Michigan Law Review

Vol. 99, No. 5 March 2001

CONTENTS

SYMPOSIUM

Miranda After Dickerson: The Future of Confession Law

The Michigan Law Review dedicates this issue to
Professor Yale Kamisar, whose contributions to confession law
have shaped Miranda jurisprudence for the past four decades.
His insight and dedication inspire us all.

FOREWORD: From Miranda to § 3501
to Dickerson to . . . .......................... Yale Kamisar 879

Panel One: Alternatives to the Miranda Warnings

The Paths Not Taken: The Supreme
Court’s Failures in Dickerson ............... Paul G. Cassell 898

Miranda, Dickerson, and the Puzzling
Persistence of Fifth Amendment
Exceptionalism .............................. Stephen J. Schulhofer 941

Panel Two: The Supreme Court’s Power
to Issue Prophylactic Rules

Miranda, the Constitution,
and Congress ............................... David A. Strauss 958

Panel Three: Miranda’s (Ir)Relevance

Miranda’s Mistake ............................. William J. Stuntz 975

Questioning the Relevance of Miranda
in the Twenty-First Century .............. Richard A. Leo 1000

Copyright © 2001 by The Michigan Law Review Association
Panel Four: The Fate of the Pre-Dickerson Exceptions to Miranda

Identifying and (Re)Formulating Prophylactic Rules, Safe Harbors, and Incidental Rights in Constitutional Criminal Procedure .... Susan R. Klein 1030

Separated at Birth but Siblings
Nonetheless: Miranda and the Due Process Notice Cases ........ George C. Thomas III 1081

Panel Five: Deterring Police from Deliberately Violating Miranda

In the Stationhouse After
Dickerson ...................... Charles D. Weissselberg 1121

Panel Six: Deceptive Police Interrogation Practices: How Far is Too Far?

Deceptive Police Interrogation Practices:
How Far is Too Far? ......................... Laurie Magid 1168

Miranda's Failure to Restrain Pernicious Interrogation Practices .............. Welsh S. White 1211

Recent Books

Books Received ......................................... 1248
UNIVERSITY OF MICHIGAN LAW SCHOOL

Winter 2001

Administrative Officers

LEE C. BOLLINGER, B.S., J.D., President of the University
NANCY E. CANTOR, B.A., PH.D., Provost and Executive Vice President for Academic Affairs
JEFFREY S. LEHMAN, A.B., J.D., M.P.P., Dean
CHRISTINA B. WHITMAN, A.B., M.A., J.D., Associate Dean for Academic Affairs
SUELYNN SCARNECCIA, B.A., J.D., Associate Dean for Clinical Affairs
VIRGINIA B. GORDAN, B.A., J.D., Assistant Dean for International Programs
ERICA A. MUNZEL, B.A., J.D., Assistant Dean and Director of Admissions
DAVID H. BAUM, B.A., J.D., Assistant Dean of Students
CHARLOTTE H. JOHNSON, B.A., J.D., Assistant Dean of Students
KATHERINE B. GOTTSCHALK, B.A., Assistant Dean for Financial Aid
SUSAN M. GUNDJ, B.A., J.D., Assistant Dean for Development and Alumni Relations

Professors Emeriti of Law

FRANCIS A. ALLEN, A.B., LL.B., J.D., LL.D.,
Edison R. Sunderland Professor of Law
OLIN L. BROWDER, A.B., LL.B., S.J.D.,
James V. Campbell Professor of Law
ALFRED F. CONARD, A.B., LL.B., LL.M.,
J.S.D., LL.D.,
Henry M. Butzel Professor of Law
LUKE K. COOPERRIDER, B.S., J.D.
SAMUEL D. ESTEP, A.B., J.D.
ROBEN W. FLEMING, B.A., LL.B., LL.D.
WHITMORE GRAY, A.B., J.D., LL.D.
JEROLD H. ISRAEL, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
JOHN H. JACKSON, B.A.,
Hessel E. Yntema Professor of Law
CHARLES W. JOINER, A.B., J.D.
FRANK R. KENNEGY, A.B., LL.B., J.S.D.,
Thomas M. Cooley Professor of Law

Professors of Law

LAYMAN E. ALLEN, A.B., M.P.A., LL.B.
REUVEN S. AVI-YONAH, B.A., A.M., PH.D., J.D.
LEE C. BOLLINGER, B.S., J.D.
EVAN H. CAMINKER, B.A., J.D.
DAVID L. CHAMBERS, A.B., LL.B.
WADE H. McCREE, JR. Collegiate Professor of Law
SHERMAN J. CLARK, B.S., J.D.
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
STEVEN P. CROOLEY, A.B., J.D., M.A.
REBECCA S. EISENBERG, B.A., J.D.,
Robert and Barbara Luciano Professor of Law
PHOEBE C. ELLSWORTH,* A.B., PH.D.,
Kirkland and Ellis Professorship in Law
MERITT B. FOX, B.A., J.D., PH.D.,
Alene and Allan F. Smith Professor of Law
RICHARD D. FRIEDMAN,* B.A., J.D., D.PHIL.,
Ralph W. Aigler Collegiate Professor of Law
BRUCE W. FRIER, B.A., PHLD.,
Henry King Ransom Professor of Law
THOMAS A. GREEN, B.A., PH.D., J.D.,
John Philip Dawson Collegiate Professor of Law
SAMUEL R. GROSS,* A.B., J.D.,
Thomas G. and Mabel Long Professor of Law

MARVIN L. NIEBUSS, A.B., LL.B.
WILLIAM J. PIECZE, A.B., J.D.
BEVERLEY J. POOLEY, B.A., LL.B., LL.M., S.J.D.
ROY F. PROFFITT, B.S., J.D., LL.M.
JOHN W. REED, A.B., LL.B., LL.M., J.U.L.D.,
Evan R. Sunderland Professor of Law
TERRANCE SANDALOW, A.B., J.D.,
Edison R. Sunderland Professor of Law
THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
ROUSLL A. SMITH, A.B., J.D.
ERIC STEIN, J.U.D., J.D., DE.H.C.,
Hessel E. Yntema Professor of Law
PETER O. STEINER, A.B., M.A., PH.D.

JAMES C. HATHAWAY, LL.B., LL.M., J.S.D.
MICHAEL A. HELLER,* A.B., J.D.
DONALD J. HERZOG,* A.B., A.M., PH.D.,
Edison R. Sunderland Professor of Law
RODERICK M. HILLS,* JR., B.A., J.D.
ROBERT L. HOWE, B.A., LL.B., LL.M.
DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law
YALE KAMISAR,* A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
THOMAS E. KAUPER, A.B., J.D.,
Henry M. Butzel Professor of Law
JAMES E. KRIER, B.S., J.D.,
Earl Warren DeLano Professor of Law
JEFFREY S. LEHMAN, A.B., J.D., M.P.P.
RICHARD O. LEMPEKT, A.B., PH.D.,
Francis A. Allen Collegiate Professor of Law
KYLE D. LOGUE, B.A., J.D.
CATHERINE A. MACKINNON,* B.A., J.D.,
Ph.D.
ELIZABETH A. LONG PROFESSOR OF LAW
DEBORAH C. MALAMUD, B.A., J.D.
RONALD J. MANN, B.A., J.D.,
Roy F. and Jean Humphrey Proffitt Research Professor of Law
WILLIAM I. MILLER, B.A., PH.D., J.D.,
Thomas G. Long Professor of Law
SALLYANNE PAYTON, A.B., LL.B.
DONALD H. REGAN,* A.B., LL.B., B.Phil., Ph.D.,
William W. Bishop, Jr. Collegiate Professor of Law
MATHIAS W. REIMANN, Dr. Jur., LL.M.,
Hessle E. Yetsma Professor of Law
CARRIE E. SCHNEIDER,* A.B., J.D.,
Chauncey Stillman Professorship for Ethics,
Morality, and the Practice of Law
A.W. BRIAN SIMPSON, B.A., M.A., D.C.L.,
Charles F. and Edith L. Cloyne Professor of Law
PHILIP SOPER, B.A., M.A., J.D., Ph.D.,
James V. Campbell Professor of Law

Joseph Vining, B.A., M.A., J.D.,
Harry Burns Hutchins Collegiate Professor of Law
Lawrence W. Waggoner, B.B.A., J.D.,
D.Phil.,
Lewis M. Simes Professor of Law
Peter K. Westen,* B.A., J.D.,
Frank G. Millard Professor of Law
James Boyd White, A.B., A.M., LL.B.,
L. Hart Wright Collegiate Professor of Law
James J. White, B.A., J.D.,
Robert A. Sullivan Professor of Law
Christina B. Whitman, A.B., M.A., J.D.

Assistant Professors of Law
OMRI BEN-SHAHAR, B.A., LL.B., LL.M.,
Ph.D.
Susanna L. Blumenthal, A.B., M.A., J.D.,
M.Phil.
Daniel Halberstam, B.A., J.D.

Peter J. Hammer, B.S., B.A., J.D., Ph.D.
Ellen D. Katz, B.A., J.D.
Nina A. Mendelson, B.A., J.D.
Adam C. Pritchard, B.A., M.P.P., J.D.
Mark D. West, B.A., J.D.

Clinical Professors of Law
DONALD N. DUQUETTE, B.A., J.D.
Rochelle E. Lento, B.A., J.D.
Paul D. Reingold, B.A., J.D.

Nicholas J. Rine, B.A., J.D.
Sue Lyn Scarneccia, B.A., J.D.

Clinical Assistant Professors of Law
EDWARD R. BECKER, B.A., J.D.
MELISSA BREGER, B.S., B.A., J.D.
MARGARET CERNAK, B.A., J.D.
KENNETH D. CHESTER, B.A., J.D.
JULIE P. CLOSE, B.A., J.D.
WILLIAM L. COOPER, A.B., J.D., A.M.L.S.
PHILIP M. FROST, B.A., J.D.

Teresa N. Gueyser, B.S., J.D.
Bridget M. McCormack, B.A., J.D.
Anne N. Scherer, B.A., J.D.
Thomas H. Seymour, B.A., M.A., J.D.
Grace C. Tonner, B.A., J.D.
Matthew Weber, A.B., J.D., M.P.A.

Visiting Professors of Law
ELIZABETH S. ANDERSON, A.M., Ph.D.
KARIMA BENNOUNE, B.A., M.A., J.D.
Christine Chinkin, LL.B., LL.M., LL.M., Ph.D.
SHELDON H. DANZIGER, B.A., Ph.D.
Graudine de Burca
TOMOTURO FUJITA, B.A.
KARLHY GOVENDER, LL.B., LL.M.
HAROLD K. JACOBSON, B.A., M.A., Ph.D.

Gareth H. Jones, LL.B., M.A., LL.B., LL.M.,
LL.D.
Dana M. Muir, A.B., M.B.A., J.D.
Minoru Nakazato, LL.B.
Rebecca J. Scott, A.B., M.Phill., Ph.D.
Bruno E. Simma, Doctorate of Law
Michel Waelbrock, Doctor of Law, LL.M.

Visiting Assistant Professors of Law
ALYSON M. COLE, B.A., M.A., Ph.D.

Joan L. Larsen, B.A., J.D.

Adjunct Professors of Law
ELIZABETH BARRY, B.A., J.D.
JOHN E. BOS, B.A., J.D.
LAURENCE D. CONNOR, A.B., J.D.
PATRICIA CURTNER, B.A., J.D.
TIMOTHY DICKINSON, A.B., J.D., LL.M.
JAMES FORMAN, B.A., J.D.
ALISON HIRSCHIEL, B.A., J.D.

Marvin Krslov, M.A., J.D.
Roberta J. Morris, A.B., J.D.
Cyril Moscow, B.S., J.D.
Steven W. Rhodes, B.S., J.D.
Mark D. Rosenbaum, B.A., J.D.
Edward Stein, B.A., J.D.

Adjunct Clinical Professors of Law
CHARI GROVE, B.A., J.D.
KATHLEEN Q. HEGARTY, B.A., J.D.
NEIL S. KAGAN, B.S., M.S., J.D.
VALERIE R. NEWMAN, B.A., J.D.

David A. Santacroce, B.A., J.D., LL.M.
J. Taylor Teasdale, B.A., J.D., LL.M.
Frank E. Vanderwilt, B.A., J.D.

Affiliated Professor
RIYAZ KANJ, A.B., J.D.

Adjunct Instructor
MARGARET A. LEARY, B.A., M.A., J.D.

* On Leave
Michigan Law Review

Vol. 99, No. 5
March 2001

EDITORIAL BOARD

Editor-in-Chief
MARCELA D. SANCHEZ, of New Mexico
Managing Editor
STEPHEN E. HESSLER, of Michigan

Book Review Editors
MAIA B. GOODELL, of Massachusetts
JAY H. STURHAID, of Missouri

Executive Article Editor
F. MATTHEW RALPH, of California

Executive Note Editor
SHAYNA S. COOK, of Kansas

Executive Editors
JAMALA S. MCFADDEN, of Illinois
BONNIE B. SCHROEDER, of New York
ELLEN B. STANFIELD, of Maryland

Contributing Editors
NARA K. AHN, of Illinois
STEVEN Y. BRESSLER, of New York
KATRICE L. BRIDGES, of Illinois
MICHAEL B. CUPPOCK, of New York
THOMAS J. CONGOVE, of Maryland
KEVIN M. COSTANTINO, of Michigan
BRIAN C. GRUBER, of Ohio
NICOLE C. HERRON, of Michigan
DEE L. HELGELY, of Utah
NIR KASSAR, of Indiana
JOHN G. KNEPER, of Wyoming
SANNE H. KNUIJSEN, of Illinois
AMIT A. KURLEKAR, of Texas

Associate Editors
JENNIFER L. BOATWRIGHT, of Iowa
JOSHUA A. BROOK, of New York
KIRSTEN MATOV CARLSON, of Oklahoma
CATHERINE M. CARROLL, of Virginia
DORA V. CHEN, of Connecticut
LISA J. COLE, of Washington, DC
MARY BETH CONSTANTINO, of Massachusetts
CHANDRA F.C. DAVIS, of New Jersey
ERIC W. DOHERTY, of Minnesota
RENEE M. DUPLER, of Michigan
BENJAMIN M. FAULKNER, of New York
RAFAEL M. GOLDSMITH, of Arizona
EDWARD A. GORDON, of Texas
NICHOLAS F. JOSEPH, of Maryland
KIMBERLY K. KEFLAS, of Michigan
BRETT D. KOELLER, of Wisconsin
JESSICA A. KOZLOV, of New Jersey
ZACHARY M. LEWIS, of Oklahoma
JAMES D. MANGIFACCO, of Ohio
SCOTT A. MARTIN, of Texas
JOSEPH E. MCCALL, of New Hampshire
TODD E. MESSROV, of North Carolina
MATTHEW S. MEYER, of Delaware
BENJAMIN C. MIZER, of Ohio

Associate Editors
MORGAN K. LOPEZ, of California
ANGELICA M. OCHOA, of Wyoming
DIANNA D. PHILLIP, of Illinois
ANN E. RAISH, of Massachusetts
COLETTE BOUTEL, of New Jersey
EDWARD A. SAAD, of Michigan
VIVEK S. SANKARAN, of New Jersey
TUSHAR J. SHEETH, of Michigan
NICOLE C. SNYDER-BRUNKE, of Idaho
NANCY M. WANG, of New Jersey
ANDERS C. WICK, of Illinois
JONATHAN P. WITMER-RICH, of Ohio
JAMIE L. ZVYK, of Michigan

Article Editors
JOHN A. AMASH, of Michigan
EVE L. BRENZIGER, of Maryland
PAUL A. DILLER, of New Jersey
ROBERT A. MIKOS, of Iowa
CHRISTIE FARRIS ÖBERG, of Ohio

Note Editors
LAURA E. KACENARI, of Ohio
MARK W. PLETCHER, of Minnesota
ASIM REHMAN, of New York
JENNIFER L. SANTINO, of Ohio
MAGGIE J. SCHNEIDER, of Illinois

BUSINESS MANAGER
DOROTHY A. KELLY

EDITORIAL ASSISTANT
MELANIE D. EHLER