



Office of the Attorney General
Washington, D. C. 20530

November 1, 1999

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515

Re: Dickerson v. United States, No. 99-5525
(S.Ct.); 18 U.S.C. 3501.

Dear Mr. Speaker:

I am writing to inform you of the position of the Department of Justice in the Supreme Court in Dickerson v. United States, No. 99-5525, with respect to 18 U.S.C. 3501. That statute provides in relevant part that "[i]n any criminal prosecution brought by the United States or by the District of Columbia, a confession * * * shall be admissible in evidence if it is voluntarily given." 18 U.S.C. 3501(a). Section 3501(b), in turn, provides that the trial judge, in determining the issue of voluntariness, shall take into consideration all the circumstances surrounding the giving of the confession, including "whether or not [the] defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him," and "whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel." That section further provides that "[t]he presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession."

In Dickerson, the United States Court of Appeals for the Fourth Circuit held that Section 3501(a) authorizes the introduction of a defendant's confession in the government's case-in-chief if the court determines that it was voluntarily given under the totality of the circumstances, notwithstanding that the confession was taken in violation of the requirements of Miranda v. Arizona, 384 U.S. 436 (1966). In Miranda, the Supreme Court held that, in order to protect the Fifth Amendment privilege against compelled self-incrimination, statements stemming from custodial interrogation of a suspect are inadmissible at trial unless the police first provided the suspect with a set of four specific warnings about the suspect's rights. Section 3501 was enacted in 1968 with the express

purpose of overturning Miranda and restoring a totality-of-the-circumstances test for the admission of confessions. The petitioner in Dickerson seeks review of the court of appeals' holding that 18 U.S.C. 3501 supersedes the Supreme Court's decision in Miranda.

As stated in the government's response, we have concluded that the Miranda decision is of constitutional dimension. Therefore, Congress may not legislate a contrary rule unless the Supreme Court were to overrule Miranda. Based on our analysis of principles that govern the circumstances under which it is appropriate to adhere to past judicial decisions, we have declined to ask the Supreme Court to overrule Miranda. We have explained that, in the thirty-three years since that decision was handed down, it has become embedded in the law and refined through the decisions of the Supreme Court. The experience of federal law enforcement agencies is that Miranda is workable in practice and in many respects beneficial to law enforcement. We do not believe that the developments since Miranda warrant reexamination of the essential balance that the Court struck in that case between the needs of law enforcement and the rights of a suspect. Accordingly, we have taken the position that Section 3501 cannot constitutionally authorize the admission of statements that would be excluded under the Supreme Court's holding in Miranda. A copy of our brief is attached.

My determination in this case is guided by the responsibility of the Department of Justice to represent in litigation the interests of the United States, consisting of all three branches of government and, therefore, of the people of the United States. United States v. Providence Journal Co., 485 U.S. 693, 701, 706 (1988). It has been, and continues to be, the traditional practice of the Department of Justice in virtually all cases to defend the constitutionality of an Act of Congress unless it is plainly unconstitutional or an impermissible encroachment on the constitutional power of the Executive. When there is a Supreme Court decision of constitutional dimension that is inconsistent with a statute, however, additional considerations are implicated. Under our system of government, the Constitution is "the supreme Law of the Land." U.S. Const. Art. VI. From the time of the Supreme Court's decision in Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), it has been a bedrock principle of our law that the Supreme Court's decisions interpreting and applying the United States Constitution are authoritative and entitled to respect from the other branches of government.

When the requirements of a federal statute are in conflict with the requirements of a decision of the Supreme Court interpreting and applying the Constitution, the statute must give way unless the Supreme Court determines to overrule or modify its

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constitutionally based precedent. While there is no inexorable requirement of adherence to precedent, a request that the Supreme Court overrule a decision is not to be made lightly. The rule of law demands special justification before asking the Supreme Court to depart from its prior decisions. That important principle carries particular force in the instance of a precedent as well established in the law as Miranda. I have considered carefully in this case whether the interests of the United States favor the overruling of Miranda and, in my view, they do not. The Department of Justice has therefore expressed this view to the Supreme Court. In reaching this conclusion, I have considered the respect owed both to Congress and the Judiciary as coordinate branches of government, the requirements of effective law enforcement, and the interest of our nation in the stability of the law. I have advised the President of my determination, and he concurs.

In the brief we filed today, we have suggested that the Supreme Court grant certiorari in order to address the legal questions involving Section 3501 resolved by the court of appeals. If the Court does grant certiorari, we will inform you of the schedule for submission of briefs in the event the House wishes to file a brief as amicus curiae to address the constitutionality of Section 3501.

Insofar as the Department of Justice's position on Section 3501 constitutes a determination that it will "refrain from defending" a provision of federal law "because of the position * * * that such provision of law is not constitutional," this letter constitutes a report such as that contemplated by Pub. L. No. 96-132, § 21(a)(2), 93 Stat. 1049-1050. See also Pub. 105-277, § 102, 112 Stat. 2681-66.

Sincerely,



Janet Reno

Enclosures