

Rather, the Constitution embraces tolerance, not hostility, toward religion.

And hence the well chronicled retreat from the 1960s- and 70s-era overbroad protections for criminal defendants, restoring a jurisprudential approach that preserves constitutional liberties without unnecessarily frustrating good-faith law enforcement efforts.

That legacy of legal transformation has earned Chief Justice Rehnquist, in the judgment of President Clinton's acting Solicitor General Walter Dellinger, a place—along with John Marshall and Earl Warren—among the three most influential Chief Justices in history.

Yet even so, the Chief's skill in steering the Court, the care and diligence with which he achieved that legacy, is not widely understood. Indeed, many scholars, lawyers, and law students have misperceived the Chief's jurisprudence—incorrectly deeming him, for example, significantly less conservative than Justices Scalia and Thomas—because they have failed to appreciate the distinct role of the Chief Justice, guiding the Court.

Take, for example, *Dickerson v. United States*, reaffirming *Miranda v. Arizona* as the law of the land. At the time of his death, eulogists pointed to *Dickerson* as an example of how the Chief had moderated his views, growing over time away from his Lone Ranger passion and toward an appreciation for elements of the status quo.

In my judgment, that view seriously misapprehends Chief Justice Rehnquist. Indeed, a careful examination of *Dickerson* can illuminate much of how he served as Chief. At the outset, *Dickerson* cannot be understood in isolation; instead, one must consider the entire course of the Chiefs criminal-law jurisprudence.

For decades before *Dickerson*, the Chief had been a vocal critic of *Miranda*. Beginning with *Michigan v. Tucker* in 1974, the Chief authored or joined dozens of opinions limiting *Miranda*'s reach. Viewed by many as one of the worst Warren Court excesses, *Miranda* combined an activist approach—mandating specific police warnings found nowhere in the Constitution—with unsettling outcomes—ensuring, in conjunction with a robust exclusionary rule, that demonstrably guilty criminals could go free on the barest of technicalities.

The predicate for all of the Chief's efforts to cabin in *Miranda* was the notion that the specified warnings were not constitutionally required; rather, they were merely a "prophylactic" measure in aid of the broader constitutional value. Because *Miranda* was prophylactic—because the Constitution did not require its application in every respect—the Chief was able gradually to do much to mitigate its harmful effects.

Enter 18 U.S.C. §3501. Passed in the wake of *Miranda* and signed into law by President Lyndon B. Johnson, §3501, in effect, purported to overrule *Miranda* and return to the underlying constitutional standard of voluntariness for the admission of confessions. Yet, for three decades, §3501 lay dormant on the statute books, all but ignored.

In *Dickerson*, however, a federal court of appeals for the first time gave force to the words of the statute, admitting into evidence a voluntary confession notwithstanding the lack of properly administered *Miranda* warnings. Thus, the validity of §3501 was squarely presented.

If there was one thing the Chief knew, it was the minds of his colleagues; he had a remarkable sense for what his Brethren were and were not willing to do. As a practical matter, there was no way that Justice O'Connor or Justice Kennedy would possibly be willing to overrule *Miranda*. It was too established, too much a part of the legal firmament, for either of them to hazard extinguishing it.

If there had been four votes to overrule *Miranda*, it is difficult to imagine that, given his decades of principled opposition, the Chief would not have readily provided the fifth. But the votes were not there.

In their place was genuine peril. Section 3501 was a statute passed by Congress and signed into law by the President; the only way it could be invalidated was for it to be declared unconstitutional. And, if it were unconstitutional, that would presumably be because *Miranda* was not mere prophylaxis, but itself required by the Constitution.

Had the Chief voted with the dissenters, the majority opinion would have been assigned by the senior Justice in the majority, in this case Justice Stevens. And Justice Stevens, of course, had a very different view of *Miranda* than did the Chief.

It is not difficult to imagine a Justice Stevens *Dickerson* majority, recounting the history of *Miranda* and §3501 and then observing something like, "Although we have often used the term 'prophylactic' to describe *Miranda*, over time it has become interwoven into the basic fabric of our criminal law; thus, today, we make explicit what had been implicit in our prior decisions: *Miranda* is required by the U.S. Constitution. Accordingly, §3501 is unconstitutional."

That holding, in turn, would have undermined the foundation for most if not all of the previous decisions limiting *Miranda*, quietly threatening three decades of the Chief's careful efforts to cabin in that decision appropriately. Therefore, in my judgment, the Chief acted decisively to avoid that consequence. He voted with the majority and assigned the opinion to himself.

With that backdrop, the majority opinion in *Dickerson* is, in many respects, amusing to read. Its holding can be characterized as threefold: First, *Miranda* is NOT required by the Constitution; it is merely prophylactic, and its exceptions remain good law. Second, 18 U.S.C. §3501 is not good law. Third, do not ask why, and please, never, ever, ever cite this opinion for any reason.

Although not what one would describe as the tightest of logical syllogisms, it was the best that could be gotten from the current members of the Court. A majority of Justices agreed with each of the first two propositions, and so therefore—even though the propositions are in significant tension with each other—pursuant to Justice Brennan's famed "rule of five," the Court declared both, and nothing more.

That leadership, I would suggest, is a hallmark of a great Chief Justice. The role of the Chief is unique, and Chief Justice Rehnquist understood his colleagues well. Consistently, he achieved the best legal outcome that could be reached in a given case, in aid of moving inexorably in the long term toward sound and principled jurisprudential doctrine.

For those of us who had the privilege of clerking for the Chief, we came to know a man of enormous intellect, principle, humor, and modesty.

Blessed with an eidetic memory, he seemed to know all the law that ever was. He would routinely amaze his clerks by quizzing them on the exact citation to some case or other; the clerks would, of course, never know the cite, and—off the top of his head—the Chief always would. As his son James observed at the Chief's funeral, he would have said that his dad had forgotten more history than most of us will ever know, but he didn't think his dad had ever forgotten anything.

A Midwesterner, born of modest means, the Chief enlisted in the Army in 1943 at age eighteen. Law has too long been a profession of the privileged few, and it is fitting, and worth noting, that the Chief Justice was an enlisted man, serving as weather observer in North Africa.

Once a week, the Chief played tennis with his clerks. We would play on a public court, and no one ever recognized the older gentlemen playing doubles with three young lawyers. He would also have us over to his house to play charades. One of my favorite memories is his lying on his stomach on the floor, pantomiming firing a rifle and mouthing "pow, pow," as he acted out *All Quiet on the Western Front*.

He enjoyed simple tastes—his favorite lunch was a cheeseburger, a "Miller's Lite," and a single cigarette—and he had little patience for putting on airs. Once, when a law clerk asked him how he went about choosing law clerks, the Chief replied, "Well, I obviously wasn't looking for the best and the brightest, or I wouldn't have chosen you guys." Himself a former law clerk, he had no grand illusions about the job.

He was a kind and decent man. He knew everybody's name in the Court, every police officer and every janitor, and he treated them all with fairness and dignity. For that reason, the respect he enjoyed from his colleagues was unparalleled.

The Chief was beloved by his family, by his colleagues, by the thirty-four years' worth of law clerks whom he befriended, taught, and mentored. His views did not always prevail, but his steady hand at the helm—his vision, leadership, and unwavering principles—made this in every respect the Rehnquist Court.

ADDITIONAL STATEMENTS

RECOGNIZING SUSTAINABLE LUMBER CO.

● Mr. DAINES. Mr. President, I rise in recognition of the achievement of Sustainable Lumber Co., located in Missoula, MT. JPMorgan Chase recently announced that Sustainable Lumber Co. has been awarded a \$100,000 grant and business trip to LinkedIn's California headquarters for an opportunity of learning and networking. This award further emphasizes Sustainable Lumber Co. as a fine tribute to the State of Montana, and their both transformative and responsible approach to operating their business has earned them the success they rightfully have achieved.

I also would like to applaud JPMorgan Chase for investing in small businesses, like Sustainable Lumber Co., through its Mission Main Street initiative. These investments in small businesses strengthen our local communities and work as a catalyst towards revitalizing the American Dream.●

TRIBUTE TO JACOB FRANCOM

● Mr. DAINES. Mr. President, I rise today in recognition of Jacob Francom, a top-tier educator from Troy, MT. Dr. Francom was recently honored as the 2015 Montana Principal of the Year and is an excellent example of the importance of education to the State of Montana.

Dr. Francom has not only succeeded in enhancing and tailoring the professional skills of his staff, but has made great advancements to the technological arenas at his school. He has