

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 97-873

UNITED STATES, PETITIONER v. ALOYZAS BALSYS
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[June 25, 1998]

JUSTICE STEVENS, concurring.

While I join the Court's opinion without reservation, I write separately to emphasize these points.

The clause that protects every person from being "compelled in any criminal case to be a witness against himself" is a part of the broader protection afforded by the Fifth Amendment to the Constitution. That Amendment constrains the power of the Federal Government to deprive any person "of life, liberty, or property, without due process of law," just as the Fourteenth Amendment imposes comparable constraints on the power of the States. The primary office of the clause at issue in this case is to afford protection to persons whose liberty has been placed in jeopardy in an American tribunal. The Court's holding today will not have any adverse impact on the fairness of American criminal trials.

The fact that the issue in this case has been undecided for such a long period of time suggests that our ruling will have little, if any, impact on the fairness of trials conducted in other countries. Whether or not that suggestion is accurate, I do not believe our Bill of Rights was intended to have any effect on the conduct of foreign proceedings. If, however, we were to accept respondent's interpretation of the clause, we would confer power on foreign governments to impair the administration of justice in this coun-

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try. See *ante*, at 6 (“[I]t would have been remarkable to adopt a privilege so broad as to condition domestic evidence gathering on the contingencies of foreign law or foreign prosecutorial policy wholly beyond the Government’s control”). A law enacted by a foreign power making it a crime for one of its citizens to testify in an American proceeding against another citizen of that country would immunize those citizens from being compelled to testify in our courts. Variants of such a hypothetical law are already in existence. See *Société Nationale Industrielle Aérospatiale v. United States Dist. Court for Southern Dist. of Iowa*, 482 U. S. 522, 526, n. 6 (1987); see also *id.*, at 544–545, n. 29. Of course, the Court might craft exceptions for such foreign criminal laws, but it seems far wiser to adhere to a clear limitation on the coverage of the Fifth Amendment, including its privilege against self-incrimination. That Amendment prescribes rules of conduct that must attend any deprivation of life, liberty, or property in our Nation’s courts.