

GINSBURG, J., dissenting

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 GINSBURG, dissenting.

The privilege against self-incrimination, “closely linked historically with the abolition of torture,” is properly regarded as a “landmar[k] in man’s struggle to make himself civilized.” E. Griswold, *The Fifth Amendment Today* 7 (1955); see *id.*, at 8 (Fifth Amendment expresses “one of the fundamental decencies in the relation we have developed between government and man”). In my view, the Fifth Amendment privilege against self-incrimination prescribes a rule of conduct generally to be followed by our Nation’s officialdom. It counsels officers of the United States (and of any State of the United States) against extracting testimony when the person examined reasonably fears that his words would be used against him in a later criminal prosecution. As a restraint on compelling a person to bear witness against himself, the Amendment ordinarily should command the respect of United States interrogators, whether the prosecution reasonably feared by the examinee is domestic or foreign. Cf. *DKT Memorial Fund Ltd. v. Agency for International Development*, 887 F. 2d 275, 307–308 (CADC 1989) (R. B. Ginsburg, J., concurring in part and dissenting in part) (“just as our flag carries its message . . . both at home and abroad, so does our Constitution and the values it expresses”) (citation and internal quotation marks omitted); *United States v.*

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Tiede, 86 F. R. D. 227 (U. S. Court for Berlin 1979) (foreign national accused of hijacking Polish aircraft abroad was tried under German substantive law in Berlin in a court created by United States; U. S. court held foreign national entitled to jury trial as a matter of constitutional right). On this understanding of the “fundamental decenc[y]” the Fifth Amendment embodies, “its expression of our view of civilized governmental conduct,” *Griswold*, *supra*, at 8, 9, I join JUSTICE BREYER’s dissenting opinion.