the defendant's coercion claim, finding that the confession was voluntary. But because of the *Miranda* suppression, the charges were reduced from first degree murder, and the defendant was allowed to plead guilty to manslaughter.[8]

Suppression supporters dismiss such cases as merely "anecdotal." That is a truism. It is impossible to systematically quantify the circumstances and consequences of

---

[7] *State v. Arroya*, No. 99SA153, Denver County, Colorado.

[8] *State v. Power*, Information No. 96-1-01668-8, Snohomish County, Washington.

Miranda suppression rulings. Most such cases never go to trial, and therefore never appear in case reporters. And when the benefiting criminal goes on to perpetrate new offenses, his *Miranda* history will generally be unknown.

Based on our experience in law enforcement, however, we can identify certain characteristics among cases in which voluntary statements are excluded for warnings violations.

We know that suppression is not merely a relic of the "old days," when officers were just learning the *Miranda* mandate. Certainly many convictions were lost in the late 60's and 70's because of the ex post facto application of *Miranda* to interrogations occurring before the case was decided. But statements are still regularly thrown out, because *Miranda* is not really a bright-line rule: it encompasses inherently ambiguous issues such as "custody" and "interrogation" and "equivocal" assertion of rights, issues that must be examined under the totality of circumstances.

We know that suppression of voluntary confessions has a disproportionate impact in more serious cases, such as child abuse and murder, in which there is frequently no available witness other than the perpetrator himself. In contrast is the Fourth Amendment exclusionary rule, which disproportionately affects cases turning primarily on physical evidence, such as drug and gun possession.

We know that, when confessions are excluded, the result is almost always a discharge or significant reduction of charges, and that admitted criminals are therefore free much earlier to commit more crime.

And we know that, when a defendant's freely given admissions are thrown out, the victim feels victimized again. Suppression of voluntary confessions is an unusual area of certainty in a frequently unsure system. In such cases, the defendant knows he perpetrated the offense; the court knows he knows; and the victim is left understandably wondering who stands for her. Such an experience will hardly build confidence in our criminal justice institutions.

But even beyond the trauma to present and future victims of crime, the *Miranda* exclusionary rule undermines its own goal of ensuring against coercion while securing probative evidence. The policy frozen into law by *Miranda* is that there is only one method for taking voluntary statements from criminal suspects. Allowed to innovate, however, without the threat of *Miranda* suppression hanging overhead, police professionals can develop alternative, and better, ways to protect defendants' rights while solving their crimes.

Exhibit A in this day is videotaping. Many departments are experimenting with creating a visual record of the interrogation process in specific cases or classes of cases. Others employ audio taping, which offers lower technological barriers and greater availability. Who can credibly contend that an officer's testimony about reciting *Miranda* warnings (often disputed by the defendant) provides a greater guarantee of voluntariness than a verbatim visual or aural chronicle of what actually occurred in the interrogation room?

The problem is that, from the perspective of current constitutional law, courts may still be free to ignore such

a compelling record. A defendant with a *Miranda* claim need prove nothing at all about the actual voluntariness of his statement; one missing warning trumps a whole spool-ful of tape. The technicality is elevated above the reality.

But even within the warnings context itself, innovation and improvement are possible. Absent *Miranda*'s one-size-fits-all straitjacket, police would be encouraged to target warnings more appropriately to the audience at hand. Policies might be developed, for example, in which younger, first-time offenders receive more extensive explanation, while defendants with a documented record of recent law enforcement contact, who have been warned many times already, are simply asked more directly if they care to answer questions. As petitioner's supporters point out, after all, the *Miranda* warnings have become embedded in public consciousness. In a post-*Miranda* world, warnings could be measured in relation to actual knowledge, rather than merely as magic words.

Similarly, some departments have already attempted to employ post-arrest interaction for more general law enforcement purposes. In New York City, for example, police have undertaken a "debriefing" program. Arrestees who have been warned and have invoked their rights in their own cases are asked whether they wish to offer background information about criminal activity in their communities, such as drug or gun trafficking. Such debriefing statements are not for use against the maker, thus protecting the suspect's core Fifth Amendment rights. But if the Constitution is extrapolated to dictate specific interrogation procedures, then any deviation could give rise to civil liability. *See California Attorneys for*

Criminal Justice v. Butts, 195 F.3d 1039 (9th Cir. 1999) (police questioning "outside *Miranda*" violates Constitution in itself and therefore exposes officers to civil suit, whether or not questioning resulted in any statement ever used as evidence against suspect).

The point is that, within the ambit of the voluntariness requirement, experienced law enforcement officials should be allowed to do their jobs. Since the time of *Miranda*, law enforcement has become increasingly professionalized. Numerous organizations have been formed, training programs abound, communication has increased. Along these lines, the Solicitor General argues that *Miranda* warnings are so valuable in the interrogation process that some agencies adopted warnings on their own, even without the compulsion of *Miranda*. Brief for the United States at 32-34. Yet the Solicitor General also contends that, unless the warnings are foisted on law enforcement by way of constitutional mandate, police will gradually "backslide." Brief for the United States at 37.

It is time to test these views. The states should be permitted their power in a federal system to devise their own solutions to important issues of public policy.[9] If a

[9] [A]ny view of the procedure we described . . . that converted it from a suggestion into a straitjacket would contravene our established practice, rooted in federalism, of allowing the States wide discretion, subject to minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy. . . . [I]t is more in keeping with our status as a court, and particularly with our status as a court in a federal system, to avoid imposing a single solution on the States from the top down.

Smith v. Robbins, 120 S. Ct. 746, 757-58 (2000).

Remarkably, the Solicitor General cites *Smith* for the proposition that the Court can and should create, and impose on the states, prophylactic procedures that go beyond constitutional requirements. Brief for the United States at 44. This is a studied effort to turn the *Smith* ruling upside down. *Smith* actually held that the Court would not force the states to employ federally created procedures for protecting constitutional rights – even where many had assumed, for over thirty years, that those procedures were mandatory.

strict regimen of warnings is as efficacious as the petitioner's supporters suggest, let it compete against other methods, in the marketplace of modern crime-fighting and under the scrutiny of vigorous litigation.[10]

To pursue that inquiry, it is necessary to explore one central myth of *Miranda*: that the rule of suppression refines voluntariness issues, simplifying the burden on police and prosecutors and facilitating the adjudication process for judges. As mentioned previously, however, the *Miranda* rule in fact encompasses various imprecise

[10] The Brief of *Amici Curiae* Griffin B. Bell, *et al.*, 8-11, presents a series of quotations from various law enforcement officials stating their "support [for] *Miranda*." But the brief's use of these statements in support of the petitioner's position is misdirection. As many of the quotations make clear, the support expressed for "*Miranda*" means support for *Miranda* **warnings**, not necessarily support for *Miranda* **suppression**. We do not challenge the value of appropriate warnings policies. We simply want to give law enforcement professionals the ability to devise those policies, within the bounds of their expertise and the dictates of the Fifth Amendment, and without fear that the slightest deviation from formula will let a serious criminal go free.

threshold questions, such as "custody," that require just the kind of totality of circumstances analysis which *Miranda* is supposed to avert.

But even aside from that problem, it is clear that *Miranda* suppression in no way subsumes the voluntariness inquiry; on the contrary, it simply creates another way for defendants to win, on grounds that seldom have anything to do with whether a confession was coerced. If police botch the warnings, the claim is complete; there is no cause to examine the defendant's state of mind. Ironically, therefore, it may be much easier to prevail on a *Miranda* claim than on a coercion theory. And predictably, therefore, *Miranda* claims have become numerous.

That hardly means, however, that traditional voluntariness challenges have faded away over the last thirty years. The allegations are legion. Defendants say that they were beaten, bribed, blandished. Such claims often demand laborious factual inquiry, in which the presence or absence of warnings is essentially meaningless: if these dramatic assertions of coercion were really true, the reading of warnings, however scrupulously, could not save the statement.[11] This is the paradox at the heart of

[11] *E.g.*:

Green v. Scully, 850 F.2d 894 (2d Cir. 1988) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because police allegedly promised leniency, told suspect he could get the electric chair, and lied about evidence they had against him).

Hawkins v. Lynaugh, 844 F.2d 1132 (5th Cir. 1988) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because police allegedly promised psychiatric treatment).

United States v. Mahan, 190 F.3d 416 (6th Cir. 1999) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that statement was involuntary because officer "coerced" suspect by telling him he could get in serious trouble for lying); *United States v. Rigsby*, 943 F.2d 631 (6th Cir. 1991) (rejecting defendant's claim that, although he was read *Miranda* warnings, statement was involuntary because police threatened to "bust in" his head); *McCall v. Dutton*, 863 F.2d 454 (6th Cir. 1988) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because suspect was under influence of drugs and police were yelling and had guns drawn during questioning); *United States v. Gatewood*, 184 F.3d 550 (6th Cir. 1999) (no *Miranda* warnings claim; rejecting defendant's claim that statement was involuntary because police allegedly picked him up and threw him, and threatened to charge him with other crimes and keep him from his wife); *United States v. Starks*, 1997 U.S. App. LEXIS 12016 (6th Cir. 1997) (rejecting argument that, although suspect was read *Miranda* warnings, statement was involuntary because police threatened to turn him over to federal authorities).

Holland v. McGinnis, 963 F.2d 1044 (7th Cir. 1992) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because police allegedly beat suspect before previous statement, and lied to him about incriminating evidence against him).

Feltrop v. Delo, 46 F.3d 766 (8th Cir. 1995) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that confession was involuntary because suspect was claustrophobic, nervous, and tired, and because police coerced him by

Miranda. A rule of suppression devised to exclude coerced confessions usually comes into play only when the confession was in fact voluntary.

The Solicitor General makes much of *Miranda*'s status as a "conclusive presumption" of involuntariness. Brief

---

asking if he was Christian and telling him killer had blood on his hands); *Sumpter v. Nix*, 863 F.2d 563 (8th Cir. 1988) (no *Miranda* warnings claim; rejecting claim that confession was involuntary because police allegedly promised leniency and treatment for alcoholism); *United States v. Mendoza*, 85 F.3d 1347 (8th Cir. 1996) (rejecting claim that, although *Miranda* warnings given, statement was involuntary because police told suspect she would be arrested if she did not cooperate, but that if she did, they would notify prosecutor of the cooperation).

United States v. Kelley, 953 F.2d 562 (9th Cir. 1992) (no *Miranda* warnings claim; rejecting claim that statement was involuntary because suspect was going through heroin withdrawal); *Guam v. Muna*, 999 F.2d 397 (9th Cir. 1993) (no *Miranda* warnings claim; rejecting defendant's claim that statement was involuntary because police threatened to impound his car, and told him others had already implicated him).

Lucero v. Kerby, 133 F.3d 1299 (10th Cir. 1998) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because police told suspect, falsely, that they had fingerprint evidence against him); *United States v. Cisneros-Cruz*, 1999 U.S. App. LEXIS 14899 (10th Cir. 1999) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that statement was involuntary because officer slammed his fist down on table during questioning).

McCoy v. Newsome, 935 F.2d 1252 (11th Cir. 1992) (no *Miranda* warnings claim; rejecting claim that statement was involuntary because police coerced suspect by holding him for unreasonable time and threatening him with life imprisonment, and because he was under influence of alcohol and marijuana); *Moore v. Dugger*, 856 F.2d 129 (11th Cir. 1988) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that

for the United States at 43. But that presumption serves only to sharpen the dilemma. The presumption must be

---

statement was involuntary because suspect was allegedly deprived of food and sleep and was promised that he could go home if he confessed).

State v. Pettit, 979 P.2d 5 (Ariz. App. 1998) (rejecting *Miranda* warnings claim; separately addressing and accepting claim that statement was involuntary because police promised defendant that any statement he made would not be used against him).

Stevens v. State, 941 S.W.2d 411 (Ark. 1997) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because police did not offer suspect food and made clear that they would continue questioning until he confessed); *Noble v. State*, 892 S.W.2d 477 (Ark. 1995) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because police appealed to defendant's religious convictions, showed him photographs of murder victim, and assured him of reliability of polygraph).

People v. Jones, 949 P.2d 890 (Cal. 1998) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because police promised to intercede with prosecutor, falsely implied that they had other inculpatory evidence, and told suspect that the truth would set him free).

People v. Hutton, 831 P.2d 486 (Colo. 1992) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because police informed suspect that he had flunked polygraph); *People v. Gennings*, 808 P.2d 839 (Colo. 1991) (rejecting claim that, although *Miranda* warnings were read, statement was involuntary because polygrapher threatened to report results to suspect's employer).

State v. Pinder, 736 A.2d 857 (Conn. 1999) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that statement was involuntary because police said that polygraph results could be used in court, that victim's parents had right to know what happened, and that suspect would be better off if he told truth); *State v. LaPointe*, 678 A.2d 942 (Conn. 1996) (rejecting

conclusive precisely because it is a legal fiction. The truth is that the absence of warnings, in itself, cannot overcome

---

Miranda warnings claim; separately addressing and rejecting claim that statement was involuntary because defendant had a dependent personality disorder, and because police told him, falsely, that his fingerprints were on the murder weapon); *State v. Casiano*, 740 A.2d 435 (Conn. App. 1999) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that statement was involuntary because police promised defendant he would only get ten years).

State v. Gella, 988 P.2d 200 (Hawaii 1999) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because the defendant had been struck by police during his arrest, still felt dizzy and in pain, and had not slept in four days).

People v. Hardaway, 718 N.E.2d 682 (Ill. App. 1999) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because defendant was not allowed opportunity to consult with parents or youth officer).

Light v. State, 547 N.E.2d 1073 (Ind. 1989) (rejecting claim that, although *Miranda* warnings given, statement was involuntary because suspect was drowsy, and because police gave him false legal advice and told him they had a letter incriminating him).

State v. Reid, 394 N.W.2d 399 (Iowa 1986) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because defendant was mentally retarded and police falsely told him that victim's hymen had been perforated).

State v. Jones, 984 P.2d 132 (Kan. 1999) (no *Miranda* warnings claim; rejecting claim that statement was involuntary because police allegedly promised to have charges reduced to involuntary manslaughter).

State v. Wilms, 449 So. 2d 442 (La. 1984) (rejecting claim that, although *Miranda* warnings given, statement was involuntary because police allegedly promised to release suspect's pregnant, ill wife, who had been arrested with him).

evidence of free will such as a videotape or a proven record of familiarity with one's rights. The presumption serves, in effect, as an exercise of judicial fiat to achieve a particular policy choice about police practices.

Those policy choices should not be the exclusive province of the courts; the responsibility must be shared by elected and executive officials charged with the duty to shape and manage the criminal justice system. The Congressional statute at issue is an appropriate exercise of that responsibility.

Williams v. State, 732 A.2d 376 (Md. App. 1999) (rejecting *Miranda* warnings claim; separately addressing and rejecting claim that statement was involuntary because suspect had a hangover).

Commonwealth v. Edwards, 651 N.E.2d 398 (Mass. 1995) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because police told defendant, falsely, that his handprint had been found at murder scene); *Commonwealth v. St. Peter*, 722 N.E.2d 1002 (Mass. App. 1999) (rejecting claim that, although *Miranda* warnings were administered, statement was involuntary because defendant was under influence of drugs and alcohol and in pain from tooth extraction).

People v. Sexton, 580 N.W.2d 404 (Mich. 1998) (rejecting claim that, although *Miranda* warnings were given, statement was involuntary because suspect was deprived of food and sleep for 21 hours).

State v. Collins, 446 P.2d 325 (Wash. 1968) (rejecting claim that, although defendant was advised of his rights, statement was involuntary because police promised him reduced sentence).

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted,

HONORABLE STUART VANMEVEREN
District Attorney, 8th Judicial District, Colorado
President, National District Attorneys Association
99 Canal Center Plaza
Suite 500
Alexandria, VA 22314

JEFFREY C. SULLIVAN
Prosecuting Attorney
LAURI BOYD
Deputy Prosecuting Attorney
Yakima County Prosecuting Attorney's Office
128 N. 2d Street, Room 211
Yakima, WA 98901

ROBERT OLSON
Chief, Minneapolis Police
President, Police Executive Research Forum
CHUCK WEXLER
Executive Director
1120 Connecticut Avenue
Suite 930
Washington, D.C. 20036

LYNNE ABRAHAM
District Attorney
RONALD EISENBERG*
Deputy District Attorney
Philadelphia District Attorneys Office
1421 Arch Street
Philadelphia, PA 19102
(215) 686-5700
*(*Counsel of Record*)

(Additional Organizations Listed In Appendix Attached Hereto)

ADDITIONAL ORGANIZATIONS JOINING BRIEF

Honorable John M. Tyson Jr.
District Attorney, 13th Judicial Circuit, Alabama
President, Alabama District Attorneys Association

Honorable Charles Hastings,
County Attorney
Yavapai County, Arizona
Chairman, Arizona Prosecuting Attorneys' Advisory Council

Honorable Grover Trask
District Attorney
Riverside County, California
President, California District Attorneys Association

Honorable William Ritter
District Attorney, 2nd Judicial District, Colorado
President, Colorado District Attorneys Council

Honorable Brad King
State Attorney, Fifth Judicial Circuit, Florida
President, Florida Prosecuting Attorneys Association

Honorable Kermit McManus
District Attorney, Conasauga Judicial Circuit, Georgia
President, Georgia District Attorney Association

Honorable Kipp Manwaring
Prosecuting Attorney, Bonneville County, Idaho
President, Idaho Prosecuting Attorneys Association

Honorable Robert Gevers, II
Prosecuting Attorney, 38th Judicial Circuit, Indiana
President, Association of Indiana Prosecuting Attorneys

Honorable Julie McKenna
County Attorney
Saline County, Kansas
President, Kansas County and District Attorneys Association

Honorable Joseph I. Casserly
State's Attorney
Harford County, Maryland
President, Maryland State's Attorney Association

Honorable Brian Mackie
Prosecuting Attorney
Washtenaw County,
Michigan
President, Prosecuting
Attorneys Association
of Michigan

Honorable Mary O'Donnell
State's Attorney
Rolette County,
North Dakota
President, North Dakota
State's Attorneys
Association

Honorable Christine A.
Cooke
County Attorney
Big Horn County, Montana
President, Montana County
Attorney's Association

Honorable Michael Spahr
Prosecuting Attorney
Washington County, Ohio
President, Ohio
Prosecuting Attorneys
Association

Honorable Ellen Totzke
County Attorney
Hall County, Nebraska
President, Nebraska
County
Attorneys Association

Honorable Dianne Barker
Harrold, District Attorney,
27th District, Oklahoma
President, Oklahoma
District Attorneys
Council

Honorable John B. Dangler
County Prosecutor
Morris County, New Jersey
President, New Jersey
Prosecutor's Association

Honorable Jack L. Banta
District Attorney
Douglas County, Oregon
President, Oregon District
Attorneys Association

Honorable Jeanine Pirro
District Attorney
Westchester County,
New York
President, New York
District Attorneys
Association

Honorable John C.
Morganelli,
District Attorney,
Northampton County,
Pennsylvania
President, Pennsylvania
District Attorneys
Association

Honorable Richard E.
Trodden
Commonwealth's Attorney
Arlington County, Virginia
President, Virginia
Association of
Commonwealth's Attorneys