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 confession 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

Dickerson case is considered by the Supreme Court. Unfortunately, they refused my invitation to testify at the hearing on section 3501. I recognize the Department's reluctance to discuss specifics about pending cases, but this is no excuse for its failure to discuss in person its refusal to explain its general treatment of the law governing voluntary confessions. Even the dissenting judge in Dickerson recognized that the Congress could invoke its oversight authority and investigate why the law is being ignored. As he stated, the ''Congress . . . may legitimately investigate why the executive has ignored § 3501 and what the consequences are.''

In my view, the Administration clearly has a duty to defend § 3501 before the Supreme Court and should be enforcing it in the lower Federal courts. The Justice Department has a long-standing policy that it has a duty to defend a duly enacted Act of Congress whenever a reasonable argument can be made in support of its constitutionality. Thus far, all Federal courts that have directly considered § 3501's constitutionality have upheld it. Accordingly, reasonable arguments in defense of the statute clearly exist and have been accepted by the courts—most recently by the Fourth Circuit in Dickerson.

Indeed, before the Dickerson case, the Fourth Circuit in United States v. Leong expressly rejected the Justice Department's argument that it was not free to press § 3501 in the lower Federal courts unless and until the Supreme Court overrules Miranda. In concluding that the Government was ''mistaken'' in this regard, the Leong court stated that ''[t]he question of whether Miranda establishes a rule of constitutional dimension, and thus whether Congress acted within its authority in enacting § 3501, is easily within the compass of the authority of lower federal courts.''

Our subcommittee inquiry into section 3501 is ongoing. America does not need its Justice Department making arguments on behalf of criminals. On this the 33rd anniversary of Miranda v. Arizona, it is appropriate to note the Fourth Circuit's statement in Dickerson that ''no longer will criminals who have voluntarily confessed their crimes be released on mere technicalities.'' I hope the Clinton Justice Department will help make this promise a reality.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a withdrawal which was referred to the Committee on Finance.

(The withdrawal received today is printed at the end of the Senate proceedings.)

REPORT OF THE COMMODITY CREDIT CORPORATION FOR FISCAL YEAR 1997—MESSAGE FROM THE PRESIDENT—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Agriculture, Nutrition, and Forestry.

To the Congress of the United States:

In accordance with the provisions of section 13, Public Law 806, 80th Congress (15 U.S.C. 714k), I transmit herewith the report of the Commodity Credit Corporation for the fiscal year ending September 30, 1997.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 15, 1999.*

REPORT RELATIVE TO THE EXCHANGE STABILIZATION FUND—MESSAGE FROM THE PRESIDENT—PM 38

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; referred jointly, pursuant to 31 United States Code 5302, to the Committee on Appropriations, to the Committee on Banking, Housing, and Urban Affairs, and to the Committee on Foreign Relations.

To the Congress of the United States:

On November 9, 1998, I approved the use of the Exchange Stabilization Fund (ESF) to provide up to $5 billion for the U.S. part of a multilateral guarantee of a credit facility for up to $13.28 billion from the Bank for International Settlements (BIS) to the Banco Central do Brazil (Banco Central). Eighteen other central banks and monetary authorities are guaranteeing portions of the BIS credit facility. In addition, through the Bank of Japan, the Government of Japan is providing a swap facility of up to $1.25 billion to Brazil under terms consistent with the terms of the BIS credit facility. Pursuant to the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress that I have determined that unique or emergency circumstances require the ESF financing to be available for more than 6 months.

The BIS credit facility is part of a multilateral effort to support an International Monetary Fund (IMF) standby arrangement with Brazil that itself totals approximately $18.1 billion, which is designed to help restore financial market confidence in Brazil and its currency, and to reestablish conditions for long-term sustainable growth. The IMF is providing this package through normal credit tranches and the Supplemental Reserve Facility (SRF), which provides short-term financing at significantly higher interest rates than those for credit tranche financing. Also, the World Bank and the Inter-American Development Bank are providing up to $9 billion in support of the international financial package for Brazil.

Since December 1998, international assistance from the IMF, the BIS credit facility, and the Bank of Japan's swap facility has provided key support for Brazil's efforts to reform its economy and resolve its financial crisis. From the IMF arrangement, Brazil has purchased approximately $4.6 billion in December 1998 and approximately $4.9 billion in April 1999. On December 18, 1998, the Banco Central made a first drawing of $4.15 billion from the BIS credit facility and also drew $390 million from the Bank of Japan's swap facility. The Banco Central made a second drawing of $4.5 billion from the BIS credit facility and $423.5 million from the Bank of Japan's swap facility on April 9, 1999. The ESF's ''guarantee'' share of each of these BIS credit facility drawings is approximately 38 percent.

Each drawing from the BIS credit facility or the Bank of Japan's swap facility matures in 6 months, with an option for additional 6-month renewals. The Banco Central must therefore repay its first drawing from the BIS and Bank of Japan facilities by June 18, 1999, unless the parties agree to the roll-over. The Banco Central has informed the BIS and the Bank of Japan that it plans to request, in early June, a roll-over of 70 percent of the first drawing from each facility, and will repay 30 percent of the first drawing from each facility.

The BIS's agreement with the Banco Central contains conditions that minimize risks to the ESF. For example, the participating central banks or the BIS may accelerate repayment if the Banco Central has failed to meet any conditions of the agreement or Brazil has failed to meet any material obligation to the IMF. The Banco Central must repay the BIS no slower than, and at least in proportion to Brazil's repayments to the IMF's SRF and to the Bank of Japan's swap facility. The Government of Brazil is guaranteeing the performance of the Banco Central's obligations under its agreement with the BIS, and, pursuant to the agreement, Brazil must maintain its gross international reserves at a level no less than the sum of the principal amount outstanding under the BIS facility, the principal amount outstanding under Japan's swap facility, and a suitable margin. Also, the participating central banks and the BIS must approve any Banco Central request for a drawing or roll-over from the BIS credit facility.

Before the financial crisis that hit Brazil last fall, Brazil had made remarkable progress toward reforming its economy, including reducing inflation from more than 2000 percent 5 years ago to less than 3 percent in 1998,