

I urge support for the bill.

#### AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES

Mr. KOHL. Mr. President, I am aware that an amendment or amendments relating to dairy policy may be offered during full committee mark-up on the fiscal year 2000 appropriations bill for Agriculture, Rural Development and Related agencies. I serve as ranking member for the Agriculture, Rural Development and Related Agencies Subcommittee and I am proud of the work I have done with Senator COCHRAN, Chairman of the Subcommittee, in preparing the bill for fiscal year 2000 and having it approved unanimously by the entire Subcommittee. I am, therefore, very distressed to learn of possible amendments that are authorizing in nature, and that would result in setting dairy policy with disastrous consequences for my State and region.

Due to my very strong commitment to keep the fiscal year 2000 appropriations bill clean of amendments of the nature suggested, I am prepared to take whatever steps possible to prevent inclusion of these amendments during consideration of the bill by the Senate Appropriations Committee. I strongly believe that the issues surrounding these amendments are of such an important nature that deliberation by the full Senate is imperative. If proponents of these amendments wish to bring them to the floor to offer and debate them, I welcome the opportunity for the discussion. However, I will do all I can to ensure that these matters are not decided by the smaller number of Senators that comprise the Appropriations Committee.

In the event an amendment or amendments relating to dairy policy, such as one establishing or extending interstate compacts, are offered for adoption by the full Appropriations Committee, I am prepared to offer, and will offer, a number of second degree amendments to eliminate the harmful policy that amendment proponents apparently seek to impose on farmers and consumers. Also, in an attempt to keep this sort of anti-consumer, anti-farmer amendment from ending up on the bill, I am prepared to offer, either as first or second degree amendments, a number of other amendments—some related to the bill and some not. If the committee chooses to enter into controversial debates that belong in authorizing committees, I too have several non-Appropriations issues that I would like considered.

I do not relish holding up the work of my Committee, and I will not if these sort of dairy amendments are not offered. But I feel it is only fair to my fellow Committee members and to the Senate to let them know how very seriously I take attempts to harm the dairy industry in the State of Wisconsin.

The amendments I may offer that are relevant to the Agriculture Appropriations bill, include, but are not limited to:

An amendment to provide additional funds for the President's Food Safety Initiative.

An amendment to provide additional funds for the WIC program.

An amendment to provide additional funds for the President's Human Nutrition Initiative.

An amendment to provide additional funds for the Wetlands Reserve Program.

An amendment to provide additional funds for the Conservation Farm Option Program.

An amendment to provide additional funds for the TEFAP program.

An amendment to provide additional funds relating to the Food Quality Protection Act.

An amendment to provide additional funds for the National Research Initiative.

An amendment to provide additional funds for the NET program.

An amendment to provide additional funds for the Food and Drug Administration.

An amendment to provide additional funds for the EQIP program.

An amendment to provide additional funds for the Fund for Rural America.

An amendment to express the sense of the Senate on the history of dairy policy.

An amendment to express the sense of the Senate on dairy compacts and their harmful effects on consumers.

An amendment to express the sense of the Senate on dairy compacts and their fundamental conflict with the principles of free trade.

An amendment to express the sense of the Senate on dairy compacts and their harmful effect on the Midwestern dairy industry.

An amendment to express a sense of the Senate on the economic policy problems with dairy compacts.

In addition to these, I have at least 40 other amendments funding changes to the bill that will require votes by the full Committee.

I also have many amendments not relevant to the bill and more in the nature of authorizing legislation. However, as I said before, if the Committee is going to consider dairy legislation of an authorizing nature—legislation with a very real impact on my State—I would insist on also considering other authorizing issues of importance to my constituents. These would include:

The Patient Abuse Prevention Act: This amendment is based on my bill that establishes a national registry of abusive long-term care workers, and requires nursing homes, home health agencies and hospices to check the registry and do criminal background checks on potential employees before hiring them.

Folic Acid Promotion and Birth Defects Prevention Act: This amendment is based on a bill I will be introducing with BOND and ABRAHAM next week. It would authorize \$20 million per year to provide education and training to health care providers and the public on the need for women to take folic acid to reduce birth defects.

Sense of the Senate on the nursing home bill: This amendment is based on

an amendment that passed two years ago on the Budget Resolution. It is a Sense of the Senate that Congress should create a national registry system so long-term care facilities may conduct background checks on potential employees.

Organ distribution amendment: This amendment would nullify the HHS proposed rule that changes the way organs are distributed across the nation.

Class size fix: This would amend the Class Size Reduction program to ensure that smaller school districts have access to their class size funds without having to form a consortium with other districts.

National Family Caregiver Support program: This would provide support services, including respite services, to persons caring for a disabled or elderly relative.

Sodas in Schools: This is based on a bill introduced by LEAHY, JEFFORDS, KOHL, and FEINGOLD last month) This would prohibit the giveaways of free sodas during the school lunch program.

The Child Care Infrastructure Act: This amendment would establish a tax credit for employers who provided child care benefit to their employees.

Child Support Pass Through: This amendment would reform the child support collection system to provide more income support for low-income families.

Income Averaging for Farmers: This, and another amendment creating Farmer IRAs would establish more fairness for farmers.

Several foreign policy Sense of the Senates including: A sense of the Senate resolution calling for a United States effort to end restrictions on the freedoms and human rights of the enclaved people in the occupied area of Cyprus; a sense of the Senate resolution condemning Palestinian efforts to revive the original Palestine partition plan of November 29, 1947, and condemning the United Nations Commission on Human Rights for its April 27, 1999, resolution endorsing Palestinian self-determination on the basis of the original Palestine partition plan; a sense of the Senate regarding a peaceful process of self-determination in East Timor, and for other purposes.

Apostle Islands: An amendment to direct the Secretary of the Interior to study whether the Apostle Islands National Lakeshore should be protected as a wilderness area.

Zachary Baumel: An amendment to locate and secure the return of Zachary Baumel, a citizen of the United States, and other Israeli soldiers missing in action.

Women's Business center: A bill to amend the Small Business Act with respect to the women's business center program.

Arctic National Wildlife Refuge: A bill to designate a portion of the Arctic National Wildlife Refuge as wilderness.

**Military Reservists:** An amendment to authorize the Small Business Administration to provide financial and business development assistance to military reservists' small business, and for other purposes.

**Menominee:** An amendment to provide for the settlement of claims of the Menominee Indian Tribe of Wisconsin.

### 33RD ANNIVERSARY OF MIRANDA VERSUS ARIZONA

Mr. THURMOND. Mr. President, 33 years ago this week, the Supreme Court issued possibly its most famous and far-reaching criminal law decision of the twentieth century: *Miranda v. Arizona*. In response, the Congress enacted a law, codified at 18 U.S.C. section 3501, to govern the admissibility of voluntary confessions in Federal court. The Criminal Justice Oversight Subcommittee, which I chair, recently held a hearing to discuss the Clinton Justice Department's refusal to use this Federal statute to help Federal prosecutors in their work to fight crime.

Issued in 1966, the *Miranda* decision imposed a code-like set of interrogation rules on police officers. Essentially, the Court held that before a confession can be admitted against a defendant, regardless of whether the confession was voluntary, the police must read the defendant the now familiar *Miranda* warnings, and the defendant must affirmatively waive his rights. We will never know how many crimes have gone unsolved or unpunished because of *Miranda*.

The *Miranda* decision acknowledged that the warnings were not themselves constitutionally protected rights but only procedural safeguards designed to protect the Fifth Amendment right against self-incrimination. Subsequent Supreme Court opinions have repeatedly reaffirmed this conclusion. Further, the *Miranda* court expressly invited Congress and the States to develop legislative solutions to the problem of involuntary confessions.

In response to the Court's invitation, the Congress held extensive hearings on this issue as part of Federal criminal law reform. A bipartisan Congress with my participation and that of many others on both sides of the aisle in 1968 passed an omnibus crime bill that included a provision that eventually became law as section 3501. That statute, of which I was an original cosponsor, provides that "In any criminal prosecution brought by the United States . . . a confession . . . shall be admissible in evidence if it is voluntarily given." The statute goes on to list five nonexclusive factors that a judge may consider in determining whether a confession is voluntary and, hence, admissible. One of those factors is whether the *Miranda* warnings were given. Thus, the statute continues to provide police with an incentive to deliver the *Miranda* warnings.

More than thirty years after the original hearings on § 3501, the Senate

Judiciary Committee's Subcommittee on Criminal Justice Oversight, under my leadership, conducted a hearing to examine the statute's enforcement.

The history of the statute begins with the Johnson Administration. Although President Johnson signed § 3501 into law, his administration viewed the statute unfavorably and refused to enforce it. Then, in 1969, the Nixon Justice Department issued an important memorandum setting forth the Department's official policy toward section 3501. According to that policy, "Congress has reasonably directed that an inflexible exclusionary rule be applied only where the constitutional privilege itself has been violated." The memorandum also concluded that "the determination of Congress that an inflexible exclusionary rule is unnecessary is within its constitutional power."

In 1975, the Department succeeded in enforcing the statute when the 10th Circuit in *United States v. Crocker* affirmed a district court's decision to apply § 3501 rather than *Miranda* and upheld the constitutionality of the statute.

The next significant chapter in the history of § 3501 occurred during the Reagan Administration. Judge Stephen Markman, who was then Assistant Attorney General in charge of the Justice Department's Office of Legal Policy, also testified before our Subcommittee. In response to an assignment from Attorney General Meese, Judge Markman's team issued a comprehensive report on the law of pre-trial interrogation that concluded that section 3501 represented a valid, constitutional response by the Congress to the *Miranda* decision. Later, as Judge Markman testified, the Reagan Justice Department continued the litigation effort to apply section 3501.

Judge Markman also testified that while he was U.S. Attorney in the Bush Administration, he and other U.S. Attorneys attempted to apply the statute, although appellate cases did not develop. Certainly, the Bush Justice Department never sought to undermine the statute's enforcement.

During the Clinton Administration, this Committee repeatedly has encouraged the Justice Department to enforce the statute. During an oversight hearing in 1997, Attorney General Reno indicated to the Committee that the Department would enforce it in an appropriate case, as did Deputy Attorney General Holder during his nomination hearing the same year. However, when such a case clearly arose in *United States v. Dickerson*, the Administration refused.

In that case, Charles Dickerson was suspected of committing a series of armed bank robberies in Virginia and Maryland. During questioning, he voluntarily confessed his crimes to the authorities and implicated another armed bank robber, but the *Miranda* warnings were not read to him beforehand. The U.S. Attorney's office in Alexandria urged the trial court to admit the con-

fession under section 3501, but the Justice Department refused to permit the U.S. Attorney to raise it on appeal. It was only the intervention of third parties in an amicus brief of Professor Cassell and the Washington Legal Foundation, that the issue was presented to the Fourth Circuit for its consideration.

The Fourth Circuit ruled solidly in favor of § 3501's constitutionality, holding that this statute, not the *Miranda* decision, governs the admissibility of confessions in Federal court. The court criticized the Justice Department for its failure to enforce the statute, saying that the Department's prohibition of the U.S. Attorney from arguing section 3501 was an elevation of politics over law.

The administration's actions in the *Dickerson* case are part of a larger pattern by which the Clinton Justice Department has blocked opportunities for career prosecutors to raise section 3501. The Department has even gone so far as to order career Federal prosecutors to withdraw already filed briefs that contained arguments in favor of section 3501. The Supreme Court in *Davis v. United States* expressly made note of the Justice Department's decision not to rely on the statute in a 1994 case where it was clearly relevant. In a concurring opinion in that same case, Justice Scalia wrote that "[t]he United States' repeated refusal to invoke § 3501 . . . may have produced—during an era of intense national concern about the problem of run-away crime—the acquittal and the non-prosecution of many dangerous felons. There is no excuse for this."

The Executive Branch has a duty under Article II, Section 3, of the Constitution to "take care that the laws be faithfully executed." Section 3501 is a law like any other. In *Davis*, Justice Scalia also questioned whether the refusal to invoke the statute abrogated this duty.

Our hearing also demonstrated the strong level of support that exists for the Justice Department to enforce section 3501, especially in the law enforcement community. I have received supportive letters in this regard from the Fraternal Order of Police, whose National President testified at our hearing, as well as from the National Association of Police Organizations, the Federal Law Enforcement Officers Association, the Major Cities Chiefs of Police, and others. Former Attorney General Ed Meese also expressed his support for our efforts.

If section 3501 is upheld by the Supreme Court, this will encourage the states to enact their own versions of the law in this area. Arizona already has a statute almost identical to § 3501, and the Maricopa County Attorney in Phoenix, whose predecessor prosecuted *Miranda*, testified at our hearing that he and others could enforce their statute in Arizona if the Supreme Court upholds section 3501.

The Justice Department will not say what position it will take if the