

# Corley v. United States—the United States Supreme Court Salvages the *Mallory* Rule

By Paul Shechtman

A remarkable chapter in criminal procedure came to a close on April 6, 2009, when the United States Supreme Court decided *Corley v. United States*.<sup>1</sup>

## A.

The story begins in 1967, when Senator John L. McClellan, Democrat of Arkansas and chairman of the subcommittee on Criminal Laws and Procedures, convened hearings on the then-rising crime problem in America. McClellan had two principal targets: the landmark Warren Court decisions in *Mallory v. United States* (1957) and *Miranda v. Arizona* (1966).<sup>2</sup> *Mallory* held that if an arresting officer fails to bring a suspect before a magistrate for arraignment “without unnecessary delay” (as required by the Federal Rules of Criminal Procedure), a confession obtained during that delay is inadmissible. In *Mallory*, the Court suppressed a confession given seven hours after arrest where the police had questioned the suspect for several hours “within the vicinity of numerous committing magistrates.” *Miranda*, of course, held that a person must be warned of his or her right to remain silent (and related rights) prior to custodial interrogation and that a confession obtained from an unwarned suspect is inadmissible. McClellan’s view of the two cases was simple: “[t]he reason the police cannot stop crime is the Court’s decision.”<sup>3</sup>

The McClellan hearings led to the passage of the Omnibus Crime Control and Safe Streets Act of 1968. Title II of the Act sought to overrule *Miranda* and *Mallory* legislatively and return confession law to the “totality of the circumstances” voluntariness test.<sup>4</sup> In the ensuing debates, Senator McClellan urged his colleagues “to stand up and be counted on the questions: Do you favor turning the guilty loose, or are you going to stand for law and order and protect womanhood and...truly make our streets safe?”

The Act was passed almost unanimously. In the House, only 17 members voted against it, and in the Senate only four. One writer at the time described it as “a piece of demagoguery devised out of malevolence and enacted in hysteria.”<sup>5</sup>

## B.

Remarkably, in the first 30 years after its enactment, § 3501(a), the provision of the 1968 Act that was meant to overrule *Miranda*, was largely ignored. In his statement accompanying the signing of the Act, President Johnson called the provision “vague and ambiguous,” which it was not, and requested the Attorney General “to assure that [the giving of *Miranda* warnings] will continue.” As a

result, § 3501(a) became, in the words of one commentator, “the statute that time forgot.”<sup>6</sup>

That changed in 1999, with the Fourth Circuit’s decision in *Dickerson v. United States*.<sup>7</sup> There, the Fourth Circuit *sua sponte* raised the applicability of § 3501(a) to the defendant’s *Miranda* claim. When Attorney General Reno directed the local United States Attorney not to defend the constitutionality of the provision, the Circuit invited Professor Paul Cassel, a *Miranda* critic, to do so.<sup>8</sup> The rest of the *Dickerson* story is familiar: the Fourth Circuit found *Dickerson*’s confession admissible, relying on § 3501(a)’s voluntariness test; the Supreme Court granted *certiorari*; the Justice Department persisted in its refusal to defend the statute (indeed it joined *Dickerson*’s *certiorari* petition); Professor Cassel again appeared as § 3501’s champion; and in a 7-to-2 decision the Court declared *Miranda* a “constitutional decision” and invalidated § 3501(a).<sup>9</sup>

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The author of the *Dickerson* majority opinion was Chief Justice Rehnquist, in what Professor Yale Kamisar has characterized as one of the most “remarkable display[s] of nimble backpedaling” in Supreme Court history.<sup>10</sup> In 1969, as the Assistant Attorney General in charge of the Office of Legal Counsel, Rehnquist had sent a 19-page memorandum to then-Associate Deputy Attorney General John Dean (later of Watergate fame) sharply attacking the Warren Court’s criminal procedure decisions. The memorandum directed its heaviest fire at *Miranda*. And once on the Court, Justice Rehnquist had written several opinions—most notably *Michigan v. Tucker* (upholding the admissibility of the testimony of a witness whose identity was the fruit of a *Miranda* violation) and *New York v. Quarles* (recognizing a public safety exception to *Miranda*)—that limited *Miranda*’s scope and seemed to relegate the decision to subconstitutional status.<sup>11</sup> In *Dickerson*, Justice Rehnquist “summarily and nonchantantly” (the adverbs are Professor Kamisar’s) dismissed his own prior decisions and rescued *Miranda*, ensuring that it will remain a fixture on the criminal justice landscape for the foreseeable future.

### C.

*Corley* completes the story. On September 17, 2003, at 8:00 a.m., Johnnie Corley was arrested in Norristown, Pennsylvania, on a local charge and taken to the nearby police precinct. At 11:45 a.m., he was transported to a hospital for treatment of a cut, which he received during his arrest. At 3:30 p.m., he was removed to the Philadelphia FBI office and told that he was a suspect in a bank robbery. Two hours later, he began confessing to that crime. Asked to “put it all in writing,” Corley complained that he was tired and was held overnight. The next morning, at 10:30 a.m., he signed a written confession. At 1:30 p.m., 29 1/2 hours after his arrest, he was presented to a federal magistrate on the bank robbery charge.

Corley was convicted at a trial in which his confessions (oral and written) were admitted. In affirming the conviction, the Third Circuit held that § 3501 had abrogated *Mallory* and replaced it with a voluntariness test. The Supreme Court granted *certiorari*, and this time the government defended the statute. It argued that *Mallory*, on which Corley relied, was dead. By a 5-to-4 margin, the Supreme Court disagreed. Writing for the majority, Justice Souter read § 3501(c) to narrow *Mallory* slightly but not to overrule it. A confession made within six hours of arrest is admissible if voluntarily made. A confession made outside the six-hour window, however, must still be suppressed if the delay was unreasonable or unnecessary. Having interpreted the statute in that manner, the Court remanded Corley’s case for the Third Circuit to determine if either his oral or written confession should have been admitted.

Justice Alito dissented, joined by Chief Justice Roberts and Justices Scalia and Thomas. The dissenters argued that Congress in 1968 had sought to “wipe away all...rules barring the admission of voluntary confessions,” including the *Mallory* rule. Those words would have pleased Senator McClellan, but they did not carry the day.

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And so, some 40 years after the passage of the 1968 Act, *Miranda* and *Mallory* are alive and well. After *Dickerson* and *Corley*, we now know that in the war on crime, Senator McClellan and his colleagues fired blanks.

### Endnotes

1. *Corley v. United States*, 129 S. Ct. 1558 (2009).
2. *Mallory v. United States*, 354 U.S. 449 (1957); *Miranda v. Arizona*, 384 U.S. 436 (1966). *Mallory* built on *McNabb v. United States*, 318 U.S. 332 (1943), and the rule is often referred to as the *McNabb-Mallory* rule.
3. The story of the passage of the 1968 Act is told eloquently in R. Harris, *The Fear of Crime*, Praeger Publishers 1969.
4. As enacted, 18 U.S.C. 3501(a) provides in relevant part, that “[i]n any criminal prosecution brought by the United States or by the District of Columbia, a confession...shall be admissible in evidence if it is voluntarily given.” The provision directed at *Mallory*, 18 U.S.C. §3501(c) reads thusly:  

In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention.
5. Harris, *supra* at 14.
6. P. Cassell, *The Statute That Time Forgot, 18 U.S.C. § 3501 and the Overhauling of Miranda*, 85 Iowa L. Rev. 175 (1999).
7. 166 F.3d 667 (1999).
8. Cassell became a federal judge in May 2002 and retired from the bench in November 2007.
9. *Dickerson v. United States*, 530 U.S. 428 (2000).
10. *Michigan v. Tucker*, 417 U.S. 433 (1974); *New York v. Quarles*, 467 U.S. 649 (1984).
11. See Kamisar, *Dickerson v. United States: The Case That Disappointed Miranda’s Critics—And Then Its Supporters*, in *The Rehnquist Legacy*, Cambridge University Press 2006.

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