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REPORT ON THE ACTIVITIES
OF THE
COMMITTEE ON THE JUDICIARY
OF THE
HOUSE OF REPRESENTATIVES
DURING THE
ONE HUNDRED FIFTH CONGRESS
PURSUANT TO
CLAUSE 1(d) RULE XI OF THE RULES OF THE
HOUSE OF REPRESENTATIVES



JANUARY 2, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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COMMITTEE ON THE JUDICIARY

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¹Henry J. Hyde, Illinois, elected to the Committee as Chairman pursuant to House Resolution 12, approved by the House January 7, 1997.

Republican Members elected to the Committee pursuant to House Resolution 12, approved by the House January 7, 1997.

Democratic Members elected to the Committee pursuant to House Resolution 13, approved by the House January 7, 1997.

²Sonny Bono, California, deceased January 5, 1998.

³James E. Rogan, California, elected to the Committee pursuant to House Resolution 354, approved by the House February 11, 1998.

⁴Lindsey O. Graham, South Carolina, elected to the Committee pursuant to House Resolution 371, approved by the House February 26, 1998.

⁵Steven Schiff, New Mexico, deceased March 25, 1998.

⁶Mary Bono, California, elected to the Committee pursuant to House Resolution 429, approved by the House May 13, 1998.

⁷Thomas M. Barrett, Wisconsin, elected to the Committee pursuant to House Resolution 530, approved by the House September 11, 1998.

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¹ Subcommittee chairmanships and assignments approved January 21, 1997. Republican assignments revised March 3, 1998: James E. Rogan, California, filled vacancies resulting from the death of Sonny Bono, California (deceased January 5, 1998); Lindsey O. Graham, South Carolina, filled vacancies resulting from the illness of Steven Schiff, New Mexico (deceased March 25, 1998). Republican assignments revised June 17, 1998, to add Mary Bono, California.

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 2, 1999.

Hon. JEFF TRANDAHL,
Clerk of the House of Representatives,
Washington, DC.

DEAR MR. TRANDAHL: Pursuant to clause 1(d) of rule XI of the Rules of the House of Representatives, I am transmitting the report on the activities of the Committee on the Judiciary of the U.S. House of Representatives for the 105th Congress.

Sincerely,

HENRY J. HYDE,
Chairman.

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Union Calendar No. 486

105TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
105-845

REPORT ON THE ACTIVITIES OF THE COMMITTEE ON THE JUDICIARY

JANUARY 2, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

Jurisdiction of the Committee on the Judiciary

The jurisdiction of the Committee on the Judiciary is set forth in
Rule X, 1.(j) of the rules of the House of Representatives for the
105th Congress:

* * * * *

RULE X.—ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

THE COMMITTEES AND THEIR JURISDICTION

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

* * * * *

(j) Committee on the Judiciary

- (1) The judiciary and judicial proceedings, civil and criminal.
- (2) Administrative practice and procedure.
- (3) Apportionment of Representatives.
- (4) Bankruptcy, mutiny, espionage, and counterfeiting.
- (5) Civil liberties.
- (6) Constitutional amendments.

- (7) Federal courts and judges, and local courts in the Territories and possessions.
- (8) Immigration and naturalization.
- (9) Interstate compacts, generally.
- (10) Measures relating to claims against the United States.
- (11) Meetings of Congress, attendance of Members and their acceptance of incompatible offices.
- (12) National penitentiaries.
- (13) Patents, the Patent Office, copyrights, and trademarks.
- (14) Presidential succession.
- (15) Protection of trade and commerce against unlawful restraints and monopolies.
- (16) Revision and codification of the Statutes of the United States.
- (17) State and territorial boundaries.
- (18) Subversive activities affecting the internal security of the United States.

Tabulation of Legislation and Activity

LEGISLATION REFERRED TO COMMITTEE

Public Legislation:	
House bills	714
House joint resolutions	95
House concurrent resolutions	30
House resolutions	28
	867
	867
Senate bills	35
Senate joint resolutions	3
	38
	38
Subtotal	905

Private Legislation:	
House bills (claims)	33
House bills (copyrights)	1
House bills (immigration)	35
House bills (patents)	1
House resolutions (claims)	1
	71
	71
Senate bills (immigration)	6
	77
	77
Subtotal	982

ACTION ON LEGISLATION NOT REFERRED TO COMMITTEE

Originated for House action:	
House resolutions	2
Amended by House with Committee language:	
House bills	3
Senate bills	1
Held at desk for House action:	
Senate bills	13
Conference appointments:	
House bills	2
	21
	21

FINAL ACTION

House concurrent resolutions approved (public)	1
House resolutions approved (public)	10
Public Laws	70
Private Laws	10

Hearings*Serial No. and Title*

-
1. Proposing a Balanced Budget Amendment to the Constitution of the United States. Committee on the Judiciary. February 3, 1997. (H.J. Res. 1).
 2. Implementation of Title III of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Subcommittee on Immigration and Claims. February 11, 1997.
 3. 21st Century Patent System Improvement Act; Patent and Trademark Office Surcharge Extension Act of 1997; and Patent Term Restoration Act of 1997. Subcommittee on Courts and Intellectual Property. February 26, 1997. (H.R. 400, H.R. 673, and H.R. 811).
 4. Implementation of the Church Arson Prevention Act of 1996. Committee on the Judiciary. March 19, 1997.
 5. Congressional Review Act. Subcommittee on Commercial and Administrative Law. March 6, 1997.
 6. Volunteer Liability Legislation. Committee on the Judiciary. April 23, 1997. (H.R. 911 and H.R. 1167).
 7. Madrid Protocol Implementation Act; and Trademark Law Treaty Implementation Act. Subcommittee on Courts and Intellectual Property. May 22, 1997. (H.R. 567 and H.R. 1661).
 8. State Taxation of Employees at Certain Federal Facilities. Subcommittee on Commercial and Administrative Law. April 17, 1997. (H.R. 865 and H.R. 874).
 9. Security and Freedom Through Encryption (SAFE) Act. Subcommittee on Courts and Intellectual Property. March 20, 1997. (H.R. 695).
 10. Product Liability Reform. Committee on the Judiciary. April 10, 1997.
 11. Deception of a Congressional Task Force Delegation to Miami District of the Immigration and Naturalization Service. Subcommittee on Immigration and Claims. February 27, 1997.
 12. Operation of the Bankruptcy System and Status Report from the National Bankruptcy Review Commission. Subcommittee on Commercial and Administrative Law. April 16, 1997.
 13. Bankruptcy Amendments of 1997; and Bankruptcy Law Technical Corrections Act of 1997. Subcommittee on Commercial and Administrative Law. April 30, 1997. (H.R. 764 and H.R. 120).
 14. Improper Granting of U.S. Citizenship Without Conducting Criminal Background Checks. Subcommittee on Immigration and Claims of the Committee on the Judiciary jointly with the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight. March 5, 1997. (Committee on Government Reform and Oversight Serial No. 105–21).
 15. Free Speech and Campaign Finance Reform. Subcommittee on the Constitution. February 27, 1997.
 16. Apprehension of Tainted Money Act of 1997. Subcommittee on Commercial and Administrative Law. May 14, 1997. (H.R. 1494).
 17. Bankruptcy Judgeship Act of 1997. Subcommittee on Commercial and Administrative Law. June 19, 1997. (H.R. 1596).
 18. Grassroots Solutions to Youth Crime. Committee on the Judiciary. May 7, 1997.
 19. Antitrust Aspects of Electricity Deregulation. Committee on the Judiciary. June 4, 1997.
 20. Fair Housing Reform and Freedom of Speech Act of 1997. Subcommittee on the Constitution. April 17, 1997. (H.R. 589).
 21. Federal Agency Compliance Act. Subcommittee on Commercial and Administrative Law. May 22, 1997. (H.R. 1544).
 22. Civil Asset Forfeiture Reform Act. Committee on the Judiciary. June 11, 1997. (H.R. 1835).
 23. Citizenship Reform Act of 1997; and Voter Eligibility Verification Act. Subcommittee on Immigration and Claims. June 25, 1997. (H.R. 7 and H.R. 1428).
 24. Hmong Veterans' Naturalization Act of 1997; and Canadian Border Boat Landing Permit Requirements. Subcommittee on Immigration and Claims. June 26, 1997. (H.R. 371 and H.R. 2027).
 25. Internet Tax Freedom Act. Subcommittee on Commercial and Administrative Law. July 17, 1997. (H.R. 1054).

26. Visa Waiver Pilot Program. Subcommittee on Immigration and Claims. June 17, 1997.
27. Judicial Reform Act of 1997. Subcommittee on Courts and Intellectual Property. May 14, 1997. (H.R. 1252).
28. Proposals to Provide Rights to Victims of Crime. Committee on the Judiciary. June 25, 1997. (H.J. Res. 71 and H.R. 1322).
29. Judicial Misconduct and Discipline. Subcommittee on Courts and Intellectual Property. May 15, 1997.
30. Limiting Terms of Office for Members of the U.S. House of Representatives and U.S. Senate. Subcommittee on the Constitution. January 22, 1997.
31. Gang-Related Witness Intimidation and Retaliation. Subcommittee on Crime. June 17, 1997.
32. Border Security and Deterring Illegal Entry into the United States. Subcommittee on Immigration and Claims. April 23, 1997.
33. WIPO Copyright Treaties Implementation Act; and On-line Copyright Liability Limitation Act. Subcommittee on Courts and Intellectual Property. September 16, 17, 1997. (H.R. 2281 and H.R. 2180).
34. Biomaterials Access Assurance Act of 1997. Subcommittee on Commercial and Administrative Law. June 12, 1997. (H.R. 872).
35. EPA's Rulemakings on the National Ambient Air Quality Standards for Particulate Matter and Ozone. Subcommittee on Commercial and Administrative Law. July 29, 1997.
36. Safeguarding the Integrity of the Naturalization Process. Subcommittee on Immigration and Claims. April 30, 1997.
37. Legislation Concerning Immigrant Issues. Subcommittee on Immigration and Claims. May 13, 1997. (H.R. 231, H.R. 429, H.R. 471, and H.R. 1493).
38. Musical Licensing in Restaurants and Retail and Other Establishments. Subcommittee on Courts and Intellectual Property. July 17, 1997.
39. Pre-1978 Distribution of Recordings Containing Musical Compositions; Copyright Term Extension; and Copyright Per Program Licenses. Subcommittee on Courts and Intellectual Property. June 27 (Nashville, Tennessee), 1997.
40. Seeking Results from the Department of Justice. Committee on the Judiciary. September 30, 1997.
41. State of Competition in the Cable Television Industry. Committee on the Judiciary. September 24, 1997.
42. Visa Fraud and Immigration Benefits Application Fraud. Subcommittee on Immigration and Claims. May 20, 1997.
43. The First Amendment and Restrictions on Issue Advocacy. Subcommittee on the Constitution. September 18, 1997.
44. The FBI Investigation into the Saudi Arabia Bombing and Foreign FBI Investigations. Subcommittee on Crime. February 12, 1997.
45. Prohibition on Financial Transactions With Countries Supporting Terrorism Act of 1997. Subcommittee on Crime. June 10, 1997. (H.R. 748).
46. Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. May 20, 1997.
47. Copyright Piracy and H.R. 2265, the No Electronic Theft (NET) Act. Subcommittee on Courts and Intellectual Property. September 11, 1997. (H.R. 2265).
48. National Bankruptcy Review Commission Report. Subcommittee on Commercial and Administrative Law. November 13, 1997.
49. Temporary Agricultural Work Visa Programs. Subcommittee on Immigration and Claims. September 24, 1997.
50. H.J. Res. 54: Proposing an Amendment to the Constitution of the United States Authorizing Congress to Prohibit the Physical Desecration of the Flag of the United States. Subcommittee on the Constitution. April 30, 1997. (H.J. Res. 54).
51. The Application of the Antitrust Laws to the Tennessee Valley Authority and the Federal Power Marketing Administrations. Committee on the Judiciary. October 22, 1997.
52. Private Trustee Reform Act of 1997 and Review of Post-Confirmation Fees in Chapter 11 Cases. Subcommittee on Commercial and Administrative Law. October 9, 1997. (H.R. 2592).
53. Amendment to the Webb-Kenyon Act; and the Private Property Implementation Act of 1997. Subcommittee on Courts and Intellectual Property. September 25, 1997. (H.R. 1063 and H.R. 1534).
54. The Role of Congress in Monitoring Administrative Rulemaking. Subcommittee on Commercial and Administrative Law. September 25, 1997. (H.R. 1036 and H.R. 1704).
55. Protecting Religious Freedom after *Boerne v. Flores*. (Parts 1, 2, and 3). Subcommittee on the Constitution. July 14, 1997, February 26, March 26, 1998.

56. Exclusions from the United States of Certain Officials from the Chinese Government Involved in the Persecution of Religious Believers; and Issue of Eligibility for Student Visas. Subcommittee on Immigration and Claims. July 24, 1997. (H.R. 967, H.R. 1543, and H.R. 2172).

57. The Antitrust Enforcement Agencies: The Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission. Committee on the Judiciary. November 5, 1997.

58. The Activities of the Federal Bureau of Investigation. (Part 1). Subcommittee on Crime. May 13, 1997. (See also Serial Nos. 59 and 60).

59. The Activities of the Federal Bureau of Investigation. (Part 2). Subcommittee on Crime. June 5, 1997. (See also Serial Nos. 58 and 60).

60. The Activities of the Federal Bureau of Investigation. (Part 3). Subcommittee on Crime. July 30, 1998. (See also Serial Nos. 58 and 59).

61. United States Department of Justice. Committee on the Judiciary. October 15, 1997.

62. Internet Domain Name Trademark Protection. (Part 1). Subcommittee on Courts and Intellectual Property. November 5, 1997.

63. Background and History of Impeachment. Subcommittee on the Constitution. November 9, 1998.

64. Application of the Americans with Disabilities Act to Medical Licensure and Judicial Officers. Subcommittee on the Constitution. May 22, 1997.

65. Religious Liberty and Charitable Donation Protection Act of 1997; and the Religious Fairness in Bankruptcy Act of 1997. Subcommittee on Commercial and Administrative Law. February 12, 1998. (H.R. 2604 and H.R. 2611).

95. Partial-Birth Abortion: The Truth. Subcommittee on the Constitution of the House Committee on the Judiciary jointly with the Senate Committee on the Judiciary. March 11, 1997. (Oversight/S. 6 and H.R. 929). (Senate Committee on the Judiciary Serial No. J-105-3).

* Civil Liability Portions of the Proposed Tobacco Settlement. Committee on the Judiciary. February 5, 1998.

* Department of Justice Appropriation Authorization Act, Fiscal Years 1999, 2000, and 2001. Committee on the Judiciary. March 11, 1998. (H.R. 3303).

* State of Competition in the Airline Industry. Committee on the Judiciary. May 19, 1998.

* Protection From Personal Intrusion Act and the Privacy Protection Act of 1998. Committee on the Judiciary. May 21, 1998. (H.R. 2448 and H.R. 3224).

* Effects of Consolidation on the State of Competition in the Financial Services Industry. Committee on the Judiciary. June 3, 1998.

* Effects of Consolidation on the State of Competition in the Telecommunications Industry. Committee on the Judiciary. June 24, 1998.

* Hate Crimes Prevention Act of 1997. Committee on the Judiciary. July 22, 1998. (H.R. 3081).

* Quality Health-Care Coalition Act of 1998. Committee on the Judiciary. July 29, 1998. (H.R. 4277).

* Inquiry Pursuant to House Resolution 581 into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States. Committee on the Judiciary. November 19, December 8, 9, 1998.

* Consequences of Perjury and Related Crimes. Committee on the Judiciary. December 1, 1998.

* Administration's Anti-Gang and Youth Violence Initiative. Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on Early Childhood, Youth and Families of the Committee on Education and the Workforce, jointly. February 26, 1997.

* Firearms Prohibitions Applicable by Reason of Domestic Violence. Subcommittee on Crime. March 5, 1997. (H.R. 26 and section 658 of H.R. 445).

* Reforming Juvenile Justice in America. Subcommittee on Crime. March 20, 1997.

* Federal Counter-Narcotic Efforts in the Caribbean. Subcommittee on Crime. April 3, 1997 (San Juan, Puerto Rico).

* Interstate Carrying of Concealed Firearms by Law Enforcement Officials; the Community Protection Act of 1997, to provide for a national concealed firearms standard, and the Law Enforcement and Community Protection Act of 1997. Subcommittee on Crime. July 22, 1997. (H.R. 218 and H.R. 339).

* Money Laundering. Subcommittee on Crime. July 24, 1997.

* Activities of the Federal Bureau of Investigation. (Part III). Subcommittee on Crime. July 30, 1997.

* Denotes material not assigned a serial number as of filing date.

- * Cellular Telephone Fraud. Subcommittee on Crime. September 11, 1997.
- * Criminal Asset Forfeiture. Subcommittee on Crime. September 18, 1997.
- * Medical Marijuana Referenda Movement in America. Subcommittee on Crime. October 1, 1997.
- * Anatomy of a Colombian Drug Trafficking Operation in the United States. Subcommittee on Crime. October 16, 1997.
- * Implementation of the Communications Assistance for Law Enforcement Act of 1994. Subcommittee on Crime. October 23, 1997.
- * Cooperation between Federal Prison Industries and the Private Sector. Subcommittee on Crime. October 30, 1997.
- * Combating Crimes Against Children Facilitated by the Internet. Subcommittee on Crime. November 7, 1997.
- * Internet Gambling Prohibition Act of 1997. Subcommittee on Crime. February 4, and June 24, 1998. (H.R. 2380).
- * Bail Bond Fairness Act of 1997. Subcommittee on Crime. March 12, 1998. (H.R. 2134).
- * Rural Law Enforcement Assistance Act of 1997 and Bulletproof Vest Partnership Grant Act of 1997. Subcommittee on Crime. March 19 and 25, 1998. (H.R. 1524 and H.R. 2829).
- * Correction Officers Health and Safety Act of 1997. Subcommittee on Crime. March 26, 1998. (H.R. 2070).
- * Protection and Privacy of Children. Subcommittee on Crime. April 30, 1998. (H.R. 305, H.R. 1972, H.R. 2173, H.R. 2122, H.R. 2488, H.R. 2815, H.R. 3185, H.R. 3494, H.R. 3729 and H.Con.Res. 125).
- * Congressional Recognition of Acts of Exceptional Valor by Public Safety Officers. Subcommittee on Crime. May 14, 1998.
- * Ecoterrorism Committed by Radical Environmental Organizations. Subcommittee on Crime. June 9, 1998.
- * Federal Bureau of Investigation's Implementation of a National Instant-Check System for Screening Prospective Gun Buyers. Subcommittee on Crime. June 11, 1998.
- * Free Market Prison Industries Reform Act of 1998 and the Federal Prison Industries Competition in Contracting Act of 1997. Subcommittee on Crime. June 25, 1998. (H.R. 4100 and H.R. 2758).
- * Civil Application of the Racketeer Influenced and Corrupt Organizations Act (RICO) to Nonviolent Advocacy Groups. Subcommittee on Crime. July 17, 1998.
- * Use of Controlled Substance Used to Commit Date-Rape. Subcommittee on Crime. July 30, 1998.
- * Drug Diversion Investigations by the United States Drug Enforcement Administration. Subcommittee on Crime. August 6, 1998.
- * No Second Chances for Murderers, Rapists, or Child Molesters Act of 1998. Subcommittee on Crime. September 17, 1998. (H.R. 4258).
- * Apalachicola-Chattahoochee-Flint River Basin Compact; Alabama-Coosa-Tallapoosa River Basin Compact; Chickasaw Trail Economic Development Compact; and Amendments to the Washington Metropolitan Area Transit Regulation Compact. Subcommittee on Commercial and Administrative Law. October 23, 1997. (H.J. Res. 91, H.J. Res. 92, H.J. Res. 95 and H.J. Res. 96).
- * Executive Office for U.S. Attorneys, Environment and Natural Resources Division, and the Executive Office for U.S. Trustees. Subcommittee on Commercial and Administrative Law. February 25, 1998.
- * Administrative Taxation: the FCC's Universal Service Tax. Subcommittee on Commercial and Administrative Law. February 26, 1998.
- * Bankruptcy Reform Act of 1998; Responsible Borrower Protection Bankruptcy Act; and the Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998. Subcommittee on Commercial and Administrative Law. March 10, 12, 18, 19, 1998. Commercial and Administrative Law. (H.R. 3150, H.R. 2500 and H.R. 3146).
- * Administrative Crimes and Quasi-Crimes. Subcommittee on Commercial and Administrative Law. Subcommittee on Commercial and Administrative Law. May 7, 1998.
- * Regulatory Fair Warning Act of 1998; and the Taxpayers Defense Act. Subcommittee on Commercial and Administrative Law. July 23, 1998. (H.R. 4049 and H.R. 4096).
- * Construction Subcontractors Payment Protection Enhancement Act of 1998. Subcommittee on Commercial and Administrative Law of the House Judiciary Committee jointly with the Subcommittee on Government Management, Information and Technology of the House Government Reform Committee. September 11, 1998. (H.R. 3032).

- * Potomac Highlands Airport Authority Compact. Subcommittee on Commercial and Administrative Law. September 25, 1998. (S.J. Res. 51).
- * Alternative Dispute Resolution and Settlement Encouragement Act and the Federal Courts Improvement Act of 1997. Subcommittee on Courts and Intellectual Property. October 9, 1997. (H.R. 2603 and H.R. 2294).
- * The Collections of Information Antipiracy Act; the Vessel Hull Design Protection Act; and the Trade Dress Protection Act. Subcommittee on Courts and Intellectual Property. October 23, 1997; February 12, 1998. (H.R. 2652, H.R. 2696, and H.R. 3163).
- * Enforcement of Child Custody Orders. Subcommittee on Courts and Intellectual Property. April 23, 1998. (H.R. 1690).
- * Trademark Anticounterfeiting and Dilution of Famous Marks. Subcommittee on Courts and Intellectual Property. May 21, 1998. (H.R. 3891 and H.R. 3119).
- * Protecting American Small Business Trade Act of 1998. Subcommittee on Courts and Intellectual Property. June 11, 1998. (H.R. 3578).
- * Class Action Jurisdiction Act of 1998. June 18, 1998. Subcommittee on Courts and Intellectual Property. (H.R. 3789).
- * Copyright Licensing Regimes Covering Retransmission of Broadcasting Signals. Subcommittee on Courts and Intellectual Property. October 30, 1997, February 4, 1998.
- * Internet Domain Name Trademark Protection. (Part 2). Subcommittee on Courts and Intellectual Property. February 12, 1998.
- * Attorneys Fees and the Proposed Global Tobacco Settlement. Subcommittee on Courts and Intellectual Property. December 10, 1997.
- * Mass Torts and Class Action Lawsuits. Subcommittee on Courts and Intellectual Property. March 5, 1998.
- * U.S. Patent and Trademark Office (PTO). Subcommittee on Courts and Intellectual Property. March 19, 1998.
- * Privacy in Electronic Communications. Subcommittee on Courts and Intellectual Property. March 26, 1998.
- * Trademark Protection and the Impact of Regulatory Delay on Patents. Subcommittee on Courts and Intellectual Property. May 21, 1998.
- * U.S. Judicial Conference, Administrative Office of the United States Courts, and the Federal Judicial Center. Subcommittee on Courts and Intellectual Property. June 11, 1998.
- * United States Copyright Office. Subcommittee on Courts and Intellectual Property. July 23, 1998.
- * Institutional Hearing Program. Subcommittee on Immigration and Claims. July 15, 1997.
- * Tucker Act Shuffle Relief Act of 1997. Subcommittee on Immigration and Claims. September 10, 1997. (HR 992).
- * Health Professional Shortage Area Nursing Relief Act of 1997. Subcommittee on Immigration and Claims. (HR 2759).
- * Final Report of the Commission on Immigration Reform. Subcommittee on Immigration and Claims. November 7, 1997.
- * Naturalization Reform Act of 1997. Subcommittee on Immigration and Claims. March 5, 1998. (H.R. 2837).
- * Pending and Anticipated Caseload of Naturalization Applications. Subcommittee on Immigration and Claims. March 19, 1998.
- * Freedom from Religious Persecution Act of 1997. Subcommittee on Immigration and Claims. (H.R. 2431). March 24, 1998.
- * Immigration and America's Workforce for the 21st Century. Subcommittee on Immigration and Claims. April 21, 1998.
- * Health Care Initiatives Pursued Under the False Claims Act That Impact Hospitals. Subcommittee on Immigration and Claims. April 28, 1998.
- * Alternative Proposals to Restructure the INS. Subcommittee on Immigration and Claims. May 21, 1998.
- * 4-Year Nonimmigrant Visitor's Visas. Subcommittee on Immigration and Claims. June 4, 1998. (H.R. 225).
- * Friendly Fire in Iraq; Settlement and payment of claims. Subcommittee on Immigration and Claims. June 18, 1998. (H.R. 2986, H.R. 3022)
- * Radiation Workers Justice Act. Subcommittee on Immigration and Claims. June 25, 1998. (H.R. 3539).
- * Alternative Technologies for Implementation of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 at Land Borders. Subcommittee on Immigration and Claims. July 23, 1998.
- * Problems Related to Criminal Aliens in Utah. Subcommittee on Immigration and Claims. July 27, 1998.

- * Tax Limitation Constitutional Amendment. Subcommittee on the Constitution. March 18, 1997. (H.J. Res. 62).
- * Civil Rights Act of 1997. Subcommittee on the Constitution. June 26, 1997. (H.R. 1909).
- * United States Commission on Civil Rights. Subcommittee on the Constitution. July 17, 1997.
- * Religious Freedom Restoration Constitutional Amendment. Subcommittee on the Constitution. July 22, 1997. (H.J. Res. 78).
- * Direct Election of the President Constitutional Amendment. Subcommittee on the Constitution. September 4, 1997. (H.J. Res. 28 and H.J. Res. 43).
- * State Approaches to Protecting Private Property Rights. Subcommittee on the Constitution. September 23, 1997.
- * Congress, the Courts and the Constitution. Subcommittee on the Constitution. January 29, 1998.
- * Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. February 25, 1998.
- * Citizen Protection Act of 1998. Subcommittee on the Constitution. March 12, 1998. (H.R. 3168).
- * State Proposal of Constitutional Amendments. Subcommittee on the Constitution. March 25, 1998. (H.J. Res. 84).
- * Child Custody Protection Act. Subcommittee on the Constitution. May 21, 1998. (H.R. 3682).
- * Religious Liberty Protection Act of 1998. Subcommittee on the Constitution. June 16, July 14, 1998. (H.R. 4019).
- * Lethal Drug Abuse Prevention Act of 1998. Subcommittee on the Constitution. July 14, 1998. (H.R. 4006).
- * Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. July 17, 1998.

Committee Prints

Serial No. and Title

-
1. Federal Rules of Appellate Procedure. December 1, 1997.
 2. Federal Rules of Civil Procedure. December 1, 1997.
 3. Federal Rules of Criminal Procedure. December 1, 1997.
 4. Federal Rules of Evidence. December 1, 1997.
 5. Compilation of Selected Civil Rights Laws (As Amended Through the 105th Congress, First Session)—Civil Rights Commission Act of 1983, Civil Rights Act of 1957, Civil Rights Act of 1960, Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title III of the Age Discrimination Act of 1975, Civil Rights Restoration Act of 1987, Civil Rights Act of 1968, Voting Rights Act of 1965, Civil Rights of Institutionalized Persons Act, Civil Rights Act of 1991, Americans with Disabilities Act of 1990, Section 722 of the Revised Statutes of the United States. March 1998.
 6. Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998. Committee on the Judiciary. September 1998.
 7. Votes of the Committee in Executive Session Pursuant to H.Res. 525 September 17, 18, 25, 1998. Committee on the Judiciary. October 1998.
 8. Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States. Meeting of the House Committee on the Judiciary held October 5, 1998—Presentation by Inquiry Staff, Consideration of Inquiry Resolution, Adoption of Inquiry Procedures. Committee on the Judiciary. December 1998.
 9. Constitutional Grounds for Presidential Impeachment: Modern Precedents. Report by the Staff of the Impeachment Inquiry. Committee on the Judiciary. November 1998.
 10. Impeachment—Selected Materials. Committee on the Judiciary. November 1998.
 11. Oversight Investigation of the Death of Esequiel Hernandez, Jr. A report of Chairman Lamar Smith of the Subcommittee on Immigration and Claims. November 1998.
 12. Federal Rules of Appellate Procedure. December 1, 1998.
 13. Federal Rules of Civil Procedure. December 1, 1998.
 14. Federal Rules of Criminal Procedure. December 1, 1998.
 15. Federal Rules of Evidence. December 1, 1998.

16. Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives. Impeachment Inquiry Pursuant to H.Res. 581. Committee on the Judiciary. December 1998.

17. Constitutional Grounds for Presidential Impeachment: Modern Precedents—Minority Views. Report by the Minority Staff of the Impeachment Inquiry. Committee on the Judiciary. December 1998.

House Documents

H. Doc. No. and Title

105–67. Amendments to the Federal Rules of Civil Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2074. April 15, 1997. (Executive Communication No. 2795).

105–68. Amendments to the Federal Rules of Criminal Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2074. April 15, 1997. (Executive Communication No. 2796).

105–69. Amendments to the Federal Rules of Evidence. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Evidence that have been adopted by the Court, pursuant to 28 U.S.C. 2074. April 15, 1997. (Executive Communication No. 2798).

105–70. Amendments to the Federal Rules of Bankruptcy Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2075. April 15, 1997. (Executive Communication No. 2797).

105–107. Report to the Congress on the Right to Bring an Action Under Title III of the Cuban Liberty and Democratic Solidarity Act of 1996. Communication from the President of the United States transmitting a report to Congress that suspension for 6 months beyond August 1, 1997, of the right to bring an action under title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba, pursuant to Public Law 104–114, section 306(e)(2). July 17, 1997. (Executive Communication No. 4228).

105–111. Legislative Proposal Entitled “Immigration Reform Transition Act of 1997”. Message from the President of the United States transmitting a legislative proposal to provide relief to certain aliens who would otherwise be subject to removal from the United States. July 24, 1997. (Presidential Message No. 55).

105–158. Veto of H.R. 1122. Message from the President of the United States transmitting his veto of H.R. 1122, a bill to amend title 18, United States Code, to ban partial-birth abortions. October 21, 1997.

105–266. Amendments to the Federal Rules of Civil Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2074. May 5, 1998. (Executive Communication No. 8997).

105–267. Amendments to the Federal Rules of Criminal Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2074. May 5, 1998. (Executive Communication No. 8998).

105–268. Amendments to the Federal Rules of Evidence. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Evidence that have been adopted by the Court, pursuant to 28 U.S.C. 2074. May 5, 1998. (Executive Communication No. 8996).

105–269. Amendments to the Federal Rules of Appellate Procedure. Communication from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Appellate Procedure that have been adopted by the Court, pursuant to 28 U.S.C. 2072. May 11, 1998. (Executive Communication No. 9072).

105–272. Proposed Legislation: International Crime Control Act of 1998. Message from the President of the United States transmitting a draft of proposed legislation

to deter and punish international crime, to protect United States nationals and interests at home and abroad, and to promote global cooperation against international crime. Referred jointly to the Committees on the Judiciary, International Relations, Ways and Means, Commerce, Transportation and Infrastructure, Banking and Financial Services, and Government Reform and Oversight. June 9, 1998. (Presidential Message No. 135).

105-310. Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c). Communication from Kenneth W. Starr, Independent Counsel. Referred to the Committee on the Judiciary pursuant to H.Res. 525. September 11, 1998. (Executive Communication No. 10849).

105-311. Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) submitted by the Office of the Independent Counsel, September 9, 1998. (Parts 1 and 2). Communication from the Office of the Independent Counsel, Kenneth W. Starr. Referred to the Committee on the Judiciary pursuant to H.Res. 525. September 18, 1998. (Executive Communication No. 11083).

105-316. Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) submitted by the Office of the Independent Counsel, September 9, 1998. (Parts 1, 2, and 3). Communication from the Office of the Independent Counsel, Kenneth W. Starr. Referred to the Committee on the Judiciary pursuant to H.Res. 525. September 28, 1998. (Executive Communication No. 11340).

105-317. Preliminary Memorandum of the President of the United States Concerning the Referral of the Office of the Independent Counsel and the Initial Response of the President of the United States to the Referral of the Office of the Independent Counsel. Communication from and released by the Committee on the Judiciary. September 28, 1998. (Executive Communication No. 11337).

Summary of Activities of the Committee on the Judiciary

LEGISLATION ENACTED INTO LAW

A variety of legislation within the Committee's jurisdiction was enacted into law during the 105th Congress. The public and private laws are listed below and are more fully detailed in the subsequent sections of this report recounting the activities of the Committee and its individual subcommittees.

PUBLIC LAWS

Public Law 105-6.—To amend title 18, United States Code, to give further assurance to the right of victims of crime to attend and observe the trials of those accused of the crime. “Victim Rights Clarification Act of 1997”. (H.R. 924) (Approved March 19, 1997; effective with respect to cases pending on the date of enactment).

Public Law 105-11.—To make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states. (H.R. 1225) (Approved April 25, 1997).

Public Law 105-12.—To clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide. “Assisted Suicide Funding Restriction Act of 1997”. (H.R. 1003) (Approved April 30, 1997).

Public Law 105-19.—To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers. “Volunteer Protection Act of 1997”. (S. 543) (Approved June 18, 1997; effective date September 16, 1997).

Public Law 105-25.—To amend the President John F. Kennedy Assassination Records Collection Act of 1992 to extend the authorization of the Assassination Records Review Board until September 30, 1998. (H.R. 1553) (Approved July 3, 1997).

Public Law 105-26.—To immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws. “Charitable Donation Antitrust Immunity Act of 1997”. (H.R. 1902) (Approved July 3, 1997; effective with respect to all conduct occurring before, on, or after the date of enactment and applicable in all administrative and judicial actions pending on or commenced after the date of enactment).

Public Law 105-30.—To clarify that the protections of the Federal Tort Claims Act apply to the members and personnel of the National Gambling Impact Study Commission. (H.R. 1901) (Approved July 25, 1997; effective date August 3, 1996).

Public Law 105-38.—To amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States. (S. 670) (Approved August 8, 1997).

Public Law 105-43.—To continue favorable treatment for need-based educational aid under the antitrust laws. “Need-Based Educational Aid Antitrust Protection Act of 1997”. (H.R. 1866) (Approved September 17, 1997; effective immediately before September 30, 1997).

Public Law 105-53.—To provide for the authorization of appropriations in each fiscal year for arbitration in United States district courts, and for other purposes. (S. 996) (Approved October 6, 1997).

Public Law 105-54.—To amend the Immigration and Nationality Act to provide permanent authority for entry into the United States of certain religious workers. (S. 1198) (Approved October 6, 1997).

Public Law 105-73.—To amend the Immigration and Nationality Act to exempt internationally adopted children 10 years of age or younger from the immunization requirement in section 212(a)(1)(A)(ii) of such Act. (H.R. 2464) (Approved November 12, 1997).

Public Law 105-80.—To make technical amendments to certain provisions of title 17, United States Code. (H.R. 672) (Approved November 13, 1997; effective dates vary).

Public Law 105-85.—To authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes. “National Defense Authorization Act for Fiscal Year 1998”. “Military Construction Authorization Act for Fiscal year 1998”. “Sikes Act Improvement Act of 1997”. “Panama Canal Commission Authorization Act for Fiscal Year 1998”. “Panama Canal Transition Facilitation Act of 1997”. (H.R. 1119) (Approved November 18, 1997; effective dates vary).

Public Law 105-101.—To amend chapter 91 of title 18, United States Code, to provide criminal penalties for theft and willful vandalism at national cemeteries. “Veterans’ Cemetery Protection Act of 1997”. (S. 813) (Approved November 19, 1997).

Public Law 105-102.—To codify without substantive change laws related to transportation and to improve the United States Code. (H.R. 1086) (Approved November 20, 1997).

Public Law 105-104.—Granting the consent of Congress to the Apalachicola-Chattahoochee-Flint River Basin Compact. (H.J. Res. 91) (Approved November 20, 1997).

Public Law 105-105.—Granting the consent of Congress to the Alabama-Coosa-Tallapoosa River Basin Compact. (H.J. Res. 92) (Approved November 20, 1997).

Public Law 105-110.—To amend the Act incorporating the American Legion to make a technical correction. (S. 1377) (Approved November 20, 1997).

Public Law 105-112.—To provide a law enforcement exception to the prohibition on the advertising of certain electronic devices. (H.R. 1840) (Approved November 21, 1997).

Public Law 105-133.—To provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000. (S. 476) (Approved December 2, 1997).

Public Law 105-136.—To amend the Immigration and Nationality Act to authorize appropriations for refugee and entrant assistance for fiscal years 1998 and 1999. (S. 1161) (Approved December 2, 1997; effective date October 1, 1997).

Public Law 105-141.—To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes. (H.R. 1493) (Approved December 5, 1997).

Public Law 105-145.—Granting the consent of Congress to the Chickasaw Trail Economic Development Compact. (H.J. Res. 95) (Approved December 15, 1997).

Public Law 105-147.—To amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes. “No Electronic Theft (NET) Act”. (H.R. 2265) (Approved December 16, 1997).

Public Law 105-151.—Granting the consent and approval of Congress for the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to amend the Washington Metropolitan Area Transit Regulation Compact. (H.J. Res. 96) (Approved December 16, 1997).

Public Law 105-166.—To make certain technical corrections to the Lobbying Disclosure Act of 1995. “Lobbying Disclosure Technical Amendments Act of 1998”. (S. 758) (Approved April 6, 1998).

Public Law 105-172.—To amend title 18, United States Code, with respect to scanning receivers and similar devices. “Wireless Telephone Protection Act”. (S. 493) (Approved April 24, 1998).

Public Law 105-173.—To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of non-immigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (S. 1178) (Approved April 27, 1998).

Public Law 105-180.—To amend Part L of the Omnibus Crime Control and Safe Streets Act of 1968. “Care for Police Survivors Act of 1998”. (H.R. 3565) (Approved June 16, 1998).

Public Law 105-181.—To establish a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments. “Bulletproof Vest Partnership Grant Act of 1998”. (S. 1605) (Approved June 16, 1998).

Public Law 105-183.—To amend title 11, United States Code, to protect certain charitable contributions, and for other purposes. (S. 1244) (Approved June 19, 1998).

Public Law 105-184.—To improve the criminal law relating to fraud against consumers. (H.R. 1847) (Approved June 23, 1998).

Public Law 105-187.—To establish felony violations for the failure to pay legal child support obligations, and for other purposes. “Deadbeat Parents Punishment Act of 1998”. (H.R. 3811) (Approved June 24, 1998).

Public Law 105-225.—To revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, “Patriotic and National Observances, Ceremonies, and Organizations”. (H.R. 1085) (Approved August 12, 1998).

Public Law 105-230.—To establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes. “Biomaterials Access Assurance Act of 1998”. (H.R. 872) (Approved August 13, 1998; effective with respect to civil actions commenced on or after August 13, 1998, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before such date).

Public Law 105-231.—To grant a Federal charter to the American GI Forum of the United States. (S. 1759) (Approved August 13, 1998).

Public Law 105-233.—To amend chapter 45 of title 28, United States Code, to authorize the Administrative Assistant to the Chief Justice to accept voluntary services, and for other purposes. (S. 2143) (Approved August 13, 1998).

Public Law 105-246.—To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes. “Nazi War Crimes Disclosure Act”. (S. 1379) (Approved October 8, 1998; effective date January 6, 1999).

Public Law 105-251.—To provide for the improvement of interstate criminal justice identification, information, communications, and forensics. “Crime Identification Technology Act of 1998”. “National Criminal History Access and Child Protection Act”. “National Crime Prevention and Privacy Compact Act of 1998”. “Volunteers for Children Act”. (S. 2022) (Approved October 9, 1998).

Public Law 105-259.—To extend the date by which an automated entry-exit control system must be developed. (H.R. 4658) (Approved October 15, 1998).

Public Law 105-261.—To authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes. “Strom Thurmond National Defense Authorization Act for Fiscal Year 1999”. (H.R. 3616) (Approved October 17, 1998; effective dates vary).

Public Law 105-271.—To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000. “Year 2000 Information and Readiness Disclosure Act”. (S. 2392) (Approved October 19, 1998).

Public Law 105-289.—To amend title 35, United States Code, to protect patent owners against the unauthorized sale of plant parts taken from plants illegally reproduced, and for other purposes. “Plant Patent Amendments Act of 1998”. (H.R. 1197) (Approved October 27, 1998).

Public Law 105-292.—To express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted in foreign countries on account of religion; to authorize United States actions in response to violations of religious freedom in foreign countries; to establish an Ambassador at Large for International Religious Freedom within the Department of State, a Commission on International Religious Freedom, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes. “International Religious Freedom Act of 1998”. (H.R. 2431) (Approved October 27, 1998).

Public Law 105-297.—To require the general application of the antitrust laws to major league baseball, and for other purposes. “Curt Flood Act of 1998”. (S. 53) (Approved October 27, 1998).

Public Law 105-298.—To amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes. “Sonny Bono Copyright Term Extension Act”. “Fairness in Music Licensing Act of 1998”. (S. 505) (Approved October 27, 1998; effective dates vary).

Public Law 105-300.—To provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes. (S. 1892) (Approved October 27, 1998; applicable with respect to any individual whose nomination is submitted to the Senate on or after the date of enactment).

Public Law 105-301.—To increase public awareness of the plight of victims of crime with developmental disabilities, to collect data to measure the magnitude of the problem, and to develop strategies to address the safety and justice needs of victims of crime with developmental disabilities. “Crime Victims With Disabilities Awareness Act”. (S. 1976) (Approved October 27, 1998).

Public Law 105-302.—To amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers. (S. 2235) (Approved October 27, 1998).

Public Law 105-304.—To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty. (H.R. 2281) (Approved October 28, 1998).

Public Law 105-310.—To amend chapter 53 of title 31, United States Code, to require the development and implementation by the Secretary of the Treasury of a national money laundering and re-

lated financial crimes strategy to combat money laundering and related financial crimes, and for other purposes. (H.R. 1756) (Approved October 30, 1998).

Public Law 105-314.—To amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes. (H.R. 3494) (Approved October 30, 1998).

Public Law 105-315.—To amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes. (H.R. 3528) (Approved October 30, 1998).

Public Law 105-318.—To amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes. (H.R. 4151) (Approved October 30, 1998).

Public Law 105-319.—To establish a cultural training program for disadvantaged individuals to assist the Irish peace process. (H.R. 4293) (Approved October 30, 1998).

Public Law 105-330.—To implement the provision of the Trademark Law Treaty. (S. 2193) (Approved October 30, 1998).

Public Law 105-339.—To amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes. (S. 1021) (Approved October 31, 1998).

Public Law 105-348. Granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia. (S.J. Res. 51) (Approved November 2, 1998).

Public Law 105-354.—To codify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code. (S. 2524) (Approved November 3, 1998).

Public Law 105-357.—To amend the Controlled Substances Import and Export Act to place limitations on controlled substances brought into the United States from Mexico. (H.R. 3633) (Approved November 10, 1998).

Public Law 105-358.—To authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes. (H.R. 3723) (Approved November 10, 1998).

Public Law 105-360.—To extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings. (H.R. 4821) (Approved November 10, 1998).

Public Law 105-369.—To provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes. (H.R. 1023) (Approved November 12, 1998).

Public Law 105-370.—To amend title 18, United States Code, to provide for the mandatory testing for serious transmissible diseases of incarcerated persons whose bodily fluids come in contact with corrections personnel and notice to those personnel of the results of the tests. (H.R. 2070) (Approved November 12, 1998).

Public Law 105-374.—To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders. (H.R. 4164) (Approved November 12, 1998).

Public Law 105-377.—Granting the consent and approval of Congress to an interstate forest fire protection compact. (S. 1134) (Approved November 12, 1998).

Public Law 105-381.—Granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement. (S.J. Res. 35) (Approved November 12, 1998).

Public Law 105-386.—To throttle criminal use of guns. (S. 191) (Approved November 13, 1998).

Public Law 105-390.—To provide for financial assistance for higher education to the dependents of Federal, State, and local public safety officers who are killed or permanently and totally disabled as the result of a traumatic injury sustained in the line of duty. (S. 1525) (Approved November 13, 1998).

PRIVATE LAWS

Private Law 105-1.—For the relief of Michael Christopher Meili, Giuseppina Meili, Mirjam Naomi Meili, and Davide Meili. (S. 768) (Approved July 29, 1997).

Private Law 105-2.—For the relief of John Wesley Davis. (H.R. 584) (Approved August 11, 1997).

Private Law 105-3.—For the relief of Roy Desmond Moser. (H.R. 2731) (Approved November 21, 1997).

Private Law 105-4.—For the relief of John Andre Chalot. (H.R. 2732) (Approved November 21, 1997).

Private Law 105-5.—For the relief of Heraclio Tolley. (H.R. 378) (Approved November 2, 1998).

Private Law 105-6.—For the relief of Larry Errol Pieterse. (H.R. 379) (Approved November 10, 1998).

Private Law 105-7.—For the relief of Mai Hoa “Jasmine” Salehi. (H.R. 1794) (Approved November 10, 1998).

Private Law 105-8.—For the relief of Mercedes Del Carmen Quiroz Martinez Cruz. (H.R. 1834) (Approved November 10, 1998).

Private Law 105-9.—For the relief of Nuratu Olarewaju Abeke Kadiri. (H.R. 1949) (Approved November 10, 1998).

Private Law 105-10.—For the relief of Chong Ho Kwak. (H.R. 2744) (Approved November 10, 1998).

CONFERENCE APPOINTMENTS

Members of the Committee were named by the Speaker as conferees on the following bills which contained legislative language within the Committee's Rule X jurisdiction:

H.R. 1119

Members of the Committee served as conferees on H.R. 1119, the "National Defense Authorization Act for Fiscal Year 1998." H.R. 1119 became law on November 18, 1997, as Public Law 105-85.

H.R. 3616

Members of the Committee served as conferees on H.R. 3616, the "National Defense Authorization Act for Fiscal Year 1999." H.R. 3616 became law on October 17, 1998, as Public Law 105-261.

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*

F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, Jr., Michigan
BILL McCOLLUM, Florida	BARNEY FRANK, Massachusetts
GEORGE W. GEKAS, Pennsylvania	CHARLES E. SCHUMER, New York
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR S. SMITH, Texas	RICK BOUCHER, Virginia
STEVEN SCHIFF, New Mexico ⁴	JERROLD NADLER, New York
ELTON GALLEGLY, California	ROBERT C. SCOTT, Virginia
CHARLES T. CANADY, Florida	MELVIN L. WATT, North Carolina
BOB INGLIS, South Carolina	ZOE LOFGREN, California
BOB GOODLATTE, Virginia	SHEILA JACKSON LEE, Texas
STEPHEN E. BUYER, Indiana	MAXINE WATERS, California
SONNY BONO, California ¹	MARTIN T. MEEHAN, Massachusetts
ED BRYANT, Tennessee	WILLIAM D. DELAHUNT, Massachusetts
STEVE CHABOT, Ohio	ROBERT WEXLER, Florida
BOB BARR, Georgia	STEVEN R. ROTHMAN, New Jersey
WILLIAM L. JENKINS, Tennessee	THOMAS M. BARRETT, Wisconsin ⁶
ASA HUTCHINSON, Arkansas	
EDWARD A. PEASE, Indiana	
CHRISTOPHER B. CANNON, Utah	
JAMES E. ROGAN, California ²	
LINDSEY O. GRAHAM, South Carolina ³	
MARY BONO, California ⁵	

¹Sonny Bono, California, deceased January 5, 1998.

²James E. Rogan, California, elected to the Committee pursuant to House Resolution 354, approved by the House February 11, 1998.

³Lindsey O. Graham, South Carolina, elected to the Committee pursuant to House Resolution 371, approved by the House February 26, 1998.

⁴Steven Schiff, New Mexico, deceased March 25, 1998.

⁵Mary Bono, California, elected to the Committee pursuant to House Resolution 429, approved by the House May 13, 1998.

⁶Thomas M. Barrett, Wisconsin, elected to the Committee pursuant to House Resolution 530, approved by the House September 11, 1998.

Tabulation of activity on legislation held at the full Committee

Legislation held at the full Committee	115
Legislation reported to the House	13
Legislation discharged from the Committee	16
Legislation pending in the House	2
Legislation failed passage by the House	1
Legislation passed by the House	27
Legislation pending in the Senate	5
Legislation vetoed by the President (not overridden)	1
Legislation enacted into public law	13
House resolutions approved	7
Legislation on which hearings were held	11
Days of hearings (legislative and oversight)	25

FULL COMMITTEE ACTIVITIES

During the 105th Congress, the full Judiciary Committee retained original jurisdiction with respect to a number of legislative and oversight matters. This included exclusive jurisdiction over the impeachment inquiry of President William Jefferson Clinton, and

antitrust and liability issues. In addition, a number of specific legislative issues were handled exclusively by the full Committee, including the Balanced Budget Constitutional Amendment, the Victims Rights Constitutional Amendment, civil asset forfeiture, the Department of Justice authorization bill, and the Protection from Personal Intrusion Act.

IMPEACHMENT

IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Background

On September 9, 1998, Independent Counsel Starr notified Speaker Gingrich and Minority Leader Gephardt that his office “delivered to the Sergeant at Arms, the Honorable Wilson Livingood, 36 sealed boxes containing two complete copies of a Referral to the House of Representatives.”¹ The Referral included a narrative, appendices, and supporting documents and evidence which supported the Office of Independent Counsel’s findings regarding the Lewinsky matter.² Independent Counsel Starr forwarded this information pursuant to the Independent Counsel Reauthorization Act, 28 U.S.C. § 591 *et. seq.*, which provides:

Information relating to impeachment.—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel’s responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title [concerning the assignment of judges to the Special Division that appoints an independent counsel] shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.³

H. Res. 525

On September 10, 1998, the Committee on Rules received testimony regarding the handling of the Referral. Chairman Hyde, Ranking Member Conyers, Representative Lofgren, Representative Jackson Lee, and Representative Waters, all Members of the Com-

¹ *Letter from Independent Counsel Kenneth W. Starr to The Honorable Newt Gingrich and the Honorable Richard A. Gephardt*, September 9, 1998.

² On January 16, 1998, in response to Attorney General Janet Reno’s request, the Special Division of the United States Court of Appeals for the District of Columbia Circuit, expanded the jurisdiction of Independent Counsel Kenneth W. Starr. The Special Division’s order provides in pertinent part:

The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton*.

In re: Madison Guaranty Savings and Loan Association, Order of the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels, January 16, 1998 (reprinted in H.R. Doc. 105–311, Part I, at 6–7).

³ 28 U.S.C. § 595(c) (1994).

mittee, testified before the Committee on Rules.⁴ After the hearing, the Committee considered an original resolution, which provided for a deliberative review by the Committee on the Judiciary of a communication from an independent counsel, and for the release thereof.⁵ On September 10, 1998, the Committee on Rules reported H. Res. 525 to the House as an original resolution (H. Rept. 105-703). The full House of Representatives approved H. Res. 525 on September 11, 1998, by a vote of 363–63.⁶ As a result of the passage of H. Res. 525, the narrative was ordered printed as a House document.⁷

Procedures Applicable to the Review of the Communication from the Independent Counsel

After the passage of H. Res. 525, Chairman Hyde issued “Procedures Applicable to the Review of the Communication from the Independent Counsel.” These procedures, reprinted herein, were promulgated to, *inter alia*, address security issues relating to the material. The Committee is particularly pleased that there were few, if any, leaks of executive session material. The procedures implemented by the Chairman are as follows:

PROCEDURES APPLICABLE TO THE REVIEW OF THE
COMMUNICATION FROM THE INDEPENDENT COUNSEL

1. Pursuant to H. Res. 525, the Committee will review the subject matter of any communication and related matters from the Independent Counsel to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced.

2. Unless otherwise authorized by the Chairman, the designated staff of the initial inquiry shall not disclose to anyone other than designated staff and Members of the Committee either the substance of their work or that of the Committee conducted in executive session. Testimony taken or documents, records, and materials received by the Committee in executive session shall not be disclosed or made public by Members or staff unless authorized by a majority vote of the Committee.

3. Offices containing executive session information regarding the initial inquiry (hereinafter the “secure area”) shall operate under strict security precautions. At least one guard shall be on duty at all times to ensure the documents, records, and materials are secure and the guard shall control ingress to, and egress from, the designated secure areas. All persons entering the secure area shall identify themselves and a list shall be kept of all persons who enter and exit the secure areas. Unless otherwise authorized by the Chairman in writing, no person may enter or exit the secure area with a cellular phone or any device,

⁴Hearing before the Comm. on Rules on H. Res. 525, 105th Cong., 2nd Sess. (September 10, 1998).

⁵*Id.*

⁶144 Cong. Rec. H7587–H7608 (daily ed. September 11, 1998).

⁷Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), H.R. Doc. 105–310, 2nd Sess, 105th Cong., 129–130 (1998).

electronic or otherwise, which may be used to transcribe or keep a record of materials in the secure area. No person may enter or exit the secure area with briefcases, containers, or any other device that may be used to transport an item.

4. All records received in executive session shall be segregated in a secure storage area. Executive session transcripts, documents, records, and materials shall be available solely to Members of the Committee and designated Committee staff in the secure area. They may be examined only at supervised reading facilities within the secure area. Unless otherwise authorized by the Chairman in writing, no person may exit the secure area with documents, records, or materials or notes, recordings, or copies thereof.

5. Access to classified information supplied to the Committee shall be limited by the Chairman, after consultation with the ranking minority member, to those staff Members with the appropriate security clearances and a need to know.

6. One official set of documents, records, or other materials received by the Committee regarding the initial inquiry shall be kept in the secure area and maintained by the Chairman. Two duplicate sets of documents, records, and other materials shall be kept in the secure area. One duplicate set shall be available to the majority and one duplicate set shall be available to the minority for review in the secure area. Additional copies may be made for the purpose of conducting the initial review. No copies made pursuant to these rules shall be removed from the secure area except for the purpose of conducting any committee hearing, meeting, or proceeding relating to the initial inquiry. Such removal is subject to Rule 4 requiring written authorization by the Chairman.

7. Each Member of the committee will be given access and the opportunity to examine all documents, records, and material that have been obtained by the Committee in executive session. Members and designated staff shall schedule a time to review documents, records, and other materials with the Chief Investigative Counsel. Hours for such examination shall be as follows:

Monday through Friday—8 a.m. until midnight

Saturday—8 a.m. until 10 p.m.

Sunday—10 a.m. until 10 p.m.

8. Except for the approximately 445 pages comprising an introduction, a narrative, and a statement of grounds, all documents, records, and materials referred to the Committee under H. Res. 525 have been received in executive session. Pursuant to clause 2(k)(7) of House Rule XI, no Member or staff may discuss, characterize, refer to, or otherwise reveal the contents of executive session materials or proceedings related thereto. Any violation of the executive

session rules of the House may be subject to such disciplinary action as the House may adjudge.

9. Once materials that have been received in executive session are made available to the public by order of the Committee, they may be removed from the secure storage area. If any redactions have been made to the materials prior to public release, only the redacted versions may be removed. Also, any work product created inside the secure storage area which does not contain, discuss, characterize, refer to or otherwise reveal the contents of executive session materials or proceedings related thereto which have not been made available to the public by order of the Committee may be removed from the secure storage area. Whether material is eligible for removal from the secure storage area pursuant to this paragraph shall be determined jointly by Tom Mooney and Julian Epstein, or their designees, after a review of the materials to be removed. The determination by Mr. Mooney and Mr. Epstein, or their designees, that materials may be removed from the secure storage area pursuant to this paragraph shall be communicated by them to the guard who is assigned to monitor the security of the secure storage area.

Proceedings Pursuant to H. Res. 525

In addition to ordering the public release of the narrative, section two of H. Res. 525 directed that the “balance of [the] material . . . shall be released from [executive session status] on September 28, 1998, except as otherwise determined by the committee. Material so released shall immediately be submitted for printing as a document of the House.” Pursuant to this directive, the Committee staff reviewed over 60,000 documents in less than 3 weeks. The task was daunting and required a great deal of staff resources to complete the job within the allotted time frame. After the staff and Members reviewed the material, the Committee met in executive session on September 17, 18, and 25 to consider the staff’s recommendations regarding the release of materials and proposed redactions to those materials which were made to protect privacy, remove vulgarities, and protect sensitive law enforcement information, such as the names of FBI agents.⁸ On September 18 and pursuant to H. Res. 525, redacted appendices to the Referral were ordered printed as a House document⁹ and redacted supplemental materials to the referral were released on September 28.¹⁰ Also, on September 28, the President’s responses to the Referral, which were received by the Committee in executive session, were ordered printed as a House document.¹¹

⁸ See *Notes of the Comm. in Executive Session Pursuant to H. Res. 525*, Comm. on the Judiciary, House of Representatives, Comm. Print, Ser. No. 7, 105th Cong., 2nd Sess. (1998).

⁹ *Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel, September 9, 1998*, H.R. Doc. 105-311, 105th Cong., 2nd Sess. (September 18, 1998).

¹⁰ *Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel, September 9, 1998*, H.R. Doc. 105-316, 105th Cong., 2nd Sess. (September 28, 1998).

¹¹ *Preliminary Memorandum of the President of the United States Concerning Referral of the Office of the Independent Counsel and Initial Response of the President of the United States to*

Pursuant to H. Res. 525, the Committee was also obligated to “determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced.” In order to fulfill that important obligation, the Chairman and Ranking Minority Member directed the majority and minority chief investigative counsels to advise the Committee regarding the information referred by the Independent Counsel. The Committee received their orally delivered reports on October 5, 1998. The Committee’s Chief Investigative Counsel advised that there was enough information to warrant a full inquiry, while the minority’s chief investigative counsel advised against conducting a full inquiry.

Consideration and Passage of H. Res. 581

Following those presentations, the Committee approved an original resolution which recommended that the full House of Representatives authorize the Committee to conduct an impeachment inquiry. The Committee approved that resolution, which eventually became H. Res. 581, by a vote of 21 to 16. Also, on that day the Committee considered and approved by voice vote impeachment inquiry procedures which were modeled after the procedures used in 1974.¹² The procedures adopted are as follows:

HOUSE COMMITTEE ON THE JUDICIARY
IMPEACHMENT INQUIRY PROCEDURES

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 581, subject to modification by the Committee as it deems proper as the inquiry proceeds.

A. The Committee shall conduct an investigation pursuant to H. Res. 581.

1. Any Committee Member may bring additional evidence to the Committee’s attention.

2. The President’s counsel shall be invited to respond to evidence received and testimony adduced by the Committee, orally or in writing as shall be determined by the Committee.

3. Should the President’s counsel wish the Committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness, precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the Committee shall determine whether the suggested evidence is necessary

Referral of the Office of the Independent Counsel, H.R. Doc. 105-317, 105th Cong., 2nd Sess. (September 28, 1998).

¹²*Authorization of an Inquiry Into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States; Meeting of the House Comm. on the Judiciary Held October 5, 1998; Presentation by Inquiry Staff/Consideration of Inquiry Resolution/Adoption of Inquiry Procedures*, Committee Print, Ser. No. 8, 105th Cong., 2nd Sess. (December 1998).

or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

B. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses, or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a Member of the Committee, Committee counsel or the President's counsel and shall be ruled upon by the Chairman or presiding Member. Such rulings shall be final, unless overruled by a vote of a majority of the Members present.

3. Committee counsel shall commence the questioning of each witness and may also be permitted by the Chairman or presiding Member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the Committee, subject to instructions from the Chairman or presiding Member respecting the time, scope and duration of the examination.

C. The Committee shall determine, pursuant to the Rules of the House, whether and to what extent the evidence to be presented shall be received in executive session.

D. The Chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of Committee hearings held pursuant to H. Res. 581, provided that the additional procedures are not inconsistent with these Procedures, the Rules of the Committee, and the Rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the Members present.

E. For purposes of hearings held pursuant to these rules, a quorum shall consist of 10 Members of the Committee.

F. Information obtained by the Committee pursuant to letter request, subpoena, deposition, or interrogatory shall be considered as taken in executive session unless it is received in an open session of the Committee. The Chairman is authorized to determine whether other materials received by the Committee shall be deemed executive session material.

On October 7, the Committee reported H. Res. 581 to the House as an original resolution (H. Rept. 105–795).¹³ On October 8, by a vote of 258 to 176, the House passed H. Res. 581, which “authorized and directed [the Committee on the Judiciary] to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America.” 144 Cong. Rec. H10119 (daily ed. October 8, 1998).

Proceedings Pursuant to H. Res. 581

After the passage of H. Res. 581, Committee staff was directed to investigate fully the allegations and evidence relating to the Referral. Furthermore, the staff met with representatives of the White House to discuss ways in which the inquiry could proceed expeditiously. At an October 21, 1998, meeting, Charles F.C. Ruff, counsel to the President, and his colleagues were asked to provide exculpatory information to the Committee. They did not supply any information. Also, the White House was provided copies of the Committee’s procedures which, *inter alia*, allowed the President’s counsel to call witnesses. They did not exercise this right until the Committee was preparing to vote on articles of impeachment.

In order to move the process forward, the Committee sent the President 81 requests for admission which were to be answered in writing under oath.¹⁴ Notwithstanding repeated requests, the White House did not submit its answers until after 3 weeks passed.¹⁵ Many on the Committee felt that the President’s answers were evasive, misleading, and perjurious. His answers became the basis for the fourth article of impeachment.

On November 9, 1998, the Subcommittee on the Constitution held a hearing at which 19 legal and constitutional experts testified on the background and history of impeachment.¹⁶ The purpose of the hearing was to hear from a diverse group of scholars regarding the constitutional standard of impeachment—“high Crimes and Misdemeanors.” The Committee also published three lengthy documents to assist Members with their research into impeachment.¹⁷

On November 19, 1998, the Committee heard testimony from Independent Counsel Starr.¹⁸ Judge Starr was invited after many Democrats requested that he be called before the Committee. David Kendall, the President’s private attorney, questioned Judge Starr for an hour. In all of his questioning, Mr. Kendall never once asked any questions relating to the evidence collected during the grand jury’s investigation.

¹³ *Investigatory Powers of the Comm. on the Judiciary with Respect to its Impeachment Inquiry*, H. Rept. 105–795, 105th Cong., 2nd Sess. (October 7, 1998).

¹⁴ *Letter from The Honorable Henry J. Hyde to The Honorable William Jefferson Clinton*, November 5, 1998.

¹⁵ *Letter from Mr. David Kendall, Esq. to The Honorable Henry J. Hyde*, November 27, 1998.

¹⁶ *The Background and History of Impeachment: Hearing before the Subcomm. on the Constitution, Comm. on the Judiciary*, 105th Cong., 2nd Sess. (November 9, 1998).

¹⁷ See *Constitutional Grounds for Presidential Impeachment: Modern Precedents*, House Comm. on the Judiciary, Comm. Print, Ser. No. 9, 105th Cong., 2nd Sess. (November 1998); *Impeachment: Selected Materials*, House Comm. on the Judiciary, Comm. Print, Ser. No. 10, 105th Cong., 2nd Sess. (November 1998); *Constitutional Grounds for Presidential Impeachment: Modern Precedents, Minority Views*, House Comm. on the Judiciary, Comm. Print, Ser. No. 17, 105th Cong., 2nd Sess. (December 1998).

¹⁸ *Hearings on Impeachment Inquiry Pursuant to H. Res. 581: Hearing before the Comm. on the Judiciary*, 105th Cong., 2nd Sess. (November 19, 1998).

On December 1, the Committee adduced testimony from various witnesses regarding the law of perjury.¹⁹ The Committee heard from the Hon. Gerald B. Tjoflat, United States Circuit Judge, United States Court of Appeals for the Eleventh Circuit; the Hon. Charles E. Wiggins, United States Circuit Judge, United States Court of Appeals for the Ninth Circuit; the Hon. A. Leon Higginbotham, Jr., Paul, Weiss, Rifkind, Wharton & Garrison, Washington, D.C.; the Hon. Elliot Richardson, Milbank, Tweed, Hadley & McCloy, Washington, D.C.; Admiral Leon A. Edney, U.S.N. (Ret.); Lieutenant General Thomas P. Carney, U.S.A. (Ret.); Professor Alan Dershowitz, Felix Frankfurter Professor of Law, Harvard Law School; Professor Stephen Saltzburg, Howrey Professor of Trial Advocacy, Litigation, and Professional Responsibility, George Washington University Law School; Professor Jeffrey Rosen, Associate Professor of Law, George Washington University Law School; Ms. Pam Parsons, Atlanta, Georgia; and Dr. Barbara Battalino, Los Osos, California, accompanied by her attorney, Mr. Curtis Clark. Ms. Parsons and Dr. Battalino were prosecuted for perjury arising out of civil cases which had many similarities to the *Jones v. Clinton* case.

After several months of requesting the White House to submit witnesses, the White House notified the Committee on Friday, December 4, that they wished to call witnesses. This was after the Chairman had already announced that the Committee would consider articles of impeachment the following week. The Committee accommodated the White House's request, and held two lengthy days of hearings. The White House's witnesses were Mr. Gregory B. Craig, Assistant to the President and Special Counsel; The Honorable Nicholas Katzenbach, former Attorney General of the United States under President Johnson and Under Secretary of State; Professor Bruce Ackerman, Sterling Professor of Law and Political Science at Yale University; Professor Sean Wilentz is the Dayton Stockton Professor of History and Director of Program and American Studies at Princeton University; Professor Samuel H. Beer, Eaton Professor of the Science of Government Emeritus at Harvard University; The Honorable Elizabeth Holtzman, a former representative from New York and member of the House Judiciary Committee during the 1974 impeachment proceeding; The Honorable Robert J. Drinan, S.J., Professor at Georgetown University Law Center and a former representative from Massachusetts and member of the House Judiciary Committee during the 1974 impeachment proceeding; The Honorable Wayne Owens, a former representative from Utah and member of the House Judiciary Committee during the 1974 impeachment proceeding; James Hamilton, a member of the Washington, D.C. law firm of Swidler, Berlin, Shereff & Friedman; Richard Ben-Veniste; Richard J. Davis, a partner with the New York law firm of Weil, Gotschal & Manges; Edward S.G. Dennis, Jr., a partner in the Litigation Section of the Philadelphia law firm of Morgan, Lewis & Bockius; William F. Weld, a former two-term governor of Massachusetts and currently a partner in the Chicago law firm of McDermott, Will & Emery;

¹⁹*The Consequences of Perjury and Related Crimes: Hearing before the Comm. on the Judiciary, 105th Cong., 2nd Sess. (December 1, 1998).*

Ronald Noble, Associate Professor of Law at NYU Law School; and Mr. Charles F.C. Ruff, Counsel to the President.²⁰ The Committee ordered printed Mr. Ruff's submission to the Committee.²¹

H. Res. 611

Finally, on December 10, 11, and 12, 1998, the Committee considered and passed an original resolution containing four articles of impeachment. The procedure used to consider the articles of impeachment was similar to and predicated upon the procedures used in 1974. Prior to the consideration of the articles, Representative Sensenbrenner moved the resolution's favorable recommendation to the House. After the clerk of the Committee reported the resolution, the Committee approved Chairman Hyde's unanimous consent request that provided in pertinent part that ". . . the proposed articles shall be considered as read and open for amendment. Each proposed article and any additional article, if any, shall be separately voted upon, as amended, for the recommendation to the House, if any article has been agreed, the original motion shall be considered as adopted and the Chairman shall report to the House said resolution of impeachment, together with such articles as have been agreed to."²² Four articles of impeachment were adopted and ordered reported to the House. Article One, as amended, was ordered favorably reported by a vote of 21 to 16. Article Two was ordered favorably reported by a vote of 20 to 17. Article Three was ordered favorably reported by a vote of 21 to 16. Article Four, as amended, was ordered favorably reported by a vote of 21 to 16.

Although not germane to the consideration of a privileged impeachment resolution, Chairman Hyde and the Committee agreed to consider a joint resolution sponsored by Mr. Boucher that would have rebuked President Clinton by expressing the sense of Congress with respect to President Clinton's behavior. This joint resolution of censure offered by Mr. Boucher was defeated by a vote of 14 ayes to 22 nays with one member voting present.

On December 16, 1998, the Committee reported H. Res. 611 as an original resolution containing the articles of impeachment (H. Rept. 105-830). The full House debated H. Res. 611 on December 18 and 19. Articles one and three, having to do with perjury before the grand jury and obstruction of justice respectively, passed the House on December 19.²³ Article One was agreed to by a vote of 228 to 206 and Article Three was agreed to by a vote of 221 to 212.²⁴

H. Res. 614

After passage of H. Res. 611, Chairman Hyde introduced H. Res. 614, which appointed Representatives Hyde, Sensenbrenner, McCollum, Gekas, Canady, Buyer, Bryant, Chabot, Barr, Hutchinson, Cannon, Rogan, and Graham as managers on behalf of the

²⁰ *Hearings on Impeachment Inquiry Pursuant to H. Res. 581: Hearing before the Comm. on the Judiciary, 105th Cong., 2nd Sess.* (December 9, 1998).

²¹ *Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives, House Comm. on the Judiciary, Comm. Print, Ser. No. 16, 105th Cong., 2nd Sess.* (December 1998).

²² *See House Committee on the Judiciary Business Meeting*, at 3-6, December 10, 1998 (unofficial transcript).

²³ 144 Cong. Rec. H12040-H12042 (daily ed. December 19, 1998).

²⁴ *Id.*

House of Representatives. H. Res. 614 authorized the managers to, *inter alia*, exhibit articles of impeachment in the Senate.²⁵ After the resolution passed by a vote of 228 to 190, the managers hand carried the official notice to the Senate and H. Res. 611, as passed by the House, to the Secretary of the Senate.

LEGISLATIVE ACTIVITIES

ANTITRUST

Need-Based Educational Aid Antitrust Protection Act of 1997—H.R. 1866 (Public Law 105-43)

Summary.—Beginning in the mid-1950s, a number of prestigious private colleges and universities agreed to award institutional financial aid (i.e., aid from the school's own funds) solely on the basis of demonstrated financial need. In a recent year, institutional aid at all colleges and universities amounted to about \$8.6 billion as compared to federal aid of about \$6.6 billion. These schools also agreed to use common principles to assess each student's financial need and to give essentially the same financial aid award to students admitted to more than one member of the group. Among the schools engaging in this practice were the Ivy Overlap Group (Brown, Columbia, Cornell, Dartmouth, Harvard, Princeton, Penn, Yale, and MIT) and the Pentagonal/Sisters Overlap Group (Amherst, Williams, Wesleyan, Bowdoin, Dartmouth, Barnard, Bryn Mawr, Mount Holyoke, Radcliffe, Smith, Vassar, Wellesley, Colby, Middlebury, Trinity, and Tufts).

From the 1950s through the late 1980s, the practice continued undisturbed. In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices. In 1991, the eight Ivy League schools (i.e. all of the Ivy Overlap Group except for MIT) agreed to a consent decree that for all practical purposes ended the practices of the Overlap Group. See *United States v. Brown University*, 1991 U.S. Dist. Lexis 21168, 1993-2 Trade Cases ¶ 70,391 (E.D. Pa. 1991).

In 1992, Congress passed a temporary antitrust exemption to allow the schools to agree to award financial aid on a need-blind basis and to use common principles of needs analysis. Higher Education Amendments of 1992, section 1544, Public Law 102-325, 106 Stat. 448, 837 (1992). This temporary exemption specifically prohibited any agreement as to the terms of a financial aid award to any specific student. By its terms, it expired on September 30, 1994.

In the meantime, MIT continued to contest the lawsuit. After a non-jury trial, the district court ruled that the practices of the Overlap Group violated the antitrust laws, but specifically invited a legislative solution. *United States v. Brown University*, 805 F.Supp. 288 (E.D. Pa. 1992). On appeal, MIT won a reversal of the district court's decision. *United States v. Brown University*, 5 F.3d 658 (3d Cir. 1993). The appeals court held that the district court had not engaged in a sufficiently thorough antitrust analysis and

²⁵*Id.* at H12042-H12043.

remanded for further consideration. After that decision, the parties reached a final settlement.

In 1994, Congress passed another temporary exemption from the antitrust laws. Improving America's Schools Act of 1994, section 568, Public Law 103-382, 108 Stat. 3518, 4060 (1994). This exemption resembled the one passed in 1992 in that it allowed agreements to provide aid on the basis of need only and to use common principles of needs analysis. It also prohibited agreements on awards to specific students. However, unlike the 1992 exemption, it also allows agreement on the use of a common aid application form and the exchange of the student's financial information through a third party. Section 568 roughly mirrors the settlement reached in 1993. It provided for this exemption to expire on September 30, 1997.

Under the exemption passed in 1994, the affected schools have recently adopted a set of general principles to determine eligibility for institutional aid. These principles address issues like expected contributions from non-custodial parents, treatment of depreciation expenses which may reduce apparent income, valuation of rental properties, and unusually high medical expenses. Common treatment of these types of issues makes sense, and the existing exemption has worked well. H.R. 1866, as passed by the House, would have made the exemption passed in 1994 permanent. It would not have made any change to the substance of the exemption. The Senate amendment, which ultimately became law, provides for a 4-year extension of the exemption and it makes some minor technical changes to the information sharing provision of the exemption.

The need-based financial aid system serves social goals that the antitrust laws do not adequately address—namely, making financial aid available to the broadest number of students solely on the basis of demonstrated need. Without it, the schools would be required to compete, through financial aid awards, for the very top students. Those very top students would get all of the aid available which would be more than they need. The rest would get less or none at all. Ultimately, such a system would serve to undermine the principles of need-based aid and need-blind admissions. No student who is otherwise qualified ought to be denied the opportunity to go to one of the nation's most prestigious schools because of the financial situation of his or her family. H.R. 1866 will help protect need-based aid and need-blind admissions and preserve that opportunity.

Legislative History.—On June 11, 1997, Representatives Lamar Smith and Barney Frank introduced H.R. 1866, the “Need-Based Educational Aid Antitrust Protection Act of 1997,” which was referred to the Committee on the Judiciary. On June 18, 1997, the full Committee met and ordered the bill reported favorably by a voice vote.

On June 23, 1997, the Committee favorably reported the bill to the House, H. Rept. 105-144. The same day, the House suspended the rules and passed H.R. 1866 by voice vote. On July 30, 1997, the Senate passed H.R. 1866 with an amendment by unanimous consent. On September 8, 1997, the House suspended the rules and agreed to the Senate amendment to H.R. 1866 by voice vote. On

September 17, 1997, the President signed H.R. 1866 into law as Public Law 105-43.

The Curt Flood Act of 1998—S. 53 (Public Law 105-297)

Summary.—The Supreme Court first held that the business of baseball is exempt from the antitrust laws in 1922. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). The Court, emphasizing organized baseball's longstanding reliance on that exemption, twice declined to overrule its original 1922 decision. *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953). Instead, the Court left Congress to decide whether the baseball exemption should continue.

Congress decided to legislate in this area this year, but it did so only in an extremely narrow manner. S. 53 leaves completely unchanged all aspects of the baseball antitrust exemption except for the narrow issue of the labor relations of major league players at the major league level as set out in detail in the new subsection 27(b) of the Clayton Act.

This bill originates from a compromise struck during the last round of collective bargaining between the major league owners and the major league players. After a lengthy labor dispute, these parties reached a collective bargaining agreement that, among other things, required negotiation to reach agreement on a limited repeal of baseball's antitrust exemption. They did so because the players' union argued that the antitrust exemption contributed to the labor disputes that have long marked its relationship with the owners. Specifically, the union asserted that it was disadvantaged in its labor negotiations with the owners because, unlike unions of other professional athletes, it could not challenge allegedly unlawful employment terms under the antitrust laws.

The major league clubs disagreed with this view. They contended that the baseball exemption was irrelevant to their labor negotiations with the union. The clubs argued that, like every other multi-employer bargaining group, they were protected from antitrust challenges to their employment terms by the nonstatutory labor antitrust exemption.

As a result of this difference of opinion, both the players and the owners were willing to support the repeal of the specific and narrow portion of the baseball exemption covering labor relations between major league players and major league clubs. The bill was carefully drafted, however, to leave the remainder of the exemption intact.

Before this bill passed the Senate, several changes were adopted to address concerns raised by owners of the minor league teams—the members of the National Association of Professional Baseball Leagues. Minor league baseball owners were concerned that the original bill reported by the Senate Judiciary Committee might not adequately protect their interests. Specifically, the minor league clubs were concerned that the original version of S. 53 was not sufficiently clear to preserve antitrust protection for: (1) the relationship between the major league clubs and the minor league clubs and (2) those work rules and employment terms that arguably affect both major league and minor league baseball players.

Members of Congress agreed that this narrow legislation should not hurt the grass roots minor league baseball played in over 150 towns across the country. For that reason, the minor league clubs were invited into the discussion and given an opportunity to suggest changes to address their concerns, and those changes were incorporated.

As a result of these three-way negotiations, the parties agreed to amend the bill in several significant ways. These amendments clarify the limited reach of the bill and the expansive nature of the continued protection the bill affords to minor league baseball. For instance, to accommodate the concerns of the minor league clubs, subsection (b) of the new section 27 of the Clayton Act was changed by adding the word “directly” immediately before the phrase “relating to or affecting employment” and the phrase “major league players” was added before the phrase “to play baseball.” These changes were made to ensure that neither major league players nor minor league players could use new subsection (a) to attack conduct, acts, practices, or agreements designed to apply to minor league employment.

In addition, new subsection (c) was added to clarify that only major league players could sue under the new subsection (a). Again, the minor leagues were concerned that, without a narrow standing section, minor league players or amateurs might attempt to attack minor league issues by asserting that these issues also indirectly affected major league employment terms.

Therefore, the new subsection (c) carefully limits the zone of persons protected by the bill to only major league players by providing that “only a major league baseball player has standing to sue under” this limited antitrust legislation. The standing provision gives major league baseball players the same right to sue under the antitrust laws over the major league employment terms that other professional athletes have. Of course, the United States has standing to sue to enjoin all antitrust violations under 15 U.S.C. §§ 4 and 25, and subsection 27(c) was not intended to limit that broad authority.

This bill does not affect the application of the antitrust laws to anyone outside the business of baseball. In particular, it does not affect the application of the antitrust laws to other professional sports. The law with respect to the other professional sports remains exactly the same after this bill becomes law.

The Ranking Member of the Judiciary Committee, Representative John Conyers, had his own bill on this topic, H.R. 21, and his work was instrumental in bringing about the successful completion of this legislation.

Legislative History.—Senators Hatch, Leahy, Thurmond, and Moynihan introduced S. 53 on January 21, 1997, and it was referred to the Senate Committee on the Judiciary. On October 29, 1997, the Committee reported the bill favorably to the Senate with an amendment by an 11–6 vote. S. Rept. 105–118. On July 30, 1998, S. 53, as amended, passed the Senate by unanimous consent with an additional floor amendment.

On July 31, 1998, S. 53 was referred to the House Committee on the Judiciary. On October 7, 1998, the Committee was discharged from further consideration. The same day, the House suspended

the rules and passed S. 53, as it was passed by the Senate, by a voice vote. On October 27, 1998, the President signed S. 53 into law as Public Law 105–297.

Charitable Donation Antitrust Immunity—H.R. 1902 (Public Law 105–26)

Summary.—The “Charitable Donation Antitrust Immunity Act of 1997” provides antitrust immunity to those involved in raising charitable donations in the form of charitable gift annuities and charitable remainder trusts. The exemption extends to both federal and state law, although a state would have until 1998 to expressly override application of the Act to its state antitrust laws.

Charitable gift annuities and charitable remainder trusts are fundraising instruments defined and regulated under sections 501(m)(5) and 664(d) of the Internal Revenue Code. A person who enters into a gift annuity or charitable remainder trust agreement with a religious, charitable or educational institution makes a gift to the institution and receives a fixed income for life. Since the value of the gift received is more than the property transferred to the donor, a bargain sale has occurred, and the difference in values is deductible to the donor. *See* 26 U.S.C. § 1011(b).

The annuity rate applied to the value of the gift is the critical element in ensuring that the transaction will result in a meaningful gift to the charity. The American Council on Gift Annuities, a non-profit organization representing more than 1,500 charitable organizations and institutions, provides technical assistance to its members in determining appropriate annuity rates. The rates recommended by the Council are based on actuarial studies of mortality experience among annuitants and a conservative projection of the rate of income to be earned on invested reserve funds. They are computed to produce an average “residuum” or gift to the organization of between 40 and 60 percent of the amount originally donated under the agreement. Consequently, the rates are lower than and are not in competition with any rates offered commercially.

The Council promotes the use of its rates for two reasons. First, it protects the fiscal integrity of the charity. Offering gift annuities at rates higher than the recommended rates may jeopardize the gift that is to be available to the charity. If the rate is too high, other funds or the general assets of the organization may be required to carry out the terms of the agreement. Second, it ensures that donative intent rather than financial gain motivates the choice of recipient. Use of consistent annuity rates, and thus equal rates of return, assure a “level playing field” for charities, so that a donor’s choice of the charitable beneficiary of a gift annuity will depend on the relative merits of the institutions under consideration in the subjective judgment of the donor.

Charitable giving through gift annuities and charitable trusts was threatened by a lawsuit pending in the United States District Court for the Northern District of Texas. *Richie v. American Council on Gift Annuities, Inc.* (Civ. No. 7:94–CV–128–X). The Richie suit, as originally filed, alleged that the use of the same annuity rate by the various charities constituted price fixing, and thus a violation of the antitrust laws. The complaint sought to enjoin the

charities from offering gift annuities using the Council's tables, to obtain a refund, and to recover treble damages.

In recognition of the potential impact of this litigation on charitable giving, Congress enacted the "Charitable Gift Annuity Antitrust Relief Act of 1995" (15 U.S.C. section 37, *et seq.*), which grants antitrust protection to entities described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation, and which issue charitable gift annuities. It specifies that agreeing to use, or using the same annuity rate for the purpose of issuing one or more charitable gift annuity is not unlawful under the antitrust laws. The exemption extends to both Federal and State law, although a state would have 3 years after enactment to expressly override application of the bill to its state antitrust laws.

Enactment of the 1995 Act was anticipated to provide a complete defense to the antitrust portions of *Richie*, as well as protection from future suits based on the use of agreed-upon annuity rates. That did not prove to be the case. A decision by the United States Court of Appeals for the Fifth Circuit, *Ozee v. American Council on Gift Annuities, Inc.*, 110 F.3d 1082 (5th Cir. 1997), upheld the denial of a motion to dismiss based on an assertion of the new antitrust exemption. That decision, and the ruling of the District Court, indicated that the Charitable Gift Annuity Antitrust Relief Act of 1995 was not being interpreted as broadly as it was intended by Congress.

H.R. 1902 replaced then-current law with language drafted in broader terms, so as to ensure that the provision would be interpreted by the courts in a manner which would achieve the goals of the 1995 Act. Enactment of the Act was intended to obviate the need for further litigation over the antitrust portions of the *Richie* case, in that it extended complete immunity to all defendants being sued for participation in the issuance of a charitable gift annuity or charitable remainder trust.

Legislative History.—Chairman Hyde introduced H.R. 1902 on June 17, 1997, along with eight original co-sponsors. The Committee ordered it reported by voice vote on June 18, 1997. House Report 105-146. It passed the House under suspension of the rules on June 23, 1997, and was approved by the Senate by voice vote on June 24, 1997. H.R. 1902 was approved by the President on July 3, 1997, and became Public Law 105-26.

Health Care and Antitrust—H.R. 415 and H.R. 4277

Summary.—In recent years, health insurers and health maintenance organizations (HMOs) have increasingly asserted control over health care decisions that doctors and patients once made. The insurers and HMOs contend that these kinds of controls are necessary to keep prices low and to keep health insurance coverage affordable. Doctors contend that these kinds of controls invade the traditional doctor-patient relationship and that they keep prices so low that doctors cannot practice economically. Doctors further contend that in negotiating contracts that establish these controls the insurers have much greater bargaining power than do individual doctors.

In response to this problem, doctors have formed their own networks to compete with HMOs. However, there has been consider-

able debate about the question of to what degree doctors must combine their practices to form a network without being charged with price fixing. In August 1996, the antitrust enforcement agencies, the Department of Justice and the Federal Trade Commission, issued joint guidelines on this topic, and they appear to be working well. Nonetheless, to maintain some focus on this issue, Chairman Hyde with 17 cosponsors introduced H.R. 415 which would have further addressed this issue. However, because the Committee believe the guidelines were working successfully, it took no further action on H.R. 415.

A separate bill introduced by Representative Tom Campbell and four cosponsors on July 20, 1998, H.R. 4277, takes a different approach—i.e., that doctors ought to have the same antitrust exemption that labor unions have when they are negotiating with HMOs. Proponents of H.R. 4277 argue that doctors will be able to get a fair deal in these negotiations only if they are allowed to band together to negotiate with insurers and HMOs. They argue that doctors cannot engage in these kinds of joint negotiations without an antitrust exemption. They also believe that patients will be better served because the doctors will use their greater bargaining power to seek contracts that allow the insurers less control over patient care.

Critics of H.R. 4277 argue that it would harm consumers because it would allow doctors to fix prices and engage in group boycotts thereby driving up the cost of insurance. The bill places no limits on the percentage of providers in a market that could band together. Thus, doctors, particularly in smaller markets, could exercise high degrees of market power. They also contend that under the guidelines, doctors are free to band together and negotiate directly with employers if they do not like the deals they get with insurers. Ultimately, they argue that the bill would end the ability of competitive forces to control health care costs and to improve efficiency.

Legislative History.—On July 29, 1998, the full Committee held a hearing on H.R. 4277 at which the following witnesses appeared: Hon. Tom Campbell, United States Representative, 15th District of California; Hon. Robert Pitofsky, Chairman, Federal Trade Commission, Washington, D.C.; Dr. Donald Palmisano, Member, Board of Trustees, American Medical Association, Metairie, Louisiana; Dr. Michael Connair, Federation of Physicians and Dentists, American Federation of State, County, and Municipal Employees, North Haven, Connecticut; Mr. Stephen deMontmollin, Vice President and General Counsel, AV-MED Health Plan, Gainesville, Florida, on behalf of the American Association of Health Plans; Karen Fennell, R.N., M.S., Senior Policy Analyst, American College of Nurse-Midwives, Washington, D.C., on behalf of the Antitrust Coalition.

LIABILITY ISSUES

Volunteer Protection—H.R. 911/S. 543 (Public Law 105-19)

Summary.—H.R. 911, the Volunteer Protection Act, promotes the interests of social services program beneficiaries and taxpayers, and sustains the availability of programs, non-profit organizations,

and governmental entities that depend on volunteer contributions, by providing volunteers reasonable protections from legal liability.

Volunteer service has become a high risk venture. From school chaperones to Girl Scout and Boy Scout troop leaders to Big Brothers and Big Sisters, volunteers perform valuable services. But rather than thanking these volunteers, our current legal system allows them to be dragged into court and subjected to needless and unfair lawsuits. In most instances the volunteer is ultimately found not liable, but the potential for unwarranted lawsuits creates an atmosphere where too many people are pointing fingers and too few remain willing to offer a helping hand.

The need for relief from these debilitating lawsuits has increased over the last two decades. The fear of being sued has had an impact on volunteerism, in that it has caused non-profit organizations to stop offering certain kinds of programs, caused potential volunteers to stay home, and led to an increase in the cost of insurance against potential verdicts. The effect of this increase in litigation—and the media attention it has drawn—has been to dampen the willingness of people to give of their time to charity. Statistics show that the rates at which people volunteer are on the decline, particularly in categories where longstanding commitments are required. According to a report by the Independent Sector, the percentage of Americans volunteering dropped from 54 percent in 1989 to 51 percent in 1991 and 48 percent in 1993. The Gallup organization studied volunteerism and found, in a study titled “Liability Crisis and the Use of Volunteers of Nonprofit Associations” that approximately 1 in 10 nonprofit organizations had experienced the resignation of a volunteer due to liability concerns. Gallup also found that 1 in 6 volunteers reported withholding services due to a fear of exposure to liability suits. And, 1 of 7 nonprofit agencies had eliminated one or more of their valuable programs because of exposure to lawsuits.

The increase in liability concerns is also evidenced by the increase in the liability insurance costs of nonprofit organizations. The average reported increase for insurance premiums for nonprofits over the period 1985–1988 was 155%. One in eight organizations reported an increase of over 300%. Little League Baseball reports the liability rate for a league increased from \$75 to \$795 in just 5 years. In fact, the Little League’s major expenditure is not bats and balls, but the cost of obtaining insurance against liability. Many leagues cannot pay the \$795 needed, so they operate their programs without coverage or discontinue the program altogether.

It is not enough to leave it to the States to solve this problem. Volunteerism is a national activity and the decline in volunteerism is a national concern. And in many cases, volunteer activities cross state lines. Even a local group may operate across state lines. A Boy Scout troop in Georgia may go on an outing in Tennessee or Alabama. A Little League team might routinely play games in Virginia, Maryland and the District of Columbia. A meals-on-wheels volunteer might daily deliver meals in Kansas City, Kansas, and Kansas City, Missouri. In emergency situations and disasters, such as hurricanes or the floods in our upper Midwest states, volunteers come from many states. Although every state now has a law pertaining specifically to legal liability of at least some types of volun-

teers, many volunteers remain fully liable for any harm they cause, and all volunteers remain liable for some actions. Only about half of the states protect volunteers other than officers and directors. Moreover, every volunteer protection statute has exceptions. As a result, state volunteer protection statutes are patchwork and inconsistent. In many states, the volunteer leaders are granted immunity while the direct service providers remain exposed. Substantially different civil justice standards apply to volunteers of the same organization, providing the same services, depending on the state in which the service is delivered. This inconsistency hinders national organizations from accurately advising their local chapters on volunteer liability and risk management guidelines.

The patchwork quality of State volunteer liability laws also has a negative effect on the cost of insurance. Because of the small size of the market for volunteer liability insurance, insurers do not differentiate among the States. Thus, regardless of the State in which organization operates, and how broad or how narrow the relevant State volunteer protection law, the price for insurance will be the same. This means that not only are nonprofit organizations forced to use their scarce resources to pay for insurance, but that those in States where the law is protective are forced to vastly overpay if they wish to obtain coverage at all.

H.R. 911 is intended to eliminate these barriers to obtaining volunteer services. As introduced by Congressman John Porter, it provided incentives to states to enact legislation which would eliminate tort liability of any volunteer if (1) the volunteer was acting in good faith and within the scope of the volunteer's official functions and duties within volunteer organization, and (2) the damage or injury at issue was not caused by the volunteer's willful and wanton misconduct. A state which could certify within 2 years of enactment that it had adopted such reforms would have been entitled to an additional one percent allotment in the State's Social Services Block Grant award. However, the Committee adopted an amendment in the nature of a substitute which takes a more direct approach to the problem. H.R. 911, as amended, preempts State law to provide that volunteers would not be liable for harm if (1) they were acting in the scope the volunteer activity, (2) they were properly licensed (if necessary), (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant, and (4) the harm was not caused by the volunteer operating a vehicle.

In addition, H.R. 911 as amended does not allow punitive damages to be awarded against a volunteer unless the harm was caused by willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant. In a suit against a volunteer, the volunteer's liability for noneconomic damages would be several but not joint. H.R. 911 allows the States to opt out of coverage under certain circumstances. It also specifies certain conditions and restrictions which a state could impose without being inconsistent with the Act. It further exempts from coverage any misconduct which constitutes a crime of violence, an act of international terrorism, a hate crime, a sexual offense, a violation

of a civil rights law, or where the volunteer was under the influence of drugs or alcohol.

Legislative History.—H.R. 911 was introduced by Congressman Porter on March 4, 1997, and ultimately garnered 156 cosponsors. The Full Committee held a hearing on H.R. 911 on April 23, 1997. On May 13, 1997, the Committee ordered H.R. 911 reported, as amended, by a recorded vote of 20 ayes to 7 nays. House Report 105–101. It was approved by the House of Representatives on May 21, 1997, under suspension of the rules, by a vote of 390 ayes to 35 nays. On that day, the text of H.R. 911 was also agreed to as an amendment to S. 543, and the Senate then agreed to the House amendment. S. 543 became law on June 18, 1997, as Public Law 105–19.

Year 2000 Information and Readiness Disclosure Act—S. 2392 (Public Law 105–271)

Summary.—The Year 2000 Information and Readiness Disclosure Act is intended to promote the voluntary sharing of information needed to discover, avoid, or fix problems with year 2000 calculations in our nation’s software, computers, and technology products. In all civil litigation including certain antitrust actions, the Act limits the extent to which year 2000 statements can be the basis for liability and it prevents certain evidentiary uses, against the maker, of a subset of such statements. However, the Act ensures that only responsible, good faith information-sharing gets such protection.

In particular, the Act protects good faith sharing of two kinds of year 2000 information: a broad category called “year 2000 statements,” and a narrower subcategory called “year 2000 readiness disclosures.” Year 2000 statements and readiness disclosures can include any year 2000 related subject matter, but year 2000 readiness disclosures must be in writing, be clearly labeled, and concern one’s own products or services. Certain already-existing year 2000 statements may be designated as year 2000 readiness disclosures and receive the protections applicable to year 2000 readiness disclosures under the Act. The protections given to year 2000 statements and readiness disclosures protect all those who help in any way to make a year 2000 statement or readiness disclosure, so a broad group of individuals and entities are protected.

The Act encourages the use of the Internet to provide notice of all matters relating to year 2000 processing. In addition, the Act protects against disclosure and use in civil actions year 2000 information voluntarily provided to the government under a “special data gathering request.” Finally, the Act creates a temporary exemption to the antitrust laws for sharing of year 2000 information, unless it results in an actual agreement to boycott, allocate markets, or fix prices.

The Act does not create new causes of action or expand any existing causes of action, nor does it create new obligations or duties. The Act does not create any duty to provide notice about a year 2000 processing problem. The intent of this legislation is to promote sharing of year 2000 information. This would be frustrated if any year 2000 statement were the sole basis for any finding of liability on the part of the maker. Furthermore, it is not the intent

of this legislation to hold the maker of a year 2000 readiness disclosure liable for the adequacy or sufficiency of its disclosure where such disclosure is not otherwise required by law or contract. The Act also does not affect existing contracts, tariffs, intellectual property rights or consumer protections applicable to solicitations or offers to sell consumer products.

The Act's protections are limited. The Act does not change or address in any way liability for a year 2000 processing failure; does not change or reduce any underlying duty, standard of care or liability for a year 2000 failure; does not apply to certain consumer transactions; does not prevent any underlying facts regarding a failure from being demonstrated in court; does not prevent any governmental entity from requiring the disclosure of any information; and does not preclude any claim to the extent it is not based on a year 2000 statement.

The Act prevents the use as evidence against the maker of only a narrow range of year 2000 statements—year 2000 readiness disclosures—to prove the truth of the disclosure. They can, however, be put into evidence to demonstrate matters other than their truth. Further, year 2000 readiness disclosures can be used in contract litigation as part of the evidence necessary to show anticipatory breach, repudiation, or similar actions, although they should not be the sole evidence supporting liability. A judge can limit (but not totally abrogate) this protection in order to prevent an abusive or bad-faith use of the disclosure contrary to the purposes of the Act.

Year 2000 statements other than year 2000 readiness disclosures can be brought into evidence for any purpose. However, they may not be the basis for any finding of liability against the maker, except where the maker knew the statement was false, made it with intent to deceive, or made it with reckless disregard as to its truth or falsity.

In cases of alleged trade defamation, product disparagement, and the like, year 2000 statements generally can be the basis of liability only if the maker knew the statement was wrong or was reckless about the statement's truth or falsity.

Internet website notice is generally deemed adequate. Important exceptions exist, however, and Internet website notice alone is not deemed adequate in cases of personal injury or serious property damage. In specified circumstances, in order to obtain the benefits of the Act, sellers, manufacturers, or providers of year 2000 remediation products or services must inform their customers about the effects of this Act during the course of solicitations or offers to sell.

For purposes of actions brought under the securities laws, year 2000 statements contained in filings with the Securities and Exchange Commission or Federal banking regulators and disclosures or writings that, when made, accompanied the solicitation of an offer or sale of securities are not covered by the Act.

Legislative history.—At the request of the Administration, S. 2392 was originally introduced as the Year 2000 Information Disclosure Act by Senator Bennett, Chairman of the Senate Select Committee on the Year 2000 Technology Problem. A number of similar bills were introduced in the House and referred to the Committee, including H.R. 4455 (Dreier) and H.R. 4355 (Burton).

After detailed negotiations with the Committee, the Senate passed an amended version of S. 2392 on September 28, 1998. By unanimous consent, the bill was called up by the House on October 1, 1998, and it passed by voice vote. Chairman Hyde inserted a statement on the bill into the Congressional Record on October 9, 1998. 144 Cong. Rec. E2017 (daily ed. Oct. 10, 1998). Following that, on October 19, 1998, President Clinton signed the bill into law, making it Public Law 105–271.

MATTERS HELD AT FULL COMMITTEE

Balanced Budget Constitutional Amendment—H.J. Res 1 and S.J. Res. 1

On the opening day of the 105th Congress, Representative Dan Schaefer introduced H.J. Res. 1, a balanced budget constitutional amendment (with provisions identical to the version that passed the House early in the previous Congress). It was designed to discourage the federal government from engaging in deficit spending, raising the public debt limit, and increasing taxes. The amendment generally required a three-fifths vote of the total membership of each House for laws providing an excess of outlays over receipts [Section 1] and a higher public debt ceiling [Section 2]—and a majority of each House’s total membership for laws increasing revenue. [Section 4] In addition, the President would be required to submit balanced budgets to Congress. [Section 3] Congress could waive the Amendment’s requirements for a fiscal year in which a declaration of war was in effect. An alternative waiver mechanism required a joint resolution (supported by a majority of the total membership in each House) that became law—declaring “an imminent and serious military threat to national security” caused by U.S. engagement in military conflict. [Section 5] The constitutional amendment would take effect “beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.” [Section 8]

The major impetus for the balanced budget constitutional amendment was concern about the rapidly mounting federal debt and the impact of climbing interest payments on future generations of Americans. Supporters of a constitutional amendment pointed out over the years that—in spite of limited successes—legislative efforts to move in the direction of a balanced budget had not prevented unacceptable levels of deficit spending.

The national debt had tripled during a recent 10-year period, climbing from approximately \$1.564 trillion at the end of fiscal year 1984 to \$4.644 trillion at the end of fiscal year 1994—with the figure at \$5.31 trillion on January 21, 1997. Interest paid by the U.S. Treasury (without offsetting interest credited to trust funds) totaled approximately \$344 billion for fiscal year 1996. For advocates of a balanced budget amendment, such statistics underscored the need for constitutional constraints. A constitutional amendment, supporters contended, was not a substitute for difficult legislative choices but rather a catalyst for congressional action.

The full Committee held a hearing on H.J. Res. 1 on February 3, 1997, at which testimony was received from Members of Congress and witnesses supporting and opposing a constitutional

amendment. The witness list consisted of Representatives Stenholm, Sabo, Cox, and Wise; Honorable Robert E. Rubin, Secretary of the Treasury; Honorable Timothy Penny, former Member of Congress and Member, Board of Directors, Concord Coalition; Stuart M. Gerson, former Assistant and Acting Attorney General; John E. Berthoud, Vice President, Alexis de Tocqueville Institution; Professor Cass R. Sunstein, University of Chicago Law School; and Eugene Lehrmann, Past President, American Association of Retired Persons. The printed hearing record (Serial No. 1) also incorporated a number of written submissions, including a prepared statement of Martin Anderson, Senior Fellow, the Hoover Institution, who could not testify in person because of illness.

On February 5, 1997, the full Committee began a markup of H.J. Res. 1. That markup, however, was not concluded because developments in the Senate appeared to preclude a successful balanced budget constitutional amendment effort in the 105th Congress. On March 4, 1997, a Senate vote of 66 in favor to 34 opposed on a companion measure (S.J. Res. 1) fell short of the two-thirds required by the Constitution.

Although the Congressional attempt to propose a balanced budget constitutional amendment for ratification by the states did not succeed, the Committee's efforts helped to focus attention on the importance of effectuating balanced budget principles. Congress did succeed in enacting a budget that resulted in a surplus for fiscal year 1998—the first time this had happened in decades.

Terms of Office for Members of the Senate and the House of Representatives—H.J. Res. 2

On January 7, 1997, Representative McCollum introduced H.J. Res. 2, a resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives. Although the resolution was held at the full Committee for purposes of markup, the Subcommittee on the Constitution held an oversight hearing on the subject of term limits. That hearing and the legislative history of H.J. Res. 2 are detailed in the Subcommittee section later in this report.

Partial-Birth Abortion Ban Act—H.R. 929 and H.R. 1122

On March 5, 1997, Representative Canady introduced H.R. 1122 and on March 19, 1997, Mr. Solomon introduced H.R. 1122, different versions of the "Partial-Birth Abortion Ban Act of 1997." Although the bills were held at the full Committee for purposes of markup and floor consideration, the Subcommittee on the Constitution held a joint oversight hearing with the Senate Committee on the Judiciary on the subject of partial-birth abortion. That hearing and the legislative history of H.R. 929 and H.R. 1122 are detailed in the Subcommittee section later in this report.

Vacancies Act—H.R. 3420 (Section 151 of Public Law 105-277)

Summary.—On March 10, 1998, Chairman Hyde introduced the "Department of Justice Vacancies Clarification Act of 1998" with 12 Members of the Committee (Mr. Sensenbrenner, Mr. Gekas, Mr. Coble, Mr. Smith, Mr. Canady, Mr. Inglis, Mr. Goodlatte, Mr. Bry-

ant, Mr. Barr, Mr. Hutchinson, Mr. Rogan, and Mr. Graham) as co-sponsors, and it was referred to the Committee. This legislation would have ended the practice of appointing acting personnel for indefinite periods of time to important jobs in the Department of Justice. For too long, the Department of Justice has used this method to evade the political accountability provided by the Senate confirmation process.

In 1988, Congress reenacted the Vacancies Act to prevent the filling of Executive Branch positions with acting personnel for long periods. Generally speaking, the Vacancies Act provides that a person may serve as an acting head of an office for no more than 120 days. 5 U.S.C. § 3348. These times are tolled while a nomination is pending or when Congress has adjourned sine die.

Most organic statutes for government departments have language providing that the head of the agency may delegate his functions to anyone within the Department. *See, e.g.*, 28 U.S.C. §§ 509–10 (language for the Department of Justice). Both Democrats and Republicans in the Executive Branch have interpreted this kind of language to be an alternative method of filling vacancies that is not subject to the 120-day period provided in the Vacancies Act. That interpretation effectively nullifies the Vacancies Act.

The Department of Justice Vacancies Clarification Act of 1998 would have clarified that the general language in the Department of Justice statute is not intended to override the Vacancies Act and that the Vacancies Act is the only method for filling vacancies in the Department of Justice.

In addition, to insure that the language is not ignored, the Act would have provided that when any acting person serves beyond the time provided in the Vacancies Act, the United States Circuit Court of Appeals for the District of Columbia Circuit would step in to appoint someone to fill the job until someone is nominated and confirmed. The Court could not appoint a person who had previously served as an acting head for that particular vacancy or a person who was nominated, but was not confirmed. This is similar to language that already exists with respect to United States Attorney positions. 28 U.S.C. § 546. The intent was not so much that the Court ought to make such appointments, but to give the Executive Branch an incentive not to let the time lapse.

A slightly different version of this legislation, which applies to all government departments including the Department of Justice, became law as section 151 of H.R. 4328, the Omnibus Appropriations Act for Fiscal Year 1999, Public Law 105–277.

Clarification That the Protections of the Federal Tort Claims Act Apply to the National Gambling Impact Study Commission—H.R. 1901 (Public Law 105–30)

Summary.—In 1996, Congress passed the National Gambling Impact Study Commission Act, Public Law 104–169, to provide for a comprehensive 2-year study of the impact of gambling on the United States. The nine members of the Commission were appointed, and the Commission began meeting in the summer of 1997.

Shortly before the Commission's first meeting, two of its members approached the Committee regarding their concerns about in-

curing personal liability for their work on the Commission. The Committee believed that the protections of the Federal Tort Claims Act (“FTCA”) covered members and employees of the Commission because it is an “independent establishment of the United States” under 28 U.S.C. § 2671. Normally, under the FTCA, when someone sues a federal employee for acts occurring within the scope of his or her employment, the United States substitutes itself as the party, defends the action, and pays any judgment.

The Committee initially believed that this matter could be resolved by an exchange of letters with the Department of Justice. However, after several weeks of study, the Department was unable to clearly resolve its position as to whether the Commission was covered under FTCA. Because the Commission was about to begin its work, the Committee decided to move forward with a legislative solution.

The bill that Chairman Hyde introduced, H.R. 1901, simply provided that, for purposes of FTCA, the Commission is a federal agency and its members and employees are federal employees. The Department of Justice still makes the determination of whether the particular conduct at issue is within the scope of employment as it does in all FTCA cases. See 28 U.S.C. § 2679. Thus, members and employees of the Commission did not receive any special treatment under this law—rather, they will receive the same treatment as all other federal employees. This treatment will apply equally to all members and employees of the Commission. The Committee believed that the members and employees should not have to put their personal assets at risk in order to serve their country in this important mission.

Legislative History.—On June 17, 1997, Chairman Hyde introduced H.R. 1901, and it was referred to the Committee. On June 18, 1997, the Committee ordered the bill reported favorably to the House by a voice vote. On June 23, 1997, the Committee reported the bill favorably to the House. H. Rept. 105–145. The same day, the House suspended the rules and passed the bill by voice vote. On July 9, 1997, the Senate passed H.R. 1901 by unanimous consent. On July 25, 1997, the President signed H.R. 1901 into law as Public Law 105–30.

Making a Technical Correction to Title 28, United States Code, Relating to Jurisdiction for Lawsuits Against Terrorist States—H.R. 1225 (Public Law 105–11)

Summary.—In response to the revelation that the Libyan government assisted in bombing Pan Am 103 over Lockerbie, Scotland, the “Antiterrorism and Effective Death Penalty Act of 1996” added a new subsection to the foreign sovereign immunity provisions of title 28 of the United States Code. Section 231 of Public Law 140–132. See 28 U.S.C. § 1605(a)(7). This new subsection provided that foreign sovereign immunity would not shield countries that sponsor terrorist acts against American citizens, like the bombing of Pan Am 103, from civil liability in American courts. Under the new subsection, American citizens can bring an action in federal court for money damages against the country that sponsored the terrorist act.

The intent of the drafters was that a family should have the benefit of these provisions if *either* the victim of the act *or* the survivor who brings the claim is an American citizen. Due to a drafting error, the law as passed in 1996 required that *both* the survivor *and* the claimant must be American citizens before the claimant can use these provisions. H.R. 1225 corrected this drafting error and made it explicit that the correction should apply to pending cases.

The correction benefitted several of the Pan Am 103 families in which one member is an American citizen and another is not. For example, Mr. Bruce Smith, who has been one of the leaders of the Pan Am 103 families, is an American citizen. His wife, who died in the bombing, was a British citizen. Mr. Smith, and several others in similar situations, stood to lose their claims against Libya if this correction had not been passed. The correction the bill made also applies to any future cases in which American families are victimized by state sponsored terrorism. H.R. 1225 only corrected this drafting error and did not make any other change to the foreign sovereign immunity provisions.

Legislative History.—On April 8, 1997, Chairman Hyde and seven other Members (Mr. Conyers, Mr. McCollum, Mr. Schumer, Mr. Canady, Mr. Wexler, Mr. Mica, and Mr. McNulty) introduced H.R. 1225. The same day, the Committee ordered the bill reported favorably to the House by a voice vote. On April 10, 1997, the Committee reported the bill favorably to the House. H. Rept. 105–48. On April 15, 1997, the House suspended the rules and passed the bill by voice vote. On April 24, 1997, the Senate passed H.R. 1225 by unanimous consent. On April 25, 1997, the President signed H.R. 1225 into law as Public Law 105–11.

Victims' Rights Constitutional Amendment and Implementing Statute—H.J. Res. 71 and H.R. 1322

Summary.—The modern victims' rights movement began in 1973, when the chief probation officer in Fresno County, California began including victim impact statements with pre-sentence investigation reports. Since that first stirring, the movement has grown tremendously.

In 1982, California passed the first state constitutional amendment to provide rights to victims of crimes. Shortly thereafter, the report of the Presidential Task Force on Victims of Crime recommended an amendment to the Sixth Amendment of the federal constitution. This rather limited amendment would have provided victims only the right to be present and be heard at all critical stages of the proceedings. Since the California amendment and the report of the Presidential Task Force, 21 additional states have adopted some form of a constitutional amendment to provide rights to victims of crime. (These states are: Alabama, Alaska, Arizona, Colorado, Florida, Idaho, Illinois, Kansas, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, Ohio, Rhode Island, Texas, Utah, Virginia, Washington, and Wisconsin.) All 50 states have some form of victims' rights legislation.

Beginning in 1995, victims' rights advocates began to push for a federal constitutional amendment. Senator Kyl, Senator Feinstein, and Chairman Hyde introduced the first versions of such an

amendment on April 22, 1996. In June, 1996, President Clinton endorsed the general concept of a federal constitutional amendment, but did not endorse any particular version of the amendment.

In the 105th Congress, Chairman Hyde introduced a new version of the amendment, H.J. Res. 71, and Senator Kyl and Senator Feinstein introduced a similar new version, S.J. Res. 6. These versions differ on a few points, but otherwise they are almost identical. The major points of difference are: the scope of the crimes to be covered, the nature of the right to be free from unreasonable delay, the inclusion or exclusion of a right to overturn sentences, and the breadth of the exceptions clause.

In addition, this year Chairman Hyde also introduced an implementing statute, H.R. 1322. This implementing statute provides substantially more detail about how the new constitutional amendment would work. The Administration has participated in discussions about the various drafts of the constitutional amendment, but it has not offered a draft that it supports.

There is a fair amount of consensus on the underlying policy that victims should play a larger role in criminal cases, although there is some disagreement as to the details. However, many question the need for a federal constitutional amendment when there is already a constitutional amendment or a statute in every state.

Victims' rights advocates contend that whenever the federal constitutional rights of accused persons come into conflict with the state rights of victims, the federal rights of the accused always prevail. They also contend that existing state constitutional amendments and statutes are not working because judges and prosecutors do not take them seriously. Most states specifically prohibit any action against judges and prosecutors who refuse to enforce the statutory rights. For that reason, they argue that these rights are dependent on the good will of judges and prosecutors. They believe that the rights of victims will never be taken seriously until they are formally recognized in the federal constitution. Moreover, they say as a matter of dignity, if the rights of the accused are formally enshrined in the federal constitution, then the rights of the victims ought to be also.

Advocates on the other side say that they generally agree with the policies expressed in the various drafts of the constitutional amendment, but they believe that a federal constitutional amendment is a bad way of enacting that policy. They say the amendment would have a profound and unknown effect on the 50 state criminal justice systems as well as the federal system. Once enacted, it would be almost impossible to change. They argue that the Congress, sitting in Washington, cannot possibly know the details of the 50 state systems and that by enacting a constitutional amendment, it will cause many unintended consequences. They say that constitutional rights exist to protect unpopular people, like accused persons, and that victims are very popular and have no trouble enacting statutory solutions. Finally, they contend that the various versions of the amendment do not resolve the question of whose rights trump in a conflict because the drafts do not address this question. They contend that this and other questions will lead to years of litigation.

Legislative History.—On June 25, 1997, the full Committee held a hearing on H.J. Res. 71 and H.R. 1322 at which the following witnesses appeared: Hon. Deborah Pryce, United States Representative, 15th District of Ohio; Hon. Janet Reno, Attorney General of the United States, United States Department of Justice, Washington, D.C.; Hon. George Kazen, Chief Judge, United States District Court for the Southern District of Texas, Laredo, Texas, on behalf of the Judicial Conference of the United States; Hon. William Terrell Hodges, Judge, United States District Court for the Middle District of Florida, Jacksonville, Florida, on behalf of the Judicial Conference of the United States; Hon. Joseph Weisberger, Chief Justice, Supreme Court of Rhode Island, Providence, Rhode Island, on behalf of the Conference of Chief Justices; Ms. Jacquelynn Davis, Domestic Violence Victim, Dallas, Texas; Ms. Donna Edwards, Executive Director, National Network to End Domestic Violence, Washington, D.C.; Mr. Robert Horowitz, Prosecuting Attorney, Stark County, Ohio, Canton, Ohio; Mr. Bruce Fein, Constitutional Scholar and Syndicated Columnist, McLean, Virginia.

Civil Asset Forfeiture Reform Legislation—H.R. 1835 and H.R. 1965

Summary.—Concern about the unfairness of current civil asset forfeiture procedures and the need to infuse due process protection into the process led Chairman Hyde to introduce reform legislation in the 105th Congress, as he had done in the previous two Congresses. See H.R. 1916, 104th Congress and H.R. 2417, 103rd Congress. On June 10, 1997, Chairman Hyde introduced H.R. 1835 followed by H.R. 1965 on June 19, 1997, both entitled the “Civil Asset Forfeiture Reform Act.” The two bills would substantially reform civil asset forfeiture procedures, but H.R. 1965 represented a bipartisan compromise that had the support of the U.S. Department of Justice. When it was introduced, H.R. 1965 superceded H.R. 1835 and received the active consideration of the Committee.

Since early in the nation’s history, ships and cargo violating the customs laws were made subject to federal civil forfeiture. Such forfeiture was vital to the federal treasury for, at that time, customs duties constituted more than 80% of federal revenues. Today, there are scores of federal forfeiture statutes, both civil and criminal. They range from the forfeiture of gamecocks used in cockfighting, to cigarettes seized from smugglers, to property obtained from violations of the Racketeer Influenced and Corrupt Organizations Act.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 made civil forfeiture a weapon in the war against drugs. The Act provides for the forfeiture of:

[a]ll controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter . . . [a]ll raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing . . . delivering, importing, or exporting any controlled substance[s] . . . in violation of this subchapter . . . [a]ll property which is used, or intended for use, as a container for [such controlled substances, raw materials, products or equipment] . . . [a]ll conveyances, including aircraft, vehicles or vessels, which are used, or

intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment [of such controlled substances, raw materials, products or equipment].

21 U.S.C. § 881(a) .

In 1978, the Act was amended to provide for civil forfeiture of:

[a]ll moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter

Section 301(a)(1) of the Psychotropic Substances Act of 1978 (found at 21 U.S.C. § 881(a)(6)).

In 1984, the Act was amended to provide for the forfeiture of:

[a]ll real property . . . which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment. . . .”

Section 306(a) of the Comprehensive Crime Control Act of 1984 (found at 21 U.S.C. § 881(a)(7)).

Prior to 1984, the monies realized from federal forfeitures were deposited in the general fund of the United States Treasury. Now they primarily go to the Department of Justice's Assets Forfeiture Fund and the Department of the Treasury's Forfeiture Fund. The money is used for forfeiture-related expenses and various law enforcement purposes.

In recent years, enormous revenues have been generated by federal forfeitures. The amount deposited in Justice's Assets Forfeiture Fund (from both civil and criminal forfeitures) increased from \$27 million in fiscal year 1985 to \$556 million in 1993 and then decreased to \$338 million in 1996. Of the amount taken in 1996, \$250 million was in cash and \$74 million was in proceeds of forfeitable property; \$163 million of the total was returned to state and local law enforcement agencies who helped in investigations.

Federal forfeiture has proven to be a great monetary success. And, as former Attorney General Richard Thornburgh said: “[I]t is truly satisfying to think that it is now possible for a drug dealer to serve time in a forfeiture-financed prison, after being arrested by agents driving a forfeiture-provided automobile, while working in a forfeiture-funded sting operation.”

The purposes of federal forfeiture were set out by Stefan Cassella, Assistant Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice, in testimony before this Committee on June 11, 1997:

Asset forfeiture has become one of the most powerful and important tools that federal law enforcement can employ against all manner of criminals and criminal organizations—from drug dealers to terrorists to white collar criminals who prey on the vulnerable for financial gain. . . .

Federal law enforcement agencies use the forfeiture laws for a variety of reasons, both time-honored and new. . . . [They] allow the government to seize contraband—property that it is simply unlawful to possess, such as illegal drugs, unregistered machine guns, pornographic materials, smuggled goods and counterfeit money.

Forfeiture is also used to abate nuisances and to take the instrumentalities of crime out of circulation. If drug dealers are using a “crack house” to sell drugs to children as they pass by on the way to school, the building is a danger to the health and safety of the neighborhood. Under the forfeiture laws, we can shut it down. If a boat or truck is being used to smuggle illegal aliens across the border, we can forfeit the vessel or vehicle to prevent its being used time and again for the same purpose. The same is true for an airplane used to fly cocaine from Peru into Southern California, or a printing press used to mint phony \$100 bills.

The government also uses forfeiture to take the profit out of crime, and to return property to victims. No one has any right to retain the money gained from bribery, extortion, illegal gambling, or drug dealing. With the forfeiture laws, we can separate the criminal from his profits—and any property traceable to it—thus removing the incentive others may have to commit similar crimes tomorrow. And if the crime is one that has victims—like car jacking or fraud—we can use the forfeiture laws to recover the property and restore it to the owners far more effectively than the restitution statutes permit.

Finally, forfeiture undeniably provides both a deterrent against crime and a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses and bloated bank accounts far more than the prospect of a jail sentence.

However, a number of years ago, as forfeiture revenue was approaching its peak, some disquieting rumblings were heard. The Second Circuit stated that “[w]e continue to be enormously troubled by the government’s increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes.” *United States v. All Assets of Statewide Auto Parts, Inc.*, 971 F.2d 896, 905 (2d Cir. 1992). Newspaper and television exposes appeared alleging that apparently innocent property owners were having their property taken by federal and local law enforcement officers with nothing that could be called due process.

H.R. 1965 was introduced to make federal civil forfeiture procedures fair for property owners, to give owners innocent of any wrongdoing the means to recover their property and make themselves whole. H.R. 1965 is not designed to enfeeble federal civil forfeiture efforts. To the contrary, as a consequence of making civil forfeiture fairer, H.R. 1965 would expand the reach of civil forfeiture and make it an even stronger tool of law enforcement against criminals. H.R. 1965 would also expand the reach of federal crimi-

nal forfeiture. Criminal forfeiture is preferable to civil forfeiture because it has the built-in procedural safeguards of the criminal law.

Hearing and Legislative History.—The Committee held a one day of hearing on civil asset forfeiture reform on June 11, 1997. Testimony was received from Billy Munnerlyn, E.E. (Bo) Edwards III, F. Lee Bailey, Susan Davis, Gerald B. Lefcourt, Stefan D. Cassella, Deputy Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice, Jan P. Blanton, Director, Executive Office for Asset Forfeiture, Department of the Treasury, Bobby Moody, Chief of Police, Marietta, Georgia, and 1st Vice President, International Association of Chiefs of Police., and David Smith. Additional material was submitted by Nadine Strossen, President, American Civil Liberties Organization, and Roger Pilon, Director, Center for Constitutional Studies, CATO Institute.

On June 20, 1997, the Committee met in open session and favorably reported H.R. 1965 to the House without amendment by a recorded vote of 26 to 1. The bill did not come to the floor.

Department of Justice Appropriation Authorization Act, Fiscal Years 1999, 2000, and 2001—H.R. 3303

Summary.—H.R. 3303, the “Department of Justice Appropriation Authorization Act, Fiscal Years 1999, 2000, and 2001,” is a comprehensive 3-year reauthorization of the Justice Department’s activities and programs. The bill contains four titles. Title I authorizes appropriations to carry out the work of the various components of the Department for fiscal years 1999, 2000, and 2001. Title I largely adheres to the Department’s budget request for fiscal year 1999 by providing \$15,499,000,000, and it would authorize a 5% increase for fiscal years 2000 and 2001. The proposed increases for fiscal years 2000 and 2001, though an approximation of the Department’s actual budgetary requirements, are the result of consultations with the Department and an analysis of the historical trend. The Committee has a high degree of confidence that the H.R. 3303 appropriation authorizations for fiscal years 2000 and 2001 are accurate.

Section 151 of Title I would authorize the Attorney General to transfer 200 lawyers from among the six litigating divisions at Justice Department headquarters in Washington, D.C. to the U.S. Attorneys. The provision is intended to raise the productivity of Washington-based lawyers, who litigate criminal and civil cases for the Department across the nation, by moving them to the field.

Title II reauthorizes for two additional years a number of successful programs whose authorizations will expire at the end of fiscal year 1998. These reauthorized programs will, for example, expedite the deportation of aliens who have been denied asylum, combat violence against women, and fund specialized training for and equipment to enhance the capability of metropolitan fire and emergency service departments to respond to terrorist attacks. Title II would also amend the Communications Assistance for Law Enforcement Act—also known as C.A.L.E.A.—by changing the effective date for purposes of compliance, enforcement, and the “grandfathering” of telecommunications carrier equipment, facilities, and services.

Title III would permanently authorize numerous inherent and noncontroversial functions of the Department. Finally, Title IV would, among other things, repeal the permanent open-ended authorization of the United States Marshals Service, which is unique among Department components. Title III of the bill would grant the Marshals Service narrower permanent authority in line with the permanent authority to be granted other Department components.

Hearing and Legislative History.—The Committee held a 1-day legislative hearing on H.R. 3303 on March 11, 1998. Testifying at the hearing on behalf of the Justice Department were Deputy Attorney General Eric H. Holder and Assistant Attorney General for Administration Stephen Colgate. In addition to this hearing, the Committee has conducted substantial oversight of the Department's activities and programs since the beginning of the 105th Congress. H.R. 3303 is the culmination of this extensive oversight.

The bill was marked up on April 29, 1998, and the Committee ordered it reported, as amended, by a voice vote. On Monday, June 22, 1998, the House passed the bill, as amended, on a voice vote. On September 17, 1998, the Senate Committee on the Judiciary reported the bill to the Senate with an amendment in the nature of substitute, but the bill was not taken up on the floor.

Protection From Intrusion on Privacy—H.R. 2448 and H.R. 3224

On May 21, 1998, the Committee held a hearing on legislation to protect individuals from overly intrusive conduct by the media. The witnesses were: Michael J. Fox, Paul Reiser, Ellen Levin, Paul McMasters, David Lutman, Richard Masur, Paul Tash, Barbara Cochran, Dick Guttman, Robert Richards, and Larry Lessig.

American society has developed an increasingly voracious appetite for information about and candid pictures of famous people. Countless newspapers and magazines are devoted to gossip about their activities and numerous television programs are dedicated to reporting about them. As a result, there is a great market for photographers to obtain pictures of celebrities in their most private moments. This has led to the proliferation of a new category of press to fill this demand, a group often referred to as the paparazzi. Paparazzi often stalk the famous hoping for that intimate or candid photo that can be sold at a substantial profit.

The impact of the paparazzi is not limited to the people who we commonly associate with the term "celebrity." While it is certainly true that stars of film, television, song, etc. are often the subject of paparazzi attention, there are also circumstances under which media attention becomes focused on someone because of events that have occurred in their life. Unlike persons whose livelihood depends on being noticed, and who routinely court press attention by leaking items about themselves and each other to raise their profiles, these people's notoriety has been foisted on them unwittingly, and often under circumstances involving personal pain. A good example of this is Ellen Levin, whose daughter was the victim of the "Preppie Murder." The incident became the focus of intense reporting.

Of course, the media must engage in newsgathering activity in order to report on events of interest to the public, and there is no

clear line between the conduct engaged in by aggressive investigative reporters and by the paparazzi. Gathering information, including taking photographs, is First Amendment activity and as such is protected under the Constitution. Yet, at times, some reporters and photographers cross the line and engage in conduct that is harmful and that is not protected by the First Amendment. The working press has no constitutional immunity from liability for conduct that is likely to precipitate individual harm.

H.R. 2448, the “Protection From Personal Intrusion Act,” was introduced by the late Congressman Sonny Bono on September 10, 1997. H.R. 2448 would make it a crime to persistently physically follow or chase a person, where that person has a reasonable expectation of privacy, in order to capture a visual image, sound recording, or other physical impression of the person. H.R. 3224, the “Privacy Protection Act of 1998,” was introduced by Congressman Gallegly on February 12, 1998. It seeks to criminalize similar conduct, but incorporates refinements to the language of H.R. 2448: for example, H.R. 3224 requires that the person who is being pursued have a reasonable fear that death or bodily injury will result from the following or chasing. Neither bill would prohibit the publication or broadcast of material obtained in this manner: their restrictions are aimed at the egregious conduct of the information gatherer, not the dissemination of the information.

Both H.R. 2448 and H.R. 3224 were carefully drafted to regulate activity that is not protected by the First Amendment. No reporter or photographer has a First Amendment right to break the law under the guise of newsgathering. In *Cohen v. Cowles Media Co.*, 501 U. S. 663 (1991), the Supreme Court discussed the intersection between First Amendment and similar laws governing newsgathering activities:

[g]enerally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news. As the cases relied upon by the respondents recognize, the truthful information sought to be published must have been lawfully acquired. The press may not with impunity break and enter an office or dwelling to gather news. Neither does the First Amendment relieve a newspaper reporter of the obligation shared by all citizens to respond to a grand jury subpoena and answer questions relevant to a criminal investigation, even though the reporter might be required to reveal a confidential source. The press, like others interested in publishing, may not publish copyrighted material without obeying the copyright laws. Similarly, the media must obey the National Labor Relations Act, and the Fair Labor Standards Act; may not restrain trade in violation of the antitrust laws, and must pay non-discriminatory taxes. It is, therefore, beyond dispute that “[t]he publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.” Accordingly, enforcement of such general laws against the press is not subject to stricter scrutiny than

would be applied to enforcement against other persons or organizations.

Id. at 669–670 (citations omitted).

Several states have existing laws which prohibit harassment and enable individuals to obtain injunctive relief from persistent press hounding. Theories of harassment can rise to the level of intrusion and enable individuals to obtain indirect protection for even public expectations of privacy. For example, Jacqueline Kennedy Onassis obtained an injunction against a free-lance celebrity photographer and self-described “paparazzo.” An injunction was also issued against reporters who were gathering information for a story by engaging in aggressive techniques such as following the plaintiffs children to school, videotaping their home, and using a “shotgun mike” to record statements made within the privacy of their home.

Other common law and statutory remedies include shadowing and stalking laws, although these generally apply to surveillance activities of private investigators more than the aggressive press intrusions that this legislation intends to address. Assault and battery provisions are available for particularly intrusive behavior, although this is not a widely prosecuted offense for merely hounding public figures. Finally, the press can be held liable for false imprisonment if the targets of press activity are physically prevented from carrying on their intended activity.

Proponents of these bills pointed out that although other laws can be used when paparazzi engage in illegal conduct, this would be the first statute specifically recognizing the broad scope of the problem. These bills would provide a national solution by establishing uniform standards to control the abusive behavior. It should also be noted that these bills would merely supplement, not preempt, any right or remedy otherwise available under the law.

Hate Crimes Prevention Act of 1997—H.R. 3081

Summary.—H.R. 3081, The Hate Crimes Prevention Act of 1997, expands federal law so as to allow the federal government authority to prosecute hates crimes that have traditionally been the responsibility of state and local authorities. In racial violence cases involving death or serious bodily injury, the bill would eliminate the requirement in title 18, United States Code, section 245 that the government prove that the defendant injured or killed the victim because the victim was engaging in a federally protected activity.

Title 18, United States Code, section 245, is one of the primary statutes used to combat racial and religious violence. At the time of its passage in 1968, the reach of the statute was directed towards civil rights activities and required a dual intent so that the universe of cases that fall within federal jurisdiction would be limited to crimes committed because the victim was engaged in certain federally protected activities. To establish a violation of section 245(b)(2), a federal prosecutor must prove that the defendant acted because of the victim’s race, color, religion or national origin and because the victim was enjoying or exercising a federally protected right. These federally protected rights are specifically enumerated in section 245(b)(2) (A)–(F). Section 245 (b)(2) (A)–(F) provides: (A) enrolling in or attending any public school or public college; (B)

participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof; (C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency; (D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror; (E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air; (F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments. Section 245, which was title I of the Civil Rights Act of 1968, was the antidote prescribed by Congress to deter and punish those who would forcibly suppress the free exercise of civil rights enumerated in that statute.

The Hate Crimes Prevention Act amends section 245 to allow the federal government to take the lead in most, if not all, cases that involve hate crimes. The definition of "hate crime" in the Hate Crimes Sentencing Enhancement Act is closely aligned to the definition contained in the Hate Crimes Prevention Act of 1997. The term "hate crime" is "a crime in which the defendant intentionally selects a victim . . . because of the actual or perceived race, color, religion, national origin, ethnicity, gender, or sexual orientation of any person."

The bill contains a separate provision expanding the definition of hate crimes to include crimes motivated by the victim's sexual orientation, gender, or disability. However, in order to establish a hate crime motivated by animus based on the victim's sexual orientation, gender or disability, the government would have to prove an interstate commerce connection. There is no interstate commerce requirement for acts of racial violence, but such a requirement would exist for all other hate crimes.

Crimes motivated by the victim's sexual orientation have become an alarming aspect of the American landscape. Testimony was received from a witnesses who was mistaken by his assailant for being gay and he testified that the assailant attacked and beat him as he left his home. Some social scientists believe individuals who commit acts of racial and religious violence are frequently the same groups who are involved in violent activity against gays and lesbians. For example, on January 4, 1996, Fred Mangione, was brutally murdered in Houston, Texas by two Neo-Nazis who bragged about hating homosexuals. The assailants belonged to a white su-

premacist group from Montana, and had traveled to Houston. The victim was stabbed 35 times. Although the FBI conducted a limited investigation of this incident, the federal government was unable to prosecute the murder, as federal law does not extend to crimes motivated by animus based on the victim's sexual orientation. The local authorities prosecuted these defendants. One was given a life sentence and the other was given 10 years' probation.

In Oregon, two women were murdered in December, 1995, in what local authorities have termed a hate crime. The victims were lesbians who were active in a number of gay rights causes, and the suspect expressed hatred for their lifestyle. Once again, the federal government was unable to prosecute these murders. The local authorities prosecuted this case and the defendant received the death penalty.

The broad sweep of the statute raises concerns of whether states and local jurisdictions will be able to take the lead in combating hate crimes or will they be preempted by the federal government. It has been argued that there are exceptional circumstances when it is appropriate for the federal government to get involved. For instance, organized hate groups, often have sophisticated interstate networks, which could make it more difficult for state and local law enforcement to prosecute these cases. The FBI is uniquely positioned to investigate the often complex interstate networks operated by organized hate groups. But there would be a need for both the proper statutory tools and additional funding for the FBI to perform its job effectively.

On a state level, hate crimes committed on the basis of a victim's gender are criminal in 19 states and the District of Columbia; hate crimes committed on the basis of the victim's sexual orientation are criminal in 20 states and the District of Columbia; hate crimes committed on the basis of a victim's disability or handicap are criminal in 21 states and the District of Columbia. Wyoming does not have any hate crime laws. Forty states and the District of Columbia have penalty enhancement hate crime statutes.

Hate crimes often involve multiple offenders and multiple incidents. Some states have very restrictive rules pertaining to joinder of defendants, which make it difficult to try defendants together. For example, in Lubbock, Texas, (*United States v. Mungia et. al.*) three racists attempted to start a race war in October, 1994, by shooting three African American victims in three separate incidents within 30 minutes. Under Texas law, the three defendants would have been entitled to separate trials if the matter had proceeded in state court. It was also conceivable that each defendant would have been entitled to a separate trial on each incident. This means that there would have been a minimum of three trials, and possibly as many as nine trials, if the matter had proceeded in state court. These separate trials would have placed an enormous burden on the victims' families, and the investigating authorities. In addition, under Texas law, the defendants would have been eligible for parole perhaps as early as 20 years later, whereas federal law provides a mandatory life sentence.

As a result, the local prosecuting authorities worked in tandem with federal authorities, and the joint decision was made to prosecute the case in federal court, where one trial was held resulting

in the defendants' convictions. This case illustrates that hate crimes are neither exclusively a state and local problem, nor exclusively a federal problem. This bill would give a new prosecutorial tool to the entire team.

Specifically, hate crimes prosecution under this law must be approved by the Attorney General or another high ranking Justice Department official, not just by local federal prosecutors. This requirement is already in place in current law. It is expected that this requirement would serve to limited the number of prosecutions.

Critics of the bill ask whether the bill is unconstitutional and opine that the bill will not pass the test set out in *United States v. Lopez*, 514 U.S. 549 (1995). In *Lopez*, the Supreme Court held the Gun-Free School Zones Act of 1990 unconstitutional because it did not fall within any of Congress' legislative powers enumerated in Article I. Chief Justice Rehnquist, writing for the majority, found that the government claim of a substantial effect on interstate commerce of guns near schools was not supported by congressional findings. Some scholars believe this bill, like the Act in *Lopez*, regulates intrastate non-economic activities and that the bill will meet the same fate as the Act in *Lopez*. It is also unclear how prosecutors and courts would determine that an act of violence was committed because of an individual's gender or disability. Others suggest the bill covers crimes already covered at the state level and fills no gaps in criminal law. They reject the need for an expanded federal jurisdiction for hate crimes. The bill presents a long term systemic cost to the federal court that may preempt the federal judiciary's core responsibility—cases that traditionally are reserved for federal court.

Legislative History.—Although the bill was referred to the Subcommittee on Crime, on July 22, 1998, the Full Committee held a hearing on H.R. 3081, the "Hate Crimes Prevention Act of 1997." The witnesses were: Acting Assistant Attorney General of the Civil Rights Division, Bill Lann Lee, United States Department of Justice—Washington, D.C. Professor Cass Sunstein, University of Chicago Law School, Professor John Harrison, University of Virginia Law School, Mark Bangerter, Boise, Idaho, Richard A. Devine, State Attorney for Cook County, Illinois, Professor Jack McDevitt, Northeastern University, Kimberly Potter, Senior Research Fellow, Center for Crime and Justice, New York University Law School.

Title 36 Codification—H.R. 1085 (Public Law 105-225)

On March 17, 1997, Chairman Hyde introduced H.R. 1085, a bill to revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code. H.R. 1085 was drafted by the Office of the Law Revision Counsel under its statutory authority to submit to the Committee on the Judiciary bills to enact the titles of the United States Code into positive law. At a markup in the full Committee on October 7, 1997, H.R. 1085, as amended, was approved by a voice vote and ordered reported. The Committee on the Judiciary formally reported the legislation favorably to the House (H. Rept. 105-326) on October 21, 1997. Under suspension of the rules, the House passed

H.R. 1085, as amended, on February 3, 1998. The Senate passed the legislation on July 30, 1998, and the President approved it (Public Law 105–225) on August 12, 1998.

Title 36 Codification Update—S. 2524 (Public Law 105–354)

On September 28, 1998, Senator Hatch introduced S. 2524, a bill to codify without substantive change laws related to patriotic and national observances, ceremonies, and organizations and to improve the United States Code. (The text of the bill was identical to H.R. 4529, introduced by Chairman Hyde on September 9, 1998.) This legislation, drafted by the Office of the Law Revision Counsel, updated the recently enacted (Public Law 105–225) codification of Title 36 and incorporated technical corrections. The Senate Committee on the Judiciary, on October 1, 1998, reported the legislation favorably to the Senate—which in turn passed it on October 8, 1998. In the House, the Senate passed legislation was referred to the Committee on the Judiciary and held at the full Committee. On October 12, 1998, the Committee on the Judiciary was discharged from further consideration and the legislation passed the House under suspension of the rules. The President approved it on November 3, 1998 (Public Law 105–354).

Title 49 Codification Update—H.R. 1086 (Public Law 105–102)

On March 17, 1997, Chairman Hyde introduced H.R. 1086, a bill to codify without substantive change laws related to transportation and to improve the United States Code. H.R. 1086 was drafted by the Office of the Law Revision Counsel under its statutory authority to submit periodically revisions of positive law titles of the Code to keep those titles current. The legislation updated title 49 to incorporate a law related to transportation that was not already included in the codification and made technical corrections. At a markup on June 18, 1997, the full Committee ordered H.R. 1086, as amended, favorably reported to the House. The Committee on the Judiciary formally reported the legislation (H. Rept. 105–153) on June 25, 1997. Under suspension of the rules, H.R. 1086, as amended, passed the House on July 8, 1997. The legislation passed the Senate on November 8, 1997 and was approved by the President (Public Law 105–102) on November 20, 1997.

Assassination Records Review Board Authorization Extension—H.R. 1553 (Public Law 105–25)

On May 8, 1997, Representative Burton of Indiana introduced H.R. 1553, a bill to amend the President John F. Kennedy Assassination Records Collection Act of 1992 to extend the authorization of the Assassination Records Review Board until September 30, 1998. On June 19, 1997, the legislation was reported favorably to the House (Rept. 105–138, Part 1) by the Committee on Government Reform and Oversight. The Committee on the Judiciary—which had held the bill at the full Committee—was discharged from further consideration on June 20, 1997. Under suspension of the rules, the House passed the legislation on June 23, 1997. The Senate passed it on June 25, 1997, and the President approved it (Public Law 105–25) on July 3, 1997.

Airline Service Improvement Act of 1998—H.R. 2748

On October 28, 1997, Representative Duncan introduced H.R. 2748, a bill to amend title 49, United States Code, to provide assistance and slots with respect to air carrier service between high density airports and airports not receiving sufficient service, to improve jet aircraft service to underserved markets, and for other purposes. The Committee on Transportation and Infrastructure, on October 15, 1998, favorably reported the bill as amended to the House (H. Rept. 105–822, Part 1). The legislation was sequentially referred to the Committee on the Judiciary until October 16, 1998—with the period subsequently extended until October 20, 1998 and then until October 21, 1998. No further action was taken on H.R. 2748 during the 105th Congress.

Campaign Reform and Election Integrity Act of 1998—H.R. 3485

On March 18, 1998, Representative Thomas introduced H.R. 3485, legislation to amend the Federal Election Campaign Act of 1971 to reform financing of campaigns for election for federal office and for other purposes. The Committee on House Oversight, on March 23, 1998, favorably reported the bill as amended to the House (H. Rept. 105–457, Part 1). That same day, the Committee on the Judiciary and the Committee on Ways and Means received sequential referrals and were discharged from further consideration of the legislation. Although the House took no further action on H.R. 3485, the House—on March 30, 1998—did consider and failed to pass under suspension of the rules a related but not identical bill, H.R. 3581, introduced that day by Representative Thomas.

The Intelligence Community Whistleblower Protection Act of 1998—H.R. 3829

On May 12, 1998, Representative Goss introduced H.R. 3829, a bill to amend the Central Intelligence Agency Act of 1949 to provide a process for agency employees to submit urgent concerns to Congress, and for other purposes. The Permanent Select Committee on Intelligence, on September 25, 1998, reported the legislation as amended favorably to the House (H. Rept. 105–747, Part 1). The Committee on the Judiciary—and other committees to which the legislation was referred—were discharged from further consideration on October 20, 1998. No further action on H.R. 3829 was taken in the 105th Congress.

Money Laundering Deterrence Act of 1998—H.R. 4005

On June 5, 1998, Representative Leach introduced H.R. 4005, a bill to amend title 31 of the United States Code to improve methods for preventing financial crimes, and for other purposes. The Committee on Banking and Financial Services, on July 8, 1998, favorably reported the bill as amended to the House. On July 31, 1998, the Committee on the Judiciary—which had received a sequential referral—was discharged from further consideration. On September 11, 1998, the Committee on Ways and Means also was discharged. By a letter dated September 28, 1998, Chairman Hyde of the Committee on the Judiciary wrote to Chairman Leach of the Committee on Banking and Financial Services requesting that the

section entitled “Fungible Property in Bank Accounts” be removed before floor consideration, pointing out: “As the House Leadership wants to delay consideration of reforms to our federal civil asset forfeiture laws until the 106th Congress, it would be more appropriate for this provision to be considered at that time.” Congressional Record, October 5, 1998, at H9477. Chairman Leach responded by letter dated October 1, 1998 that “[i]n deference to your concerns—and to the House leadership’s view that further consideration of civil asset forfeiture reforms should await the next Congress—this provision will be removed from the bill reported by the Banking Committee on July 8, 1998.” *Id.* During floor consideration on October 5, 1998, the House passed the bill in revised form under suspension of the rules—with the bill’s title changed to reflect the fact that title 18, United States Code, also was being amended. The Senate, however, did not act on H.R. 4005 during the 105th Congress.

Financial Information Privacy Act of 1998—H.R. 4321

On July 23, 1998, Representative Leach introduced H.R. 4321, a bill to protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses. The Committee on Banking and Financial Services, on August 21, 1998, favorably reported the bill as amended to the House (H. Rept. 105–701, Part 1). The legislation was sequentially referred to the Committee on the Judiciary and to the Committee on Commerce. On September 25, 1998, the Committee on Commerce favorably reported the bill, as amended (H. Rept. 105–701, Part 2), and the Committee on the Judiciary was discharged from further consideration of the legislation. No further action on H.R. 4321 was taken in the 105th Congress.

Sense of the Congress Relating to an Award of Attorneys’ Fees, Costs, and Sanctions—H.J. Res. 107

On February 3, 1998, Representative Hayworth introduced H.J. Res. 107 expressing the sense of the Congress that the award of attorneys’ fees, costs, and sanctions of \$285,864.78 ordered by United States District Judge Royce C. Lamberth on December 18, 1997, should not be paid with taxpayer funds. (The resolution included a finding that “American taxpayers should not be held responsible for the inappropriate conduct of Federal Government officials and lawyers involved with the [President’s] Task Force [on National Health Care Reform].”) On the same day, the Committee on Rules reported a rule for Floor consideration of H.J. Res. 107. The following day the Committee on the Judiciary was discharged from further consideration of the joint resolution and the joint resolution passed the House by a recorded vote of 273 yeas to 126 nays. The resolution was referred to the Senate Committee on the Judiciary, but the Senate took no action during the 105th Congress.

Criminal Charges for Failure to Comply with a Valid Subpoena—H. Res. 244

On September 25, 1997, Representative Thomas submitted H. Res. 244 demanding that the Office of the United States Attorney for the Central District of California file criminal charges against

Hermanidad Mexicana Nacional for failure to comply with a valid subpoena under the Federal Contested Elections Act. The resolution noted that “the United States Attorney’s failure to enforce criminal penalties for violation of the [Federal Contested Elections] Act encourages disrespect for the law and hinders the Constitutionally mandated process of determining the facts in the contested election case [of *Dornan v. Sanchez* pending before the Committee on House Oversight], including the discovery of any election fraud that may have influenced the outcome of the election.” The Committee on Rules, on September 29, 1997, reported a rule providing for Floor consideration of the resolution. The following day the Committee on House Oversight and the Committee on the Judiciary—to which the resolution had been referred—were discharged from further consideration. On October 1 (legislative day of September 30), 1997, the House by a recorded vote of 219 yeas to 203 nays (with one member answering “present”) agreed to the resolution as amended.

President’s Assertions of Executive Privilege—H. Res. 432

On May 14, 1998, Representative DeLay submitted H. Res. 432 expressing the sense of the House of Representatives concerning the President’s assertions of executive privilege. The resolution expressed the sense of the House that “all records or documents (including legal memoranda, briefs, and motions) relating to any claims of executive privilege asserted by the President should be immediately made publicly available.” That same day the Committee on Rules reported a rule providing for Floor consideration of this resolution and H. Res. 433 (H. Rept. 105–536). On May 21, 1998, the Committee on the Judiciary—to which H. Res. 432 had been referred—was discharged from further consideration, and the House by a recorded vote of 259 yeas to 157 nays (with six Members answering “present”) agreed to the resolution.

Urging Full Cooperation with Congressional Investigations—H. Res. 433

On May 14, 1998, Representative Solomon submitted a resolution calling upon the President of the United States to urge full cooperation by his former political appointees and friends and their associates with congressional investigations. The resolution noted that “approximately 90 witnesses in the campaign finance investigation have either asserted a fifth amendment privilege or fled the country to avoid testifying in congressional investigations.” On the same day the resolution was submitted, the Committee on Rules reported a rule providing for floor consideration of both H. Res. 432 and H. Res. 433 (H. Rept. 105–536). On May 21, 1998, the Committee on the Judiciary—to which H. Res. 433 had been referred—was discharged from further consideration, and the House by a vote of 342 yeas to 69 nays (with 12 members answering “present”) agreed to the resolution.

Condemning the Brutal Killing of Mr. James Byrd, Jr.—H. Res. 466

On June 11, 1998, Representative Waters submitted H. Res. 466 condemning the brutal killing of Mr. James Byrd, Jr. The resolu-

tion stated in findings that “[t]his was not a random act of violence, but a senseless, hate-filled crime.” Also on June 11th, the Committee on the Judiciary—to which the resolution had been referred—was discharged from further consideration, and the House—by a vote of 397 yeas to 0 nays—agreed to the resolution.

Impeachment Resolution Directed at Independent Counsel Kenneth W. Starr—H. Res. 545

On September 18, 1998, Representative Hastings of Florida submitted H. Res. 545 to impeach independent counsel Kenneth W. Starr. On September 23, 1998, the Committee on the Judiciary (to which the resolution had been referred) was discharged from further consideration, and the House—considering the resolution as a privileged matter—agreed to a motion to table by a vote of 340 yeas to 71 nays.

Condemning the Brutal Killing of Mr. Matthew Shepard—H. Res. 597

On October 14, 1998, Representative Cubin submitted H. Res. 597 condemning the brutal killing of Mr. Matthew Shepard, a student at the University of Wyoming, and pledging “to do everything in its [the House’s] power to fight the sort of prejudice and intolerance that leads to the murder of innocent people.” On October 15, 1998, the Committee on the Judiciary—to which the resolution had been referred—was discharged from further consideration and the House, under suspension of the rules, agreed to the resolution.

Nazi War Crimes Disclosure Act—S. 1379 (Public Law 105–246)

On November 5, 1997, Senator DeWine introduced S. 1379, a bill to amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes. The Senate Committee on the Judiciary, on March 5, 1998, reported the bill with an amendment. On June 19, 1998, the Senate passed the bill as amended in Committee and on the Floor. After being held at the desk in the House, the legislation passed the House on August 6, 1998. The President approved it on October 8, 1998 (Public Law 105–246).

Authorization for Acceptance of Voluntary Services by the Administrative Assistant to the Chief Justice—S. 2143 (Public Law 105–233)

On June 9, 1998, Senator Hatch introduced S. 2143, a bill to amend chapter 45 of title 28, United States Code, to authorize the Administrative Assistant to the Chief Justice to accept voluntary services, and for other purposes. The Senate Committee on the Judiciary, on July 9, 1998, reported the legislation favorably to the Senate with an amendment. The bill as amended passed the Senate on July 16, 1998. After being held at the desk in the House, the legislation passed the House under suspension of the rules on August 3, 1998. The President approved it on August 13, 1998 (Public Law 105–233).

OVERSIGHT ACTIVITIES

Pursuant to Rule X, clause 2(d), the Committee adopted an oversight plan for the 105th Congress. The oversight plan incorporated the matters which the Committee deemed, at the beginning of the Congress, to be worthy of its attention. Some of the matters contained in the oversight plan were addressed in the context of legislative hearings. The following is a list of the oversight hearings held by the full Committee. The oversight activities of the subcommittees will be discussed separately.

Full Committee Oversight Hearings

- Implementation of the “Church Arson Prevention Act of 1996” (Public Law 104–105), March 19, 1997 (*Serial No. 4*).
- Product Liability Reform, April 10, 1997. (*Serial No. 10*).
- Grassroots Solutions to Youth Crime, May 7, 1997 (*Serial No. 18*).
- Antitrust Aspects of Electricity Deregulation, June 4, 1997 (*Serial No. 19*).
- State of Competition in the Cable Television Industry, September 24, 1997 (*Serial No. 41*).
- Seeking Results from the Department of Justice, September 30, 1997 (*Serial No. 40*).
- United States Department of Justice, October 15, 1997 (*Serial No. 61*).
- Application of the Antitrust Laws to the Tennessee Valley Authority and the Federal Power Marketing Administrations, October 22, 1997 (*Serial No. 51*).
- Antitrust Enforcement Agencies: the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission, November 5, 1997 (*Serial No. 57*).
- Civil Liability Portions of the Proposed Tobacco Settlement, February 5, 1998.
- State of Competition in the Airline Industry, May 19, 1998.
- Effects of Consolidation on the State of Competition in the Financial Services Industry, June 3, 1998.
- Effects of Consolidation on the State of Competition in the Telecommunications Industry, June 24, 1998.
- Consequences of Perjury and Related Crimes, December 1, 1998.

SUBCOMMITTEE ON CRIME

BILL McCOLLUM, Florida, *Chairman*

STEVEN SCHIFF, New Mexico ¹	CHARLES E. SCHUMER, New York
STEPHEN E. BUYER, Indiana	SHEILA JACKSON LEE, Texas
STEVE CHABOT, Ohio	MARTIN T. MEEHAN, Massachusetts
BOB BARR, Georgia	ROBERT WEXLER, Florida
ASA HUTCHINSON, Arkansas	STEVEN R. ROTHMAN, New Jersey
GEORGE W. GEKAS, Pennsylvania	
HOWARD COBLE, North Carolina	
LINDSEY O. GRAHAM, South Carolina ²	

¹ Steven Schiff, New Mexico, deceased March 25, 1998.

² Lindsey O. Graham, South Carolina, assigned March 3, 1998, to fill the vacancy resulting from the illness of Steven Schiff, New Mexico.

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	308
Legislation reported favorably to the full Committee	24
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	3
Legislation discharged from the Subcommittee	4
Legislation pending before the full Committee	2
Legislation reported to the House	29
Legislation discharged from the Committee	21
Legislation pending in the House	2
Legislation passed by the House	39
Legislation pending in the Senate	18
Legislation vetoed by the President	0
Legislation enacted into public law	14
Legislation on which hearings were held	24
Days of hearings (legislative and oversight)	32

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Crime has jurisdiction over the Federal Criminal Code, drug enforcement, sentencing, parole and pardons, Federal Rules of Criminal Procedure, prisons, the Independent Counsel Act, law enforcement assistance to State and local governments, and other appropriate matters as referred by the Chairman, and relevant oversight.

Highlights of the Subcommittee’s activities during the 105th Congress include the following:

JUVENILE CRIME

The Juvenile Accountability Block Grants Act of 1997

On January 7, 1997, Chairman McCollum introduced H.R. 3, the “Juvenile Crime Control Act of 1997.” H.R. 3 evolved from a bill considered in the 104th Congress, H.R. 3565, the “Violent Youth Predator Act of 1996.” Several field hearings were held in the 104th Congress to examine the current and future magnitude of violent youth crime, and much needed juvenile justice reforms. In

particular, the forums were designed to determine how Congress might help states and localities as they respond to the crisis of youth crime. Law enforcement leaders from all fifty states were invited to participate in the regional forums in their area. H.R. 3565 was marked up in the full Judiciary Committee on July 16, 1996, but the bill was not reported out of the full Committee in the 104th Congress.

Throughout the United States today, state and local juvenile justice systems are failing to hold juvenile offenders accountable for their wrongdoing. The statistics describe a juvenile justice system in collapse. Only 10 percent of violent juvenile offenders—those who commit murder, rape, robbery, and assault—receive any sort of secure confinement. Many juveniles receive no sentence at all: Nearly 40 percent of violent juvenile offenders who come into contact with the justice system have their cases dismissed. By the time the courts finally lock up an older teenager on a violent crime charge, the offender often has a long rap sheet with arrests starting in the early teens. According to the Justice Department, 43 percent of juveniles in state institutions had more than five prior arrests, and 20 percent had been arrested more than 10 times. Approximately four-fifths of these offenders had previously been on probation, and three-fifths had been committed to a correctional facility at least once in the past.

The average length of institutionalization for a juvenile who has committed a violent crime is only 353 days. Nationally, according to the FBI, if trends continue as they have over the past 10 years, juvenile arrests for violent crime will more than double by the year 2010. The FBI predicts that juveniles arrested for murder will increase 145 percent; forcible rape arrests will increase 66 percent; and aggravated assault arrests will increase 129 percent. In the final years of this decade and throughout the next, America will experience a population surge made up of the children of today's aging baby boomers. Today's enormous cohort of 5-year-olds will be tomorrow's teenagers. This is ominous news, given that more violent crime is committed by older juveniles than by any other age group. At the same time, youth drug use is rising rapidly. The confluence of these trends portends the possibility of an unprecedented period of violent youth crime.

The introduction of H.R. 3, the "Juvenile Crime Control Act of 1997," was an effort by Chairman McCollum to continue to promote juvenile justice reform in the 105th Congress. The bill strengthens the outdated federal juvenile justice system and provides assistance to states and localities to restore accountability to their juvenile justice systems. The bill does so by reforming and strengthening the federal juvenile justice system, with the aim of providing a model federal system for the states. The bill also establishes a grant program for states and localities for the purpose of promoting greater accountability in their juvenile justice systems. The grant program, which allows jurisdictions to decide how best to use their funds to fight juvenile crime, encourages prosecution of serious violent offenses by juveniles as adults, meaningful sanctions for every act of delinquency, and reform of juvenile records to improve quality and accessibility.

On January 28, 1997, H.R. 3 was referred to the Subcommittee on Crime. On February 26, 1997, the Subcommittee held a joint hearing with the Subcommittee on Early Childhood, Youth and Families of the Committee on Education and the Workforce on the Administration's anti-gang and youth violence initiative. The Subcommittee heard testimony from only one witness, Attorney General Janet Reno.

On March 20, 1997, the Subcommittee held a hearing on Reforming Juvenile Justice in America. The Subcommittee heard testimony from the Honorable Patricia West, Secretary of Public Safety, Commonwealth of Virginia; Chief David Walchak, Chief of Police, Concord, New Hampshire and Past President, International Association of Chiefs of Police; Judge David Grossman, Hamilton County Juvenile Court, Cincinnati, Ohio and Past President, National Council of Juvenile and Family Court Judges; Barbara O'Connor, Federal Public Defender, Los Angeles, California, Special Counsel, U.S. Sentencing Commission; Eric Joy, Director, Allegheny County Juvenile Court; Sergeant Roger Redd, Director, Cumberland County Physical Training Program and Bailiff, Cumberland County Sheriff's Office; Reverend Eugene Rivers, Director, Ten Point Leadership Program; Peter Jackson, Director, Alliance of Concerned Men of Washington, D.C. and Deputy Warden, Lorton Youth Center; Richard Green, Director, Crown Heights Youth Collective, Inc.

On April 22, 1997, the Subcommittee on Crime was discharged from further consideration. On April 24, 1997, and April 29, 1997, the full Committee met in open session to consider the bill. On April 29, 1997, the Committee ordered the bill favorably reported to the House, amended, by a vote of 15 yeas to 9 nays. H.R. 3 was reported favorably to the House, (H. Rept. 105-86). On May 8, 1997, the House passed H.R. 3, the "Juvenile Crime Control Act of 1997," by a vote of 286 yeas to 132 nays. Title III of H.R. 3, The "Juvenile Accountability Block Grants" portion of the bill was amended and incorporated in the Commerce, Justice, State and the Judiciary Appropriations Act for fiscal year 1998, which was signed into law on November 26, 1997, (Public Law 105-119). Similar language was also included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 (H. Rept. 105-825, Public Law 105-277).

On September 15, 1998, the House passed S. 2073, a bill to authorize appropriations for the National Center for Missing and Exploited Children, (with an amendment including the language of H.R. 3) under suspension of the rules by a vote of 280 yeas to 126 nays. On October 1, 1998, the House agreed to a motion to insist on amendments and request a conference. No further action was taken on S. 2073 or H.R. 3 in the 105th Congress.

Community Police Officers in Schools

S. 2235, to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 103-322) to encourage the use of school resource officers, was passed by the Senate on October 7, 1998. The bill allows police officers from the 1994 Crime bill's "100,000 COPS on the Beat" program to be used in schools. Several random school-related shootings occurred in 1997 and 1998, evoking public shock and outrage. These shootings resulted in numer-

ous deaths and serve as sobering and tragic examples of just how urgent the need to address youth crime has become. A look at crime statistics show that while murder rates for young people may have declined during the 105th Congress, the schoolyard murder rate almost doubled in 2 years. Twenty-five students were killed in U.S. schools in 1998.

On October 8, 1998, S. 2235 was referred to the House Committee on the Judiciary, in addition to the Committee on Education and the Workforce, for the consideration of such provisions as fall within the jurisdiction of the committee concerned. On October 8, 1998, the Judiciary Committee and the Committee on Education and the Workforce were discharged from further consideration. On October 9, 1998, S. 2235 passed the House under suspension of the rules and the bill was signed by the President on October 27, 1998 (Public Law 105-302).

Establishment of 2,500 Boys and Girls Clubs of America by the year 2000

H.R. 1753 amends a provision enacted as part of the "Economic Espionage Act of 1996," (Public Law 104-294), which authorized \$100 million in federal seed money over 5 years to establish an additional 1,000 Boys and Girls Clubs in public housing and distressed areas throughout the country. As of 1996, there were 1,800 Boys and Girls Clubs facilities in the United States. H.R. 1753 makes several administrative changes to current law, streamlining the application process for the clubs and ensuring that at least 2,500 facilities are established by the year 2000.

On October 9, 1997, the Subcommittee met in open session and considered the bill H.R. 1753, to establish 2,500 Boys and Girls Clubs of America by the year 2000. The bill was ordered reported favorably to the full Committee. On October 29, 1997, the full Committee considered H.R. 1753 and the bill was ordered reported favorably to the House, amended (H. Rept. 105-368). On November 13, 1998, H.R. 1753 was passed by the House, as amended, under suspension of the rules. On November 13, 1998, the Senate companion of H.R. 1753, S. 476 passed the House with an amendment substituting the language of H.R. 1753 as passed by the House. S. 476 was signed into law on December 2, 1997 (Public Law 105-133).

National Youth Crime Prevention Demonstration Act

On March 31, 1998, Mr. Conyers introduced H.R. 3607, the "National Youth Crime Prevention Demonstration Act." H.R. 3607 provides grants to grassroots organizations in certain cities to develop youth intervention models. The bill was referred the Committee on the Judiciary and the Committee on the Education and the Workforce. On April 15, 1998, the bill was referred to the Subcommittee on Crime. On July 31, 1998, the Subcommittee on Crime was discharged from further consideration. On August 5, 1998, the full Committee met in open session and considered H.R. 3607. The bill was ordered reported favorably to the House, amended. No further action was taken on H.R. 3607 in the 105th Congress.

Juvenile Rape in Prison Protection Act of 1997

On June 16, 1997, Ms. Jackson Lee introduced H.R. 1898, the “Juvenile Rape in Prison Protection Act of 1997.” H.R. 1898 would amend section 2241(a) of title 18 of the United States Code so as to establish mandatory life imprisonment for anyone 21 years of age or older who commits the federal offense of aggravated sexual abuse in violation of section 2241(a) of title 18 of the United States Code, where the victim is a Federal prisoner who has not attained the age of 18 years.

On June 18, 1997, the Subcommittee on Crime was discharged from further consideration and H.R. 1898 was ordered reported to the House by the full Committee. H.R. 1898 was reported to the House on June 26, 1997 (H. Rept. 105–159). No further action was taken on H.R. 1898 in the 105th Congress.

PROTECTING OUR CHILDREN

The Jacob Wetterling Improvements Act

On May 20, 1997, Chairman McCollum introduced H.R. 1683, the “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Improvements Act of 1997.” H.R. 1683 strengthens state Megan’s law programs and closes several loopholes which allow convicted sex offenders to avoid registering their whereabouts with local law enforcement. Congress has made several efforts to encourage States to establish a system which requires persons who commit sexual or kidnaping crimes against children or who commit sexually *violent* crimes against any person (adult or child) to register their address and other pertinent information with state law enforcement upon release from prison. The Jacob Wetterling Act, which passed in the 1994 Crime Bill was the first of such legislation (Public Law 103–322). In 1996, Congress amended the Wetterling Act in “Megan’s Law” (Public Law 104–145) which requires states to notify the public when sexually violent offenders move into their communities. Also in 1996, Congress passed the “Pam Lychner National Sexual Offender Tracking and Identification Act,” which was designed to ensure the nationwide availability of sex offender registration information to law enforcement (Public Law 104–236). H.R. 1683, the “Jacob Wetterling Improvements Act” was designed to amend previous efforts regarding sex offender registries to require federal and military offenders to participate in the program, as well as provide States with more flexibility as they implemented their own systems. While no hearings were held on the bill, formal and informal input was received from the Department of Justice and from several State and local government officials, law enforcement officers and criminal history repository directors.

On June 12, 1997, the Subcommittee on Crime considered H.R. 1683, and the bill was ordered reported favorably to the full Committee. On September 9, 1997, the full Committee ordered the bill reported favorably to the House, amended, (H. Rept. 105–256). On September 23, 1997, the bill passed the House, as amended, under suspension of the rules, by a vote of 415 yeas, 2 nays, and 1 voting “present.” The text of H.R. 1683 was incorporated into the Commerce, Justice, State and the Judiciary Appropriations Act for fis-

cal year 1998, which was signed on November 26, 1997 (Public Law 105-119).

The Child Protection and Sexual Predator Punishment Act of 1998

During the 104th and 105th Congresses, the Subcommittee on Crime held a total of seven hearings on issues related to crimes against children. At those hearings, the Subcommittee heard testimony from victim parents, child safety advocacy groups, and federal, state and local law enforcement about the nature, threat and best ways to stop pedophiles who prey on innocent children.

While there are currently no estimates as to the number of children victimized via cyberspace, the rate at which federal, state, and local law enforcement are confronted with these types of cases is growing rapidly. As we usher in the computer age, law enforcement will be confronted with even newer challenges. "Cyber-predators" often "cruise" the Internet in search of lonely, rebellious or trusting young people. Pedophiles can easily find children through on-line "chat rooms" and "bulletin boards" designed for and frequented by children. These on-line forums allow computer users to exchange typed messages about a particular subject and to engage in conversations with like-minded souls, often perfect strangers. In this environment, a middle-aged man could actually be masquerading as a 12-year-old girl. Clever pedophiles manage to befriend and gain the trust of youngsters who may eventually agree to a face-to-face meeting. In recent cases, youths who have agreed to such meetings have been photographed for child pornography, raped, beaten, robbed, and kidnaped.

Several well-publicized tragedies occurred around the nation during the 105th Congress which led to the hearings held by the Subcommittee on Crime: In New Jersey, a 15-year-old teenager accused of sexually assaulting and murdering an 11-year-old boy was discovered to be himself a victim of sexual assault by a 43-year-old man he met in an *America On Line* chat room. In Maryland, a computer consultant was convicted in federal court of two counts of crossing state lines to engage in sex with a minor. The man had used the Internet to contact over 100 girls and had arranged to meet a 12-year-old girl at the Burke, Virginia, public library when he was caught. A missing 12-year-old, Palm Springs, California, boy was found in the home of a Fairfax, Virginia, man with whom he had communicated via telephone and the Internet. The boy was apparently persuaded by the Fairfax man to take a bus to Virginia. There, the boy was sexually abused for several weeks before he was located by authorities.

During the 105th Congress, the Subcommittee on Crime held 2 days of hearings on issues related to H.R. 3494 on November 7, 1997, and April 30, 1998. At the November 7, 1997, hearing, witnesses invited by the Subcommittee were members of law enforcement who had worked cases involving Internet crimes against children on a day-to-day basis, or they were individuals who had worked with children and families to promote on-line safety on the Internet. They included: Steven Wiley, Section Chief, Violent Crimes Unit, Federal Bureau of Investigation; Carol Ellison, senior editor, *HomePC Magazine*; D. Douglas Rehman, Special Agent, Florida Department of Law Enforcement; Cathy Cleaver, Legal

Counsel, Family Research Council; and Paul Reid, Detective, Arlington County Police Department.

On March 18, 1998, Chairman McCollum introduced H.R. 3494, the "Child Protection and Sexual Predator Punishment Act of 1998." The bill is a comprehensive package of new crimes and increased penalties developed in response to assaults on children, particularly those facilitated by computers. The bill toughens penalties for pedophiles who stalk children on the Internet and provides law enforcement with tools to track down kidnappers, child pornographers and serial killers. As introduced, the bill prohibits contacting a minor over the Internet for the purposes of engaging in illegal sexual activity and prohibits knowingly transferring obscene materials to a minor over the Internet. H.R. 3494 also prohibits the use of interstate facilities to transmit identifying information about a minor for criminal sexual purposes. Moreover, the bill, as introduced, establishes a minimum sentence of 3 years for using a computer to coerce or entice a minor to engage in illegal sexual activity.

H.R. 3494 targets pedophiles who use and distribute child pornography to lure children into sexual encounters. The bill increases penalties for possessing 50 or more images of or items containing child pornography and broadens the scope of current law relating to the coercion of a minor to travel in interstate commerce to engage in sexual activity to include the "production of child pornography." In addition, the bill permits the forfeiture of assets utilized to distribute or possess "morphed" child pornography. H.R. 3494 also authorizes pretrial detention of federal child sex offenders and allows for criminal forfeiture for certain federal sex offenses.

As introduced, H.R. 3494 also mandates life in prison for serial rapists—those who commit federal sexual assaults and have been convicted twice previously of serious state or federal sex crimes. The bill increases the maximum prison sentence from 10 to 15 years for transporting a minor in interstate commerce for prostitution or sexual activity, and requires the U.S. Sentencing Commission to review and amend the sentencing guidelines to increase the penalties for certain federal sex offenses against minors. H.R. 3494 also doubles prison sentences for abusive sexual contact if the victim is under the age of 12 and doubles the maximum prison sentence available for second-time sex offenders. The bill also authorizes the pursuit of a civil remedy for personal injuries resulting from certain sex crimes against children.

Lastly, H.R. 3494 gives law enforcement the tools it needs to track down kidnappers, and serial killers. Importantly, the bill allows for administrative subpoenas in certain child exploitation investigations and provides for the immediate commencement of federal investigations in kidnaping cases. H.R. 3494 also restructures the currently existing Morgan P. Hardiman Missing and Exploited Children's Task Force into a resource center to improve its effectiveness in kidnaping and serial murder investigations. As amended in Committee, the bill also prohibits unsupervised access to the Internet by federal prisoners; expresses a sense of Congress that state governors, state legislators, and state prison officials should also prohibit unsupervised access to the Internet by state prisoners;

and requires the Attorney General to report to Congress on the extent to which states currently allow prisoner access to the Internet.

On April 30, 1998, the Subcommittee held a hearing on H.R. 3494 and related bills pertaining to crimes against children. Those bills included H.R. 305, the "Protection from Sexual Predators Act of 1997"; H.R. 1972, the "Children's Privacy Protection and Parental Empowerment Act of 1997"; H.R. 2173, the "Child Abuse Notification Act of 1997"; H.R. 2122, the "Joan's Law Act of 1997"; H.R. 2488, the "Volunteers for Children Act"; H.R. 2815, the "Protecting Children From Internet Predators Act of 1997"; H.R. 3185, the "Abolishing Child Pornography Act"; H.R. 3729, the "Stop Trafficking of Pornography in Prisons Act of 1998" and H. Con. Res. 125, expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

The Subcommittee heard testimony from Deborah Niemann-Boehle, Chicago, Illinois; the Honorable Jerry Weller, Eleventh District of Illinois, U.S. House of Representatives; the Honorable Bob Franks, Seventh District of New Jersey, U.S. House of Representatives; the Honorable Gil Gutknecht, First District of Minnesota, U.S. House of Representatives; the Honorable Debra Pryce, Fifteenth District of Ohio, U.S. House of Representatives; the Honorable Nick Lampson, Ninth District of Texas, U.S. House of Representatives; the Honorable Bob Riley, Third District of Alabama, U.S. House of Representatives; the Honorable Louise Slaughter, Twenty-Eighth District of New York, U.S. House of Representatives; and the Honorable Mark Foley, Sixteenth District of Florida, U.S. House of Representatives. The Subcommittee also heard testimony from the Administration: Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice.

On April 30, 1998, the Subcommittee on Crime was discharged from further consideration. On May 6, 1998, the full Committee considered the bill in open session and ordered it reported favorably to the House as amended (H. Rept. 105-557). On June 11, 1998, H.R. 3494 passed the House, as amended, with additional floor amendments by a vote of 416 yeas to 0 nays, and 1 voting "present." On June 16, 1998, the bill was reported favorably to the Senate Judiciary Committee. On September 17, 1998, H.R. 3494, the "Protection of Children from Sexual Predators Act" was reported favorably to the Senate, amended. On October 9, 1998, the bill passed the Senate with additional floor amendments by unanimous consent.

Several provisions were stricken from the House-passed bill by the Senate. While the House bill would have prohibited contacting a minor over the Internet for the purposes of engaging in illegal sexual activity and would have established a 3-year minimum term of imprisonment for using a computer to entice or coerce a minor to engage in illegal sexual activity, the Senate did not adopt this language. The House bill would have also cracked down on serial rapists by mandating life in prison for such repeat offenders and would have increased penalties for possessing 50 or more images of or items containing child pornography, the Senate struck this language during Committee markup. The House bill would have authorized federal jurisdiction in kidnaping cases if any facility or

means of interstate or foreign commerce was used in furtherance of the offense or the kidnaping offense affects interstate or foreign commerce and would have reauthorized certain Violence Against Women Act provisions, but Senate did not adopt these provisions. On October 12, 1998, the House agreed to the Senate amendments to H.R. 3494 by a vote of 400 yeas to 0 nays, and 2 voting "present." H.R. 3494, the "Protection of Children from Sexual Predators Act of 1998," was signed into law by the President on October 30, 1998 (Public Law 105-314).

Deadbeat Parents Punishment Act of 1997

On March 26, 1998, the Subcommittee held a markup and considered H.R. 2925, the "Deadbeat Parents Punishment Act of 1997." The bill was ordered favorably reported to the full Committee. H.R. 2925 establishes federal penalties for the egregious failure to pay legal child support obligations. On April 1, 1998, H.R. 2925 was considered by the full Committee and ordered reported favorably to the House. On May 7, 1998, Mr. Hyde introduced an identical version to H.R. 2925, H.R. 3811, the "Deadbeat Parents Punishment Act of 1998." On May 11, 1998, the Subcommittee on Crime was discharged from further consideration; on May 12, 1998, the full Committee was discharged from further consideration. On May 12, 1998, H.R. 3811 passed the House in lieu of H.R. 2925 under suspension of the rules, by a vote of 402 yeas to 16 nays. H.R. 3811 was passed by the Senate on June 5, 1998, and signed by the President on June 24, 1998 (Public Law 105-187).

No Second Chances for Murderers, Rapists, or Child Molesters Act of 1998

Despite the fact that violent criminals are serving longer sentences nationwide, and expected days of imprisonment have slowly recovered from an all-time-low in the mid-70s, accountability in our nation's criminal justice systems is still lacking. The justice system imprisons barely one criminal for every 100 violent crimes. In 1994, the most recent year in which coinciding data is available 10,900,000 million violent crimes were committed in the United States, yet 1,860,000 of these violent crimes were reported to the police. There were 778,000 arrests, 165,000 convictions, and of those arrested, 100,000 were sent to prison.

According to the Department of Justice, the average sentence for a violent crime is 9.8 years. The average time served for a violent crime is 4.5 years, or 46 percent of that sentence. For all offenses, the average sentence is 5.9 years, the average time served 2.2 years or 38 percent of that sentence. Many offenders who are released from prison go on to commit new crimes. Two-thirds of all individuals arrested for murder, rape, robbery, or assault in 1994 had a prior arrest, almost 40 percent had at least 5 prior arrests. Over a 3-year period following prison release, more than half of individuals convicted rape and half of those convicted of sexual assault were re-arrested for new crimes. The failure to hold convicted violent or repeat criminals accountable for their crimes has done much to erode public trust in our criminal justice system. The failure to incarcerate these chronic offenders costs thousands of lives each year. . . .

On September 17, 1998, the Subcommittee held a hearing on H.R. 4258, the "No Second Chances for Murderers, Rapists, or Child Molesters Act of 1998." H.R. 4258 would levy penalties against states after they have released violent offenders who have served their sentences if the offender crosses state lines and commits a new crime of violence. If an offender is convicted of murder or specified sex crimes in one state served his time, was released, and traveled to a second state where he committed a similar crime, the bill would require the U.S. Attorney General to transfer \$100,000 from the first state's funds from federal law enforcement assistance programs to the second state. In addition to the sponsor of the bill, Congressman Matt Salmon, 1st District of Arizona, the witnesses who testified at the hearing were victims, or family members of victims, of violent crimes committed by repeat offenders. They included: Marc Klaas, Sausalito, California; Mary Vincent and Mark Edwards, Esq., Santa Ana California; Louis Gonzales, Newfield, New Jersey; Trina Easterling, Slydell, Louisiana; and Jeremy Brown, South Nyack, New York. No further action was taken on H.R. 4258 in the 105th Congress.

Violent Crimes Committed by Repeat Offenders and Criminals Serving Abbreviated Sentences

On May 7, 1997, Mr. Barcia introduced H. Con. Res. 75, which expresses the sense of Congress that States should work more aggressively to attack the problem of violent crimes committed by repeat offenders and criminals serving abbreviated sentences. The legislation commends those States which have made improvements in their criminal justice laws to ensure that criminals serve an appropriate amount of time in prison, and encourages the remaining States to adopt legislation to increase the amount of time served by violent offenders. The resolution further emphasizes Congress' support for the requirement that violent criminals should serve at least 85% of their sentences. H. Con. Res. 75 was ordered reported to the full Committee by the Subcommittee on Crime on June 12, 1997. On June 18, 1997, the resolution was ordered reported to the House and reported to the House on June 26, 1997, (H. Rept. 105-157). On June 28, 1997, H. Con. Res. 75 was considered by the House and agreed to by the House with an amendment on July 29, 1997 (400 yeas; 24 nays; and 1 present). On July 29, 1997, the resolution was referred to the Senate Committee on the Judiciary. On June 15, 1998, the Senate Judiciary Committee was discharged and the resolution was agreed to by the Senate.

The Protection of Our Children Should Be the Nation's Highest Priority

On May 20, 1997, Mr. Collins introduced H. Res. 154, a resolution expressing the sense of the House that the Nation's children are its most valuable assets and that their protection should be the Nation's highest priority. H. Res. 154 is to express Congressional commitment to the safety and protection of our Nation's children. It provides that the States should have in place laws which severely punish individuals convicted of offenses against children. The resolution declares that law enforcement agencies should take the necessary steps to safeguard children against the dangers of

abduction and exploitation and should work in close cooperation with Federal law enforcement to ensure a rapid and efficient response to reported child abductions, especially in cases where a child's life may be in danger. No hearings were held on H. Res. 154.

The Subcommittee on Crime ordered H. Res. 154 reported to the full Committee on June 12, 1997. On June 18, 1997, the resolution was ordered reported to the House by the Judiciary Committee and the resolution was reported to the House on June 26, 1997 (H. Rept. 105-160). On July 8, 1997, H. Res. 154 was agreed to by the House.

REINVIGORATING THE WAR ON DRUGS

Almost all of the indicators regarding the drug problem in America—most significantly, youth drug use—are heading in the wrong direction. Drug quantity is up; drug prices are down, and drug use is up. Consequently, the Subcommittee on Crime has focused aggressively on the growing drug crisis in America. It has done so with an eye toward ensuring an effective counter drug response on all fronts: drug source countries, where the drugs are grown; the transit zone, where drugs can be interdicted; domestic law enforcement, focusing on dismantling large trafficking organizations; and demand reduction. Specifically, the Subcommittee has sought to correct the imbalanced approach to the drug problem of the last 6 years by rebuilding the U.S. source country and interdiction capability, and by further strengthening our domestic law enforcement capability.

Western Hemisphere Act of 1998

H.R. 4300, The "Western Hemisphere Drug Elimination Act" was introduced by Chairman McCollum on July 22, 1998. In 1998, the streets of our nation are flooded with more cocaine and heroin at cheaper prices than at any time in our history. This legislation is intended to provide the resources and the direction to reduce the supply of drugs coming into our nation from abroad. The plan put forth in this legislation is designed to cut the flow of drugs into our country by 80% within 4 years. It is the most dramatic, exhaustive, targeted effort ever conceived to stop the drug flow from Latin America.

The legislation is intended to strengthen the counter narcotics infrastructure in source countries and transit zones from 1999 through 2001. Such infrastructure will require a mix of improved intelligence, personnel, technology and training, all of which are provided by this legislation.

All of the cocaine entering the United States comes from Colombia, Peru and Bolivia. More than half the heroin entering the United States and virtually all of it in the eastern half comes from Colombia. While some heroin is produced in Mexico, Mexico is principally a transit country. The objective in this legislation is to cut the flow of cocaine and heroin not only before it reaches the United States, but before it reaches Mexico. The plan and the specific resources authorized in this bill were developed from a "bottom-up" review involving extensive input from the Department of Defense, State Department, Drug Enforcement Administration and U.S. In-

telligence personnel on the ground working in Colombia, Peru, Bolivia, and the transit zone north of these source countries.

The legislation was referred to 5 committees (Committees on International Relations, Ways and Means, the Judiciary, National Security, and Transportation and Infrastructure). The Judiciary Committee was discharged on September 15, 1998. On September 16, 1998, H.R. 4300 passed the House, amended, by a vote of 384 yeas to 39 nays. Much of the language from H.R. 4300 was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 (H. Rept. 105–825, Public Law 105–277).

Drug Demand Reduction Act

On September 11, 1998, Mr. Portman introduced H.R. 4550, the “Drug Demand Reduction Act.” H.R. 4550 was referred to the Committee on Commerce in addition to the Committees on Government Reform and Oversight, Small Business, Transportation and Infrastructure, the Judiciary and Education and the Workforce. On September 14, 1998, this bill was referred to the Subcommittee on Crime. The Judiciary Committee was discharged on September 16, 1998. On September 16, 1998, the House passed the bill with an amendment (396 yeas; 9 nays). On September 17, 1998, H.R. 4550 was received in the Senate. No hearings were held, no report was filed on this bill. No further action was taken on H.R. 4550 in the 105th Congress.

The Medical Marijuana Referenda Movement in America

After years of decline, marijuana use dramatically increased in recent years. The number of individuals seeking treatment for marijuana addiction rose to more than 140,000 in 1996. The University of Michigan’s “Monitoring the Future Survey” reveals that marijuana use by 8th, 10th, and 12th graders declined steadily from 1980 to 1992. But, from 1992 to 1996, marijuana use by these populations increased dramatically—by 253 percent among 8th graders, 151 percent among 10th graders, and 84 percent among 12th graders. Marijuana users are also younger. The annual survey conducted by the Partnership for a Drug-Free America released on March 4, 1997, found that among children 9 through 12 years of age who were interviewed, nearly one-fourth of them were offered drugs in 1996, with marijuana being the predominant drug offered. Only 19 percent of the same age group gave this response on the survey covering 1993. The 1996 “Monitoring the Future Survey” reported that 8 percent of 6th graders interviewed said they had tried marijuana, while 23 percent of the 7th graders and 33 percent of the 8th graders said they had done so.

The harmful effects of marijuana use are now clear, having been extensively studied since the 1960s. For example, the gateway effect of marijuana is better understood: According to the 1994 study by Columbia University’s Center on Addiction and Substance Abuse, 12 to 17-year-olds who use marijuana are 85 times more likely to use cocaine than those who abstain from marijuana. The study further reveals that 60 percent of adolescents who use marijuana before the age 15 will later use cocaine, and 43 percent of teenagers who use marijuana by age 18 go on to use cocaine.

A review of over 6,000 articles from the medical literature, published in the May 15, 1997, *Annals of Internal Medicine* evaluating the potential medicinal applications of crude marijuana, concluded the following: marijuana is not a medicine; its use causes significant toxicity; numerous safe and effective medicines are available which makes the use of crude marijuana unnecessary and inappropriate for medicinal purposes. Claims that smoking marijuana is beneficial for a variety of illnesses are anecdotal and not founded in scientifically accepted research. To the contrary, according to the National Institute of Health (NIH), research indicates that smoking marijuana may lead to a variety of clinically significant impairments. At the same time, experts at the NIH have indicated that some of the more than 65 cannabinoids in the marijuana plant may prove to be medically beneficial, suggesting that additional research in this area may be helpful. However, due to the fact that smoking plant material poses patient dangers as well as dose standardizing problems, NIH encourages the development of delivery routes other than smoking.

The federal drug approval process has been a long-established element of U.S. drug control policy. Before any drug can be approved as a medication it must meet rigorous and extensive scientific criteria, as established by the Food and Drug Administration. As such, no drug can be prescribed without first having obtained FDA approval. Currently, marijuana—in any form—has not been approved as medication.

On October 1, 1997, the Subcommittee held a hearing on the Medical Marijuana Referenda Movement in America. The Subcommittee heard testimony from Barry McCaffrey, Director, Office of National Drug Control Policy, The White House; Dr. Alan Leshner, Director, National Institute of Drug Abuse, Department of Health and Human Services; James E. Copple, President and CEO, Community Anti-Drug Coalitions of America, Alexandria, Virginia; Richard M. Romley, Maricopa County Attorney, Maricopa County, Arizona; Dennis Peron, Director, Californians for Compassionate Use, San Francisco, California; Dr. Lester Grinspoon, Associate Professor of Psychiatry, Harvard Medical School, Boston, Massachusetts; Ronald E. Brooks, Chair, Drug Policy Committee, California Narcotic Officers' Association, Santa Clara, California; Dr. Janet D. Lapey, Executive Director, Concerned Citizens for Drug Prevention, Inc., Hanover, Massachusetts; Dr. Roger Pilon, Senior Fellow, Cato Institute, Washington, D.C.

On February 26, 1998, Chairman McCollum introduced H. Res. 372, expressing the sense of the House that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use. The resolution also calls on the Attorney General to submit a report to the House Judiciary Committee within 90 days of the adoption of this resolution which reports on: (a) the total quantity of marijuana eradicated in the United States from 1992 through 1997; and (b) the annual number of arrests and prosecutions for marijuana offenses from 1992 through 1997.

H. Res. 372 was introduced February 26, 1998 (in form agreed upon by the Subcommittee on Crime on February 25, 1998) and forwarded to the full Committee as an original resolution. It was additionally referred to the Committee on Commerce. The full

Committee met in open session and considered H. Res. 372, ordering it reported favorably to the House (H. Rept. 105–451). On March 18, 1998, the Committee on Commerce was discharged from further consideration. On March 18, 1998, H. Res. 372 was placed on the House Calendar. On April 30, 1998, Chairman McCollum introduced a revised version of H. Res. 372, H.J. Res. 117. On September 15, 1998, H.J. Res. 117 passed the House, under suspension of the rules, by a vote of 310 yeas to 93 nays. The title was amended to read, “Expressing the sense of Congress in support of the existing Federal legal process for determining the safety and efficacy of drugs, including marijuana and other schedule I drugs, for medicinal use.”

Language similar to H.J. Res. 117 was incorporated into the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999. The resolution declares the support of Congress for the current legal, medical process for evaluating the safety and efficacy of medications and expresses Congressional opposition to legalizing marijuana for medicinal use without the Food and Drug Administration approving its use as a medication (can be found in H. Rept. 105–825, Public Law 105–277).

Money Laundering

Since the current money laundering laws were enacted in 1986, the criminal conduct that those laws were intended to address has become increasingly international in scope. Criminals who commit crimes abroad are using the United States and its financial institutions as havens for laundered funds, at the same time that criminals committing offenses in the United States are using foreign banks and bank secrecy jurisdictions to conceal the proceeds of their offenses.

In the 105th Congress, the Subcommittee on Crime sought to address this truly international law enforcement problem. On July 24, 1997, the Subcommittee held a hearing on the nature and extent of domestic and international money laundering, its role in the international drug trade, and methods of combating the problem. The Subcommittee heard testimony from Mary Lee Warren, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Raymond Kelly, Under Secretary of the Treasury for Enforcement, Department of the Treasury; Michael Zeldin, Partner, Price Waterhouse LLP; Vincent Bugliosi, author, *The Phoenix Solution*; Charles Saphos, Partner, Fila & Saphos; John Byrne, Senior Counsel & Compliance Manager, American Bankers Association; Brendon Hewson, Senior Vice President, International Investigations, NationsBank.

The Subcommittee also held a hearing on October 16, 1997, on the anatomy of a Colombian drug trafficking operation in the United States. The Subcommittee heard testimony from only one witness, “Mr. Rodriguez,” a former member of the New York Branch of the Medellin Cartel (assumed name for the purposes of the hearing). At the hearing the Subcommittee heard first hand information about how drugs and money are illegally transported by drug cartels.

On April 29, 1998, Chairman McCollum introduced H.R. 3745, the “Money Laundering Act of 1998.” H.R. 3745 updates the money

laundering laws to enable law enforcement to respond to the increasingly international nature of money laundering. It does so by making the operation of an illegal money transmitting business subject to civil forfeiture; authorizing federal courts to restrain the U.S. assets of a person arrested abroad for certain offenses (including money laundering, reporting violations, and "structuring" offenses) so as to prevent those assets from disappearing; requiring litigants to make records in bank secrecy jurisdictions (in foreign countries) available to the Government, if the records are material to a claim pending in federal court; granting federal courts jurisdiction over civil money laundering actions filed against foreign banks that launder money in the U.S.; expanding the list of foreign "specified unlawful activities" (predicate offenses for money laundering) to include offenses such as foreign crimes of violence, fraud, bribery, and smuggling; and authorizing the Secretary of State to transfer forfeited property to a foreign country which participated in the seizure or forfeiture of the property, even if that country has not been fully certified (pursuant to the annual drug certification process), if the Secretary finds the transfer to be in the national interest.

On June 5, 1998, the Subcommittee on Crime held a markup and considered H.R. 3745, the "Money Laundering Act of 1998," and the bill was ordered reported favorably to the full Committee. No further action was taken on H.R. 3745 in the 105th Congress.

Money Laundering and Financial Crimes Strategy Act of 1997

On June 16, 1997, H.R. 1756, the "Money Laundering and Financial Crimes Strategy Act of 1997," was referred to the Subcommittee on Crime. H.R. 1756 was reported favorably to the House with an amendment from the Committee on Banking and Financial Services on June 25, 1998 (H. Rept. 105-608, part 1). The Committee on the Judiciary was discharged from further consideration July 31, 1998. On October 5, 1998, H.R. 1756 passed the House with an amendment under suspension of the rules. On October 6, 1998, the bill was received in the Senate. The Senate passed H.R. 1756 with an amendment on October 15, 1998. On October 16, 1998, the House agreed to the Senate amendment. H.R. 1756 was approved by the President on October 30, 1998. (Public Law 105-310).

Violent Crimes Committed by Repeat Offenders and Criminals Serving Abbreviated Sentences

On June 9, 1998, Mr. Bachus introduced H. Con. Res. 288, a resolution expressing the sense of the Congress that the United States should support the efforts of Federal law enforcement agents engaged in investigation and prosecution of money laundering associated with Mexican financial institutions.

On June 16, 1998, H. Con. Res. 288 was referred to the Subcommittee on Crime. No hearings were held and no report was filed. On June 22, 1998, the Committee was discharged from further consideration and the resolution was agreed to by the House (404 yeas; 3 nays). H. Con. Res. 288 was referred the Senate Committee on the Judiciary June 23, 1998. No further action was taken on H. Con. Res. 288 in the 105th Congress.

Speed Trafficking Life in Prison Act of 1997

In the 104th Congress, the Subcommittee held two hearings on the increased presence of methamphetamine (often called “speed”) trafficking in America. One of those hearings examined issues related to a bill introduced in the 104th Congress, H.R. 3852, the “Comprehensive Methamphetamine Control Act of 1996.” The Senate companion bill, S. 1965 was amended and passed by the Congress and signed by the President on October 3, 1996 (Public Law 104–237). Not all the provisions in the “Comprehensive Methamphetamine Control Act of 1996,” were passed in the final version that became law in the 104th Congress. The Senate did not adopt a provision to increase penalties for trafficking methamphetamine equal to those of crack-cocaine.

In the 105th Congress, Congressman Pete Sessions introduced H.R. 3898, the “Speed Trafficking Life in Prison Act of 1997.” H.R. 3898 included the provision from the “Comprehensive Methamphetamine Control Act of 1996” which was not adopted in the 104th Congress. H.R. 3898 reduces by one-half the quantity of methamphetamine required to trigger already existing mandatory minimum prison sentences, so as to make the penalty equal to that of crack-cocaine. On May 19, 1998, H.R. 3898 was referred to the Committee on the Judiciary and the Committee on Commerce for consideration of such provisions as fall within the jurisdiction of the committee concerned. On May 26, 1998, the bill was referred to the Subcommittee on Crime. On June 5, 1998, the Subcommittee held a markup and H.R. 3898 was ordered favorably reported the full Committee. On July 21, 1998, the full Committee held a markup and H.R. 3898 was ordered favorably reported to the House by a vote of 21 yeas to 6 nays (H. Rept. 105–711, part I). On September 14, 1998, the Committee on Commerce was discharged from further consideration. On September 15, 1998, H.R. 3898 passed the House, under suspension of the rules. While no further action was taken on H.R. 3898 in the 105th Congress, language from H.R. 3898 was incorporated in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 (H. Rept. 105–825, Public Law 105–277).

Controlled Substances Trafficking Prohibition Act

On April 1, 1998, Mr. Chabot introduced H.R. 3633, the “Controlled Substances Trafficking Prohibition Act” which places limitations on controlled substances brought into the United States from Mexico. The bill was referred jointly to the Judiciary Committee and the Committee on Commerce. On March 26, 1998, the Subcommittee held a hearing on issues related to the problem of individuals bringing large quantities of illegal prescription drugs across our borders into the United States. The Subcommittee heard testimony from the sponsor of the bill, the Honorable Steve Chabot, First District of Ohio, U.S. House of Representatives; Matt Meagher, Senior Investigative Correspondent, Inside Edition; Wesley S. Windle, Program Officer, Passenger Operations Division, U.S. Customs Service; Christopher E. Anders, Legislative Counsel, American Civil Liberties Union; Marilyn Wolfe; Michael G. Graney, Executive Vice President, New York Council 82, American Federa-

tion of State, County, and Municipal Employees; Correctional Officer John L. Parcell, Corrections and Criminal Justice Coalition.

On May 7, 1998, the Subcommittee held a markup and considered the bill, H.R. 3633, the "Controlled Substances Trafficking Prohibition Act," ordering it favorably reported to the full Committee. On May 20, 1998, the full Committee held a markup and H.R. 3633 was ordered reported favorably to the House (H. Rept. 105-629, part 1). On July 16, 1998, the Committee on Commerce was discharged from further consideration. On August 3, 1998, H.R. 3633 passed the House, was amended by title, under suspension of the rules. On August 31, 1998, the bill was received in the Senate and on October 20, 1998, passed by the Senate. H.R. 3633 was approved by the President on November 10, 1998. (Public Law 105-357)

Drug Diversion Investigations by the United States Drug Enforcement Administration

Diversion (the redirecting of drugs from the legal stream of commerce into criminal hands) of legitimately produced, prescription controlled substances has long been a serious problem in the United States. In 1996, licitly manufactured controlled substances accounted for one-quarter of drug deaths reported by medical examiners and one-quarter of drug-related emergency room admissions. In 1995, at least 6.6 million Americans abused at least one prescription psychotherapeutic drug (e.g., a stimulant, sedative, antidepressant or analgesic). Prior to enacting the Controlled Substances Act (CSA) in 1970, an estimated 65 percent of all drug deaths in the United States arose from licitly produced drugs, and almost 50 percent of the amphetamines and barbiturates produced legitimately in the United States were diverted into illicit channels.

Preventing the diversion of legitimately produced drugs into illicit channels is one of the primary missions of the Drug Enforcement Administration (DEA) and a major purpose of the CSA. The CSA and the Code of Federal Regulations establish a system of drug distribution which is designed to prevent unauthorized individuals from engaging in drug diversion and to prevent registered individuals from using their authority under the CSA to engage in pharmaceutical drug diversion. The core requirements of the federal diversion prevention program are the registration of all drug manufacturers, distributors, dispensers (including hospitals), pharmacies and doctors with the DEA and the requirement that all such registrants maintain careful records, as prescribed in the Code of Federal Regulations. These records ensure a "paper trail" to account for each transaction, both to deter diversion and to enable actual diversion to be investigated. The registration and extensive record-keeping requirements make the pharmaceutical and legitimate drug industry among the most pervasively regulated industries in the United States.

The DEA is charged with enforcing the record-keeping requirements established in the CSA, with the aim of deterring drug diversion and identifying actual and potential sources of diversion. Section 842 of title 21, United States Code, establishes the principal record-keeping requirements on registrants. Subsection 842(a)(5) provides that it is unlawful for any registrant "to refuse

or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter . . .” Subsection (a)(10) imposes an additional, similar record-keeping requirement on registrants. These two regulatory provisions do not require that the failure to keep records properly must be “knowing.” Rather, they establish a strict liability standard for non adherence. This strict liability standard has been identified by law enforcement as the principal contributing factor to the development of an industry culture of extensive care and precision regarding record-keeping. Industry representatives, on the other hand, have argued that the strict liability standard punishes innocent, unintentional and minor record-keeping mistakes, whether or not those mistakes led to any diversion.

Section 842(c) establishes civil penalties of up to \$25,000 for a violation of the record-keeping and reporting requirements in the CSA. This maximum fine amount has been identified by law enforcement as an extremely effective inducement to comply with the record-keeping requirements. Industry representatives, on the other hand, have argued that the maximum fine amount has led to unacceptable practices by law enforcement. This includes the tallying up of all of the record-keeping mistakes by a registrant and then threatening the maximum possible civil fine corresponding to the mistakes—at times totaling millions of dollars. Even if no case is brought, or no settlement is reached, the registrant has had to endure the considerable cost and possible damage to reputation associated with defending against the possible suit. Witnesses on the second panel will provide testimony regarding specific instances of this practice.

There were 2,211 total diversion investigations in fiscal year 1997. Of these, 151 (or 6.8%) were pharmacy investigations, leading to 130 “actions” being taken against pharmacies. These 130 actions consisted of 52 letters of admonition, 35 civil fines, 22 criminal fines, 19 voluntary surrenders of registration, and two administrative hearings.

The civil penalty authority has been used sparingly over the years. The total number of registrants under the CSA in fiscal year 1997 was 955,207. Of these, 63,065 (or 6.6%) were pharmacy registrants. Of the 63,065 pharmacies registered with the DEA in fiscal year 1997, only 35 (or 0.055%) paid a civil penalty. Of those 35 pharmacies, four were chain drug stores.

The DEA Diversion Program emphasizes cooperation with and voluntary compliance by registrants. It is DEA policy that civil actions are not encouraged as a primary compliance tool, except in instances of actual, willful diversion, or where a registrant’s irresponsibility or unwillingness to comply has created a strong potential for diversion. The Department of Justice maintains that federal prosecutors have not, as a rule, sought civil penalties except in cases of egregious, extensive or repeated violations.

On August 6, 1998, the Subcommittee held a hearing on drug diversion investigations by the United States Drug Enforcement Administration. The Subcommittee heard testimony from Rick Beard, owner, Harvest Drug & Gift, Burkburnett, Texas; Philip P. Burgess, National Director of Pharmacy Operations, Walgreen Cor-

poration, Deerfield, Illinois; David R. Work, Executive Director, North Carolina Board of Pharmacy, Carrboro, North Carolina; James R. Phelps, Attorney, Phelps & McNamara, P.C., Washington, D.C. Language providing pharmacies with a needed measure of relief, without weakening DEA diversion investigation was incorporated in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 (H. Rept. 105-825, Public Law 105-277).

Date-Rape Drugs

On July 30, 1998, the Subcommittee held a hearing on the use of controlled substance used to commit date-rape. The Subcommittee heard testimony from Raul Farias, La Porte, Texas; Michael Stevens, Detective, Undercover Drug Investigations, Orlando Police Department, Orlando, Florida; Dr. Joyce M. Carter, Chief Medical Examiner, Joseph A. Jachimczyk, Forensic Center, Houston, Texas; Paul Doering, Professor, Department of Pharmacy Practice, University of Florida; John H. King III, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

VITAL TOOLS FOR LAW ENFORCEMENT

Multipoint Wiretapping

In the last few years there have been rapid advances in the area of wireless communications. Wireless telephones have become increasingly available in all areas of the country and have become so affordable that they have become common, everyday devices. Unfortunately, this technology has also given criminals new tools with which to commit crime and a new mobility allowing them to better evade detection. Over the past several years, law enforcement agencies have discussed with the Committee their concern that the common manner of intercepting telephone calls—placing a wiretap on a single, stationary telephone—was inadequate to investigate crimes such as drug dealing, kidnaping, and domestic terrorism. Criminals committing these and other crimes well know the limits of the wiretap law and often use public telephones, or stolen or cloned wireless telephones, in order evade the placing of a wiretap that would intercept their communications. Because criminals who use pay telephones may never use the same telephone with regularity, law enforcement officials are unable to obtain a wiretap order on that telephone. Criminals who use wireless telephones often discard the telephone or reprogram its number every few days in order to evade the placing of a wiretap on the phone.

Existing law does allow law enforcement agencies to obtain a wiretap order that does not specify the phone to be tapped—and thus allowing law enforcement officials to tap any telephone used by the person named in the application—but only if the agency can show that the person named had acted with the “purpose” to “thwart interception” on his telephone calls by changing telephones. Law enforcement officials have long informed the Committee that they have found it hard to make this showing of purpose to the satisfaction of judges.

In order to remedy this problem, Representative Bill McCollum together with Representative Henry Hyde, Representative John Conyers, and Representative Chuck Schumer, introduced H.R. 3753, the "Multipoint Wiretap Act of 1998." The bill was referred to the Subcommittee on Crime. While the Subcommittee did not take formal action on this bill, the text of the bill was included as section 604 of the Intelligence Authorization Act of 1998 (Public Law 105-272). This section makes it easier for law enforcement officials to obtain wiretap orders on a specific person. Under the Act, officials now only must show the court that the actions of the person named in the wiretap application could have the "effect" of substantially thwarting an interception. In order to balance this lower standard to obtain the wiretap order, however, the Act requires that judges impose a new requirement—that law enforcement officials be prohibited from activating a wiretap until it is reasonable to presume that the person named in the order is "reasonably proximate" to the telephone to be tapped.

Under this new requirement, a person would only be deemed "reasonably proximate" to the telephone when law enforcement officials actually observe the person using a telephone (e.g., in a public place, at a pay phone, or using a wireless phone in a car) or when they are in communication with informants present in a building who observe the person using a telephone or entering a room where a telephone is known to be. The intent behind this provision is to minimize the possibility that the government would hear conversations not involving the person named in the wiretap order.

Crime Identification Technology Act

On July 13, 1998, the Senate passed the bill S. 2022, the "Crime Identification Technology Act of 1998." The bill authorizes \$250 million a year over 5 years for flexible discretionary grants to states to upgrade criminal history record systems, promote integration of local, state and national criminal justice information and communications systems, and assist crime laboratories to reduce the backlog of forensic analysis requests that exists throughout the country. Grants may be given to states to be used in conjunction with units of local government, State and local courts, and other states.

Effective access to criminal history data has become a necessity not only for law enforcement agencies, but for school districts, volunteer organizations, and a host of professions that want to conduct background checks to avoid hiring convicted offenders who pose a danger to children. The FBI processes approximately 52,000 requests for criminal history information via fingerprint cards each day, about half the requests are for criminal justice purposes, the other half are for civil purposes (government licensing, child care, etc.). The federal government has invested significant federal resources into systems providing criminal history data, including almost \$2 billion for the Integrated Automated Fingerprint Identification System (IAFIS), and the Crime Information Center 2000 (NCIC 2000), both of which should be fully operational by fall of 1999. The National Integrated Ballistics Network (NIBN), the National Criminal History Improvement Program (NCHIP), the FBI's National Sex Offender Database and the National Combined DNA

Index System (CODIS) all provide automated searching capabilities to allow law enforcement obtain essential evidence and solve crimes. States are requested to participate in all of these federal initiatives, but many are a long way from becoming computerized, nevertheless in a position to exchange compatible crime data in a timely manner or in a computer-ready format. Many state agencies have inadequate equipment to retrieve information from a computer database quickly, or on a widespread geographic basis. Presently, there is no comprehensive program to support the integration of all of these new technologies and systems. All of the benefits of these federally funded information and identification systems may go largely unrealized unless the states develop the ability to use them. It is the purpose of this grant program to enable states to utilize such federal initiatives.

The bill also includes two other provisions. Title II, subtitle A of the bill is called the "National Criminal History Access and Child Protection Act" and provides for a compact between the states and the federal government to facilitate the exchange of criminal history records for noncriminal justice purposes. The compact is somewhat administrative in nature, and requires no authorization for funding. The Act facilitates authorized interstate criminal history record exchanges for noncriminal justice purposes on a uniform basis, while permitting each state to effectuate its own dissemination and privacy policies within its own borders. The Act also allows federal and state records to be provided expeditiously to government and nongovernment agencies that use such records in accordance with pertinent federal and state law while enhancing the accuracy of the records and safeguarding the information contained in the records from unauthorized disclosure.

Subtitle B of the bill is called the "Volunteers for Children Act," which would amend the National Child Protection Act of 1993 (called the "Oprah Act") to allow child care, elder care or volunteer organizations to request access to FBI criminal fingerprint background checks in the absence of specific state laws or procedures allowing that access. This modest change to current law does not override any state laws regarding the use or dissemination of records. The House passed this provision in H.R. 3494, the "Child Protection and Sexual Predator Punishment Act," which is pending in the Senate.

On August 4, 1998, the bill was referred to the Subcommittee on Crime. On September 11, 1998, the Subcommittee held a markup and considered S. 2022. On September 14, 1998, the bill was ordered reported favorably, as amended, to the full Committee. On October 7, 1998, the House Committee on the Judiciary was discharged from further consideration. On October 7, 1998, S. 2022 passed the House, amended, under suspension of the rules. On October 8, 1998, the Senate agreed to the House amendment. On October 9, 1998, S. 2022 was signed into law by the President (Public Law 105-251).

National Salvage Motor Vehicle Consumer Protection Act of 1997

H.R. 1839, the "National Salvage Motor Vehicle Consumer Protection Act of 1997," was introduced by Representative Rick White on June 10, 1997. This bill will establish nationally uniform re-

quirements regarding the titling and registration of salvage, non-repairable, and rebuilt vehicles. On June 23, 1997, H.R. 1839 was referred to the Committee on Commerce and the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, for consideration of such provisions as fall within the jurisdiction of the Committee concerned. On June 23, 1997, H.R. 1839 was referred to the Subcommittee on Crime. On September 30, 1997, the bill was reported with an amendment to the House by the Committee on Commerce (H. Rept. 105–285, part 1); also, the Committee on the Judiciary was discharged from further consideration. On November 4, 1997, the bill passed the House with an amendment and on November 13, 1997, H.R. 1839 was referred to the Senate Committee on Commerce, Science and Transportation. No hearings were held and no further action was taken on H.R. 1839 in the 105th Congress.

Law Enforcement Advertisement Clarification Act of 1997

On June 10, 1997, Chairman McCollum introduced H.R. 1840, the “Law Enforcement Advertisement Clarification Act of 1997.” This bill provides a narrow exception to the prohibition on advertisement of electronic devices primarily designed for interception. Under section 2512 of title 18, United States Code, it is unlawful to advertise in interstate or foreign commerce “any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of surreptitious interception.” Unfortunately, the broad restriction against advertisements also applies to advertisements sent to legitimate law enforcement users.

H.R. 1840 creates an exception to section 2512, to permit the advertisement of devices designed for surreptitious interception to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such devices. This bill will allow companies which manufacture electronic devices to mail information about their equipment to law enforcement agencies. No hearings were held on H.R. 1840.

On June 12, 1997, H.R. 1840 was ordered reported to the full Committee by the Subcommittee on Crime. On June 26, 1997, H.R. 1840 was ordered reported to the House (H. Rept. 105–162). The bill passed the House on July 8, 1997, and was referred to the Senate Committee on the Judiciary on July 9, 1997. The Senate Committee on the Judiciary was discharged on November 10, 1997. H.R. 1840 passed the Senate on November 10, 1997. On November 21, 1997, the bill was approved by the President and became Public Law 105–112.

VIOLENT CRIME

Mandatory Minimum Sentences for Criminals Using Firearms

H.R. 424, introduced by Representative Sue Myrick, amends section 924(c) of title 18, United States Code. Section 924(c) provides for a mandatory minimum 5 years in prison for “using or carrying” a firearm during and in relation to the commission of a federal crime of violence or drug trafficking crime. In the December, 1995 decision *Bailey v. United States*, 116 S.Ct. 501, the Supreme Court

rejected the Justice Department's interpretation of the words "use or carry," so that the section 924(c) penalty enhancement could only be applied in a narrower set of circumstances. The Court held that, in order to receive an enhancement for using or carrying a firearm, a defendant must "actively employ the firearm" during and in relation to the crime of violence or drug trafficking offense. In crafting this new standard, the Court struck down two decisions by the U.S. Court of Appeals for the District of Columbia.

H.R. 424 would have changed section 924(c) by striking the current "uses or carries" standard, and replacing it with the terms "possessing, brandishing or discharging." The bill also increased penalties under the new scheme of "possessing, brandishing or discharging" to a mandatory minimum of 10 years in prison for possessing, fifteen for brandishing and 20 years for discharging.

On July 16, 1997, the Subcommittee held a markup and H.R. 424 was ordered reported favorably to the full Committee, amended. On September 9, 1997, the full Committee considered H.R. 424, and the bill was ordered reported favorably to the House, as amended, with an additional Committee amendment, by a vote of 17 yeas to 8 nays. The bill was reported to the House on October 24, 1997 (H. Rept. 105-344). On February 24, 1998, H.R. 424 passed the House, as amended, under suspension of the rules, by a vote of 350 yeas to 50 nays). No further action was taken on H.R. 424 in the 105th Congress.

The Senate companion bill to H.R. 424, S. 191, passed the Senate on November 6, 1997, as amended. The bill was referred to the House Subcommittee on Crime on January 30, 1998. On October 9, 1998, the Judiciary Committee was discharged from further consideration. On October 9, 1998, S. 191 passed the House, amended, under suspension of the rules. The Senate concurred in the House amendment on October 15, 1998. The bill was signed by the President on November 13, 1998 (Public Law 105-386). S. 191, as sent to the President, retains the "possessing, brandishing or discharging" language, but lowers the penalties to 5, 7 and 10 years, respectively. The penalties are higher for a second offense, or if a machine gun, destructive device, firearm muffler or firearm silencer are used.

Veterans' Cemetery Protection Act of 1997

On June 12, 1998, the Subcommittee on Crime met in open session and considered the bill, H.R. 1532, the "Veteran's Cemetery Protection Act of 1997." H.R. 1532 provides criminal penalties for theft and willful vandalism at national cemeteries. During the markup, the Subcommittee amended the legislation so that, rather than create a new federal crime, the United States Sentencing Commission is directed to increase penalties for persons who steal, deface or destroy any federal cemetery property. The bill was ordered reported favorably to the full Committee, as amended on June 12, 1998. The full Committee met in open session and considered the bill, H.R. 1532, and ordered it favorably reported to the House on June 21, 1998 (H. Rept. 105-142.) On June 23, 1997, H.R. 1532 passed the House, as amended, under suspension of the rules.

The Senate companion bill to H.R. 1532, S. 813, passed the Senate on November 4, 1997, with amendment, by unanimous consent. The bill was held at the desk in the House on November 5, 1997. On November 8, 1997, S. 813 passed the House (in lieu of H.R. 1532) under suspension of the rules. The bill was signed by the President on November 19, 1997 (Public Law 105–101.)

Domestic Violence Misdemeanor and Firearms Ownership

Passed during the 104th Congress, section 658 of the Omnibus Appropriations bill for fiscal year 1997 (H. Rept. 104–863) amended §§ 921 and 922 of title 18, United States Code, to prohibit persons previously convicted of a misdemeanor crime of domestic violence from possessing a firearm. This provision was originally adopted in the Treasury-Postal Appropriations bill for Fiscal Year 1997 in the Senate through a floor amendment offered by Senator Frank Lautenberg (D–NJ). A modified version of this amendment was included in the omnibus consolidated appropriations bill by the conferees. The modified version narrowed the definition of a “misdemeanor crime of domestic violence,” included some procedural safeguards, and applied the ban to government employees, including police officers. Neither the House of Representatives nor the Senate held hearings on this issue.

A “misdemeanor crime of domestic violence” is defined under the new law as an offense that is (1) either a federal or state charge, and (2) has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, and (3) is committed by a current or former spouse, parent or guardian, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian, or by a person similarly situated as a spouse, parent or guardian.

In order for the gun ban to apply, the law requires that a convicted person must have been represented by counsel, or knowingly and intelligently waived the right to counsel. Also, if the person was entitled to a jury trial, the law requires that the case was tried by a jury, or the right to a jury was knowingly and intelligently waived. Furthermore, no person shall be considered to have been convicted of a misdemeanor crime of domestic violence for purposes of gun ownership if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored.

This ban does apply to law enforcement officers, including federal agents. A general exemption for police officers and military personnel from federal gun control laws does not apply to this section. This law represents the first time that law enforcement has not enjoyed an exemption from the federal gun laws. Employees of government agencies convicted of qualifying misdemeanors will not be able to lawfully possess firearms. This includes law enforcement officers who may be required by their departments or agencies to carry guns for employment purposes.

Law enforcement agencies have been made aware of this new restriction. The Bureau of Alcohol, Tobacco and Firearms sent out an “open letter” to all State and local law enforcement agencies describing their responsibilities under the new law. BATF warned

that all employees subject to this disability must immediately dispose of all firearms and ammunition in their possession. As this ban also applies to federal agencies, the federal government has determined that the appropriate way to handle this new requirement is to require all federal agents to sign a form certifying that they have never been convicted of a misdemeanor crime of domestic violence.

The Administration is interpreting section 658 to apply retroactively to persons convicted of qualifying misdemeanors which occurred before the date of enactment of the appropriations bill. Advocates for those impacted by the prohibition argue that such an interpretation is a violation of the ex post facto clause, Article I, section 9 of the U.S. Constitution. Broadly defined, an ex post facto law is one which retroactively alters or increases a person's punishment for a criminal act. These advocates assert that a person who had been previously convicted of a misdemeanor crime of domestic violence is now having that punishment unconstitutionally increased by this belated loss of firearm ownership.

Defenders of the provision respond that the law does not increase punishment for any earlier misdemeanor crime, rather it creates a new law. A person who continues to possess a gun after the law became effective is in violation of the new law. Moreover, they argue that the prohibitions of Article I, section 9 relate only to penal laws, and that the disability imposed is designed to accomplish a legitimate governmental purpose.

The "Brady Handgun Violence Prevention Act" (Public Law 103-159), which became law in 1993, had two distinct phases. Phase I required a 5-day waiting period (unless a State had an exemption) for the purchase of a handgun. Phase II required the Attorney General to establish, by November 30, 1998, a national, instant, criminal background check system. Under the Phase II provisions, the 5-day waiting period would terminate, and all presale firearms inquiries will be made to a national computer system, operated by the FBI.

The Brady law also required the Attorney General to determine the type of computer hardware and software necessary to develop the national system, to evaluate each State's criminal history records, and set a timetable by which the State should be able to provide criminal records on-line. This role has been delegated to the FBI.

This new gun ban for misdemeanor domestic violence convictions was added to the list of items in title 18 which a State must be able to check before a federal firearms licensee can lawfully sell a gun. In order to comply with the Brady law, States must now redevelop their computer systems before November, 1998, so that the systems have the capability to instantly check for misdemeanor domestic violence convictions. Several States have raised questions regarding the implementation of this new law as it impacts on their recently developed computer systems. Other States do not have access to all misdemeanor conviction records. For example, some States destroy the records after a certain period of time, and those States are concerned about liability if an unlawful purchaser is inadvertently sold a gun.

Three bills were referred to the Crime Subcommittee. On January 7, 1997, Representative Bob Barr introduced H.R. 26, to provide that the firearms prohibitions applicable by reason of a domestic violence conviction do not apply if the conviction occurred before the prohibitions became law. On January 9, 1997, Representative Bart Stupak introduced H.R. 445, to provide that firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities. On March 11, 1997, Representative Helen Chenoweth introduced H.R. 1009, to repeal the Lautenberg amendment completely.

On March 5, 1997, the Subcommittee held a hearing on H.R. 26 and H.R. 445. (H.R. 1009 was not introduced until the following week.) The Subcommittee heard testimony from Bernard H. Theodorski, National Vice President, Fraternal Order of Police; William Johnson, General Counsel, National Association of Police Organizations; Ronald E. Hampton, Executive Director, National Black Police Association; Donna F. Edwards, Executive Director, National Network to End Domestic Violence; Captain R. Lewis Vass, Records Management Officer, Department of State Police, Commonwealth of Virginia; Gerald E. Wethington, Chairman, Systems and Technology Program Advisory, SEARCH, Pete Gagliardi, Deputy Associate Director, Criminal Enforcement Programs, Bureau of Alcohol, Tobacco and Firearms; David R. Loesch, Deputy Assistant Director, Criminal Justice Information Service Division, Federal Bureau of Investigation. No further action was taken on either H.R. 26 or H.R. 445 in the 105th Congress.

Witness Protection and Interstate Relocation Act of 1997

On June 17, 1997, the Subcommittee held a hearing on gang-related witness intimidation and retaliation. In a growing number of criminal cases around the United States, police and prosecutors are unable to investigate and prosecute cases successfully because key witnesses refuse to provide critical evidence or to testify because they fear retaliation by defendants or their associates. This problem has become particularly acute in gang-related and drug-related criminal cases. Witnesses' refusal to testify is a major concern because it undermines the administration of justice while simultaneously eroding public confidence. Increasingly, there is an interstate dimension to witness intimidation, with gangs able to follow witnesses to other States and gangs utilizing gang members from other states to victimize witnesses. There is currently no federal law directly addressing the interstate relocation of witnesses. As such, unless required by state law or other agreement, programs are under no legal obligation to notify local law enforcement officials of witnesses with criminal records who are relocated interstate. The Subcommittee heard testimony from Charles F. Gallagher III, Deputy District Attorney, Philadelphia, Pennsylvania; Jennifer Lentz Snyder, Deputy District Attorney, Los Angeles County, California; Sgt. Ron Stallworth, Gang Intelligence Coordinator, Utah Department of Public Safety Division of Investigations.

On July 17, 1997, Chairman McCollum introduced H.R. 2181, the "Witness Protection and Interstate Relocation Act of 1997." H.R. 2181 addresses the problem of gang-related witness intimidation by establishing a federal offense for traveling in interstate or foreign

commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation, or threat, or by any such means to cause any person to destroy, alter, or conceal a record, document, or other object, with the intent or hindering the document's availability for use in such a proceeding. The bill also establishes enhanced conspiracy penalties for obstruction of justice offenses involving victims, witnesses, and informants.

H.R. 2181 addresses the need for coordination among jurisdictions when a witness is relocated interstate. The bill directs the Attorney General to survey State and local witness protection programs to determine the extent and nature of such programs and the training needs of those programs, and then to make training available to those programs (the bill authorizes \$500,000 to carry out these initiatives). The Attorney General is also directed to promote coordination among State and local witness interstate relocation programs, including by establishing a model Memorandum of Understanding (MOU) for States and localities that engage in interstate witness relocation. This model MOU is to include a requirement that notice is to be provided to the jurisdiction to which the relocation has been made in certain cases. The Attorney General is authorized to make grants under the Byrne discretionary grant program (section 511 of subpart 2 of part E of the Omnibus Crime Control and Safe Streets Act of 1968) to those jurisdictions that have interstate witness relocation programs that have substantially followed the MOU.

On July 17, 1998, H.R. 2181 was forwarded to the full Committee. On July 23, 1997, the full Committee held a markup on H.R. 2181 and ordered the bill favorably reported to the House by a vote of 20 yeas to 4 nays. On September 18, 1997, the bill was reported to the House (H. Rept. 105-258). H.R. 2181 passed the House by a vote of 366 yeas to 49 nays, with 1 voting "present." On February 26, 1998, the bill was referred to the Senate Committee on the Judiciary. No further action was taken on H.R. 2181 in the 105th Congress.

RICO Reform and Nonviolent Advocacy Groups

In 1986, the National Organization for Women, Inc. filed a class action lawsuit against several defendants who are anti-abortion activists. The lawsuit alleged, among other things, that the defendants had violated the Racketeer Influenced Corrupt Organizations Act. Passed in 1970 and originally intended to be used to combat organized crime, the RICO law makes it a federal crime to commit certain "prohibited activities" involving "racketeering activity" or the collection of an unlawful debt. The law defines "racketeering activity" by setting out a long list of federal crimes which, under the Act, are deemed to constitute racketeering activity. These "predicate acts" include acts of violent crime, but principally involve crimes in which violence need not necessarily occur such as fraud, embezzlement, counterfeiting, and trafficking in stolen or otherwise contraband items. In addition to the federal crimes listed, the definition of racketeering activity also includes certain acts which are felonies under state law, such as murder, kidnaping, gambling, arson, bribery, and extortion. The RICO law is uncom-

mon in that although it is a criminal statute, it also authorizes civil suits to be brought by private citizens seeking monetary damages for a violation of the statute.

After two rounds of procedural challenges to the lawsuit, one of which was ultimately decided by the United States Supreme Court, the case went to trial. In 1998, the jury rendered a verdict in favor of the plaintiffs, marking the first time in which a jury imposed civil liability against an advocacy group using the RICO law. In response to the requests of several Members, the Subcommittee held a hearing on the use of the RICO statute against non-violent advocacy groups on July 17, 1998. The Subcommittee heard testimony from Frank J. Marine, Acting Chief, Organized Crime and Racketeering Section, Department of Justice; G. Robert Blakey, Professor of Law, Notre Dame Law School; Louis Bograd, Senior Staff Attorney, American Civil Liberties Union; Thomas Brejcha, Pro-Life Law Center, Chicago, Illinois; Jeff Kerr, General Counsel, People for the Ethical Treatment of Animals; Eugene Volokh, Professor of Law, UCLA Law School; Fay Clayton, Robinson, Curley & Clayton, P.C., Chicago, Illinois; Susan Hill, President, National Women's Health Organization; Gerald Lynch, Professor of Law, Columbia Law School; Emily Lyons, Birmingham, Alabama.

Also discussed at the hearing, but not officially considered by the Subcommittee, was H.R. 4245, the "Civil RICO Clarification Act of 1998," introduced by Representative John Shadegg. This bill would amend the RICO law to limit certain types of civil cases brought under the statute. No further action was taken on H.R. 4245 in the 105th Congress.

Prohibition on Financial Transactions with Countries Supporting Terrorism Act of 1997

On February 13, 1997, Chairman McCollum, with Representative Chuck Schumer, introduced H.R. 748, the "Prohibition on Financial Transactions with Countries Supporting Terrorism Act of 1997." H.R. 748 expands section 321 of the "Antiterrorism and Effective Death Penalty Act of 1996," by eliminating overly permissive regulations promulgated by the Administration and the authority to issue such regulations in the future. It establishes, in place of regulations, specific exceptions to the prohibition, created by section 321, on engaging in financial transactions with countries that have been designated as sponsors of terrorism.

The effect of section 321 is to prohibit financial support of U.S. persons by terrorist countries and all financial transactions by U.S. persons with this countries, regardless of where these transactions take place. The provision also authorizes the Department of Treasury, in consultation with the State Department, to make specific exceptions to the ban through regulations.

In August of 1996, the Treasury Department published regulations in relation to section 321 which essentially reversed the effect of the new prohibition. The regulations permit all financial transactions with terrorist list governments, except for transactions otherwise prohibited by law or which pose a risk of furthering domestic terrorism. The regulations prohibit U.S. persons from receiving unlicensed donations and from engaging in financial transactions with respect to which the U.S. person knows or has reasonable

cause to believe that the financial transaction poses a risk of furthering terrorist acts in the United States.

H.R. 748 strips the executive branch of its authority to issue regulations exempting transactions from the prohibition. It establishes instead a legislative exception only for specified transactions. The list of permitted activities, and transactions incident thereto, include: routine diplomatic relations among countries; official acts by representatives of the U.S. government; news reporting; humanitarian assistance; emergency medical services; postal and telephone services; the protection of intellectual property rights; hospitality or transportation services; the fulfillment of existing contracts; and payments of claim to U.S. persons.

On June 10, 1997, the Subcommittee held a hearing on H.R. 748, hearing testimony from Kate Almquist, Policy Analyst, World Vision Relief and Development, Inc.; Mansoor Ijaz, Chairman, Crescent Investment Management, L.P.; James D. Latham, Senior Vice President and General Counsel, ITT Sheraton Corp.; Hillary Mann, Associate Fellow, Washington Institute for Near East Policy; R. Richard Newcomb, Director, Office of Foreign Assets Control, Department of the Treasury; William C. Ramsay, Deputy Assistant Secretary of State for Energy, Sanctions and Commodities, Bureau of Economic and Business Affairs, Department of State.

On June 12, 1997, the Subcommittee on Crime held a markup and H.R. 748 was ordered favorably reported to the full Committee, amended. On June 18, 1997, the full Committee considered H.R. 748 and ordered it favorably reported to the House, amended, with additional Committee amendments. On June 21, 1997, the bill was reported favorably to the House (H. Rept. 105-141). On July 18, 1997, H.R. 748 passed the House, as amended, under suspension of the rules, by a vote of 377 yeas to 33 nays, with one voting "present." On July 9, 1997, H.R. 748 was received in the Senate. No further action was taken on H.R. 748 in the 105th Congress.

PROTECTING AND SUPPORTING POLICE

Care for Police Survivors Act of 1998

H.R. 3565, the "Care for Police Survivors Act of 1998," amends part L of the Omnibus Crime Control and Safe Streets Act of 1968 relating to public safety officers' death benefits. It authorizes the Director of the Bureau of Justice Assistance to expend not less than \$150,000 out of the Public Safety Officers' Benefits (PSOB) program to maintain and enhance national peer support and counseling programs to assist families of public safety officers who have died in the line of duty. There had been a cap on that funding at \$150,000. The legislation also allows the PSOB office to reduce its current hearing backlog by authorizing the expenditure of funds for outside hearing officers. On March 26, 1998, the Subcommittee on Crime met in open session and considered a committee print of H.R. 3565, which was introduced later that same day. On April 1, 1998, the Judiciary Committee met in open session and ordered reported favorably H.R. 3565 without amendment. On April 21, 1998, the House passed H.R. 3565 under suspension of the rules by a vote of 403 to 8. The Senate passed H.R. 3565 on May 15, 1998,

and it was signed by the President on June 16, 1998 (Public Law 105–180).

Bulletproof Vests Partnership Grants Act

H.R. 2829, introduced by Representative Visclosky (D-IN), establishes a matching grant program to help State and local jurisdictions purchase armor vests for use by law enforcement departments. The legislation gives discretionary authority to the Director of the Bureau of Justice Assistance to award grants to those departments which have the greatest need, a mandatory wear policy and a violent crime rate at or above the national average. At least half of the funds awarded under this program shall be allocated to units of local government with fewer than 100,000 residents. H.R. 2829 also prohibits any State or unit of local government which receives funds made available by the bill to use equipment or products manufactured using prison inmate labor. The legislation expresses the sense of the Congress that entities receiving such funds should purchase only American-made equipment and goods.

On March 25, 1998, the Subcommittee held a hearing on H.R. 2829, the “Bulletproof Vest Partnership Grant Act of 1997.” The Subcommittee heard testimony from Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice; Bernard H. Teodorski, Vice President, National Fraternal Order of Police; Sheriff Stephen O. Simpson, National Sheriffs’ Association.

On May 7, 1998, the Subcommittee on Crime held a markup and the bill was ordered reported favorably to the full Committee. The Subcommittee amended the legislation by adding a requirement that the Director give preferential consideration to those entities which do not receive funds under the Local Law Enforcement Block Grants program. Also, all units of local government which receive such grants are required to certify that they did not receive sufficient funding for vests under the Block Grant program. On May 12, 1998, the Committee on the Judiciary was discharged from further consideration, and the House passed the bill under suspension of the rules, by a vote of 412 to 4.

The compromise legislation agreed to by the House and Senate authorizes to be appropriated \$25,000,000 for each of fiscal years 1999 through 2001. On May 12, 1998, the Senate companion bill to H.R. 2829, S. 1605, passed the House with an amendment substituting the language of H.R. 2829, as passed by the House. The Senate passed S. 1605, as amended by the House on May 15, 1998, and the President signed the bill into law on June 16, 1998 (Public Law 105–181).

Police, Fire, and Emergency Officers Educational Assistance Act

H.R. 3046, “Police, Fire, and Emergency Officers Educational Assistance Act,” extends federal educational assistance benefits to dependants of state and local law enforcement officers killed or permanently injured in the line of duty. The Federal Law Enforcement Dependents Assistance Program costs are estimated to be \$515,000 in 1998, including the estimated number of new survivors. That number includes \$182,000 for 30 federal survivors, plus \$333,000 for an estimated 55 new survivors under the extension this legisla-

tion proposes. The Bureau of Justice Assistance within the Department of Justice anticipates that this additional funding for other public safety officers' dependants should not pose any new difficulties.

On May 15, 1998, the companion bill to H.R. 3046, S. 1525, the "Public Safety Officers Educational Assistance Act of 1998," passed the Senate. The bill was referred to the House Judiciary Committee on May 18, 1998, and discharged from the Committee on October 10, 1998. On October 10, 1998, the bill passed the House in lieu of H.R. 3046. The Senate agreed to the House amendment by unanimous consent on October 15, 1998. The bill was signed by the President on November 13, 1998 (Public Law 105-390).

Correction Officers Health and Safety Act of 1998

H.R. 2070, the "Correction Officers Health and Safety Act of 1997," was introduced by Representative Solomon. On March 26, 1998, the Subcommittee held a hearing on H.R. 2070. The Subcommittee heard testimony from Christopher E. Anders, Legislative Counsel, American Civil Liberties Union, Washington, D.C.; Marilyn Wolfe, New York; Michael G. Graney, Executive Vice President, New York Council 82, American Federation of State, County, and Municipal Employees; Correctional Officer John L. Parcell, Corrections and Criminal Justice Coalition.

As passed by the House, the bill required the testing of all inmates in the Federal prison system for the HIV virus upon their arrival in the system. It also required the testing of any inmate in the Federal penal system when there is reason to believe that an inmate or a person ordered detained pending trial may have intentionally or unintentionally transmitted the HIV virus to any government employee or to any person lawfully present in a federal correctional facility. The bill allowed federal employees, should be they involved in the type of incident with an inmate or detained person in which the HIV virus could have been transmitted, to request that the inmate or detained person be tested for the virus. The bill then required the government to test the person and report the test results to the employee requesting the test, the person tested, and the warden of the facility in which the person is incarcerated or detained.

The need for this type of legislation is simple. Drugs have now been developed which can prevent the transmission of the HIV virus after exposure to someone who carries the virus. The drugs are effective in preventing transmission approximately 80% of the time. However, the drugs must be administered within 2 to 24 hours after exposure and have extremely unpleasant side effects. If a Bureau of Prisons or Marshals Service employee were to come in contact with the blood of an inmate, knowing the HIV status of the inmate will enable the employee and his or her doctor to make a more informed decision as to whether to undergo this course of treatment. Unfortunately, some inmates refuse to be tested when Bureau of Prison officials request. This bill will require that they be tested.

H.R. 2070 passed the House under suspension of the rules on August 3, 1998, by voice vote. On October 20, 1998, the Senate passed the bill by unanimous consent, with an amendment. On October 21,

1998, the House agreed to the bill as amended by the Senate. The bill was signed by the President on November 12, 1998 (Public Law 105-370). As enacted, the bill does not contain the House provision allowing Federal employees to require that the testing called for in the bill be conducted. Instead, the bill simply states a general direction to the Attorney General to test inmates or detained persons who are involved in incidents with Federal employees or other persons lawfully present in a correctional facility who are not incarcerated there where the HIV virus may have been intentionally or unintentionally passed. The bill as enacted also did not contain the House provision requiring all persons incarcerated in Bureau of Prisons facilities to be tested for the HIV virus. As enacted, the bill only requires testing for those persons that the Attorney General deems to be at risk for infection of the virus in accordance with Bureau of Prisons guidelines.

Rural Law Enforcement Assistance Act

On March 19, 1998, and March 25, 1998, the Subcommittee held hearings on H.R. 1524, the "Rural Law Enforcement Assistance Act of 1997." H.R. 1524, introduced by Representative Asa Hutchinson, authorizes the establishment of the National Center for Rural Law Enforcement in Little Rock, Arkansas, as a private, nonprofit corporation in order to promote rural law enforcement training programs around the country. On March 19, 1998, the Subcommittee heard testimony from The Honorable Asa Hutchinson, Third District of Arkansas, U.S. House of Representatives; The Honorable John Elias Baldacci, Second District of Maine, U.S. House of Representatives; Dr. Lee Colwell, Professor and Director, Criminal Justice Institute, University of Arkansas, Little Rock, Arkansas; Sheriff Herman Young, Fairfield County Sheriff's Office, Winnsboro, South Carolina; Mr. Hobart Henson, Director, Office of State, Local and International Training, Federal Law Enforcement Training Center, Glynco, Georgia; Chief Michael Carillo, Deming Police Department, Deming, New Mexico; Jack Roberts, President, Southern States Benevolent Association; Sheriff Ted Sexton, Executive Board Member, National Sheriffs' Association.

On March 25, 1998, the Subcommittee heard testimony from one witness, Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice.

No further action was taken on H.R. 1524 in the 105th Congress.

Interstate Carrying of Concealed Firearms by Law Enforcement Officials and the Community Protection Act of 1997

Two bills referred to the Subcommittee on Crime in the 105th Congress, H.R. 218 and H.R. 339, would create a national standard which would allow any police officer, active-duty or retired in good standing, to carry a concealed firearm into another State. Both of these bills preempt state laws. Thus, there would not be any impact on federal laws which restrict the right to carry firearms.

H.R. 218, the "Community Protection Act of 1997," was introduced by Representative Cunningham (R-CA) on January 7, 1997. Mr. Cunningham introduced similar legislation in the 104th Congress. H.R. 218 amends chapter 44 of title 18, United States Code, by creating a new section 926B, "Carrying of concealed handguns

by qualified current and former law enforcement officers.” This legislation would permit any “qualified” current or former law enforcement officer who is carrying appropriate written identification of such status to carry a concealed handgun. The term “qualified law enforcement officer” is defined to mean a law enforcement officer who is authorized to carry a firearm, is not subject to disciplinary action, and meets all agency established requirements with respect to firearms. A “qualified former law enforcement officer” is defined as an individual who is retired from service for reasons other than a mental disability, meets State requirements with respect to firearm training, is not prohibited by law from receiving a firearm and has a nonforfeitable right to benefits under the agency retirement plan. This legislation would apply to any individual authorized by law to engage in or supervise the detection, prevention, investigation or prosecution of any violation of law. It specifically includes corrections, probation, parole and judicial officers.

H.R. 339 was introduced by Representative Stearns on January 7, 1997. It provides for a national standard for nonresidents of a State to carry a concealed firearm, and it exempts current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns. H.R. 339 also amends chapter 44 of title 18, United States Code, by creating a new section 926C, “Carrying of concealed handguns by qualified current and former law enforcement officers.” This legislation applies to qualified current or former law enforcement officers carrying appropriate identification. The terms “qualified current and former officers” are defined the same as under H.R. 218. This legislation also specifically includes corrections, probation, parole and judicial officers.

On July 22, 1997, the Subcommittee held a hearing on H.R. 218 and H.R. 339. The Subcommittee heard testimony from Bernard H. Teodorski, National Vice President, Fraternal of Police; Bill Thompson, Director of Governmental Affairs, Southern States Police Benevolent Association; James A. Rhinebarger, Chairman, National Troopers Coalition; Officer Ed Nowicki, Twin Lakes Police Department and Host, “American Crime Line” Law Enforcement Alliance of America; Chief John F. Farrell, Prince George’s County Maryland, Police Executive Research Forum; Chief Darrell Sanders, President, International Association of Chiefs of Police; Albert Eisenberg, Commissioner, Arlington County, Virginia, U.S. Conference of Mayors/National League of Cities.

On June 19, 1998, the Subcommittee on Crime met in open session and considered the bill, H.R. 218. The bill was ordered favorably reported to the full Committee, as amended. The Subcommittee amended the legislation to include a new section which would allow private citizens in limited circumstances the right to carry a concealed firearm into another state. This new section directed the Attorney General to review all states’ concealed carry laws and compile a list of states which are “shall-issue” or “may-issue” states for the purposes of permitting citizens to carry concealed weapons. The Attorney General was then directed to publish a list of states which had the same or substantially similar concealed carry laws. Citizens from one state on the list would be permitted to carry their lawfully possessed concealed weapon into another state on the list. On August 5, 1998, the full Committee considered H.R. 218

and ordered the bill favorably reported to the House, as amended. On October 14, 1998, the bill was ordered reported favorably to the House (H. Rept. 105-819). No further action was taken on H.R. 218 in the 105th Congress.

Medal of Valor

H.R. 4090, the "Public Safety Officer Medal of Valor Act of 1998," establishes a medal, given by the President in the name of the Congress of the United States, to a public safety officer who is recognized by the Attorney General for extraordinary valor above and beyond the call of duty. The Attorney General is limited to naming not more than six medal recipients in a given year.

On June 19, 1998, Chairman McCollum introduced H.R. 4090, the "Public Safety Medal of Valor," which was immediately forwarded to the full Committee as an original bill. The legislation creates the Medal of Valor Review Board composed of eleven members appointed by Congress and the President. The members of the Review Board, who shall serve 4-year terms, shall be persons with knowledge or experience in the field of public safety, including firefighter, law enforcement and emergency services expertise. Each year, the Board will be charged with reviewing applications and determining which names to present to the Attorney General for approval. They may conduct hearings and take testimony as necessary. The Board will be staffed by a new office within the Department of Justice, known as the National Medal Office. The Committee expects that this office shall consist of a few persons who will be available to review material, acquire background information and otherwise assist the Medal of Valor Review Board.

On May 14, 1998, the Subcommittee held a hearing on Congressional recognition of acts of exceptional valor by public safety officers. The Subcommittee heard testimony from Peter E. Bergin, Acting Principal Deputy Assistant Secretary and Director of the Diplomatic Security Service, U.S. Department of State; Donnie R. Marshall, Acting Deputy Administrator, Drug Enforcement Administration; Richard J. Gallo, National President, Federal Law Enforcement Officers Association; Gilbert G. Gallegos, National President, Fraternal of Police; Robert G. Parry, Communications Director, Local 341 Houston Fire Department, International Association of Fire Fighters.

On July 16, 1998, the full Committee considered H.R. 4090 and ordered the bill favorably reported to the House, amended. On July 31, 1998, the bill was reported to the House, as amended (H. Rept. 105-667). On September 9, 1998, the bill passed the House under suspension of the rules. The bill was referred to the Senate Committee of the Judiciary on September 10, 1998. No further action was taken on H.R. 4090 in the 105th Congress.

*Law Enforcement Officers Who Have Died in the Line of Duty
Should Be Honored, Recognized, and Remembered for Their
Great Sacrifice*

On May 7, 1998, Mr. Burton introduced H. Res. 422, expressing the sense of the House of Representatives that law enforcement officers who have died in the line of duty should be honored, recognized, and remembered for their great sacrifice. On May 11, 1998,

H. Res. 422 was referred to the Subcommittee on Crime. The Committee on the Judiciary was discharged from further consideration on May 12, 1998, and H. Res. 422 was agreed to by the House (416 yeas; 0 nays). No hearings were held.

PROTECTING THE PUBLIC FROM FRAUD

Cellular Telephone Protection Act

Cellular telephone fraud is a significant criminal activity in the United States. Each year the wireless telephone industry loses hundreds of millions of dollars in revenue as the result of calls made from stolen telephones or cloned telephones. In 1996, the last year for which data is available, the wireless telephone industry reported that the aggregate loss to the industry was approximately \$710 million.

As significant as is the loss of revenue to the wireless telephone industry, cellular telephone fraud poses another, more sinister, crime problem. A significant amount of the cellular telephone fraud which occurs in this country is connected with other types of crime. In most cases, criminals used cloned phones in an effort to evade detection for the other crimes they are committing. This phenomenon is most prevalent in drug crimes, where dealers need to be in constant contact with their sources of supply and confederates on the street. These criminals often use several cloned phones in a day, or switch from one cloned phone to another each day, in order to evade detection. Most significantly, this technique thwarts law enforcement's efforts to use wiretaps in order to intercept the criminals' conversations in which they plan their illegal activity.

In 1994, Congress passed the Communications Assistance for Law Enforcement Act (Public Law 103-414) which, in part, amended 18 U.S.C. § 1029, which concerns fraud and related activity in connection with access devices. That Act added a new provision to section 1029 to make it a crime for persons to knowingly, and with intent to defraud, use, produce, traffic in, or have custody or control of, or possess a scanning receiver or hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services.

On September 11, 1997, the Subcommittee held a hearing on Cellular Telephone Fraud. The Subcommittee heard testimony from Michael C. Stenger, Special Agent in Charge, Financial Crimes Division, United States Secret Service; John Navarrete, Deputy Assistant Director, Federal Bureau of Investigation; Anthony R. Bocchichio, Assistant Administrator, Operational Support Division, Drug Enforcement Agency; Thomas E. Wheeler, President and CEO, Cellular Telecommunications Industry Association; John Marinho, Telecommunications Industry Association.

Law enforcement officials have testified before the Subcommittee that it is often hard to prove the intent to defraud aspect of this section with respect to the possession of hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services. In the most common case, law enforcement officials will arrest criminals for other crimes and find telephone cloning equipment in the possession of the criminals. Without finding specific evidence that the

criminals intended to use this equipment to clone cellular telephones, law enforcement officials often have been thwarted in an effort to prove a violation of this statute. But because there is no legitimate reason why any person not working for wireless telephone industry carriers would possess this equipment, there is no question that these criminals intended to use that equipment to clone cellular telephones. Law enforcement officials informed the Subcommittee that deleting the "intent to defraud" requirement from section 1029(a)(8) with respect to this equipment would enable the government to punish a person who merely possesses this equipment, as well as those who produce, traffic in, or have custody or control over it.

Generally speaking, while Congress is hesitant to criminalize the mere possession of technology without requiring proof of an intent to use it for an improper purpose, the testimony before the Subcommittee on Crime, both by law enforcement agencies and representatives of the wireless telephone industry, confirms that the only use for this type of equipment, other than by persons employed in the wireless telephone industry and law enforcement, is to clone cellular telephones. Although wireless telecommunications companies use this equipment to test the operation of legitimate cellular telephones, to test the anti-fraud technologies their companies employ to thwart the use of cloned telephones, and in other ways to protect their property and legal rights, the equipment has no other legitimate purpose. Thus, there is no legitimate reason for any other person to possess this equipment.

Representative Sam Johnson introduced H.R. 2460, the "Wireless Telephone Protection Act." The bill amended existing law by deleting the intent to defraud requirement currently found in section 1029(a)(8). The bill also clarifies the penalties which may be imposed for violations of section 1029. Under existing law, violations of subsections (a)(5), (6), (7), or (8) were subject to a maximum penalty of 10 years under section 1029(c)(1). However, these same violations also were subject to a maximum penalty of 15 years under subsection (c)(2) of that same section. The bill corrected this problem by restating the punishment section of section 1029 to more clearly state the maximum punishment for violations of each paragraph of section 1029(a).

In order to ensure that telecommunications companies may continue to use these devices, the bill provides that it is not a violation of new subsection (a)(9) for an officer, employee, or agent of, or a person doing business with, a facilities-based carrier to use, produce, have custody or control of, or possess hardware or software as described in that subsection if they are doing so for the purpose of protecting the property of or legal rights of that carrier. The bill also defines "facilities-based carrier" in order to make it clear that the exception to new subsection (a)(9) is only available to officers, employees, or agents of, or persons doing business with, companies that actually own communications transmission facilities, and persons under contract with those companies, because only those persons have a legitimate reason to use this property to test the operation of and perform maintenance on those facilities, or otherwise to protect the property or legal rights of the carrier.

The bill also amends the definition of scanning receiver presently found in subsection (e)(8) of section 1029 to that definition to ensure that the term “scanning receiver” will be understood to also include devices which intercept electronic serial numbers, mobile identification numbers, or other identifiers of telecommunications service, equipment, or instruments. Finally, the bill provides direction to the United States Sentencing Commission to review and amend, if appropriate, its guidelines and policy statements so as to provide an appropriate penalty for offenses involving cloning of wireless telephones. The bill states eight factors which the Commission is to consider in reviewing existing guidelines and policy statements.

On October 9, 1997, the Subcommittee met in open session and considered the bill, H.R. 2460, and ordered it reported favorably to the full Committee. On October 29, 1997, the full Committee considered the bill and ordered it reported favorably to the House. On February 24, 1998, the bill was reported to the House with a technical amendment (H. Rept. 105-418). H.R. 2460 passed the House, with a floor amendment in the nature of a substitute, by a vote of 414 yeas to 1 nay, on February 26, 1998. Immediately after the passage of H.R. 2460, the House considered S. 493, the Senate companion bill to H.R. 2460 passing the Senate bill with an amendment, substituting the language of H.R. 2460 as passed by the House for the text of S. 493. On April 1, 1997, the Senate agreed to the House amendment. S. 493 was signed by the President on April 24, 1997 (Public Law 105-172).

Clone Pager Authorization Act of 1996

On January 21, 1997, Senator DeWine introduced S. 170, a bill to provide for a process to authorize the use of clone pagers, and for other purposes. On September 18, 1997, this bill was reported to the Senate by the Committee on the Judiciary with no written report. S. 170 passed the Senate on November 7, 1997. On November 18, 1997, the bill was referred to the House Committee on the Judiciary and ordered reported to the House Judiciary Committee by the Subcommittee on Crime on May 7, 1998. No hearings were held and no report was filed. No further action was taken on S. 170 in the 105th Congress.

Telemarketing Fraud Prevention

In the 104th Congress, the House of Representatives passed the “Telemarketing Fraud Prevention Act.” The Senate failed to act on that legislation, and Representative Goodlatte introduced identical legislation, H.R. 1847, in the 105th Congress on June 10, 1997. The legislation directs the U.S. Sentencing Commission to increase penalties for persons who commit telemarketing fraud. The bill also allows for forfeiture of any real or personal property used, constituting or derived from the commission of the fraudulent offense.

On June 12, 1997, the Subcommittee held a markup and considered H.R. 1847, the “Telemarketing Fraud Prevention Act of 1997.” The bill was ordered favorably reported to the full Committee. On June 18, 1997, the full Committee considered the bill and it was ordered favorably reported to the House. On June 26, 1997, the bill

was reported to the House (H. Rept. 105–158). H.R. 1847 passed the House on July 8, 1997.

On November 9, 1997, H.R. 1847 passed the Senate, as amended, with additional floor amendments. The Senate amendment struck the specific penalty enhancements directed by the House to the U.S. Sentencing Commission. Instead, the Senate bill directed the Commission to review the guidelines to ensure that penalties were appropriately severe. The House agreed to the Senate amendment on June 18, 1997, by a vote of 411 yeas and 1 nay. On June 23, 1997, H.R. 1847, the “Telemarketing Fraud Prevention Act of 1997” was signed by the President (Public Law 105–184).

Identify Theft and Assumption Deterrence Act

H.R. 4151, the “Identity Theft and Assumption Deterrence Act of 1998,” introduced by Representative John Shadegg, amends the fraud chapter of title 18 of the United States Code to create a new crime prohibiting the unlawful use of personal identifying information—such as names, social security numbers, and credit card numbers. Identity fraud involves the misappropriation of another person’s personal identifying information. Criminals use this information to establish credit in their name, run up debts on another person’s account, or take over existing financial accounts. According to a 1998 GAO study, the consequences of this crime are enormous. One national credit union reported that two-thirds of the 500,000 annual consumer inquiries it receives involve identity fraud. MasterCard has reported that its member banks lose almost \$400 million annually to identity theft. The Secret Service, which investigates only a small portion of identify theft cases under the existing wire and mail fraud statutes, reported that the cases it investigated in 1997 involved over \$745 million in losses.

Unfortunately, only a portion of identify fraud cases are investigated and prosecuted. At present, while the use of false identity documents is a crime, the gathering, use, and sale of personal identifying information is not. Because of this gap in the law, law enforcement agencies can only investigate the fraud that occurs after stolen identity information is used. And as many of these individual crimes involve relatively small amounts, they often are too small to justify the use of valuable investigative and prosecutorial resources.

H.R. 4151 gives law enforcement agencies the authority to investigate these crimes. It amends section 1029 of title 18 to make it a crime to unlawfully transfer or use a means of personal identification. But only an unlawful use or transfer is prohibited. The statute will still allow banks, credit card companies, and credit bureaus to conduct their business as they always have. The bill also requires the United States Sentencing Commission to review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, for each offense under section 1028 of title 18, United States Code, as amended by the bill. Further, the bill requires the Federal Trade Commission to establish a centralized complaint center which will log and acknowledge the receipt of complaints by individuals who certify that they have a reasonable belief that one or more of their means of identification

have been assumed, stolen, or otherwise unlawfully acquired in violation law.

Finally, the bill was amended on the floor of the House to add a provision amending the “Ethics in Government Act of 1998.” As amended by H.R. 4151, the Act will allow for the redaction of portions of the annual financial reports filed by Federal judges under the Act prior to their release to the public after a request is made for their release if a finding is made by the Judicial Conference of the United States, in consultation with United States Marshal Service, that revealing personal and sensitive information could endanger that individual.

The House passed the bill under suspension of the rules on October 7, 1998. The Senate passed the bill on October 14, 1998, by unanimous consent. The President signed the bill into law on October 30, 1998 (Public Law 105–318).

CARING FOR VICTIMS

Crime Victims with Disabilities Awareness Act

Research in foreign countries has found that persons with developmental disabilities are at a 4 to 10 times higher risk of becoming crime victims than those without disabilities. Studies in Canada, Australia, and Great Britain consistently show that crime victims with disabilities suffer repeated victimization, often because so few of the crimes against them are reported. We know little about the nature of crimes against individuals with disabilities in the United States. Nationally, data is not collected on crimes against such persons and no significant studies have been conducted on this issue in the United States.

On July 13, 1998, the Senate passed the bill, S. 1976, the “Crime Victims with Disabilities Awareness Act” by unanimous consent. S. 1976 directs the Attorney General to conduct a study on crime victims with disabilities to learn the nature and extent of this problem. S. 1976 also directs the Attorney General to include crime victims with developmental disabilities in the National Crime Victims Survey in order to begin quantifying the number of crimes against such persons here in the United States.

On September 11, 1998, the House Subcommittee on Crime met in open session and considered S. 1976. On September 14, 1998, the Subcommittee ordered the bill reported favorably to the full Committee. On October 7, 1998, the Committee on the Judiciary was discharged from further consideration and S. 1976 passed the House under suspension of the rules. S. 1976 was signed by the President on October 27, 1998 (Public Law 105–301).

Victims Rights Clarification Act

In recent years, the public has come to demand that its elected leaders take a greater interest in the concerns of victims of crime. Congress has responded to this demand in a number of ways. In 1990, Congress passed a provision requiring federal government employees involved in the detection, investigation, and prosecution of crime to make their best efforts to see that victims of crime were accorded a number of rights, including the right to be treated with fairness and with respect for the victims’ dignity and privacy, the

right to be reasonably protected from the accused offender, the right to be notified of court proceedings, the right to confer with the attorney for the government in the case, and the right to information about the conviction, sentencing, imprisonment and release of the offender. See Public Law 101-647, codified at 42 U.S.C. § 10606. That Act also provided for two other important rights to be accorded victims: the right to restitution, and the right to be present at all public court proceedings related to the offense. Since 1990, Congress has enacted several measures to further this intent.

In 1996, Congress enacted Public Law 104-132, the "Anti-Terrorism and Effective Death Penalty Act of 1996." Title II of that Act made significant amendments to the restitution provisions of the United States Code to require, in large part, that federal courts order persons convicted of violent crimes, and specified other crimes, to make restitution to the victims of their crimes.

In 1994, Congress amended the Federal Rules of Criminal Procedure to provide that a victim would have the right to make a statement to the court in a non-capital case, at the time of sentencing, in order to better ensure that the interests of victims of crime would be known to sentencing judges. Also in that year, Congress authorized the government, after a guilty verdict is returned in a capital case, to call victims and victims' family members to testify during the post-verdict sentencing hearing. This testimony may be in connection with any aggravating factors that the government wishes to prove, or to rebut evidence of mitigating factors that the convicted defendant is attempting to prove. This so-called "victim impact" testimony often describes the effect of the crime on the victim or the victim's family. The Supreme Court has upheld the government's right to present victim impact testimony against constitutional challenge.

In *United States v. Timothy McVeigh*, one of the criminal trials arising from the bombing of the Federal Building in Oklahoma City in 1995, the presiding judge ruled that some victims and victims' family members would be precluded from attending the guilt-phase of a criminal trial because these persons intend to make victim impact statements during the sentencing phase of the trial. While Federal Rule of Evidence 615 does authorize judges to exclude fact witnesses from trial, this rule was formulated primarily to guard against potential fact witnesses changing their testimony based on the testimony of other fact witnesses they might hear at trial. The situation in the *McVeigh* case did not involve the testimony of fact witnesses but rather statements and other testimony presented by victims as to the impact of the offenders' crimes on them personally. As such, the risk that their testimony might somehow be tainted by evidence presented during the guilt phase of a trial was minimal.

To ensure that the ruling in the *McVeigh* case would not be relayed upon in other cases, Representative Bill McCollum introduced H.R. 924, the "Victim Rights Clarification Act of 1997," which provides that a victim may not be excluded from a criminal trial in federal court solely because of the fact that the victim may or will make a statement as to the impact of the crime on them or their family in accordance with existing law. The bill does not prevent judges from separating victims who will also be fact wit-

nesses during the guilt phase of the trial if the court determines that their fact testimony would be materially affected by hearing other fact testimony at trial. *See* 42 U.S.C. § 10606(b)(4). Nor does the bill affect a judge's authority to manage his or her courtroom in accordance with other statutes and court rules. As such the bill strikes a balance between the goal of ensuring that fact testimony is not tainted by other testimony at trial and the goal that, when appropriate, every opportunity is given to victims to witness first hand that our system is providing justice for them.

On March 6, 1997, the Subcommittee on Crime met in open session considered H.R. 924 and ordered it reported favorably to the full Committee. The full Committee considered the bill on March 12, 1997, and ordered it reported favorably to the House (H. Rept. 105-28). On March 18, 1997, the House considered the bill under suspension of the rules and passed the bill by a vote of 418 yeas to 9 nays. On March 19, 1997, the Senate passed the bill by unanimous consent. The President signed the bill into law on March 19, 1997 (Public Law 105-6).

Traffic Stops Statistics Act of 1997

H.R. 118, the "Traffic Stops Statistics Act of 1997," requires the Attorney General to conduct a study by acquiring data from law enforcement agencies regarding the characteristics of those stopped for alleged traffic violations and the rationale for any subsequent searches resulting from those violations. The Attorney General is directed to issue a report to Congress in 2 years which would set forth the findings of the study.

This bill will discourage law enforcement officers from using race as the primary factor in making determinations as to whether to institute a car search and will provide statistical data as to the nature and extent of the problem of African-Americans being targeted for traffic stops. H.R. 118, will also identify the benefits of traffic stops to fight crime by including information on the type of contraband seized, the quantity of drugs and the value of drug proceeds seized pursuant to a routine traffic stop.

On February 26, 1998, the Subcommittee on Crime was discharged from further consideration. On March 3, 1998, the Judiciary Committee held a markup. On March 4, 1998, H.R. 118 was ordered reported to the House with an amendment that would include in the study statistics on the approximate quantity of drugs and the value of drug proceeds seized on an annual basis as a result of the traffic stops. On March 11, 1998, the bill was reported, as amended, to the House (H. Rept. 105-435). H.R. 118, passed the House, as amended, and referred to the Senate Committee on the Judiciary on March 25, 1998. No further action was taken on H.R. 118 in the 105th Congress.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968

H.R. 804 is a bill to amend part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to ensure that Federal Funds made available to hire or rehire law enforcement officers are used in a manner that produces a net gain of the number of law enforcement officers who perform nonadministrative public safety services.

On September 11, 1998, H.R. 804 was marked-up by the Subcommittee on Crime. On September 14, 1998, the bill was ordered reported to the Judiciary Committee. The Committee on the Judiciary was discharged from further consideration on October 7, 1998. H.R. 804 passed the House on October 7, 1998, and was received in the Senate on October 8, 1998.

INTERNET GAMBLING

During the 105th Congress, the Subcommittee held two hearings on the subject of Internet gambling. On February 4, 1998, and June 24, 1998, the Subcommittee held hearings on H.R. 2380, the "Internet Gambling Prohibition Act of 1997." On February 4, 1998, the Subcommittee heard testimony from Frank Fahrenkopf, Jr., President and CEO, American Gaming Association; Douglas Donn, Director, National Thoroughbred Racing Association; William S. Saum, Gambling and Agent Representative, National Collegiate Athletics Association; Frank Miller, Past President, North American Gaming Regulators Association; Sue Schneider, Chairperson, Interactive Gaming Council and Managing Editor, Rolling Good Times OnLine; Bernie Horn, Director of Political Affairs, National Coalition Against Legalized Gambling/National Coalition Against Gambling Expansion.

On June 24, 1998, the Subcommittee heard testimony from Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; David Jemmet, President, WinStar GoodNet and Commercial Internet Exchange Association (CIX); Marianne McGettigan, Counsel, Major League Baseball Players Association; David Matheson, Chief Executive Officer of Gaming, Couer d'Alene Tribe.

One month after the first hearing, on March 5, 1998, the United States Attorney for the Southern District of New York indicted 14 owners and managers of six Internet sports betting companies headquartered in the Caribbean and Central America. The six companies were: Galaxy Sports in Curacao; Island Casino in Curacao; Real Casino in Costa Rica; SDB Global Casino in Costa Rica; Winner's Way in the Dominican Republic; and World Sports Exchange in Antigua. Significantly, all of the defendants are United States citizens who moved to a foreign location to operate their web sites.

All defendants were charged with conspiracy to transmit bets and wagers on sporting events via the Internet and telephones. The six separate complaints charged the defendants with owning and/or operating sports betting businesses that illegally accept wagers on sporting events over the Internet and telephones. These complaints represented the first federal prosecutions of sports betting over the Internet.

Although the gambling operations were legal in the countries where they were being operated, the relevant facts, according to United States Attorney Mary Jo White, were that all of the companies advertised and promoted their betting sites with the goal of obtaining wagers from U.S. customers via the Internet. They all used the U.S. mails; they advertised in U.S. publications and some maintained marketing offices on U.S. soil. United States Attorney General Janet Reno issued a statement saying, "Federal law clearly prohibits anyone engaged in the business of betting or wagering

from using interstate and international wire communications, including the Internet and telephones, in connection with betting on sports events. Criminals cannot avoid responsibility for federal crimes by seeking refuge in offshore locations.” Lawyers for the defendants continue to argue that their clients have licenses to operate an on-line betting site by the countries where the businesses are located, and that the United States does not have jurisdiction to prosecute such companies.

Three weeks later the Department of Justice charged an additional seven owners, managers and employees of five Caribbean-based sports betting companies with conspiracy. As with the initial charges, undercover federal agents opened accounts with the on-line betting sites and used the Internet and telephone lines to place bets. The cases were filed in federal court in New York, and the investigations are continuing. These activities by the Federal Government necessitated the second hearing.

Additionally, there are several Indian tribes which operate casinos on tribal lands, and many of these casinos are extremely lucrative for the tribes. Some tribes have expressed interest in augmenting their gambling revenue by operating on-line gambling web sites. Also, many news web sites also operate a rotisserie sports game on the Internet, which are also known as fantasy sports leagues. For example, CBS and ESPN both have web pages with several fantasy sports games—baseball, football, golf, etc. In order to play, one simply logs onto the web page and purchases a team for a set fee. The player provides a credit card number to enter the “draft,” and then picks a team from the names of the players in a particular league. The grand prize on the ESPN baseball site is an all-expenses paid trip to spring training in Florida. Other prizes include jackets, hats, and plastic miniature baseball bats. These organizations dispute the contention that their games fall within the definition of gambling. They also argue that fantasy leagues involve skill, such as keeping track of a player’s statistics and making player trades with other participants.

On September 14, 1998, the Subcommittee on Crime considered H.R. 4427 and the bill was ordered reported favorably to the full Committee. No further action was taken on H.R. 4427 in the 105th Congress.

DEPARTMENT OF JUSTICE

Federal Prisons of Industries

On October 30, 1997, the Subcommittee held a hearing on options for improving and expanding cooperation between Federal Prison Industries and the private sector. The Subcommittee heard testimony from Steve Schwalb, Assistant Director, Federal Bureau of Prisons; Michael N. Harrell, General Manager of News Business Development, PRIDE Enterprises; Robert Sanders, Division of Industries, South Carolina Department of Corrections; Kenneth L. Mellem, President and CEO, Geonex Corporation, Morgan O. Reynolds, National Center for Policy Analysis; Ann F. Hoffman, Legislative Director, Union of Needletrades, Industrial and Textile Employees; V. James Adduci, II, American Apparel Manufacturers As-

sociation; Donald G. Heeringa, President, BIFMA International; Stephen M. Ryan, Quarters Furniture Manufacturers Association.

On June 25, 1998, the Subcommittee held a hearing on H.R. 4100, the "Free Market Prison Industries Reform Act of 1998" and H.R. 2758, the "Federal Prison Industries Competition in Contracting Act of 1997." The Subcommittee heard testimony from Kathleen Hawk Sawyer, Director, Bureau of Prisons; Steve Schwalb, Assistant Director, Bureau of Prisons; Morgan Reynolds, Professor of Economics, Texas A&M; Michael J. Sullivan, Secretary of the Department of Corrections, State of Wisconsin; Knut Rostad, The Enterprise Prison Institute; Len Lorey, Kimball International; David A. Smith, Director of Public Policy, AFL-CIO; Larry Martin, President, American Apparel Manufacturers Association. Both of these bills address the operation of Federal Prison Industries (FPI), a correctional program operated by the Bureau of Prisons (BOP).

Representative McCollum introduced H.R. 4100, the "Free Market Prison Industries Reform Act" on June 19, 1998. Under this legislation, the private sector will be encouraged to participate whole scale in federal prison industry programs. The bill requires the BOP to invite private companies to bid for the right to operate a federal prison industry program at all new federal prisons. Contracts will be awarded based on the benefit to the government in terms of revenue produced and number of inmate employed. From the amount that a private business pays to the government for the right to operate a prison industry will be made payments as wages to the inmates working in the industry. Amounts will be deducted from those wages to pay victim restitution, support to the inmates' families, and the cost of room and board.

Under the bill, the BOP will also be required to begin offering existing prison industries to the private sector to be operated in the same way as the industries at new prison facilities. Until private companies can be found to run existing industries, however, FPI will be authorized to continue to operate the industry, but for the first time, will authorized to sell the goods made there on the open market, to other companies or directly to consumers. Regardless of whether the industry is operated by a private person or by the BOP, if the goods made there are sold on the open market, the bill will repeal the "mandatory source preference" that requires the federal government to purchase goods made in prison industries.

The bill also lifts federal restrictions on the interstate transportation of goods made in state prison industry programs. As a result of these changes, states may also invite private companies to operate their prison industry programs, or may choose to operate the industries itself, and sell the goods made there in the open market. States wishing to take advantage of this provision, however, would be required to give up their reliance on any provision that requires state agencies in that state to buy goods from the state prison industry program.

H.R. 2758, introduced by Representative Peter Hoekstra, would immediately eliminate the mandatory source preference currently used by FPI. In return, it would require all Federal agencies to solicit an offer from FPI when making a purchase of goods or services offered for sale by FPI. The bill would continue to limit FPI to selling goods or services only to the Federal government. The bill

would also limit the authority of FPI to offer for sale a new product or to increase the quantity offered for sale of an existing product.

No further action was taken on H.R. 4100 and H.R. 2758 in the 105th Congress.

Prisoner Service Opportunity Act of 1997

On March 5, 1997, Mr. McCollum introduced H.R. 926, the "Prisoner Service Opportunity Act of 1997." On March 6, 1997, H.R. 926 was ordered reported to the full Committee by the Subcommittee on Crime. No further action was taken on H.R. 926 in the 105th Congress.

United States Marshals Service Improvement Act of 1997

On March 5, 1997, Mr. McCollum introduced H.R. 927, the "United States Marshals Service Improvement Act of 1997." This bill will change the selection process of United States Marshals from that of appointment by the President with the advice and consent of the Senate, to appointment by the Attorney General. United States Marshals will be selected on a competitive basis from among the career managers within the Marshals Service.

Incumbent U.S. Marshals, selected before enactment of H.R. 927, will continue to perform the duties of their office until their terms expire and successors are appointed. Marshals selected between the enactment of this bill and December 31, 1999, will still be appointed by the President, with the advice and consent of the Senate. They will serve a 4-year term, unless they resign or are removed by the President.

On March 6, 1997, H.R. 927 was ordered reported to the Judiciary Committee by the Subcommittee on Crime. On March 17, 1997, the bill was reported to the House (H. Rept. 105-27) and passed the House on March 18, 1997. On March 19, 1997, H.R. 927 was referred to the Senate Committee on the Judiciary. On March 26, 1998, the bill was reported favorably to the Senate with an amendment by Senator Hatch. No written report was filed in the Senate.

Private Security Officer Quality Assurance Act of 1997

H.R. 103, the "Private Security Officer Quality Assurance Act of 1997," establishes a procedure for expediting background checks of private security officers. The bill requires the Attorney General to designate and associate the employers of private security officers to submit applicant fingerprints to the Attorney General for the purpose of background checks. The Attorney General is expected to designate responsibility for conducting the background checks to the Federal Bureau of Investigation.

H.R. 103 further requires the Attorney General to report to the House and Senate Judiciary Committee 2 years after enactment on the number of inquiries made by the association established under the bill and disposition of those inquiries. The legislation also expressed the sense of Congress that States should participate in the background check system.

On January 7, 1997, H.R. 103 was introduced by Bob Barr and was referred to the Committee on Education and the Workforce; and the Committee on the Judiciary. On June 12, 1997, the bill was ordered reported to the Judiciary Committee by the Sub-

committee on Crime. H.R. 103 was ordered reported to the House on June 26, 1997, by the Committee on the Judiciary (H. Rept. 105-161, part 1). The Committee on Education and the Workforce was discharged from further consideration on July 28, 1997. The bill passed the House on July 28, 1997, and was referred to the Senate Committee on the Judiciary on September 11, 1997. No hearings were held on H.R. 103. No further action was taken on H.R. 103 in the 105th Congress.

To Limit the Jurisdiction of the Federal Courts with Respect to Prison Release Orders

On April 23, 1998, Mr. DeLay introduced H.R. 3718, a bill to limit the jurisdiction of the Federal courts with respect to prison release orders. H.R. 3718 was referred to the Subcommittee on Crime on May 11, 1998. The Committee on the Judiciary was discharged from further consideration on May 19, 1998, and the bill passed the House by a vote of 325 yeas to 53 nays. H.R. 3718 was referred to the Senate Committee on the Judiciary on May 20, 1998. No further action was taken on H.R. 3718 in the 105th Congress.

GENERAL OVERSIGHT AND OTHER SUBCOMMITTEE HEARINGS

FBI Oversight

On February 12, 1997, the Subcommittee held a hearing on the Federal Bureau of Investigation investigation into the Khobar Towers bombing in Dhahran, Saudi Arabia and the foreign investigative activities of the FBI in general. The Subcommittee heard testimony from Robert Bryant, Assistant Director, National Security Division, Federal Bureau of Investigation, Department of Justice, accompanied by Allen Ringgold, Deputy Assistant Director.

On May 13, 1997, the Subcommittee held a hearing on the activities of the Federal Bureau of Investigation, Part I. The Subcommittee heard testimony from Fredric Whitehurst, Supervisory Special Agent, Federal Bureau of Investigation; Daniel S. Alcorn, Counsel, National Association of Criminal Defense Lawyers; Michael R. Bromwich, Inspector General, Department of Justice; Donald Thompson, Acting Assistant Director, Federal Bureau of Investigation; James Maddock, Deputy General Counsel, Federal Bureau of Investigation; Kevin Lothridge, President, American Society of Crime Laboratory Directors.

On June 5, 1997, the Subcommittee held a hearing on the activities of the Federal Bureau of Investigation, Part II. The Subcommittee heard testimony from Louis J. Freeh, Director, Federal Bureau of Investigation.

On July 30, 1997, the Subcommittee held a hearing on the activities of the Federal Bureau of Investigation, Part III. The Subcommittee heard testimony from Richard Jewell; Albert Alschuler, Professor of Law, University of Chicago; Michael Shaheen, Jr., Director, Office of Professional Responsibility, Department of Justice; Robert Bryant, Assistant Director, Federal Bureau of Investigation; Woody Johnson, Special Agent in Charge, Atlanta Regional Office, Federal Bureau of Investigation.

On June 11, 1998, the Subcommittee held a hearing on the Federal Bureau of Investigation's implementation of a national instant-check system for screening prospective gun buyers. The Subcommittee heard testimony from James E. Kessler, Jr., Section Chief, Operations Branch, Criminal Justice Information Services Division, Federal Bureau of Investigation; Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, U.S. Department of Justice; Tanya K. Metaksa, Executive Director, National Rifle Association of America; Grover G. Norquist, President, Americans for Tax Reform; James J. Baker, Washington Representative, Sporting Arms & Ammunition Manufacturers Institute; Lt. Col. Cynthia Smith, Bureau Chief of Drug and Criminal Enforcement, Maryland State Police; Lt. Robert G. Kemmler, Assistant Records Management Officer, Virginia Firearms Transaction Program, Virginia Department of State Police.

Implementation of the Communications Assistance for Law Enforcement Act of 1994

On October 23, 1997, the Subcommittee held a hearing on the implementation of the Communications Assistance for Law Enforcement Act of 1994 (CALEA) (Public Law 103-414). CALEA was signed into law by President Clinton on October 25, 1994 (Public Law 103-414, codified at 47 U.S.C. § 1001 et seq.). The purpose of the Act is to "preserve the government's ability, pursuant to court order or other lawful authorization, to intercept communications involving advanced technologies such as digital or wireless transmission modes, or features and services such as call forwarding, speed dialing, and conference calling, while protecting the privacy of communications and without impeding the introduction of new technologies, features, and services."

The Act places four requirements on telecommunications carriers. First, carriers are expected to expeditiously isolate and enable the government to intercept all wire and electronic communications within a carrier's service area. Second, carriers are required to expeditiously isolate and enable the government to access call identifying information that is reasonably available to the carrier both before, during, or immediately after the transmission of the communication. Third, carriers are required to provide intercepted communications and call identifying information to the government in a format that the government can use. Finally, the Act requires carriers to intercept the communication or access to the call identifying information unobtrusively, with a minimum of interference to any subscriber's service, and in a manner that protects the privacy and security of any communications and call identifying information not authorized to be intercepted.

In addition to the requirements placed on telecommunications carriers, the Act specifies that law enforcement is not authorized to require any specific design of equipment, facilities, services, features, or system configurations nor can the government prohibit the adoption of any equipment, facilities, service, or feature by any provider or manufacturer.

The purpose of the hearing was to determine if the extent of cooperation between the telecommunications industry and the government in implementing the Act, to determine when the Act

might be fully implemented, and to ascertain whether further legislation is required to ensure that the intent of the 1994 law was carried out. The Subcommittee heard testimony from Thomas E. Wheeler, President, Cellular Telecommunications Industry Association; Jay Kitchen, President, Personal Communications Industry Association; Matthew J. Flanigan, President, Telecommunications Industry Association; Roy M. Neel, President, United States Telephone Association; James X. Dempsey, Senior Staff Counsel, Center for Democracy and Technology; Edward L. Allen, Chief, Electronic Surveillance Technology Section, Information Resources Division, Federal Bureau of Investigation; H. Michael Warren, Chief, CALEA Implementation Section, Information Resources Division, Federal Bureau of Investigation.

Ecoterrorism

On June 9, 1998, the Subcommittee held a hearing on ecoterrorism committed by radical environmental organizations. The Subcommittee heard testimony from The Honorable Frank Riggs, First District of California, U.S. House of Representatives; Ron Arnold, author, *Ecoterror: The Violent Agenda to Save Nature*; Bruce Vincent, President, Alliance for America; Barry Clausen, author, *Walking on the Edge: How I Infiltrated Earth First!*; Julie Rodges, District Office Manager, The Honorable Frank Riggs, Eureka, California; Cathi Peterson, former Forest Service Employee, Northern California.

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

GEORGE W. GEKAS, Pennsylvania, *Chairman*

STEVEN SCHIFF, New Mexico ¹	JERROLD NADLER, New York
LAMAR S. SMITH, Texas	SHEILA JACKSON LEE, Texas
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ED BRYANT, Tennessee	WILLIAM D. DELAHUNT, Massachusetts
STEVE CHABOT, Ohio	
LINDSEY O. GRAHAM, South Carolina ²	

¹ Steven Schiff, New Mexico, deceased March 25, 1998.

² Lindsey O. Graham, South Carolina, assigned March 3, 1998, to fill the vacancy resulting from the illness of Steven Schiff, New Mexico.

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	78
Legislation reported favorably to the full Committee	16
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	1
Legislation discharged from the Subcommittee	8
Legislation pending before the full Committee	0
Legislation reported to the House	16
Legislation discharged from the Committee	9
Legislation pending in the House	5
Legislation passed by the House	22
Legislation pending in the Senate	9
Legislation vetoed by the President	0
Legislation enacted into public law	9
Legislation enacted into public law as part of another bill	2
Legislation on which hearings were held	25
Days of hearings (legislative and oversight)	15

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Commercial and Administrative Law has legislative and oversight responsibility for the Independent Counsel statute, the Legal Services Corporation, the Office of Solicitor General, the U.S. Bankruptcy Courts, the Executive Office for the U.S. Trustees of the Department of Justice, the Executive Office of United States Attorneys, and the Environment and Natural Resources Division of the Department of Justice. The Subcommittee's legislative responsibilities include administrative law (practice and procedure), regulatory flexibility, state taxation affecting interstate commerce, bankruptcy law, bankruptcy judgeships, legal services, federal debt collection, the Contract Disputes Act, the Federal Arbitration Act, and interstate compacts.

LEGISLATIVE ACTIVITIES

ADMINISTRATIVE LAW/PRACTICE AND PROCEDURE (REGULATORY REFORM)

H.R. 1544, the Federal Agency Compliance Act

On May 22, 1997, the Subcommittee held a hearing on H.R. 1544, the "Federal Agency Compliance Act," introduced by Mr. Gekas. The legislation would have generally prevented agencies from refusing to following controlling precedents of the United States courts of appeals in the course of program administration and litigation involving their programs. This practice by agencies, known as "non-acquiescence," has been criticized for many years by courts and legal scholars, and has resulted in hardship to those appearing before agencies and continual relitigation of settled questions of law. The bill, based upon a recommendation of the Judicial Conference of the United States, addressed the two kinds of agency nonacquiescence: intracircuit nonacquiescence refusal to follow controlling appellate precedent within a specific federal judicial circuit; and intercircuit nonacquiescence—relitigating in other judicial circuits issues on which precedents have already been established in multiple circuits.

Regarding intracircuit non-acquiescences, the bill generally required an agency and all agency officials who administer statutes and regulations within a given judicial circuit to follow relevant existing courts of appeals precedent in that circuit. An agency would have been permitted to assert a position contrary to precedent in limited circumstances, for example, when intervening legal, factual, or public policy developments may have undermined or changed the rationale for the earlier decision. With respect to intercircuit nonacquiescence, the bill required the Department of Justice and other agency officials in such situations to consider the following factors, among others, when deciding whether to pursue litigation when three or more circuits had decided a question of law: (1) the effect of intervening changes in pertinent law or public policy or circumstances on which the other courts of appeals decisions were based; (2) subsequent decisions of the Supreme Court or the courts of appeals that previously decided the relevant question of law; (3) the extent to which that question of law was fully and adequately litigated in the earlier cases; and (4) the need to conserve the resources of the federal court and non-agency parties to the litigation. These provisions aimed at discouraging intercircuit nonacquiescence were not subject to judicial review or enforcement.

Witnesses who testified at the hearing were: James F. Allsup, President, Allsup, Inc.; Stephen H. Anderson, U.S. Courts of Appeals for the Tenth Circuit, Salt Lake City, Utah, on behalf of the Judicial Conference of the United States; Dan T. Coenen, J. Alton Hosch Professor, University of Georgia School of Law; Peter J. Ferrara, General Counsel and Chief Economist, Americans for Tax Reform; Arthur J. Fried, General Counsel, Social Security Administration; John H. Pickering, Wilmer, Cutler & Pickering, on behalf of the American Bar Association; Stephen W. Preston, Deputy Assistant Attorney General, Civil Division, U.S. Department of Jus-

tice; Daniel J. Wiles, Deputy Associate Chief Counsel, (Domestic Field Service), Office of Chief Counsel, Internal Revenue Service.

On July 24, 1997, the Subcommittee reported the bill favorably by a voice vote. On September 17, 1997, the Judiciary Committee reported the bill favorably by a voice vote (H. Rept. 105-395). On February 25, 1998, the House passed H.R. 1544 by a vote of 241-176. A companion bill, S. 1166, was introduced in the Senate on September 11, 1997, and a hearing was held by the Subcommittee on Administrative Oversight and the Courts on June 15, 1998.

No further action was taken by that body.

H.R. 2440, Technical Amendment in Section 10, Title 9, United States Code

On September 11, 1997, the Subcommittee by voice vote reported H.R. 2440, making technical corrections to section 10 of title 9, United States Code. Title 9, which governs arbitration, contains in section 10 an obvious typographical error which was corrected by this legislation. The Judiciary Committee reported H.R. 2440 on September 17, 1997, by voice vote (H. Rept. 105-381) and it was passed by the House by voice vote on November 12, 1997. The Senate approved the bill with an amendment on October 21, 1998, but that House was unable to act before the adjournment sine die of the 105th Congress.

H.R. 4049, Regulatory Fair Warning Act of 1998

Chairman Gekas introduced H.R. 4049, the Regulatory Fair Warning Act of 1998, on June 11, 1998, after announcing his intention to do so at the Subcommittee's May 7, 1998, hearing on Administrative Crimes and Quasi-Crimes. The bill is a revision of H.R. 3307, which Chairman Gekas introduced in the 104th Congress.

The Subcommittee conducted a hearing on the bill July 23, 1998. Witnesses who testified at the hearing were: Joseph N. Onek, Principal Deputy Associate Attorney General, U.S. Department of Justice; Daniel E. Troy, Associate Scholar, American Enterprise Institute and Partner, Wiley, Rein & Fielding; James H. Schaum, President & CEO, Allen Memorial Hospital, Oberlin, Ohio; and David C. Vladeck, Director, Public Citizen Litigation Group.

The Regulatory Fair Warning Act would prevent agencies from pursuing violations of regulations that are unclear, ambiguous, or unavailable to the general public. The bill would prohibit the imposition of administrative, civil, or criminal sanctions if: (a) rules and regulations are not available to the public or known to the regulated community; (b) rules and regulations do not give fair warning of what is prohibited or required; or (c) officials have misled people about what rules and regulations prohibit or require.

No markup of H.R. 4049 was held.

H.R. 4096, Taxpayer's Defense Act

Along with 53 original cosponsors, Chairman Gekas introduced the Taxpayer's Defense Act on June 19, 1998. The Subcommittee conducted a hearing on the bill July 23, 1998.

Since before the founding of the United States, taxation has been regarded as a governmental function reserved to the legislative

branch. The modern era of restricted federal budgets, however, threatens to erode the essential principle that taxes be levied only by Congress. Federal agencies are now regularly and increasingly empowered to impose user fees, an appropriate method of compensating the government for specific benefits it provides. Such fees may become taxes, however, when they go beyond covering the cost of services, or beyond the value provided to identifiable beneficiaries.

The Subcommittee's February 26 hearing dealt with the Federal Communications Commission's (FCC) Universal Service Tax. Section 254 of the Telecommunications Act of 1996 gave the FCC authority to define "universal service" and require contributions—taxes—from long-distance telecommunications providers for subsidizing universal service. The Taxpayer's Defense Act was intended to prevent federal agencies from establishing or increasing taxes through rules and regulations. The bill would have created an expedited congressional review procedure and would have required any agency promulgating a rule that would establish or increase a tax to submit the rule to Congress for its approval before such a rule can take effect.

Witnesses who testified at the hearing were: William A. Niskanen, Chairman, CATO Institute; Thomas A. Schatz, President, Council for Citizens Against Government Waste; and Christopher McLean, Deputy Administrator, Rural Utilities Service, U.S. Department of Agriculture.

No markup of H.R. 4096 was held.

BANKRUPTCY

H.R. 764, the Bankruptcy Amendments of 1997, and H.R. 120, the Bankruptcy Law Technical Corrections Act of 1997

H.R. 764, the Bankruptcy Amendments of 1997, was introduced on February 13, 1997, by Judiciary Chairman Henry Hyde, with Representatives George Gekas, Chairman of the Subcommittee, and Bill McCollum as original cosponsors. Prior thereto on January 7, 1997, Representative John Conyers, Ranking Minority Member of the Committee on the Judiciary, introduced H.R. 120, the Bankruptcy Law Technical Corrections Act of 1997, which was similar in many respects to H.R. 764. Both bills trace their origins to S. 1559, the Bankruptcy Technical Corrections Act of 1996, which was introduced by Senator Charles Grassley in the 104th Congress and passed, as amended, on unanimous consent by the Senate on August 2, 1996. H.R. 764 also reflects recommendations made by the National Bankruptcy Conference, a select, nonpartisan organization of bankruptcy experts.

On April 30, 1997, the Subcommittee on Commercial and Administrative Law conducted a hearing on H.R. 764 and H.R. 120. Witnesses who testified at the hearing were: Representatives Vernon Ehlers and Joe Knollenberg; Kenneth Klee, National Bankruptcy Conference; Roger Whelan, American Bankruptcy Institute; Frederick Luper, Commercial Law League of America; Albert Sullivan, Director, Office of Asset Management and Disposition, United States Department of Housing and Urban Development; Donald Ennis, American Council of Life Insurance and the Mortgage Bank-

ers Association; Joseph Bonita, American Land Title Association; Richard Gerken, Equipment Leasing Association; and Jill Sturtevant, American Bankers Association.

While the principal thrust of H.R. 120 was to make technical and clarifying amendments to the Bankruptcy Code, it also contained several substantive provisions. These included, for example, an amendment to the definition of “single asset real estate” to clarify that it did not apply to a family farmer. Another provision authorized the trustee, subject to court approval and providing it was in the best interests of the estate, to render professional services, such as those performed by appraisers and auctioneers, and be compensated for such services. It also provided that a security interest in property created by a transfer to which Section 547(c)(3) applies was excepted from the Bankruptcy Code’s automatic stay provisions.

H.R. 764, as introduced, had provisions that were in some instances identical and in other instances dissimilar to those in H.R. 120. For example, H.R. 764’s amendment to the Bankruptcy Code’s definition of “single asset real estate” with respect to its inapplicability to family farmers had a similar counterpart in H.R. 120, but H.R. 764—in contrast to H.R. 120—also eliminated the debt ceiling in the single asset real estate definition. Another example of a difference is that H.R. 764 did not include H.R. 120’s provision concerning professional services rendered by a trustee.

On June 25, 1997, the Subcommittee on Commercial and Administrative Law met in open session and adopted by voice vote an amendment in the nature of a substitute to H.R. 764, which reconciled many of the differences between both bills. H.R. 764, as amended, was then ordered favorably reported by the Subcommittee by voice vote to the Committee on the Judiciary. On July 16, 1997, the Committee met in open session and ordered favorably reported H.R. 764, as amended by the Subcommittee amendment in the nature of a substitute, by a voice vote. The Committee filed its report on H.R. 764, (H. Rept. 105–324), on October 21, 1997.

As reported by the full Committee, H.R. 764 primarily made technical corrections to the Bankruptcy Code that were intended to clarify original legislative intent, correct drafting defects, and improve grammar and cross-references. In addition, the bill included substantive amendments to the Bankruptcy Code that were limited in scope and designed to rectify shortcomings in current law. These included a provision increasing the monetary limitation in the Bankruptcy Code’s definition of single asset real estate from \$4 million to \$15 million to make expedited relief from the automatic stay available to creditors in a broader range of commercial property reorganizations. In addition, the bill added language clarifying the rights of parties to leasing arrangements and executory contracts with respect to nonmonetary defaults. H.R. 764 also made a perfecting amendment to the Bankruptcy Code’s provisions concerning the avoidability of certain security interests given to a non-insider prior to a bankruptcy filing.

On November 12, 1997, the House considered H.R. 764 in a revised form from the version reported by the Committee. One revision clarified the bill’s amendment to Section 365(b) of the Bankruptcy Code to provide that when a trustee or debtor in possession

is excused from curing a nonmonetary default under a real estate lease or executory contract as a condition to assumption of the lease or contract, the creditor remains entitled to compensation for actual pecuniary loss resulting from the default and to adequate assurance of future performance. The other revision amended Section 1124(2) of the Bankruptcy Code to clarify that a creditor remains entitled to compensation for actual pecuniary loss resulting from the default for purposes of determining impairment of such creditor's claim. The House, under suspension of the rules, passed H.R. 764, as amended, by voice vote.

The bill was received in the Senate and referred to the Senate Committee on the Judiciary on November 13, 1997. On October 13, 1998, the bill was referred to the Senate Subcommittee on Administrative Oversight and the Courts. Although the Senate subsequently adjourned without taking further action on the bill, the Conference Report on H.R. 3150, the Bankruptcy Reform Act of 1998, incorporated most of H.R. 764 as it passed the House. Senator Grassley had relied heavily on H.R. 764 in crafting Title IV of S. 1301, the Consumer Bankruptcy Reform Act of 1998, as reported in the Senate. See subsequent discussion of H.R. 3150 (which includes reference to S. 1301).

H.R. 1596, the Bankruptcy Judgeship Act of 1997

H.R. 1596, the Bankruptcy Judgeship Act of 1997, was introduced on May 14, 1997, by Representative George Gekas, Chairman of the Subcommittee on Commercial and Administrative Law, with the cosponsorship of Representatives Henry Hyde, Chairman of the Committee on the Judiciary, John Conyers, Ranking Minority Member of the Committee on the Judiciary, and Jerrold Nadler, Ranking Minority Member of the Subcommittee on Commercial and Administrative Law.

Bankruptcy judges serve as judicial officers of the United States District Courts. In contrast with Article III judges, who are nominated by the President and confirmed by the Senate to lifetime positions, bankruptcy judges are selected by the regional United States Courts of Appeals and serve 14-year terms, with eligibility for reappointment.

This bill was introduced in response to the unprecedented increase in bankruptcy case filings and the attendant need in certain areas in the nation for additional bankruptcy judgeships. Bankruptcy case filings in 1996, for example, exceeded one million for the first time. This represented a 27.2 percent increase over bankruptcy case filings in the prior year.

H.R. 1596 authorized the creation of seven permanent and 11 temporary bankruptcy judgeships in 14 Federal judicial districts and extended an existing temporary judgeship. The legislation reflected Congressional policy favoring the creation of temporary as opposed to permanent judgeships in order to limit future costs wherever possible and appropriate.

The Subcommittee on Commercial and Administrative Law conducted a hearing on H.R. 1596 on June 19, 1997. Witnesses who testified at the hearing were: Hon. David Thompson, United States Court of Appeals Judge for the Ninth Circuit and Chairman of the Committee on the Administration of the Bankruptcy System of the

Judicial Conference of United States Courts; Hon. Frank Koger, Chief Bankruptcy Judge for the Western District of Missouri, and President of the National Conference of Bankruptcy Judges; Hon. Tina Brozman, Chief Bankruptcy Judge, Southern District of New York; Richard Wynne of the Los Angeles law firm of Wynne Spiegel Itkin, on behalf of the Los Angeles County Bar Association; and Michael Richman of the New York law office of Mayer, Brown and Platt, on behalf of the American Bankruptcy Institute.

On June 19, 1997, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported H.R. 1596 without amendment by voice vote. Thereafter, the Committee on the Judiciary met in open session on July 16, 1997, and ordered favorably reported the bill without amendment by voice vote. The Committee filed its report on H.R. 1596, (H. Rept. 105-208), on July 28, 1997. On that same day, the bill was called up by the House under suspension of the rules and passed by voice vote. The following day, the bill was received by the Senate and referred to the Senate Committee on the Judiciary. It was thereafter referred to the Senate Subcommittee on Administrative Oversight and the Courts on May 15, 1998. Although the Senate took no further action on the bill, a modified version of H.R. 1596 was incorporated into Section 322 of S. 1301, the Consumer Bankruptcy Reform Act of 1998, and subsequently included in the Conference Report on H.R. 3150, the Bankruptcy Reform Act of 1998. *See* subsequent discussion of H.R. 3150 (which includes reference to S. 1301).

H.R. 2592, the Private Trustee Reform Act of 1997, and Review of Post-Confirmation Fees in Chapter 11 Cases

H.R. 2592, the Private Trustee Reform Act of 1997, was introduced on October 1, 1997, by Representative Bob Goodlatte, for himself, and Representatives Lamar Smith and Bob Barr.

The Subcommittee on Commercial and Administrative Law conducted a combined hearing on H.R. 2592 in conjunction with a review of postconfirmation fees in Chapter 11 cases on October 9, 1997. Witnesses who testified at the hearing were: Representative Bob Goodlatte; Ford Elsaesser, Vice President for Research, American Bankruptcy Institute; Henry Hildebrand, III, National Association of Chapter 13 Trustees; Hon. Frank Koger, Chief Bankruptcy Judge for the Western District of Missouri, and President, National Conference of Bankruptcy Judges; Professor Jeffrey Lubbers of the Washington College of Law, American University; W. Clarkson McDow, Jr., United States Trustee for Region 4; Laurence Morin, President, Association of Bankruptcy Professionals; Professor Jeffrey Morris, University of Dayton Law School, on behalf of the National Bankruptcy Conference; Kevyn Orr, Deputy Director, Executive Office for United States Trustees; Joseph Patchan, Director, Executive Office for United States Trustees; W. Steve Smith, President, National Association of Bankruptcy Trustees; and Ellen Vergos, United States Trustee for Region 8.

As amended in the full Committee by an amendment in the nature of a substitute, the bill created a procedural mechanism for administrative and judicial review of certain decisions made by United States trustees with regard to their supervision of bankruptcy trustees. Bankruptcy trustees are fiduciaries responsible for

administering bankruptcy cases. For consumer bankruptcy cases, there are two types of trustees. One type consists of individuals appointed by the United States trustee to serve on a "panel of private trustees" who are responsible for administering cases filed under Chapter 7 of the Bankruptcy Code (a form of bankruptcy relief in which the debtor's non-exempt assets are liquidated and distributed to the debtor's creditors). Qualifications for panel membership are specified by regulation. Upon appointment to a panel, a trustee is assigned Chapter 7 cases by the United States trustee to administer. Panel trustees are appointed for a 1-year term, subject to renewal. As of 1997, there were approximately 1,200 panel trustees.

Another type of trustee consists of individuals appointed to administer Chapter 13 (individual debt reorganization) and Chapter 12 (family farmer) cases. In addition to performing many of the same duties as private trustees, these individuals, known as "standing trustees," are responsible for collecting payments due under the debtor's repayment plan and distributing these payments to the debtor's creditors. A standing trustee's compensation and expenses attributable to the trusteeship are fixed by the Attorney General. These expenses are not case-specific, but relate to the operation of the trusteeship. As of 1997, there were approximately 200 standing trustees.

The United States trustee is responsible for supervising a trustee's performance. To this end, the United States Trustee Program has promulgated "initiatives" imposing stringent standards of accountability for these fiduciaries who, in turn, are entrusted with the responsibility to administer billions of dollars in bankruptcy estate assets. A trustee determined to be derelict in discharging his or her administrative or fiduciary duties may be suspended by the United States trustee from active case assignment until the problem is rectified. In addition, the United States trustee may decline to reappoint a panel trustee upon the expiration of his or her 1-year appointment. These actions, however, only relate to the assignment of *future* cases. In contrast, a trustee may be removed from *pending* bankruptcy cases in which he or she is serving only by the court "for cause," after notice and hearing.

The bill, as amended, permitted an individual whose appointment to the trustee panel or as a standing trustee is terminated by the United States trustee or who ceases to be assigned cases by the United States trustee to obtain administrative review of such action, including an administrative hearing on the record, and review by the district court of a final agency decision. It also would have allowed a standing trustee, after exhausting all available administrative remedies, to obtain district court review of a final agency action denying a claim of actual, necessary expenses by such trustee. In addition, H.R. 2592, as amended, specified the standard of judicial review and authorized a district court to refer these matters for a recommendation to a bankruptcy judge or a magistrate judge in districts with at least three bankruptcy judges or to a magistrate judge in districts with less than three bankruptcy judges. Further, the legislation, as amended, would have directed the Attorney General to promulgate rules implementing its provisions concerning the suspension and termination of panel and

standing trustees as well as its provisions concerning the expenses of standing trustees.

On April 30, 1998, the Subcommittee on Commercial and Administrative Law met and ordered favorably reported the bill H.R. 2592, without amendment, by voice vote. Thereafter, the full Committee met on July 21, 1998, and ordered favorably reported the bill, with an amendment in the nature of a substitute, by voice vote. The Committee filed its report on H.R. 2592, (H. Rept. 105-663), on July 31, 1998. On August 3, 1998, the House passed the bill, as amended, by voice vote under suspension of the rules. The principal revision pertained to the bill's provisions concerning judicial review. As revised, H.R. 2592 eliminated magistrate judges from the judicial review process and required the district court to determine whether to retain the matter or refer it a bankruptcy judge in the district.

On August 31, 1998, the bill, as amended, was received in the Senate and referred to the Committee on the Judiciary. It was thereafter referred to the Subcommittee on Administrative Oversight and the Courts on October 13, 1998. Although the Senate adjourned without taking further action on the bill, a revised version of H.R. 2592 appeared in the Conference Report on H.R. 3150, the Bankruptcy Reform Act of 1998. The principal revisions concerned the bill's judicial review provisions. Specifically, it provided for judicial review in the United States district court of a final agency decision and required such decision to be affirmed unless unreasonable or without cause based upon the administrative record before the agency. *See* subsequent discussion of H.R. 3150.

H.R. 2604, the Religious Liberty and Charitable Donation Protection Act of 1997, and H.R. 2611, the Religious Fairness in Bankruptcy Act of 1997

Representative Ron Packard introduced H.R. 2604, the Religious Liberty and Charitable Donation Protection Act of 1997, on October 2, 1997. As originally introduced, H.R. 2604 was identical to S. 1244, the "Religious Liberty and Charitable Donation Protection Act of 1997," which was introduced by Senator Charles Grassley, for himself, and Senators Jeff Sessions and Rod Grams on October 1, 1997. Following its introduction, H.R. 2604 gained the support of 127 bipartisan cosponsors.

A somewhat similar bill, H.R. 2611, the Religious Fairness in Bankruptcy Act of 1997, was introduced by Representatives Helen Chenoweth (for herself and Representative James Traficant) on October 6, 1997. It subsequently received support from 107 bipartisan cosponsors.

The Subcommittee on Commercial and Administrative Law conducted a hearing on both bills on February 12, 1998. Witnesses who testified at the hearing were: Senator Charles Grassley; Representatives Helen Chenoweth and Ron Packard; Stephen Case, Davis, Polk & Wardwell, on behalf of the National Bankruptcy Conference; Michael Farris, President, Home School Legal Defense Association; Dr. Stephen Paul Gould, Crystal Evangelical Free Church; Ralph Hardy, Jr., President, Washington, D.C. Stake, The Church of Jesus Christ of the Latter-day Saints; Professor Douglas

Laycock, University of Texas Law School; and Steven McFarland, Director, Center for Law and Religious Freedom.

Some courts have held that a contribution made to a religious or charitable organization by a debtor before he or she filed for bankruptcy relief can be recovered by a bankruptcy trustee as a fraudulent transfer under section 548 of the Bankruptcy Code on the basis that reasonably equivalent value was not received in exchange for the donation. Other courts have concluded that a debtor received reasonably equivalent value in exchange for his or her religious contributions. These courts consider, for example, whether the debtor received certain services from the religious entity, such as counseling, in exchange for his or her donation. This analysis, which essentially requires courts to value spiritual benefits and to determine whether they were conferred in exchange for the debtor's tithe, has led to disparate case law.

H.R. 2604 protects certain charitable contributions made by an individual debtor to qualified religious or charitable entities, defined by reference to the Internal Revenue Code, within 1 year preceding the filing date of the debtor's bankruptcy petition from being avoided by a bankruptcy trustee under section 548 of the Bankruptcy Code. The bill reflects several important policy considerations that warrant treating religious and charitable contributions differently from other property transfers under section 548 of the Bankruptcy Code. One such policy consideration pertains to the inherent nature of these contributions and why they are made. Religious contributions are often given from a sense of duty. The practice of tithing, for example, is viewed by some religious organizations as a fundamental precept and doctrine based on divine commandment from God. Accordingly, the use of fraudulent transfer provisions to undo tithing arguably may infringe the First Amendment rights of both the donor and donee.

Another policy consideration is that contributions are used by religious and charitable organizations to fund valuable services to society, which serve the common good. This principle is recognized in the Internal Revenue Code's provisions concerning the deductibility of certain charitable contributions. Furthermore, most religious and charitable organizations lack the means to defend against a recovery action filed by a bankruptcy trustee under section 548. As a result, they must either return the funds or divert other resources to pay for defending such recovery actions.

In addition to providing this relief, H.R. 2604 protects the right of certain debtors to tithe or make charitable contributions after filing for bankruptcy relief. Some courts have dismissed a debtor's Chapter 7 case (a form of bankruptcy relief that discharges an individual debtor of most of his or her personal liability without any requirement for repayment) for substantial abuse under section 707(b) of the Bankruptcy Code based on the debtor's charitable contributions. The legislation prevents this. The bill also protects the right of debtors who file for Chapter 13 (a form of bankruptcy relief that requires a debtor to commit his or her future income to fund a plan of repayment) to tithe or make charitable contributions. Some courts have held that tithing is not a reasonably necessary expense or have attempted to fix a specific percentage as the maximum that a Chapter 13 debtor may include in his or her budget.

H.R. 2611 would have deemed a donation to a religious group or entity made by a debtor out of a sense of religious obligation to have been made in exchange for reasonably equivalent value. This bill proposed to amend section 548(d) of the Bankruptcy Code by adding a new subsection creating an exemption for donations made based on religious obligation.

On May 7, 1998, the Subcommittee on Commercial and Administrative Law was discharged from further consideration of H.R. 2604. Thereafter, the Committee on the Judiciary held a markup on May 14, 1998, and ordered favorably reported the bill without amendment by voice vote. The Committee filed its report on H.R. 2604, (H. Rept. 105-556), on June 3, 1998. A revised version of the bill, which included a provision preempting state law identical to a provision in its Senate counterpart, was considered on the House suspension calendar. After passing H.R. 2604, as amended, the House then, by unanimous consent, called up S. 1244, which was identical in content to H.R. 2604, and passed it by voice vote. On June 19, 1998, the President signed S. 1244 into law as Public Law Number 105-183.

H.R. 3150, the Bankruptcy Reform Act of 1998, H.R. 2500, the Responsible Borrower Protection Bankruptcy Act, and H.R. 3146, the Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998

Representative George Gekas, Chairman of the Subcommittee on Commercial and Administrative Law, for himself and Representatives Bill McCollum, Rick Boucher, and James Moran, introduced H.R. 3150, the Bankruptcy Reform Act of 1998, on February 3, 1998. That same day, Representative Jerrold Nadler, Ranking Minority Member of the Subcommittee on Commercial and Administrative Law, introduced H.R. 3146, the Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998.

As introduced, H.R. 3150 incorporated many of the consumer bankruptcy reform provisions of H.R. 2500, the Responsible Borrower Protection Bankruptcy Act, which was introduced by Representative Bill McCollum on September 18, 1997. Both bills attracted extensive bipartisan support. H.R. 2500 eventually obtained 185 cosponsors, while H.R. 3150 gained the support of 75 cosponsors.

H.R. 3150 presented a comprehensive package of reforms pertaining to consumer and business bankruptcy law and practice, and included provisions regarding the treatment of tax claims and enhanced data collection. H.R. 3150 also established a separate chapter under the Bankruptcy Code devoted to the special issues and concerns presented by international insolvencies.

The consumer bankruptcy reforms of H.R. 3150, as introduced, were implemented through a self-evaluating income/expense screening mechanism, the establishment of new eligibility standards for bankruptcy relief, the imposition of additional financial disclosure requirements for consumer debtors, and augmented responsibilities for those charged with administering consumer bankruptcy cases. In addition, H.R. 3150 instituted a panoply of consumer bankruptcy reforms designed to increase the protections afforded to debtors and creditors.

H.R. 3150 was introduced in response to several developments affecting bankruptcy law and practice. According to statistics released by the Administrative Office of the United States Courts, more than 1.4 million Americans filed for bankruptcy relief in calendar year 1997. This record number of bankruptcy case filings was 19.1 percent more than the number of bankruptcy cases filed the previous year. The Administrative Office also reported that the rate of increase was part of a continuing trend. Paradoxically, however, this explosion in bankruptcy filing rates occurred during a period when the economy continued to be robust, with low unemployment and high consumer confidence.

Coupled with this development was the release of a privately funded study that estimated financial losses in 1997, resulting from these bankruptcy filings *exceeded \$44 billion*, a loss equal to more than \$400 per household. This study projected that even if the growth rate in personal bankruptcies slowed to only 15 percent over the next 3 years, the American economy would have to absorb a cumulative cost of *more than \$220 billion*. Another study concluded that a significant portion of debtors who file for bankruptcy relief can, in fact, repay a portion, if not all, of their debts.

The consumer bankruptcy provisions of H.R. 3150 addressed the needs of creditors as well as debtors. With respect to creditors, H.R. 3150's principal provisions consisted of needs-based bankruptcy relief, general protections for creditors, and protections for specific types of creditors. The bill's debtor protections included enhanced requirements for those professionals and others who assist consumer debtors in connection with their bankruptcy cases, expanded notice requirements for consumers with regard to alternatives to bankruptcy relief, required participation of consumer debtors in debt repayment programs, and the institution of a pilot program to study the effectiveness of consumer financial education for debtors.

The heart of H.R. 3150's consumer bankruptcy reforms was the implementation of a mechanism to ensure that consumer debtors repay their creditors the maximum that they can afford. For Chapter 7 of the Bankruptcy Code (a form of bankruptcy relief where the debtor generally receives a discharge of his or her personal liability for most unsecured debts), H.R. 3150 implemented mandatory eligibility standards for those individuals seeking this form of bankruptcy relief. The needs-based formula under H.R. 3150, as introduced, articulated objective criteria so that debtors and their counsel could self-evaluate their eligibility for relief under Chapter 7 or Chapter 13. Certain expense allowances were localized and a debtor's extraordinary circumstances were recognized, including episodic losses of income. Parties in interest, such as creditors, were empowered under H.R. 3150 to move for dismissal of Chapter 7 cases where debtors were ineligible. These reforms were intended to have no impact on consumer debtors who lacked the ability to repay their debts and deserved a fresh start.

With regard to business bankruptcy reform, H.R. 3150 addressed the special problems that small business cases present by instituting a variety of time frames and enforcement mechanisms to identify and weed out small business debtors who were not likely to reorganize. It also required more active monitoring of these cases by United States Trustees and the bankruptcy courts. In addition,

H.R. 3150 included provisions dealing with business bankruptcy cases in general and Chapter 12 (family farmer bankruptcies). The small business and single asset real estate provisions of H.R. 3150 were largely derived from consensus recommendations of the National Bankruptcy Review Commission. These provisions also received broad support from those in the bankruptcy community, including various bankruptcy judges, creditor groups, and the Executive Office for United States Trustees.

With regard to single asset real estate debtors, H.R. 3150 eliminated the monetary cap from the Bankruptcy Code's definition applicable to these debtors and made them subject to the small business provisions of the bill. It also amended the automatic stay provisions by permitting a single asset real estate debtor to make requisite interest payments out of rents or other proceeds generated by the real property.

H.R. 3150, in addition, contained several provisions having general impact with respect to bankruptcy law and practice. Under H.R. 3150, certain appeals from final bankruptcy court decisions were to be heard directly by the court of appeals for the appropriate circuit. Another general provision of H.R. 3150 required the Executive Office for United States Trustees to compile various statistics regarding Chapter 7, 11 and 13 cases and to make these data available to the public and to report annually to Congress on the data collected. Other general provisions included a prohibition against the appointment of fee examiners and the allowance of shared compensation with bona fide public service attorney referral programs.

The Committee on the Judiciary began its consideration of comprehensive bankruptcy reform early in the 105th Congress. On April 16, 1997, the Subcommittee on Commercial and Administrative Law conducted a hearing on the operation of the bankruptcy system that was combined with a status report from the National Bankruptcy Review Commission. This was the first of nine hearings that the Subcommittee would conduct on bankruptcy reform over the ensuing year.

With regard to H.R. 3150 alone, the Subcommittee on Commercial and Administrative Law held four hearings. Over the course of those hearings, more than 60 witnesses, representing a broad cross-section of interests and constituencies in the bankruptcy community, testified. Nearly every major organization having an interest in bankruptcy reform had an opportunity to participate in these hearings. Witnesses who testified at the March 10, 1998, hearing were: Representatives Bill McCollum, Rick Boucher and Jim Moran; Honorable Edith Hollan Jones, United States Court of Appeals Judge for the Fifth Circuit; Honorable Randall Newsome, United States Bankruptcy Judge for the Northern District of California; Lloyd Cutler, Wilmer, Cutler & Pickering, representing the Bankruptcy Issues Council; Honorable Heidi Heitkamp, Attorney General of the State of North Dakota, representing the National Association of Attorneys General; Karen Cosgrove, Vice President of Business Operations, Kemp Management, representing the National Multi-Housing Council and National Apartment Association; John Gleason, Vice President/Credit, Bon-Ton Department Stores, representing the National Retail Federation; Bruce Hammonds,

Senior Vice Chairman, MBNA America Bank, N.A.; Janet Kubica, Chief Executive Officer, Postmark Credit Union, representing the Credit Union National Association; William Kosturko, Executive Vice President of People's Bank of Bridgeport, representing America's Community Bankers; Nicholl Russell, a former Chapter 7 debtor; James "Ike" Shulman, representing the National Association of Consumer Bankruptcy Attorneys; Henry Sommer, Consumer Bankruptcy Assistance Project; Matthew Mason, Assistant Director, UAW-GM Legal Services Plan; Stuart Feldstein, President, SMR Research Corporation; Mark Lauritano, Senior Vice President, WEFA, Inc.; Professor Lawrence Ausubel, Department of Economics, University of Maryland; and Vern McKinley, regular policy contributor for Cato Institute.

Witnesses who testified at the March 12, 1998, hearing were: Dr. Michael Staten, Credit Research Center, Georgetown University School of Business; Richard Stana, Associate Director, Administration of Justice Issues, U.S. General Accounting Office; Dr. Thomas Neubig, National Director, Policy Economics & Quantitative Analysis, Ernst & Young; Dr. Fritz Scheuren, Associate National Technical Director, Statistical Sampling, Ernst & Young; George Wallace, Eckert Seamons Cherin & Mellott, representing the American Financial Services Association; Robert Mitsch, Mitsch & Crutchfield, representing the National Retail Federation; Robert Waldschmidt, Howell & Fisher, representing the National Association of Bankruptcy Trustees; Norma Hammes, Gold & Hammes, representing National Association of Consumer Bankruptcy Attorneys; Professor Karen Gross, New York Law School; Lewis Mandell, Dean, Marquette University; Marion Olson, Jr., Standing Chapter 13 Trustee, Western District of Texas—San Antonio Division; and William Brewer, Jr., National Association of Consumer Bankruptcy Attorneys.

Witnesses who testified at the March 18, 1998, hearing were: Judith Starr, Assistant Chief Litigation Counsel, Enforcement Division, Securities and Exchange Commission; Donald Banks, Director of Legal Services, Hudson Corporation, representing the National Retail Federation; Brian McDonnell, President and Chief Executive Officer, Navy Federal Credit Union, representing the National Association of Federal Credit Unions; Judith Greenstone Miller, representing the Commercial Law League of America; Honorable Bernice Donald, United States District Court Judge for the Western District of Tennessee; Thomas Boone, Managing Director of Portfolio Services, Countrywide Home Loans, Inc.; Jeffrey Tasse, Senior Vice President of Government & Legal Affairs, American Financial Services Association; Mallory Duncan, Vice President and General Counsel, National Retail Federation; Michael McEneney, Partner, Morrison & Foerster, representing the Bankruptcy Issues Council; Honorable Eugene Wedoff, United States Bankruptcy Judge, Northern District of Illinois, representing the American Bankruptcy Institute; Professor Jeffrey Morris, University of Dayton School of Law, representing the National Bankruptcy Conference; Michael Kane, Deputy Secretary for Enforcement, Pennsylvania Department of Revenue; James Shepard, former member of the National Bankruptcy Review Commission; Professor Grant William Newton, Pepperdine University; and Paul Asofsky, former

member of the Tax Advisory Committee of the National Bankruptcy Review Commission.

Witnesses who testified at the fourth and final hearing on March 19, 1998, were: Stephen Case of Davis, Polk & Wardwell, former Senior Advisor to the National Bankruptcy Review Commission; John Gose of Preston, Gates & Ellis, former member of the National Bankruptcy Review Commission; Patricia Staiano, United States Trustee for Region 3; Christopher Graham of Thacher Proffit & Wood, representing the American Bankruptcy Institute; Professor Alan Resnick, Hofstra University School of Law, representing the National Bankruptcy Conference; Honorable Robert Hershner, Jr., Chief Bankruptcy Judge, Middle District of Georgia, and President of the National Conference of Bankruptcy Judges; Norman Kranzdorf, President, Kranzco Realty Trust, representing the International Council of Shopping Centers; James Smith, President and Chief Executive Officer, Union State Bank and Trust of Clinton, representing the American Bankers Association; Charles Tatelbaum of Johnson, Blakely, Pope, Bakar & Ruppel, representing National Association of Credit Managers; Leon Forman of Blank Rome Comisky & McCauley, representing American College of Bankruptcy; William Perlstein of Wilmer Cutler & Pickering, representing American Bar Association-Business Section; Harold Bordwin, Keen Realty Consultants Inc.; Kevyn Orr, Deputy Director, Executive Office for United States Trustees; Honorable Michael Kaplan, Chief Bankruptcy Judge, Western District of New York, Judicial Conference of the United States; and Professor Lynn LoPucki, Cornell Law School, former Senior Advisor/Data Study Project for the National Bankruptcy Review Commission.

During the course of these hearings, the Subcommittee on Commercial and Administrative Law heard testimony that if H.R. 3150's needs-based and other consumer bankruptcy reforms were implemented, the rate of repayment to creditors would increase while the number of bankruptcy filings would decrease as more debtors were channeled into Chapter 13 as opposed to Chapter 7.

On April 23, 1998, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the bill H.R. 3150, by voice vote with a single amendment in the nature of a substitute. Thereafter, the Committee on the Judiciary met on May 12, 13, and 14, 1998, in open session. Of 43 amendments offered, 18 were adopted. Among the amendments agreed to were two offered by Chairman Hyde. One amendment moderated the bill's needs-based formula and the other amendment subordinated priority claims incurred to pay nondischargeable debts to existing priority claims, such as obligations for alimony, maintenance or child support. Representative Rick Boucher offered four amendments that were agreed to concerning the treatment of domestic support obligations and related matters. Representative Steve Chabot offered an amendment relating to aircraft equipment and vessels that was agreed to by voice vote. Also agreed to was an amendment by Representative Bob Goodlatte exempting certain Chapter 11 debtors from the requirement to pay quarterly fees to the United States Trustee Program.

The Committee ordered reported favorably H.R. 3150, as amended, by a recorded vote of 18 to 10. On May 18, 1998, the Committee filed its report on H.R. 3150 (H. Rept. 105-540).

The House, under a rule making certain amendments in order, thereafter passed H.R. 3150, as amended, with a vote of 306 to 118 on June 10, 1998. Among the principal changes to the bill that occurred as the result of floor action was the inclusion of a provision according first priority to domestic support obligations under section 507 of the Bankruptcy Code. In addition, the bill's \$100,000 homestead exemption cap was replaced with a provision concerning the conversion of nonexempt property into exempt property with intent to hinder, delay, or defraud a creditor. Provisions regarding the conduct of studies on small businesses and the impact of the extension of credit to dependent students were also added to the bill.

The following day, the bill was received in the Senate. On September 23, 1998, H.R. 3150 was laid before the Senate by unanimous consent. The Senate struck all of H.R. 3150's language after its enacting clause and substituted the language of S. 1301, as amended. H.R. 3150, as amended, was then passed by the Senate in lieu of S. 1301 by a recorded vote of 97 to 1.

On September 28, 1998, the House agreed without objection to the request of the Senate for a conference on the House bill and Senate amendment to H.R. 3150. On that same day, the House also passed a motion to instruct conferees with respect to Section 405 of H.R. 3150, as amended by the Senate, which would have amended the Truth in Lending Act with respect to certain lending practices of creditors in connection with an extension of credit. Representatives Henry Hyde, Chairman, Committee on the Judiciary; John Conyers, Ranking Minority Member, Committee on the Judiciary; George Gekas, Chairman, Subcommittee on Commercial and Administrative Law; Jerrold Nadler, Ranking Minority Member, Subcommittee on Commercial and Administrative Law; Ed Bryant; Steve Chabot; Bob Goodlatte; Bill McCollum; Rick Boucher; and Sheila Jackson Lee were appointed as House conferees. Senators Orrin Hatch, Chairman, Committee on the Judiciary; Patrick Leahy, Ranking Minority Member, Committee on the Judiciary; Charles Grassley, Chairman, Subcommittee on Administrative Oversight and the Courts; Richard Durbin, Ranking Minority Member, Subcommittee on Administrative Oversight and the Courts; and Jeff Sessions were appointed as Senate conferees.

The Conference Report (H. Rept. 105-794) was filed on October 7, 1998. The Conference Report differed from the House passed version of H.R. 3150 in various respects. For example, the Conference Report modified the House-passed version's needs-based consumer bankruptcy formula and its application. Whereas the House version utilized a pre-filing formula designed to channel consumer debtors with repayment capacity into Chapter 13, the Conference Report adopted the procedural approach of S. 1301 and preserved the right of a debtor to have a judge review his or her individual case and repayment capacity. The Conference Report, however, retained the House version's formula with regard to expense allowances and the deductibility of certain debts to determine repayment capacity. In addition to revising several of the House version's nondischarge-

ability provisions, the Conference Report included a provision expanding the House version's prohibition against cramdown of certain secured obligations. Under the Conference Report, the cramdown of debts securing the purchase of personal property acquired by an individual debtor within 5 years of filing for bankruptcy relief was prohibited. The Conference Report also expanded the House version's 1-year domicile requirement for claiming exemptions to 2 years. In addition, the Conference Report included provisions intended to protect savings earmarked for the education of a debtor's child. Further, it added provisions concerning the treatment of financial contracts and asset-backed securitizations.

A motion in the House to recommit the Report with instructions to the Conference Committee failed by a vote of 157 to 266 on October 9, 1998. The House then agreed to the Conference Report by a recorded vote of 300 to 125. On that same day, the Senate agreed to a motion to proceed on the Conference Report by a recorded vote of 94 to 2. While further action by the Senate with respect to the Conference Report did not occur prior to the Senate's adjournment on October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 included a provision reenacting and extending Chapter 12, a form of bankruptcy relief for family farmers, until April 1, 1999.

H.R. 4239 and H.R. 4393, the Financial Contract Netting Improvement Act of 1998

Representative Jim Leach, Chairman of the Committee on Banking and Financial Services, introduced H.R. 4239, the Financial Contract Netting Improvement Act of 1998, on July 16, 1998. In addition to the Committee on Banking and Financial Services, H.R. 4239 was referred to the Committee on the Judiciary and the Commerce Committee.

This legislation, in its initial form, codified a series of recommendations proposed by a Presidential interagency working group whose members included the Federal Deposit Insurance Corporation, Securities and Exchange Commission, Commodity Futures Trading Commission, Office of the Comptroller of the Currency, the Department of the Treasury, Federal Reserve Bank of New York, and the Board of Governors of the Federal Reserve System. The purpose of this legislation was to reduce systemic risk in the financial market presented by a market member's bankruptcy. The legislation sought to effectuate this goal by amending the Bankruptcy Code, the Federal Deposit Insurance Act ("FDIA"), the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), and the Securities Investor Protection Act of 1971 ("SIPA").

A revised version of the bill, H.R. 4393, was later introduced by Representative Leach on August 4, 1998, which included revisions espoused by the Bond Market Association (a group representing securities firms and banks that underwrite, trade and sell debt securities) and the International Swaps and Derivatives Association (an international financial trade association whose membership is comprised of commercial, merchant and investment banks that engage in swaps and other privately negotiated derivatives transactions). Among the substantive provisions in H.R. 4393 affecting bank-

ruptcy law that were not included in H.R. 4239 was a provision that treated certain asset-backed securitizations as valid transfers. In addition, the superseding version of this bill broadened the scope of certain definitions to include additional types of transactions and a new definition for “financial participant.” It also included a provision limiting the authority of a court or administrative agency to stay the effect of certain exceptions from the Bankruptcy Code’s automatic stay.

Among H.R. 4393’s substantive amendments to the Bankruptcy Code were provisions revising the Bankruptcy Code’s automatic stay and setoff provisions to allow certain transactions to be offset against each other notwithstanding the intervention of bankruptcy. It permitted cross-product netting of certain obligations and protected them from being set aside pursuant to the Code’s transfer avoidance provisions, absent actual fraud. Third, the bill excepted certain asset-backed securitizations from the types of property interests qualifying as “property of the estate” under the Bankruptcy Code. H.R. 4393 treated these transactions as valid transfers that could not be set aside absent actual fraud.

In the Senate, legislation similar to H.R. 4393 was included in S. 1914, the “Business Bankruptcy Reform Act of 1998,” sponsored by Senator Charles Grassley (R-IA). As introduced, the Senate version, unlike its House counterpart, primarily amended the Bankruptcy Code.

On August 5, 1998, the Banking Committee passed H.R. 4393 by voice vote without amendment and ordered the bill reported. It thereafter filed its report on the bill (H. Rept. 105–688) on August 21, 1998. That same day, the Committee on Commerce was discharged. Pursuant to an agreement with the Banking Committee, the Judiciary Committee exercised jurisdiction over the bill until September 25, 1998.

Although neither the Subcommittee on Commercial and Administrative Law nor the Judiciary Committee marked up H.R. 4393, a version of this bill was subsequently included in the Conference Report on H.R. 3150, the Bankruptcy Reform Act of 1998. *See* prior discussion of H.R. 3150 (which includes reference to S. 1301).

H.R. 4831, Temporary Reenactment of Chapter 12, Bankruptcy Relief for Family Farmers

On October 14, 1998, Representative Nick Smith introduced H.R. 4831, a bill to reenact temporarily Chapter 12, a form of bankruptcy relief for family farmers that expired on September 30, 1998. The bill reenacted Chapter 12 for the period beginning on October 1, 1998, through April 1, 1999. The Subcommittee on Commercial and Administrative Law and the Judiciary Committee did not report the bill. On October 15, 1998, the full Committee was subsequently discharged from further consideration and the House passed H.R. 4831, as amended, by voice vote under suspension of the rules. The bill was received in the Senate on October 20, 1998, and was included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which was signed into law as Public Law 105–277 on October 21, 1998.

STATE TAXATION

H.R. 865 and H.R. 874, State Taxation of Employees at Certain Federal Facilities

On April 17, 1997, Subcommittee on Commercial and Administrative Law held a hearing on H.R. 865 and H.R. 874, bills that restricted state taxation of federal workers at certain federal facilities. H.R. 865 (Bryant) limited the authority of Kentucky to tax federal employees for services at Fort Campbell, Kentucky to those who were residents of Kentucky, while H.R. 874 (Doc Hastings) exempted Washington residents from taxation by Oregon for services as a federal employee at federal hydroelectric facilities located on the Columbia River. Witnesses who testified at the hearing were: Senator Fred Thompson; Representative Ed Bryant, Representative Doc Hastings; Representative Linda Smith; Dwight Campbell, U.S. Army Corps of Engineers; James D. Cunningham, National President, National Federation of Federal Employees; Harley T. Duncan, Executive Director, Federation of Tax Administrators; Roger Hays, Chairman, Tax Equity Committee, United Power Trades Organization; Worth Lovett, Federal employee at Fort Campbell; James Charles Smith, Professor of Law, University of Georgia; Joy E. Wilen, Joy E. Wilen Associates, Vancouver, Washington; and Edwin Wilson, federal employee at Fort Campbell.

The facilities located on the Columbia River straddle the state boundaries between Washington and Oregon. Residents of Washington, which does not have a state income tax, access the facilities from the Washington side of the river and only cross the boundary incidental to their work. Fort Campbell sits astride Kentucky, which has an income tax, and Tennessee, which does not, but it is located primarily within the borders of the latter. Tennessee residents enter the base on its Tennessee side and do not utilize any services of Kentucky even if their duty station is on the Kentucky side of the base.

Subsequently, Mr. Gekas introduced H.R. 1953, which addressed the matters that were the subject of the hearing, together with a similar situation existing at a federal hydroelectric facility located on the Missouri River between South Dakota and Nebraska. On June 19, 1997, the Subcommittee reported the bill by voice vote and on July 16, 1997, the Judiciary Committee reported the bill favorably without amendment by voice vote (H. Rept. 105-203). On July 28, 1997, the House agreed to H.R. 1953 by a voice vote.

The Senate Committee on Governmental Affairs held a hearing on H.R. 1953 on October 24, 1997, but took no further action on the bill. However, the bill was added to H.R. 3616 authorizing appropriations for the Department of Defense, which was signed into law by the President on October 17, 1998, as Public Law 105-261.

H.R. 1054, Internet Tax Freedom Act

On July 17, 1997, the Subcommittee on Commercial and Administrative Law held a hearing on H.R. 1054, the Internet Tax Freedom Act (Cox), legislation providing for a moratorium on state taxation of the Internet. The bill had been referred primarily to the Committee on Commerce (which had conducted a hearing on July 11, 1997) and secondarily to the Committee on the Judiciary. Wit-

nesses who testified at the hearing were: Senator Ron Wyden; Representative Christopher Cox; Stanley R. Arnold, Commissioner, New Hampshire Department of Revenue Administration, and President, Federation of Tax Administrators; Howard P. Foley, President, Massachusetts High Technology Council; Professor Walter Hellerstein, University of Georgia, School of Law; Robert Holleyman, President, Business Software Alliance; Kendall L. Houghton, General Counsel, Committee on State Taxation; Andrea L. Ireland, Associate General Counsel, Netscape Communications Corp.; Brian O'Neill, Council Member; City of Philadelphia, PA, and First Vice President, National League of Cities; and Jack Valenti, President and CEO, Motion Picture Association of America.

H.R. 1054 sought to encourage the development of a consistent and coherent national tax policy with respect to the Internet.¹ Sponsors argued that a moratorium on state taxation was necessary to avoid stifling the potential for an innovative form of technology to provide information, goods and services quickly and cheaply throughout the world. The current subfederal tax system, they argued, was developed in a time and for a form of commerce that makes it inappropriate for application to the "electronic commerce" which the Internet represents.

On October 9, 1997, the Subcommittee reported an amendment in the nature of a substitute to H.R. 1054 as a committee print. Subsequently, the sponsor of the legislation, Representative Cox, continued negotiations aimed at gaining the support of the National Governors' Association, resulting in the introduction on March 23, 1998, of H.R. 3529 (Chabot), which was referred primarily to the Judiciary Committee. However, that legislation failed to resolve some issues in controversy and negotiations continued resulting in yet another measure, H.R. 3849 (Cox), this time referred primarily to the Commerce Committee which reported it on May 14, 1998. In reporting H.R. 3849, the Commerce Committee did not consider portions of the bill that were clearly within the jurisdiction of the Judiciary Committee.

Negotiations continued and ultimately resulted in the approval by the Judiciary Committee on June 17, 1998, of H.R. 3529 with an amendment in the nature of a substitute by voice vote (H. Rept. 105-808, Part I). As amended, H.R. 3529 would have imposed a 3-year moratorium on certain state and local taxation of online services and electronic commerce. In addition, it established an Advisory Commission on Electronic Commerce to examine issues related to the taxation of electronic commerce. H.R. 3529 and H.R. 3849 were reconciled by negotiations between the Commerce and Judiciary Committees into H.R. 4105, which was approved by the House by voice on June 23, 1997. The Senate approved a companion bill (S. 442) on October 8, 1998, by a vote of 96-2. The Senate language was subsequently included in the Omnibus Appropriations bill which was signed into law by the President on October 21, 1998, as Public Law 105-277.

¹The Internet is a global matrix of interconnected computer networks communicating through the Transmission Control Protocol/Internet Protocol, which specifies how data is subdivided in packets and assigned to different addresses to be transferred over the Internet. The term has been used to encompass all such data networks as well as applications such as the World Wide Web and e-mail running on those networks despite the fact some of these commerce activities occur on proprietary or other networks that are not technically part of the Internet.

H.R. 4572, a Bill Clarifying that the Limitation on State Income Taxation of Governmental Pension Income Applies to Possessions of the United States

Representative George Gekas, Chairman of the Subcommittee on Commercial and Administrative Law, introduced H.R. 4572, together with cosponsors Representatives Bill McCollum and John Mica, on September 15, 1998. This bill would have simply amended section 114(b)(1)(G) of title 4 of the United States Code to correct a technical error concerning its applicability to possessions of the United States, such as the Commonwealth of Puerto Rico. H.R. 4572 clarified that the prohibition against a State taxing governmental pension income of its former citizens applied to possessions of the United States. Specifically, it provided that governmental plans of possessions of the United States were to be treated as if they were State governmental plans within the meaning of Section 414(d) of the Internal Revenue Code. While the clear legislative intent of Section 114 was to have it apply to Puerto Rico as demonstrated by its reference to "possessions of the United States," the provision's incorporation of the Internal Revenue Code's definition of "governmental plan" (which does not include Puerto Rico) created a legislative glitch that H.R. 4572 corrected.

Following its introduction by Mr. Gekas, the bill was passed by the Subcommittee without amendment by voice vote on September 25, 1998. On October 15, 1998, H.R. 4572 was called up by the House under suspension of the rules and was passed by voice vote without amendment. The bill was received in the Senate on October 20, 1998. The Senate took no further action on the bill prior to its adjournment on October 21, 1998.

INTERSTATE COMPACTS

The Subcommittee considered a number of interstate compacts which under the Constitution the Congress must approve.

H.J. Res. 91—The Apalachicola-Chattahoochee-Flint River Basin Compact (ACF)

On October 23, 1997, held a hearing on and favorably reported H.J. Res. 91, granting consent of the Congress to a compact between the states of Alabama, Florida and Georgia with the United States concerning the Apalachicola-Chattahoochee-Flint River Basin located within these states. Witnesses who testified at the hearing were: Representative Bob Barr and Representative Allen Boyd.

The three states had for some time been negotiating over allocation of the waters of the ACF Basin and had initiated litigation in federal court to prevent the U.S. Army Corps of Engineers from re-allocating storage in Federal reservoirs without completing adequate environmental assessments. Thereafter, the three states and the Corps of Engineers, seeking to negotiate and resolve the issue, agreed that a comprehensive study needed to be conducted by a partnership of the three states and the federal government. In 1992, the three states adopted a Memorandum of Agreement concerning the ACF Basin which resulted ultimately in a compact adopted by each of the states in 1997.

On October 29, 1997, the Judiciary committee reported H.J. Res. 91 by voice vote (H. Rept. 105-369). The House adopted H.J. Res. 91 on November 4, 1997. The Senate passed the joint resolution on November 7, 1997, and the President signed it into law as Public Law 105-104 on November 20, 1997.

H.J. Res. 92—The Alabama-Coosa-Tallapoosa River Basin Compact (ACT).

On October 23, 1997, the Subcommittee held a hearing on and reported H.J. Res. 92, granting the consent of the Congress to the Alabama-Coosa-Tallapoosa River Basin Compact between the states of Alabama and Georgia. Witnesses who testified at the hearing were: Peter D. Coppelman, Deputy Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice; G. Robert Kerr, Director, Pollution Prevention Assistance Division, Georgia Department of Natural Resources, State of Georgia, accompanied by Harold Reheis, Director, Environmental Protection Division, Georgia Department of Natural Resources, State of Georgia; Walter B. Stevenson, Director, Office of Water Resources, State of Alabama; and Douglas E. Barr, Executive Director, Northwest Florida Water Management District, State of Florida.

The circumstances that led to the development of the ACT River Basin Compact were similar to those that brought about the ACF River Basin Compact except that the former river basin was located within Georgia and Alabama. The two states adopted the ACT Compact during their 1997 legislative sessions.

On October 29, 1997, the Judiciary Committee reported H.J. Res. 92 favorably by voice vote (H. Rept. 105-370). The House approved the joint resolution on November 4, 1997, and the Senate concurred on November 7, 1997. The President signed the joint resolution into law as Public Law 105-105.

H.J. Res. 95—The Chickasaw Trail Economic Development Compact

On October 23, 1997, the Subcommittee held a hearing on and reported H.J. Res. 95 favorably by voice vote. Witnesses who testified at the hearing were: Representative Ed Bryant, Representative Roger F. Wicker and Michael Thornton, Project Director, Chickasaw Trail Economic Development Compact.

H.J. Res. 95 granted the consent of Congress to the Chickasaw Trail Economic Development Compact entered into between the states of Tennessee and Mississippi. The compact sought to promote economic development in a rural area near Memphis, Tennessee that includes portions of Fayette County, Tennessee and Marshall County, Mississippi. It created an Authority whose task it will be to conduct studies and surveys of the problems, benefits, and other matters associated with the development of the area described in the compact, and to report thereon. It is anticipated that, upon a favorable report by the authority, the States would negotiate a new compact to provide for establishment of a 4,000 to 5,000 acre industrial park.

On October 29, 1997, the Judiciary Committee reported H.J. Res. 95 by voice vote (H. Rept. 105-389). The House approved the joint

resolution by voice vote on November 12, 1997, and the Senate concurred on November 13, 1997. The President signed the measure into law as Public Law 105–145 on December 15, 1997.

H.J. Res. 96—Amendments to the Washington Metropolitan Area Transit Regulation Compact

On October 23, 1997, the Subcommittee held a hearing on and reported by voice vote H.J. Res. 96, granting the consent of Congress to amendments to the Washington Metropolitan Area Transit Regulation Compact. Witnesses who testified at the hearing were: Representative Thomas M. Davis and Jack Evans, Chairman & Board of Directors, Washington Metropolitan Area Transit Authority, accompanied by Chief Barry J. McDevitt, Washington Metropolitan Area Transit Authority.

The compact was adopted by Maryland, Virginia and the District of Columbia in 1967. It established the Washington Metropolitan Area Transit Authority (WMATA) to plan, finance, construct and operate a comprehensive public transit system for metropolitan Washington. In addition to a subway system connecting the three jurisdictions, WMATA administers an extensive surface transportation system throughout the area. Since its inception, the compact had been amended five times. Authorization to create the Metro Transit Police Department was signed into law in 1976 by President Ford.

The amendments contained in H.J. Res. 96 included: changes to requirements concerning public hearings consistent with federal regulations governing other transit agencies; permitting off-duty transit police to carry Authority-issued weapons subject to restrictions imposed on police officers by each jurisdiction; and clarification of the process by which certain WMATA regulations are adopted.

On October 29, 1997, the Judiciary Committee reported H.J. Res. 96 by voice vote (H. Rept. 105–396). On November 12, 1997, the House approved the joint resolution and the Senate concurred on November 13, 1997. The President signed it into law as Public Law 105–151 on December 16, 1997.

S. 1134—Interstate Forest Fire Protection Compact

On October 15, 1998, the House discharged the Judiciary Committee from further consideration of, and passed, S. 1134 (Murray) under suspension of the rules. The bill granted the consent of Congress to a compact to be entered into by Oregon, Washington, Alaska, Idaho, Montana, the Yukon Territory, the provinces of British Columbia and Alberta implementing the Northwest Wildland Fire Protection Agreement. The agreement is intended to promote effective prevention, suppression and control of forest fires in the Northwestern United States and adjacent areas of Canada by the development of mutual aid among the signatories. The bill was passed by the Senate on July 30, 1998, unanimously and was referred the Subcommittee on August 7, 1998. It was taken to the House floor directly without subcommittee or committee action. The President signed the bill into law as Public Law 105–377 on November 12, 1998.

S.J. Res. 35—The Pacific Northwest Emergency Management Arrangement

On October 15, 1998, the House discharged the Judiciary Committee from further consideration of, and passed, S.J. Res. 35 (Craig) under suspension of the rules. The joint resolution granted the consent of Congress to the Pacific Northwest Emergency Management Arrangement entered into between Alaska, Idaho, Oregon, and Washington, as well as the province of British Columbia and the Yukon Territory. The agreement seeks to encourage collective assistance among the signatories by providing for emergency planning management. The bill passed the Senate unanimously on July 31, 1998, and was referred to the Subcommittee on August 7, 1998. It was taken to the House directly without subcommittee or committee action. The President signed the joint resolution into law as Public Law 105-381 on November 12, 1998.

S.J. Res. 51—The Potomac Highlands Airport Authority Compact

On September 25, 1998, the Subcommittee held a hearing on and reported by voice vote S.J. Res. 51, granting the consent of the Congress to the Potomac Highlands Airport Authority Compact entered into by Maryland and West Virginia. Witnesses who testified at the hearing were: Senator Paul S. Sarbanes and Representative Roscoe G. Bartlett, accompanied by James G. Stahl, Chairman, Potomac Highlands Airport Authority, Cumberland Regional Airport, Wiley Ford, West Virginia.

The PHAA compact governs the operation, use, management and development of the Greater Cumberland Regional Airport located in Mineral County, West Virginia. The airport was established in 1944 when the city of Cumberland, Maryland purchased property in Wiley Ford, West Virginia, three miles to its south, and constructed aviation facilities. This was an unusual situation—a commercial service airport located in one state but owned by a local unit of government in another state. With two states, two counties, and two municipalities having jurisdiction over various aspect of the airport, the General Assemblies of Maryland and West Virginia enacted a bi-state compact in 1976 authorizing creation of the Potomac Highlands Airport Authority to govern and operate the airport. Congressional approval of the compact was not sought at that time and no action was taken to implement the compact until 1990 when the various interested governmental units signed an agreement to transfer airport management and control to the Authority.

Since 1990, the PHAA has operated the airport and has been attempting to implement a 20-year, \$10 million modernization and expansion program to help service a three-state region that includes, in addition to Maryland and West Virginia, an area of Pennsylvania. In the process of seeking investment capital, loans and airport development grants, the PHAA had confronted questions from the Federal Aviation Administration, USDA Rural Development and other about its eligibility to function as the legal sponsor for the airport and borrow money and give security absent Congressional consent to the compact which established the authority.

The Senate had approved S.J. Res. 51 unanimously on August 3, 1998. The House concurred on October 9, 1998. The President

signed the joint resolution into law as Public Law 105-348 on November 2, 1998.

MISCELLANEOUS

H.R. 872, Biomaterials Access Assurance Act of 1998

Chairman Gekas introduced the Biomaterials Access Assurance Act with 27 original co-sponsors on February 27, 1997. A companion bill (S. 364) was introduced in the Senate by Senator Lieberman. Nearly identical legislation (Title II of S. 648) was reported favorably by the Senate Commerce Committee on May 1, 1997. H.R. 872 was jointly referred to the Judiciary Committee and the Commerce Committee.

Biomaterials are the substances and component parts that go into medical implants and devices, which are used by millions of Americans. Many biomaterials suppliers have ceased supplying raw materials and component parts for use in medical devices and implants because the costs associated with litigation exceed the benefits of sales to the medical market.

The Biomaterials Access Assurance Act creates a limited protection from liability for products provided by entities falling within the definition of "biomaterials supplier." Three major exceptions to this protection cause the Act's protections to follow the contours of the common law in most states. A biomaterials supplier loses the protection of the Act if (a) it is the manufacturer of a medical device, (b) it is the seller of a medical device, or (c) the biomaterials supplier failed to meet contractual and other specifications.

In addition to its limited protection from liability, the Biomaterials Access Assurance Act creates expedited court procedures for determining whether a biomaterials supplier defendant is protected by the Act. A defendant asserting such protection may file a motion to dismiss alleging that it is a biomaterials supplier not subject to any exception. The motion to dismiss in most cases is decided on affidavits and discovery is limited during pendency of the motion.

The Subcommittee held a hearing on the bill on June 12, 1997. Witnesses who testified at the hearing were: Neil Kahanovitz, M.D., founder, Center for Patient Advocacy; Rita Bergmann, patient, Clarksburg, Maryland; Randy Markey, patient, Newton, Massachusetts; Stephen D. Kaiser, patient, Baltimore, Maryland; Donald P. Doty, patient, Minnetonka, Minnesota; Kenneth M. Kent, M.D., Director, Washington Cardiology Center, Washington, D.C.; Ronald J. Greene, Esq.; Wilmer, Cutler & Pickering, representing the Health Implant Manufacturers Association, Washington, D.C.; James E. Brown, Vice President, Biopharmaceutical and Implant R&D, ALZA Corporation, Palo Alto, California; Dane A. Miller, Ph.D., President and CEO, BioMet, Inc., Warsaw, Indiana; Dr. Jorge Ramirez, Hoechst-Celanese, League City, Texas; and Professor Mark McLaughlin Hager, Washington College of the Law, American University, Washington, D.C.

On September 11, 1997, the Subcommittee adopted an amendment in the nature of a substitute offered by Chairman Gekas and reported the amended bill favorably by voice vote to the full Committee. On April 1, 1998, the full Committee ordered H.R. 872 favorably reported with two en bloc amendments offered by Chair-

man Gekas (H. Rept. 105-549). The bill was passed by both the House and Senate on the same day, July 30, 1998, and was signed into law, (Public Law 105-230), on August 13, 1998.

H.R. 1494, Apprehension of Tainted Money Act

H.R. 1494, the Apprehension of Tainted Money Act, was introduced by Chairman Gekas on April 30, 1997. The Subcommittee held a hearing on the bill on May 14, 1997. Witnesses who testified at the hearing were: Robert S. Litt, Deputy Assistant Attorney General, Department of Justice; Lawrence M. Noble, General Counsel, Federal Election Commission; William B. Canfield III, Esq., Williams & Jensen; Kenneth A. Gross, Esq., Skadden, Arps, Slate, Meagher & Flom; and Larry Klayman, Esq., Chairman, Judicial Watch, Inc.

The bill was introduced in response to allegations of illegality in federal campaign fund-raising and giving during the 1996 election cycle. Numerous illegal and "improper" contributions were returned, and additional return of contributions was pledged, to the parties making the illegal or suspect contributions. This created concern that individuals who tried illegally to influence federal elections may be unjustly rewarded with return of the money they illegally used. This is a particular concern in cases where an election has intervened between the giving of the contribution and its return.

The Federal Election Campaign Act of 1971, as amended, prohibits certain types of contributions, including contributions by foreign nationals and contributions given in the name of another. Political committees must examine contributions for evidence of illegality and conformity to contribution limitations. Under current law and regulation, illegal contributions are returned to the individuals who made them. Contributions that a political committee discovers to be illegal based on evidence not available at the time of receipt must be returned (within 30 days of discovery) to the contributor.

H.R. 1494 would have tied up illegal and so-called "improper" campaign contributions that a political committee returns after the ordinary time for returning contributions. If a political committee belatedly returned a large campaign contribution, it would have to transfer the money to the Federal Election Commission. The Commission would hold the money, notify the Attorney General, and investigate whether the contribution was from a foreign source, was made in the name of another, or was otherwise illegal. The Commission or the Attorney General could require this tainted money to be forfeited or applied to fines and penalties against illegal contributors. The Commission would have to return a contribution if it planned not to use the money, if there was money left over after fines and penalties, or if there was no public investigation for more than 120 days.

H.R. 1494 was not marked up in the Subcommittee. A version of it was attached as an amendment to H.R. 2183, the Bipartisan Campaign Reform Act of 1998 (Shays/Meehan), which passed the House on August 6, 1998. That legislation was not considered in the Senate.

H.R. 3032, Construction Subcontractors Payment Protection Enhancement Act of 1998

On September 11, 1998, the Subcommittee conducted a joint legislative hearing with the Government Reform and Oversight Subcommittee on Government Management, Information, and Technology on H.R. 3032, the Construction Subcontractors Payment Protection Enhancement Act of 1998. Witnesses who testified at the hearing were: Deidre A. Lee, Administrator, Federal Procurement Policy, Office of Management and Budget; Fred Levinson, President, Levinson & Santoro Electric Corporation; Robert E. Lee, President, Lee Masonry, representing the American Subcontractors Association; Andrew Stephenson, Contracts Partner, Holland & Knight, representing the Associated General Contractors; and Lynn M. Schubert, President, Surety Association of America, also representing the American Insurance Association and the National Association of Surety Bond Producers.

H.R. 3032 was introduced by Representative Carolyn B. Maloney on November 12, 1997, and referred to the Committees on the Judiciary and Government Reform and Oversight. The bill makes a number of amendments to the Miller Act, which requires the submission of performance and payment bonds by prime contractors on federal construction projects. The Act also specifies the manner in which claims can be brought under such bonds in the U.S. District Courts.

H.R. 3032 would have amended the Office of Federal Procurement Policy Act relating to federal contract payment policies and the Miller Act to provide broader payment protections for subcontractors and suppliers furnishing labor and materials in performance of a federal construction contract. As characterized by the bill's proponents, H.R. 3032 would have made explicit the responsibility of the Administrator for Federal Procurement Policy to (a) establish government-wide policies assuring timely payment of federal contractors, subcontractors, and suppliers, and (b) assure that the Federal Acquisition Regulation implements the various statutes providing for timely payment; required the amount of the payment bond equal to the performance bond; extended the Miller Act's protections to progress payments (periodic payments made by the government to prime contractors during the term of performance), which flow down to subcontractors and suppliers for work performed; extended the Miller Act's payment protections to subcontractors and suppliers at all tiers; established standards relating to waivers of Miller Act payment bond protection by subcontractors or suppliers; allowed notice of payment bond suits by means other than registered mail, including future electronic means; accelerated the resolution of claims for non-payment by permitting subcontractors and suppliers to bring suit under the payment bond any time after a payment claim has been denied (rather than having to wait 90 days after last supplying labor or materials as currently required by the Act); and authorized U.S. District Courts to award attorneys fees, court costs, and interest to a prevailing payment bond claimant to (a) discourage raising of groundless defenses, and (b) restore the Act's payment protection for meritorious small claims (under \$100,000 in dispute), which would otherwise be foreclosed simply by the cost of litigation.

No markup of H.R. 3032 was held.

H.R. 4243 and H.R. 4857, Government Waste, Fraud, and Error Reduction Act of 1998

As introduced by Representative Steve Horn on July 16, 1998, H.R. 4243 was intended to reduce waste, fraud, and error in Government programs by making improvements with respect to Federal management and debt collection practices, Federal payment systems, and Federal benefit programs. In addition to the Committee on Government Reform and Oversight, it was referred to the Committees on the Judiciary and the Committee on Ways and Means.

The Government Reform and Oversight Committee ordered H.R. 4243 reported as amended. On August 26, 1998, it was referred to Subcommittee on Commercial and Administrative Law. No markup of H.R. 4243 was held by either the Subcommittee or the Judiciary Committee. On October 14, 1998, the bill was passed as amended by voice vote in the House under suspension of the rules and the Judiciary Committee was discharged. The bill was received in the Senate on the following day.

On October 20, 1998, Representative Horn introduced a modified version of the bill as H.R. 4857, which did not include certain provisions of H.R. 4243 pertaining to the integrity of federal benefit verification. It was referred to the Subcommittee on Commercial and Administrative Law of the Judiciary Committee on that same day. No markup of H.R. 4857 was held by either the Subcommittee or the Judiciary Committee. After the Committee on the Judiciary was discharged by unanimous consent, H.R. 4857, as amended, passed the House by voice vote. The bill was received in the Senate on the following day and no further action was taken.

OVERSIGHT ACTIVITIES

ADMINISTRATIVE LAW, PRACTICE AND PROCEDURES

Administrative Crimes and Quasi-Crimes

On May 7, 1998, the Subcommittee held a hearing titled "Administrative Crimes and Quasi-Crimes." Witnesses who testified at the hearing were: Robert W. "Bobby" Unser, Albuquerque, New Mexico; George O. Krizek, M.D. and Blanka Krizek, Washington, D.C.; Steven A. Goodman, JSG Trading Corp., Tinton Falls, New Jersey; Jane M. Orient, M.D., Association of American Physicians and Surgeons, Tucson, Arizona; James V. DeLong, Regulatory Policy Center, and Adjunct Scholar, Competitive Enterprise Institute, Washington, D.C.; Roger J. Marzulla (former United States Assistant Attorney General for Environment and Lands), Marzulla & Marzulla, Washington, D.C.; and Professor Jonathan Turley, The George Washington University Law School, Washington, D.C.

"Administrative crimes or quasi-crimes" are a range of activities for which agencies or federal law enforcers seek punitive sanctions against citizens based on their violation of a regulation. Whether explicitly denominated "civil" or "criminal," such an enforcement action was called an "administrative crime" for purposes of the hearing if the remedy sought goes beyond that of compensating the government or the public for wrongs allegedly done. The witnesses

and their cases were intended to illustrate important questions about the nature and scope of criminal regulations, the effect of civil punishment on regulated entities and individuals, and how administrative actions affect regulated entities and individuals.

The hearing led Chairman Gekas to introduce H.R. 4049, the Regulatory Fair Warning Act.

Administrative Taxation: The FCC's Universal Service Tax

On February 26, 1998, the Subcommittee held a hearing titled "Administrative Taxation: the FCC's Universal Service Tax." Witnesses who testified at the hearing were: James Glassman, DeWitt-Wallace-Readers Digest Fellow in Communications, American Enterprise Institute; Julia Johnson, Esq., Chairman, Florida Public Service Commission; Grover G. Norquist, President, Americans for Tax Reform; James Miller III, Counselor, Citizens for a Sound Economy; Dr. John E. Berthoud, President, National Taxpayers Union; and Christopher A. McLean, Deputy Administrator, Rural Utilities Service, Department of Agriculture.

The clearest example of administrative taxation is the Federal Communications Commission's Universal Service Tax. "Universal service" is the idea that everyone should have access to affordable telecommunications services. It originated at the beginning of the century when the nation was still being strung with telephone wires. The Telecommunications Act of 1996 included provisions that allowed the FCC to extend universal service, ensuring that telecommunications are available to all areas of the country and to institutions that benefit the community, like schools, libraries, and rural health care facilities.

Notably, the Telecommunications Act gave the FCC the power to decide the level of "contributions"—taxes—that long-distance providers would have to pay to support universal service. The FCC now determines how much can be collected in taxes to subsidize a variety of "universal service" programs. It charges long-distance providers, who pass the costs on to consumers in the form of higher telephone bills. The amount collectible to support schools and libraries began at \$2.25 billion per year and the amount for health care providers was \$400 million per year. Currently, the level of tax collections is \$1.4 billion dollars per year. The FCC's order implementing the universal service provisions raised a variety of other legal and policy questions.

The hearing led to the introduction of H.R. 4096, the Taxpayer's Defense Act, by Chairman Gekas.

Congressional Review Act

On March 6, 1997, the Subcommittee on Commercial and Administrative Law held an oversight hearing on the operation of the Congressional Review Act. That Act, signed into law on March 29, 1996, was contained in Subtitle E of Title II of the Contract With America Advancement Act (Public Law 104-121) and provided that agencies must submit new rules to Congress prior to their going into effect, together with timetables for both Houses of the Congress to consider resolutions of disapproval for such rules.

The Congressional Review Act resulted from a desire for a more active Congressional role in the oversight and control of a rapidly

growing body of administrative rules.² Congress has historically employed various means to assert its authority over agencies. A popular method, particularly from the early 1970's through 1983 was the "legislative veto" under which an enabling statute sometimes provided that rules promulgated under it were subject to reversal if one or both of the Houses passed a resolution repealing the Executive Branch's action. In 1983, however, the Supreme Court struck down the legislative veto in *INS v. Chadha*, 462 U.S. 919, on the grounds that when Congress acted "legislatively," it had to conform to the dictates of the bicameral requirement and the Presentment Clause. (Article 1, section 7, clause 2 of the United States Constitution). Because the legislative veto was a legislative act that did not adhere to these provisions, it violated the Constitutional design for the separation of powers. In recognition of *Chadha*, the Congressional Review Act requires that rules be disapproved by a joint resolution of both Houses, which is then presented to the President. It thus follows the approach taken in the Rules Enabling Act (28 U.S.C. 2072 et seq.), under which the Supreme Court has for many years promulgated rules of practice and procedure and rules of evidence for the federal courts which are subject to disapproval by the Congress following the ordinary legislative process.

After enactment of the Congressional Review Act, 2,120 rules had been filed and noted in the *Congressional Record* pursuant to the Act's requirement in the 104th Congress, while 1,318 rules had been filed as of February 28, 1997, in the 105th Congress. Of these, 11 had been designated as major rules in the 104th Congress and 22 in the 105th Congress.

The hearing sought to explore the rationale behind the Act, to determine how it is understood and applied by the officers of the House of Representatives and to establish to what extent its provisions were being adhered to by the agencies.

Witness who testified at the hearing were: Robert P. Murphy, General Counsel, General Accounting Office; Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Jonathan Z. Cannon, General Counsel, U.S. Environmental Protection Agency; Nancy E. McFadden, General Counsel, U.S. Department of Transportation; C. Boyden Gray, Esquire, former White House Counsel, partner, Wilmer, Cutler & Pickering; Peter L. Strauss, Betts Professor of Law, Columbia University; Richard J. Pierce, Jr., Lyle T. Alverson Research Professor of Law, George Washington University; Charles W. Johnson, III, Parliamentarian, U.S. House of Representatives; Thorne Auchter, Executive Director, Center for Regulatory Effectiveness; and Angela Antonelli, Deputy Director of Economic Policy Studies, Heritage Foundation.

EPA's Rulemakings on National Ambient Air Quality Standards for Particulate Matter and Ozone

On July 18, 1997, the Environmental Protection Agency published final rules setting national ambient air quality standards for

²Between 1987 and 1990, agencies promulgated 160 final major rules. During the next 4 years, that number had increased to 241.

particulate matter and ozone. The process undertaken to develop the rules, and the rules themselves, engendered significant debate.

The Clean Air Act requires the EPA to promulgate national air quality standards and review them every 5 years. Under a court-ordered, accelerated review of the standard for particulate matter, the EPA decided to revise the standards for particulate matter and ozone. In promulgating the new standards, the EPA found itself not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Unfunded Mandates Reform Act, though it did comply with President Clinton's Regulatory Executive Order. The EPA's findings as to the administrative procedures found in these laws, and the interplay between those procedures and the Clean Air Act, were the focus of the hearing.

The Subcommittee held the hearing on July 29, 1997. Witnesses who testified were: Representative Fred Upton; Representative Rick Boucher; Fred Hansen, Deputy Administrator, Environmental Protection Agency; Brian Flaherty, Connecticut State Representative, National Conference of State Legislatures; Allen Schaeffer, Vice President, Environmental Affairs, American Trucking Associations; Richard L. Russman, Esq., New Hampshire State Senate; Ron Klink; George Wolff, Ph.D., Principal Scientist, Corporate Affairs Staff, General Motors Corporation; Randy Johnson, Hennepin County (MN) Commissioner, President, National Association of Counties; George D. Thurston, Sc.D., Associate Professor, New York University School of Medicine, Institute of Environmental Medicine.

Oversight of the Executive Office for United States Attorneys, the Environment and Natural Resources Division of the Department of Justice, and the Executive Office for United States Trustees.

On February 25, 1998, the Subcommittee held a hearing on three offices within the Department of Justice over which it has oversight jurisdiction: the Executive Office for United States Attorneys, the Environment and Natural Resources Division, and the Executive Office for United States Trustees. Witnesses who testified at the hearing were: Donna A. Bucella, Director, Executive Office for U.S. Attorneys, U.S. Department of Justice; Karen F. Schreier, U.S. Attorney for the District of South Dakota, Vice Chairman, Attorney General's Advisory Committee for U.S. Attorneys, U.S. Department of Justice; Lois Schiffer, Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice; and Joseph Patchan, Director, Executive Office for the U.S. Trustees, U.S. Department of Justice.

The hearing gave an opportunity for the Department of Justice representatives to describe the workings of their respective offices, the plans each had for the future and the progress they had made towards achieving their goals. Each, moreover had the opportunity to share with the Subcommittee the amounts and justification for their authorization requests.

Role of Congress in Monitoring Administrative Rulemaking

On September 25, 1997, the Subcommittee held a hearing on the role of Congress in monitoring administrative rulemaking. Though an oversight hearing, it was framed around two bills: the Congressional Responsibility Act of 1997 (H.R. 1036; Hayworth) and the Congressional Office of Regulatory Analysis Creation Act (H.R. 1704; Kelly). Witnesses who testified at the hearing included the bills sponsors, Senator Sam Brownback; Representative J.D. Hayworth; and Representative Sue W. Kelly, as well as Professor Marci A. Hamilton, Benjamin N. Cardozo School of Law; Craig Brightup, Director of Government Relations, National Roofing Contractors Association; and Todd Robbins, Staff Attorney, U.S. Public Interest Research Group (U.S. PIRG).

The role of Congress in monitoring administrative rulemaking flows from its constitutional power to organize the executive branch and to make all laws for carrying into execution the powers of the United States government. Congress writes both the organic and procedural laws that guide agencies and it possesses inherent power to oversee all their activities.

To retain direct control of the regulatory process, Congress used the legislative veto for most of this century. The legislative veto allowed one or both Houses of Congress to negate an agency action by passing a simple resolution which did not require the President's signature. When overturned by the Supreme Court's decision in *INS v. Chadha*, 462 U.S. 919, there were as many as 295 legislative veto-type procedures written into federal law.

Improving the regulatory process and asserting Congressional authority over it continued to be interests of members in the 105th Congress. Senators Levin and Thompson introduced the Regulatory Improvement Act (S. 981), which was aimed at improving the regulatory process. Two bills within the Subcommittee's jurisdiction focused on asserting Congressional authority: H.R. 1036, the "Congressional Responsibility Act" (Hayworth); and H.R. 1704, the "Congressional Office of Regulatory Analysis Creation Act" (Kelly).

On February 25, 1998, the Subcommittee ordered favorably reported H.R. 1704 in the form of an amendment in the nature of a substitute. On March 3 and 4, 1998, the full Committee ordered favorably reported the bill H.R. 1704 in the form of an amendment in the nature of a substitute (H. Rept. 105-441, Part I). The bill was not considered by the full House.

BANKRUPTCY

Status Report from the National Bankruptcy Review Commission and Operation of the Bankruptcy System

On April 16, 1997, the Subcommittee held a combined oversight hearing on the National Bankruptcy Review Commission and the operation of the bankruptcy system. The hearing provided a forum where representatives from the National Bankruptcy Review Commission and the bankruptcy community could provide an update on the Commission's work and an overview of the bankruptcy system.

The portion of the hearing concerning the Commission served to provide the Subcommittee with an interim indication of the issues it would need to consider upon completion of the Commission's

work. In connection with this portion of the hearing, the Subcommittee heard from Brady Williamson, Commission Chairman; Stephen Case, a partner with Davis, Polk Wardwell, a law firm; and Leonard Rosen, a partner with Wachtell, Lipton, Rosen & Katz, a law firm.

The National Bankruptcy Review Commission was an independent commission established pursuant to the Bankruptcy Reform Act of 1994, Public Law 103-394, 108 Stat. 4106. The Commission was created to: (1) investigate and study issues relating to the Bankruptcy Code; (2) solicit divergent views of parties concerned with the operation of the bankruptcy system; (3) evaluate the advisability of proposals with respect to such issues; and (4) prepare a report to be submitted to the President, Congress and the Chief Justice not later than 2 years from October 20, 1995, the date of the Commission's first meeting. The report was required to contain a detailed statement of the Commission's findings and conclusions together with recommendations for legislative or administrative action. The House Report accompanying the legislation establishing the Commission stated that Congress was "generally satisfied with the basic framework established in the current Bankruptcy Code" and advised the Commission to focus on "reviewing, improving, and updating the Code in ways which do not disturb the fundamental tenets of current law."

The nine-member Commission was authorized to conduct public meetings and empowered to obtain official data from any federal agency, department or court necessary to the implementation of its duties. Among the topics that the Commission considered were case administration, consumer bankruptcy, environmental matters, business bankruptcy, issues relating to tax, banking, insurance, mass torts and future claims, municipal bankruptcies, and international insolvencies.

The second portion of the hearing was devoted to a general overview of the bankruptcy system. Witnesses who testified during this part of the hearing included Charles Tattelbaum, Vice President for Research, American Bankruptcy Institute; and Honorable George Paine, Chief Bankruptcy Judge for the Middle District of Tennessee, on behalf of the National Conference of Bankruptcy Judges. Issues discussed included the need for consumer and business bankruptcy reform, abuse in the current bankruptcy system, potential causes of increased bankruptcy filings, and the treatment of exempt property, among other matters.

National Bankruptcy Review Commission Report

On November 13, 1997, the Subcommittee on Commercial and Administrative Law conducted an oversight hearing on the Report of the National Bankruptcy Review Commission. Witnesses who testified at this hearing included Brady Williamson, Commission Chairman; Babette Ceccotti, Commission Member; Honorable Edith Hollan Jones, United States Court of Appeals Judge from the Fifth Circuit and Commission Member.

As noted above, the National Bankruptcy Review Commission was charged pursuant to its enabling statute to prepare a detailed report of its findings and conclusions together with recommendations for legislative or administrative reform regarding bankruptcy

law and practice. The Commission's Report, filed on October 20, 1997, contained 172 recommendations.

Subcommittee Chairman Gekas, in his opening statement, observed that the Commission's report would be central to any bankruptcy legislation would follow. He noted that the use of credit had become an addiction for many consumers and that the current bankruptcy system failed to require individuals to take sufficient personal responsibility. Mr. Gekas explained that the ease by which consumers can have their debts forgiven under the bankruptcy laws led to higher prices and interest rates that had to be paid by those who were fiscally responsible. He described his intention to introduce comprehensive legislation that would reestablish the balance between creditor and debtor interests and encourage greater personal responsibility among consumers.

SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY

HOWARD COBLE, North Carolina, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin	BARNEY FRANK, Massachusetts
ELTON GALLEGLEY, California	JOHN CONYERS, JR., Michigan
BOB GOODLATTE, Virginia	HOWARD BERMAN, California
SONNY BONO, California ¹	RICK BOUCHER, Virginia
EDWARD A. PEASE, Indiana	ZOE LOFGREN, California
CHRIS CANNON, Utah	WILLIAM D. DELAHUNT, Massachusetts
BILL MCCOLLUM, Florida	
CHARLES T. CANADY, Florida	
JAMES E. ROGAN, California ²	
MARY BONO, California ³	

¹Sonny Bono, California, deceased January 5, 1998.

²James E. Rogan, California, assigned March 3, 1998, to fill the vacancy resulting from the death of Sonny Bono, California.

³Mary Bono, California, assigned June 17, 1998.

Tabulation and disposition of bills referred to the Subcommittee

Legislation referred to the Subcommittee	101
Legislation reported favorably to the full Committee	21
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	2
Legislation discharged from the Subcommittee	1
Legislation pending before the full Committee	1
Legislation reported to the House	24
Legislation discharged from the Committee	6
Legislation pending in the House	5
Legislation passed by the House	26
Legislation pending in the Senate	6
Legislation vetoed by the President (not overridden)	0
Legislation enacted into public law	11
Legislation enacted into public law as part of another measure	20
Legislation on which hearings were held	23
Days of hearings (legislative and oversight)	36
Private legislation referred to the Subcommittee	2
Private legislation pending in the Subcommittee	2

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee has legislative and oversight responsibility for (1) the intellectual property laws of the United States (including authorizing jurisdiction over the Patent and Trademark Office of the Department of Commerce and the Copyright Office of the Library of Congress); and (2) Article III Federal courts (including authorizing jurisdiction over the Administrative Office of the United States Courts, the Judicial Conference of the United States, and the Federal Judicial Center); the Federal Rules of Evidence and Civil and Appellate Procedure; and judicial discipline and misconduct.

LEGISLATIVE ACTIVITIES

COURTS

The Judicial Reform Act of 1997, H.R. 1252

Introduced by Chairman Hyde, Mr. Coble, Mr. Canady of Florida, Mr. Bono, Mr. Bryant, Mr. Goodlatte, Mr. Manzullo, Mr. Riggs, and Mr. Sensenbrenner, H.R. 1252 constitutes a restrained legislative response to specific examples of unfair practices and procedures, many of which violate the separation-of-powers doctrine, that exist in the federal court system.

The Subcommittee held a legislative hearing on H.R. 1252 on May 14, 1997, and an oversight hearing on the related issue of judicial misconduct on May 15, 1997. Testimony at the May 14 hearing was received regarding H.R. 1252 from the following witnesses: Chairman Henry Hyde, U.S. Representative, 6th District of Illinois; The Honorable Ed Bryant, U.S. Representative, 7th District of Tennessee; The Honorable Donald A. Manzullo, U.S. Representative, 8th District of Illinois; The Honorable Melvin Watt, U.S. Representative, 12th District of North Carolina; The Honorable Eleanor Holmes Norton, Delegate to Congress, The District of Columbia; The Honorable Henry A. Politz, Chief Judge, United States Court of Appeals for the Fifth Circuit; The Honorable Anne Williams, District Judge, United States District Court for the Northern District of Illinois; Steve Burbank, Professor, University of Pennsylvania School of Law; The Honorable Frederick B. Lacey, LeBoeuf, Lamb Greene and MacRae; The Honorable Dan Lungren, Attorney General, State of California; The Honorable Richard Mountjoy, State Senator, California; Bob Destro, Professor, Catholic University School of Law; and Arthur Hellman, Professor, University of Pittsburgh School of Law.

On May 15, 1997, the Subcommittee received testimony from the following witnesses: The Honorable Bob Barr, U.S. Representative, 7th District of Georgia; The Honorable Tom DeLay, U.S. Representative, 22nd District of Texas; The Honorable John N. Hostettler, U.S. Representative, 8th District of Indiana; The Honorable Nita M. Lowey, U.S. Representative, 18th District of New York; Thomas Jipping, Director of the Center for Law & Democracy, Judicial Selection Monitoring Project, Free Congress Foundation; Charlotte Stout, Greenfield, Tennessee; Bruce Fein, McLean, Virginia; Lino Graglia, Professor, University of Texas School of Law; Roger Pilon, Director for the Center for Constitutional Studies, Cato Institute; and Wade Henderson, Executive Director, Leadership Conference, Washington, D.C.

On June 10, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1252, amended, by a recorded vote of 8 yeas and 7 nays, a quorum being present. On March 24, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 1252, as amended with additional full Committee amendments, by recorded vote, a quorum being present (H. Rept. 105-478). H.R. 1252 was passed by the House on April 23, 1998. It was not taken up by the Senate.

To amend the Webb-Kenyon Act to allow any State, territory, or possession of the United States to bring an action in Federal Court to enjoin violations of that Act or to enforce the laws of such State, territory, or possession with respect to such violations, H.R. 1063

Introduced by Representative Robert Ehrlich, Mr. Kleczka, Mr. Holden, Mr. Ney, Mr. LaTourette, Mr. Boswell, Mr. Barcia, Mr. Baker, Mr. Price of North Carolina, Mr. Blunt, Mr. Barrett, Mr. Clyburn, Ms. Christian-Green, Mr. Goodlatte, Mr. Canady, Mrs. Thurman, Mr. Pickett, Mr. Sensenbrenner, Mr. Wicker, Mr. Diaz-Balart, Mr. Deutsch, Mrs. Clayton, Mr. Goode, Ms. Pryce of Ohio, Mr. Neumann, Mr. Etheridge, Mr. McIntyre, Mr. Moran of Virginia, Ms. McCarthy, Mr. Foley, Mr. Rahall, Mr. Davis of Virginia, Mr. Bereuter, Mr. Collins, Mr. Shadegg, Mr. Hutchinson, Mr. Clement, Mr. Boyd, Mr. Watts of Oklahoma, Mr. Mica, Mr. Lucas of Oklahoma, Mr. Lewis of Georgia, Mr. Franks of New Jersey, Mr. Gilchrest, Mr. Bliley, Ms. Slaughter, Ms. DeLauro, Mr. Burton of Indiana, Mr. Hefley, Mr. Wamp, Ms. Dunn of Washington, Mr. Hall, Mr. Duncan, Mr. Johnson, Mr. Pease, Mr. Roemer, Mr. Kennedy of Rhode Island, Mr. Hoekstra, Mr. Talent, Ms. Millender-McDonald, Mr. Sandlin, Mr. Kennedy of Massachusetts, Mr. Turner, Mr. Cannon, Mr. Hansen, Mr. Bonior, Mrs. Cubin, Mr. Cook, and Ms. Stabenow, H.R. 1063 responds to recent problems with direct shipment of alcohol in violation of state liquor laws by amending the Webb-Kenyon Act to allow States to bring an action in federal court to enjoin illegal activity or to enforce state liquor laws.

The Subcommittee held a hearing on H.R. 1063 on September 25, 1997. Testimony was received from the following witnesses: The Honorable Frank Riggs, U.S. Representative, 1st District of California; The Honorable Robert Ehrlich, Jr., U.S. Representative, 2nd District of Maryland; Jim Simpson, Chairman, Government Affairs Committee, National Licensed Beverage Association; Jerry Douglas, Vice President, Marketing, Biltmore Estate Wine Company, on behalf of the American Vintners Association; James Goldberg, Esq., on behalf of the Joint Committee of States; and Louis M. Foppiano, Vice President, L. Foppiano Wine Co., Inc., on behalf of the Wine Institute. No further action was taken on H.R. 1063.

Private Property Rights Implementation Act, H.R. 1534

Introduced by Representative Elton Gallegly, for himself, Mr. Goode, Mr. Royce, Mr. Sessions, Mr. Bryant, Mr. Hill, Mr. Pickett, Mr. Sensenbrenner, Mr. Neumann, Mr. Bonilla, Mr. Combust, Mr. Holden, Mr. Riggs, Mr. Weller, Mr. McIntosh, Mr. English of Pennsylvania, Mr. Barcia of Michigan, Mr. Herger, Mr. Cunningham, Mr. McInnis, Mr. Turner, Mr. Canady of Florida, Mr. Thornberry, Mr. Dooley of California, Mr. Frost, Mr. Hastings of Washington, Mr. Hansen, Mr. Riley, Mr. Bob Schaffer, Mr. Paxon, Mr. Brady, Mr. Collins, Mr. Traficant, Mr. Bliley, Mr. Jenkins, Mr. Bishop, Mr. Boehner, Mr. Goodlatte, Mr. Pascrell, Mr. Lewis of California, Mr. Solomon, Mr. Condit, Mr. Dreier, Mr. Fazio of California, Mr. Hutchinson, Mr. Shimkus, Mr. Ensign, Mr. Calvert, Mr. Doolittle, Mr. Kolbe, Mr. Cox of California, Mr. McCollum, Mr. Cannon, Mr. Hall of Texas, Mrs. Chenoweth, Mr. Bunning of Kentucky, Mr. Kim, Mr. Hilliard, Mr. Hayworth, Mrs. Northup, Mr. Deal of Geor-

gia, Mr. Christensen, Mr. Packard, Mr. Pickering, Mr. Gekas, Mr. McHugh, Mr. Gillmor, Mr. Hefley, Mr. Cooksey, Mr. McKeon, Mr. Salmon, Mr. Rogan, Mr. Smith of Oregon, Mr. Underwood, Mr. Ingalls of South Carolina, Mr. Skeen, Mr. Chambliss, Mr. Wicker, Mr. Schiff, Mr. Ehrlich, Mr. Shadegg, Mr. Gibbons, Mr. Parker, Mr. Foley, Mr. Ballenger, Mr. Upton, Mr. Watkins, Mr. Smith of New Jersey, Mr. Hunter, Mr. Tauzin, Mr. Hastert, Mr. Jones, Mr. Callahan, Mr. Kingston, Mr. LoBiondo, Mr. Martinez, Mr. Cook, Mr. Metcalf, Mr. Ortiz, Mr. Spencer, Mr. Wamp, Mr. Regula, Ms. Granger, Mrs. Roukema, Mr. Thomas, Mr. Saxton, Mr. Knollenberg, Mr. Dickey, Mr. Coble, Mr. Bono, Mr. Pombo, Mr. McCrery, Mr. Rohrabacher, Mr. Sam Johnson of Texas, Mr. Burton of Indiana, Mr. Baker, Mr. Stump, Mrs. Linda Smith of Washington, Mr. Livingston, Mr. Barr of Georgia, Mr. Smith of Texas, Mr. Peterson of Minnesota, Mr. Latham, Mr. Graham, Mr. Radanovich, Mrs. Fowler, Mr. Brown of California, Mr. Weldon of Pennsylvania, Mr. Stenholm, Mr. Chabot, Mr. Watts of Oklahoma, Mr. Edwards, Mr. Franks of New Jersey, Mr. Crapo, Ms. Danner, Mr. Duncan, Mr. Baesler, Mr. Gutknecht, Mr. Talent, Ms. Pryce of Ohio, Mr. Cramer, Mr. Barrett of Nebraska, Mr. Smith of Michigan, Mr. Young of Alaska, Mr. Miller of Florida, Mr. Nethercutt, Mr. Pappas, Mr. Aderhold, Mrs. Myrick, Ms. Dunn of Washington, Mr. Sandlin, Mr. Tiahrt, Mr. Berry, Mr. Camp, Mr. Everett, Mr. Stearns, Mr. Bachus, Mr. Goodling, Mr. Souder, Mr. Hoekstra, Mr. Ryun, Mr. White, Mr. Faleomavaega, Mr. McDade, Mrs. Cubin, Mr. Hobson, Mr. Nussle, Mr. Dicks, Mr. Rogers, Mr. Bilirakis, Mr. Pitts, Mr. Petri, Mr. LaHood, Mr. Hamilton, Mr. Mica, Mr. Arme, Mr. Scarborough, Mrs. Tauscher, Mr. Buyer, Mr. Manzullo, Mr. DeLay, Mr. Weldon of Florida, Mr. Ney, Mr. John, Mr. Horn, Mr. Wolf, Mr. Dan Schaefer of Colorado, Mr. Lucas of Oklahoma, Mr. Coburn, Mr. Bartlett of Maryland, Mr. Barton of Texas, Mr. Bilbray, Mr. Young of Florida, Mr. Whitfield, Mr. Archer, Mr. Moran of Kansas, Mr. Linder, Mr. Paul, Mr. Blunt, Mr. Norwood, Mr. Skelton, Mr. Redmond, Mr. Thompson, Mr. Hoyer, Mrs. Emerson, Mr. Davis of Virginia, Mr. Boyd, Mr. Gilman, Mr. Peterson of Pennsylvania, Mr. Sisisky, Mr. Green, Mr. Sununu, Mr. Oxley, Mr. Kasich, Mr. Istook, Mr. Lewis of Kentucky, Mr. Leach, Mrs. Johnson of Connecticut, Mr. Porter, Mr. Largent, Mr. Oberstar, Mr. Crane, Mr. Murtha, Mr. Houghton, Mr. Sanford, Mr. Gordon, Mr. Snowbarger, Mr. Hilleary, Mr. Diaz-Balart, Mr. Shaw, Mr. Blumenauer, Mr. Doyle, Mr. Taylor of North Carolina, Mr. Taylor of Mississippi, Mr. King of New York, Mr. Rothman, and Mr. Hulshof, H.R. 1534 provides private property owners claiming a violation of the Fifth Amendment's taking clause some certainty as to when they may file the claim in federal court by addressing the procedural hurdles of the ripeness and abstention doctrines which currently prevent them from having fair and equal access to federal court. H.R. 1534 defines when a final agency decision has occurred for purposes of meeting the ripeness requirement and prohibits a federal judge from abstaining from or relinquishing its jurisdiction when the case does not allege any violation of a state law, right, or privilege as a means of overcoming judicial reluctance to review takings claims based on the abstention doctrines.

On September 25, 1997, the Subcommittee held a hearing on H.R. 1534. The Subcommittee received testimony from the following witnesses: John Dwyer, Esq., Acting Associate Attorney General, United States Department of Justice, Don Betsworth, President, North Carolina Home Builders Association, on behalf of the National Association of Home Builders; Carl Goldberg, Partner, Roseland Property Company, on behalf of the New Jersey Home Builders Association; Elizabeth M. Osenbaugh, Solicitor General, Iowa Attorney General's Office; and Daniel R. Mandelker, Howard A. Stamper Professor of Law, Washington University School of Law.

On September 30, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1534, amended, a quorum being present. On October 7, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 1534, as amended, by a recorded vote of 18 yeas and 10 nays, a quorum being present (H. Rept. 105-323). The House passed H.R. 1534 by recorded vote of 248 in favor and 178 opposed on October 22, 1997. H.R. 1534 was reported to the Senate by the Senate Committee on the Judiciary on February 26, 1998. H.R. 1534 was placed on the Senate Legislative Calendar but was not taken up for a vote.

Alternative Dispute Resolution Act, H.R. 3528

Introduced by Subcommittee Chairman Coble, H.R. 3528 is designed to address the problem of the high caseloads burdening the federal courts. This legislation will provide a quicker, more efficient method by which to resolve some federal cases when the parties or the courts so choose. H.R. 3528 directs each federal trial court to establish some form of alternative dispute resolution ("ADR"), which could include arbitration, mediation, mini trials, or early neutral evaluation or some combination of those for certain civil cases. The bill also provides for the confidentiality of the alternative dispute resolution process and prohibits the disclosure of such confidential communications. It also directs the courts to establish standards for the neutrals and arbitrators to follow, and authorizes the Judicial Conference and the Administrative Office of the United States Courts to assist courts with their programs. It would provide the federal courts with the tools necessary to present quality alternatives to expensive federal litigation.

On October 9, 1997, the Subcommittee held a hearing on H.R. 2603, the "Alternative Dispute Resolution and Settlement Encouragement Act" which contained many of the provisions included in H.R. 3528. The Subcommittee received testimony from the following witnesses: The Honorable Brock Hornby, Chief Judge, United States District Court for the District of Maine; Peter R. Steenland, Senior Counsel for Alternative Dispute Resolution, U.S. Department of Justice; L. Allan Lind, Ph.D., Fuqua School of Business, Duke University; and Mitchell F. Dolin, Esq., on behalf of the American Bar Association.

On February 26, 1998, the Subcommittee met in open session to markup a Committee print which represented a different version of H.R. 2603. The Committee print was ordered favorably reported by a voice vote, a quorum being present. On March 23, 1998, the Committee print was then introduced as an original bill, H.R. 3528. On

March 24, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 3528, amended, by a voice vote, a quorum being present (H. Rept. 105-487). H.R. 3528 was passed by the House under suspension of the rules by a recorded vote of 405 yeas and 2 nays on April 21, 1998. It was subsequently amended by the Senate. Those amendments were accepted by the House on October 7, 1998, sent to the President and H.R. 3528 was signed into law on October 30, 1998. It is Public Law 105-315.

Federal Courts Improvement Act, H.R. 2294

Introduced by Subcommittee Chairman Coble, by request, H.R. 2294 contains several provisions that are needed to improve the Federal Court System. It is designed to improve administration and procedures, eliminate operational inefficiencies, and, to the extent prudent, reduce operating expenses.

The bill affects a wide range of judicial branch programs and operations. Provisions affecting the Judiciary Information Technology Fund and the disposition of miscellaneous fees are included. Provisions altering the composition of judicial districts are included. The bill also contains provisions regarding territorial judges and several other personnel matters.

On October 10, 1997, the Subcommittee held a hearing on H.R. 2294. The Subcommittee received testimony from the following witnesses: The Honorable Brock Hornby, Chief Judge, United States District Court for the District of Maine; The Honorable Philip M. Pro, District Judge, United States District Court for the District of Nevada, Chairman, Judicial Conference Committee on Judges; The Honorable Elizabeth Kovachevich, Chief Judge, United States District Court for the Middle District of Florida; and The Honorable Julia Smith Gibbons, Chief Judge, U.S. District Court for the Western District of Tennessee, Chair, Committee on Judicial Resources.

On February 26, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2294, amended, by voice vote, a quorum being present. On March 3, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2294, as amended with additional full Committee amendments, by voice vote, a quorum being present (H. Rept. 105-437). H.R. 2294 was passed by the House under suspension of the rules on March 18, 1998. It was not taken up by the Senate.

To amend title 28 of the United States Code regarding enforcement of child custody orders, H.R. 4164

Introduced by Subcommittee Chairman Coble and Mr. Andrews, H.R. 4164 amends the Parental Kidnaping Prevention Act of 1980, 28 U.S.C. § 1738A, to clarify that the Act was intended to include grandparents as persons who may claim rights to custody or visitation of a child and that orders granting such rights should be enforced in any subsequent state where the children may be moved.

On April 23, 1998, the Subcommittee held a hearing on H.R. 1690, a bill "To amend title 28 of the United States Code regarding enforcement of child custody orders," which contained almost all of the provisions in H.R. 4164. The Subcommittee received testimony from the following witnesses: The Honorable Robert E. Andrews, U.S. Representative, 1st District of New Jersey; Josephine D' Anto-

nio, President, Grandparents Count; and Anne M. Haralambie, Esq., Anne Nicholson Haralambie, Attorneys, P.C., on behalf of the American Bar Association.

On April 30, 1998, the Subcommittee met in open session to mark up the bill H.R. 1690. The Subcommittee ordered favorably reported the bill H.R. 1690, amended, a quorum being present. On May 6, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 1690, as amended, by a voice vote, a quorum being present (H. Rept. 105-546). On June 25, 1998, Mr. Coble introduced H.R. 4164, which contained all of the provisions of H.R. 1690 as it passed the full Committee as well as technical amendments. On July 14, 1998, the full Committee discharged its option to conduct a markup of H.R. 4164. H.R. 4164 passed the House under suspension of the rules on July 14, 1998. It was subsequently amended by the Senate. Those amendments were accepted by the House on October 21, 1998. It is Public Law 105-374.

Class Action Jurisdiction Act of 1998, H.R. 3789

Introduced by Chairman Hyde, Mr. McCollum, Mr. Smith of Texas, Mr. Canady of Florida, Mr. Bryant, Mr. Pease, Mr. Moran of Virginia, Mr. Frank of Massachusetts, Mr. Inglis of South Carolina, Mr. Sensenbrenner, and Mr. Rogan, H.R. 3789 responds to a flaw in the Judicial Code recently highlighted by the U.S. Court of Appeals for the Third Circuit: Although “national (interstate) class actions are [arguably] the paradigm for federal diversity jurisdiction because, in a constitutional sense, they implicate interstate commerce, [invite] discrimination by a local state, and tend to [attract] bias against [business] enterprise[s],” most such “class actions [are] beyond the reach of the federal courts . . . under the current jurisdictional statutes.” Frequently, these interstate class actions are heard by state courts that are not applying rigorous standards necessary to avoid abuses, that are ill-equipped to address laws and claimants from outside their home states, and that are powerless to consolidate overlapping, “competing” class-action proceedings filed in different jurisdictions.

H.R. 3789 addresses these problems by expanding the original jurisdiction of U.S. District courts over most class actions in which minimal diversity exists among the parties. Federal removal statutes are also amended pursuant to the bill in furtherance of this goal.

On March 5, 1998, the Subcommittee held an oversight hearing on the subject of mass torts and class actions. The Subcommittee received testimony from the following witnesses: The Honorable James P. Moran, U.S. Representative, 8th District of Virginia; Richard L. Thornburgh, Esq., Kirkpatrick & Lockhart, LLP; The Honorable Anthony J. Scirica, United States Circuit Judge, U.S. Court of Appeals for the 3rd Circuit; John P. Frank, Esq., Lewis & Roca; Professor Susan P. Koniak, Boston University School of Law; Ralf G. Wellington, Esq., Schnader, Harrison, Segal & Lewis, LLP; Jack W. Martin, Vice President-General Counsel, Ford Motor Company; John L. McGoldrick, Senior Vice President for Law and Strategic Planning and General Counsel, Bristol-Meyers Squibb Company; Elizabeth J. Cabraser, Attorney at Law, Lief, Cabraser,

Heinmann & Bernstein, LLP; and Dr. John B. Hendricks, President, Alabama Cryogenic Engineering, Inc.

On June 18, 1998, the Subcommittee held a legislative hearing on H.R. 3789. The Subcommittee received testimony from the following witnesses: The Honorable James P. Moran, U.S. Representative, 8th District of Virginia; Richard H. Middleton, Esq., Middleton, Mixson, Adams & Tate, on behalf of the American Trial Lawyers Association; John H. Beisner, Esq., O'Melveny & Meyers, LLP; Sheila L. Birnbaum, Esq., Skadden, Arps, Slate, Meagher & Flom, LLP; Brian Wolfman, Esq., Public Citizen Litigation Group; and Stanely M. Grossman, Esq., Pomerantz, Haudek, Block & Grossman, on behalf of the National Association of Securities and Commercial Law Lawyers.

On June 24, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3789, amended, by voice vote, a quorum being present. On August 5, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 3789 as amended with additional full Committee amendment by a recorded vote of 17 yeas and 12 nays, a quorum being present (H. Rept. 105-702). H.R. 3789 was placed on the House Union calendar but not considered.

To provide that a person closely related to a judge of a court exercising judicial power under Article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, H.R. 3926 (S. 1892)

Introduced by Representative Jennifer Dunn, H.R. 3926 was incorporated into S. 1892, the Senate companion bill. S. 1892 passed the Senate on October 6, 1998. S. 1892 passed the House under suspension of the rules on October 7, 1998. The President signed H.R. 1892 and it is Public Law 105-300.

Protecting American Small Business Trade Act of 1998, H.R. 3578

Introduced by Representative Robert Menendez, Mr. Pallone, Mr. Payne, Mr. Frelinghuysen, Mr. Smith of New Jersey, Mr. Franks of New Jersey, and Mr. Traficant, H.R. 3578 would allow any person or corporation who has signed a contract or other agreement containing an arbitration clause with a foreign entity before July 1, 1985, to bring an action for relief before the appropriate U.S. Court or federal agency to resolve any controversy arising under the contract or agreement. In effect, the bill would allow U.S. citizens or corporations to disregard any arbitration clause in any contract to which they were signatories along with a foreign entity before July 1, 1985.

On June 11, 1998, the Subcommittee held a legislative hearing on H.R. 3578. The Subcommittee received testimony from the following witnesses: The Honorable Robert Menendez, U.S. Representative, 13th District of New Jersey; Salvatore J. Monte, Owner, Kenrich Petrochemicals, Inc; and Peter A. Kalat, Esq., Curtis, Mallet-Prevost & Mosle. No further action was taken on H.R. 3578.

Veterans Employment Opportunities Act of 1997, H.R. 240

H.R. 240 was introduced by Representative John L. Mica, Mr. Solomon, Mr. Stump, Mr. Everett, Mr. Frelinghuysen, Mr. Davis of Virginia, Mr. Calvert, Mr. Filner, Mr. Ramstad, Mr. Holden, Mr. Evans, Mr. Buyer, Mrs. Kelly, Mr. Klug, Mr. Coyne, Mr. Rahall, Mr. Lipinski, Mr. Canady of Florida, Mr. Gallegly, Mr. Schiff, Mr. Camp, Mr. Borski, Mr. Luther, Mr. Fazio of California, Mr. Ensign, Mr. Manzullo, and Mr. English of Pennsylvania.

On March 20, 1997, the Committee on Government Reform and Oversight ordered favorably reported the bill H.R. 240, amended (H. Rept. 105-40, part 1). The Committee on the Judiciary did not conduct a markup of H.R. 240, but in a letter from Chairman Hyde to Chairman Burton, it did not waive its jurisdictional prerogative in this area. The Committee on the Judiciary was discharged from further consideration of the bill H.R. 240. On April 9, 1997, H.R. 240 passed the House under suspension of the rules. The Senate companion bill, S. 1021, the "Veterans Employment Opportunities Act of 1997," passed the Senate, amended, on October 5, 1998. S. 1021 passed the House under suspension of the rules on October 8, 1998. S. 1021 was signed by the President on October 31, 1998. It is Public Law 105-339.

Peremptory Challenge Act of 1997, H.R. 520 (H.R. 1252)

Introduced by Representative Charles Canady of Florida, Mr. Sensenbrenner, Mr. Schiff, Mr. Bryant, Mr. Bono, Mr. Rohrabacher and Mr. Riggs, H.R. 520 was incorporated into H.R. 1252, the "Judicial Reform Act of 1997."

To establish a Commission on Structural Alternatives for the Federal Courts of Appeals, H.R. 908 (H.R. 2267)

Introduced by Subcommittee Chairman Coble and Mr. Berman, H.R. 908 would establish a Commission on Structural Alternatives for the Federal Courts of Appeals. The Commission would: (1) study the present division of the United States into several judicial circuits; (2) review the structure and alignment of the Federal Courts of Appeals system, with particular reference to the Ninth Circuit; and (3) report to the President and Congress its recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process.

On March 5, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 908, a quorum being present. On March 12, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 908 by voice vote, a quorum being present (H. Rept. 105-26). The House passed H.R. 908, as amended, under suspension of the rules on June 3, 1997, by voice vote. A compromise version of H.R. 908, negotiated between the staffs of the House and Senate Committees on the Judiciary, was incorporated into H.R. 2267, the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act," as section 305. The House passed H.R. 2267, by unanimous consent, on November 13, 1997. The President signed

H.R. 2267 into law on November 26, 1998. It is Public Law 105-119.

To amend title 28 of the United States Code to allow an interlocutory appeal from a court order determining whether an action may be maintained as a class action, H.R. 660 (H.R. 1252)

Introduced by Representative Charles Canady of Florida, H.R. 660 was incorporated into H.R. 1252, the “Judicial Reform Act of 1997.”

Judicial Disciplinary Proceedings Act of 1997, H.R. 702 (H.R. 1252)

Introduced by Representative Ed Bryant, Mr. Barr of Georgia, Mr. Bono, Mr. Canady of Florida, Mr. Goodlatte, Mr. Hostettler, Mr. McCollum, Mr. Schumer, Mr. Sensenbrenner, Mr. Smith of Texas, Mr. Duncan, and Mr. Gekas, a version of H.R. 702 was incorporated into H.R. 1252, the “Judicial Reform Act of 1997.”

To adjust, and provide a procedure for the future adjustment of, the salaries of Federal judges, H.R. 875 (H.R. 1252)

Introduced by Chairman Hyde, for himself, Mr. Conyers, Mr. Frank of Massachusetts, Mr. Shays, Mr. Schiff, Mr. Berman, Mr. Hastings of Florida, Mrs. Johnson of Connecticut, Mr. McDade, Mr. Smith of Texas, Mr. Meehan, Mr. Pickett, Ms. Brown of Florida, Mr. McCrery, Mr. Delahunt, Mr. King of New York, Mr. Ganske, Ms. Lofgren, Mr. Diaz-Balart, Mr. Manton, Mr. Dixon, Mr. Coyne, Mr. Filner, Mr. Snyder, Mr. Foglietta, Mr. Frost, Mr. Lewis of Georgia, Mr. Cooksey, Mr. Rahall, Mr. Markey, Mr. Wamp, Mr. Shuster, Mr. Chambliss, Mr. Barr of Georgia, Mr. Koble, Mr. Weldon of Pennsylvania, Mrs. Meek of Florida, Mr. Hilliard, Mr. Fox of Pennsylvania, Mr. Bishop, Mr. Maloney of Connecticut, Ms. Jackson Lee of Texas, Mrs. Lowey, Mr. Gonzales, Mr. Campbell, Mr. Neal of Massachusetts, Mr. McCollum, Mr. Gejdenson, Mr. Blagojevich, Mr. Turner, Mr. Cannon, Mr. English of Pennsylvania, Mr. Hefner, Mr. Davis of Florida, Mr. Allen, Mr. Deal of Georgia, Mr. Torres, Mr. Barrett of Wisconsin, Mr. Hoyer, Mr. McNulty, Mr. Watt of North Carolina, Mr. Spence, Mr. Gekas, Mrs. McCarthy of New York, Mr. Abercrombie, Mr. Bliley, Ms. Sanchez, Mr. Ackerman, Mrs. Kennelly of Connecticut, Ms. Waters, Mr. Davis of Illinois, Mr. Wicker, Mr. Sandlin, Mr. Shimkus, Mr. Hinchey, Mr. Rodriguez, Mr. Graham, Mr. Nethercutt, Ms. Furse, Mr. Lampson, Mr. Wexler, Mr. Kind of Wisconsin, Mr. Kucinich, Mr. Dooley of California, Mr. Price of North Carolina, Mr. LaHood, Ms. DeLauro, Mr. Greenwood, Ms. Carson, and Mr. Bilirakis, portions of H.R. 875 were incorporated into H.R. 1252, the Judicial Reform Act of 1997.”

To amend chapter 3 of title 28 of the United States Code to provide for the appointment in each United States Circuit Court of Appeals, of at least one resident of each state in such circuit, H.R. 932 (H.R. 2267)

Introduced by Representative Neil Abercrombie and Mrs. Mink of Hawaii, H.R. 932 was incorporated into H.R. 2267 as section 307. The House passed H.R. 2267, the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations

Act,” by unanimous consent on November 13, 1997. The President signed H.R. 2267 into law on November 26, 1998. It is Public Law 105–119.

To provide for the conversion of existing temporary United States district judgeships to permanent status, H.R. 977 (S. 996)

Introduced by Chairman Hyde, for himself, Mr. Conyers, Mr. LaHood, Mr. Dooley of California, Mr. Matsui, Mr. Barrett of Nebraska, Mr. Fazio of California, Mr. Abercrombie, Mr. Radanovich, Mr. Traficant, Mr. Shimkus, Mr. Regula, Mr. Pombo, Mr. Pickett, Mr. Bateman, Mr. Stokes, Mr. Kucinich, Mr. Lewis of California, Mr. Oxley, Mr. Christensen, Mr. Evans, Mrs. Mink of Hawaii, Mr. Moran of Virginia, Mr. Davis of Virginia, Ms. Kaptur, Mr. Sawyer, Mr. Hilliard, Mr. Sisisky, Mr. Scott, Mr. Bereuter, Mr. Bliley, Mr. Goode, Mr. Wolf, Mr. Poshard, Mrs. Emerson, Mr. Hinchey, Mr. McNulty, Mr. McHugh, Mr. Boehlert, Mr. Costello, and Mr. Solomon, H.R. 977 was incorporated into S. 996, a bill “To provide for the authorization of appropriations in each fiscal year for arbitration in the United States district courts.” S. 996 passed the Senate on July 31, 1997. An amended S. 996 passed the House under suspension of the rules by a recorded vote of 421 yeas and 0 nays on September 23, 1997. On September 30, 1997, the Senate agreed to the House amendments and sent the bill S. 996 to the President. The President signed S. 996 on October 6, 1997. It is Public Law 105–53.

State Initiative Fairness Act, H.R. 1170 (H.R. 1252)

Introduced by Representative Sonny Bono, for himself, Mr. Hyde, Mr. Coble, Mr. Smith of Texas, Mr. Gekas, Mr. McCollum, Mr. Canady of Florida, Mr. Sensenbrenner, Mr. Gallegly, Mr. Goodlatte, Mr. Barr of Georgia, Mr. Bryant, Mr. Schiff, Mr. Chabot, Mr. Solomon, Mr. Dreier, Mr. Calvert, Mr. Rohrabacher, Mr. Horn, Mr. Bilbray, Mr. Riggs, Mr. McKeon, Mr. Royce, Mr. Herger, Mr. Hunter, Mr. Lewis of California, Mr. Kim, Mr. Ehrlich, Mr. Coburn, Mr. Cunningham, Mr. Graham, Mr. Hostettler, Mr. Bartlett of Maryland, Mr. McIntosh, Mr. Packard, Mr. Rogan, Mr. Inglis of South Carolina, Mr. Foley, Mr. Largent, Mr. Hutchinson, Mr. Gibbons, and Mr. Salmon, H.R. 1170 was incorporated into H.R. 1252, the “Judicial Reform Act of 1997.”

Sunshine in the Courtroom Act, H.R. 1280 (H.R. 1252)

Introduced by Representative Steve Chabot, for himself, Mr. Schumer, Mr. Coble, Mr. DeLay, Mr. Frank of Massachusetts, Mr. Gekas, Mr. Dellums, Mr. Schiff, Mr. Rothman, Mr. Portman, Mr. Delahunt, Mr. Lewis of Kentucky, Mrs. McCarthy of New York, Mr. Dixon, Mr. Boehner, Mr. Inglis of South Carolina, Mr. English of Pennsylvania, Mr. Hulshof, Mr. Wexler, Mr. Jones, Mr. Paxon, Mr. Hilleary, Mr. Quinn, and Mr. Scarborough, a version of H.R. 1280 was incorporated into H.R. 1252, the “Judicial Reform Act of 1997.” The amended version permits proceedings in federal courts to be televised under certain conditions.

To reauthorize the program established under chapter 44 of title 28 of the United States Code relating to arbitration, H.R. 1581 (S. 996)

Introduced by Subcommittee Chairman Coble, H.R. 1581 reauthorizes twenty arbitration programs currently operating in Federal district courts throughout the country. The arbitration programs were first authorized over 20 years ago and have been continuously reauthorized since. The success of these programs is unquestioned.

Following are those Federal District Courts authorized to use arbitration pursuant to Chapter 44, Section 28 U.S.C. 658(1): the Northern District of California, the Middle District of Florida, the Western District of Michigan, the Western District of Missouri, the District of New Jersey, the Eastern District of New York, the Middle District of North Carolina, the Western District of Oklahoma, the Eastern District of Pennsylvania, and the Western District of Texas. The following are those Federal District Courts approved for the use of arbitration voluntarily by the Judicial Conference pursuant to Chapter 44, Section 28 U.S.C. 658(2): the District of Arizona, the Middle District of Georgia, the District of Nevada, the Northern District of New York, the Western District of New York, the Western District of Pennsylvania, the Northern District of Ohio, the District of Utah, the Western District of Washington, and the Middle District of Tennessee.

On June 10, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1518, by voice vote, a quorum being present. On June 18, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 1518, by voice vote, a quorum being present (H. Rept. 105-143). On June 23, 1997, the House passed the bill H.R. 1518 by voice vote, under suspension of the rules. The provisions of H.R. 1518 were included in S. 996, a bill "To provide for the authorization of appropriations in each fiscal year for arbitration in the United States district courts." S. 996 passed the Senate on July 31, 1997. An amended S. 996 passed the House under suspension of the rules by a recorded vote of 421 yeas and 0 nays on September 23, 1997. On September 30, 1997, the Senate agreed to the House amendments and sent the bill S. 996 to the President. The President signed S. 996 on October 6, 1997. It is Public Law 105-53.

To amend title 28 of the United States Code to create two divisions in the Eastern Judicial District of Louisiana, H.R. 1790

Introduced by Representative W.J. "Billy" Tauzin, the provisions in H.R. 1790 were incorporated into H.R. 2294, the "Federal Courts Improvement Act of 1997."

Multiparty, Multiforum Jurisdiction Act of 1997, H.R. 1857 (H.R. 1252)

Introduced by Representative Jim Sensenbrenner, H.R. 1857 was incorporated into H.R. 1252, the "Judicial Reform Act of 1997."

To amend title 28 of the United States Code to transfer Schuylkill County, Pennsylvania, from the Eastern Judicial District of Pennsylvania to the Middle Judicial District of Pennsylvania, H.R. 2123 (H.R. 2294)

Introduced by Representative Tim Holden, H.R. 2123 was incorporated into H.R. 2294, the “Federal Courts Improvement Act of 1997.”

Judicial Conduct Reform Act of 1997, H.R. 2739 (H.R. 4328)

Introduced by Representative Joseph M. McDade and Mr. DeLay, H.R. 2739 was incorporated into H.R. 4328, the Omnibus Appropriations bill, as section 801, Ethical Standards for Federal Prosecutors. It subjects government attorneys to State laws and rules, and local Federal court rules, governing attorneys in each State where a government attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State. This will repeal 77.2(a) of part 77 of title 28 of the Code of Federal Regulations. Section 801 takes effect 180 days after the date of the enactment of H.R. 4328. H.R. 4328 is Public Law 105–277.

Florida Federal Judgeship Act of 1998, H.R. 3154 (H.R. 2294)

Introduced by Representative Charles Canady of Florida, Mr. McCollum, Mr. Goss, Mr. Young of Florida, Mr. Davis of Florida, and Mr. Wexler, H.R. 3154 was incorporated into H.R. 2294, the “Federal Courts Improvement Act of 1997.”

Alternative Dispute Resolution and Settlement Encouragement Act, H.R. 903 (H.R. 3528)

Introduced by Subcommittee Chairman Coble and Mr. Goodlatte, the provisions of H.R. 903 were incorporated into H.R. 3528, the “Alternative Dispute Resolution Act of 1998.”

INTELLECTUAL PROPERTY

COPYRIGHTS

WIPO Treaties Implementation Act, H.R. 2281

Introduced by Subcommittee Chairman Coble, Mr. Hyde, Mr. Conyers, Mr. Frank of Massachusetts, Mr. Bono, Mr. McCollum, Mr. Berman, Mrs. Bono, Mr. Paxon, and Mr. Pickering, H.R. 2281 contains five titles which address several copyright issues. Title I implements two treaties which ensure adequate protection for American works in countries around the world at a time when the Internet allows users to send and retrieve perfect copies of copyrighted material over the Internet. In compliance with the treaties, H.R. 2281 makes it unlawful to defeat technological measures used by copyright owners to protect their works on the Internet, including preventing unlawful access and targeting devices made to circumvent encrypted copyrighted material. It also makes it unlawful to deliberately alter or delete information provided by a copyright owner which identifies a work, its owner, and its permissible use.

Title II, the “On-Line Copyright Infringement Liability Limitation Act” was introduced to address concerns raised by a number

of on-line service and Internet access providers regarding their potential liability for copyright infringement when infringing material is transmitted on-line through their services. Title II of this bill codifies a liability system based on the core of current case law dealing with the liability of on-line service providers.

Title III ensures that independent computer maintenance servicers do not inadvertently become liable for copyright infringement merely because they have turned on a machine in order to service its hardware components. When a computer is turned on, certain software or parts thereof (generally the machine's operating system software) is automatically copied into the machine's random access memory, or "RAM." During the course of activating the computer, different parts of the operating system may reside in the RAM at different times because the operating system is sometimes larger than the capacity of the RAM. Because such copying has been held to constitute a "reproduction" under § 106 of the Copyright Act, a person who activated the machine without the authorization of the copyright owner of that software could be liable for copyright infringement. This title has the narrow and specific intent of relieving independent service providers, persons unaffiliated with either the owner or lessee of the machine, from liability under the Copyright Act when, solely by virtue of activating the machine in which a computer program resides, they inadvertently cause an unauthorized copy of that program to be made.

Title IV contains several miscellaneous provisions:

It directs the Register of Copyrights to consult with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives and to submit recommendations to the Congress no later than 6 months after the date of enactment of the bill on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users.

It updates section 108 to allow libraries and archives to take advantage of digital technologies when engaging in specified preservation activities. Section 108 of the Copyright Act permits these entities of the type described in that section to make and, in some cases, distribute a limited number of copies of certain types of copyrighted works, without the permission of the copyright holder, for specified purposes relating to these entities' functions as repositories of such works for public reference.

It contains amendments to sections 112 and 114 of the Copyright Act that are intended to achieve two purposes: first, to further a stated objective of Congress when it passed the Digital Performance Right in Sound Recordings Act of 1995 to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services. This amendment accomplishes both of these objectives by creating two statutory licenses for certain performances and reproductions of sound recordings in the digital environment.

The purpose of title V, the “Vessel Hull Design Protection Act,” is to offer limited protection for original designs of vessel hulls which are usually misappropriated by persons who indulge in a marine industry practice known as “hull splashing.”

On September 16 and 17, 1997, the Subcommittee held hearings on H.R. 2281. On September 16, the Subcommittee received testimony from the following witnesses: The Honorable Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, United States Department of Commerce; The Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States, Library of Congress; Roy Neel, President and Chief Executive Officer, United States Telephone Association; Jack Valenti, President and Chief Executive Officer, Motion Picture Association of America; Robert Holleyman, President, Business Software Alliance; M.R.C. Greenwood, Chancellor, University of California, Santa Cruz, on behalf of the Association of American Universities and the National Association of State Universities and Land Grant Colleges; Tushar Patel, Vice President and Managing Director, USWeb; Lawrence Kenswil, Executive Vice President, Business and Legal Affairs, Universal Music Group; Marc Jacobson, General Counsel, Prodigy Services, Inc.; Ken Wasch, President, Software Publishers Association; Ronald G. Dunn, President, Information Industry Association; John Bettis, Songwriter, on behalf of the American Society of Composers Authors and Publishers; Allee Willis, Songwriter, on behalf of Broadcast Music, Inc.; and Robert L. Oakley, Professor of Law, Georgetown University Law Center and Director, Georgetown Law Library, on behalf of a Coalition of Library and Educational Organizations.

On September 17, the Subcommittee received testimony from the following witnesses: Johnny Cash, Vocal Artist, with Hillary Rosen, President and Chief Executive Officer, Recording Industry Association of America; Allan Adler, Vice President, Legal and Governmental Affairs, Association of American Publishers; Gail Markels, General Counsel and Senior Vice President, Interactive Digital Software Association; Mike Kirk, Executive Director, American Intellectual Property Law Association; Thomas Ryan, President, SciTech Software, Inc.; Mark Belinsky, Vice President, Copy Protection Group, Macrovision, Inc.; Douglas Bennett, President, Earlham College, Vice President, American Council of Learned Societies, on behalf of the Digital Future Coalition; Edward J. Black, President, Computer and Communications Industry Association; Christopher Byrne, Director of Intellectual Property, Silicon Graphics, Inc., on behalf of the Information Technology Industry Council; and Gary Shapiro, President, Consumer Electronics Manufacturer’s Association (a sector of the Electronic Industries Association), and Chairman, Home Recording Rights Coalition.

On February 26, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2281, amended, by voice vote, a quorum being present. On April 1, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2281, as amended with additional full Committee amendments, by voice vote, a quorum being present. The Committee on Commerce requested and received a sequential referral on H.R.

2281. The Committee on Commerce reported on H.R. 2281 on July 22, 1998 (H. Rept. 105-551, part 2). The House passed under suspension of the rules H.R. 2281 on August 4, 1998. It was subsequently amended by the Senate. The Senate insisted on its amendments and requested a conference on H.R. 2281. On October 8, 1998, Subcommittee Chairman Coble filed the Conference Report (H. Rept. 105-796). The Conference Report on H.R. 2281 was passed by the Senate on October 8, 1998, and the House passed it under suspension of the rules, by voice vote, on October 12, 1998. The President signed H.R. 2281 on October 28, 1998. It is Public Law 105-304.

Computer Maintenance Competition Assurance Act of 1997, H.R. 72 (H.R. 2281)

Introduced by Representative Knollenberg, H.R. 72 was incorporated into H.R. 2281, the "Digital Millennium Copyright Act."

Online Copyright Liability Limitation Act, H.R. 2180 (H.R. 2281)

Introduced by Subcommittee Chairman Coble and Chairman Hyde, the provisions contained in H.R. 2180 were incorporated into H.R. 3209, the "On-line Copyright Infringement Liability Limitation Act," and ultimately in H.R. 2281, the "Digital Millennium Copyright Act."

On February 16 and 17, 1997, the Subcommittee held hearings on the bills H.R. 2180 and H.R. 2281. The Subcommittee received testimony regarding H.R. 2180 from the same witnesses that testified regarding H.R. 2281.

On February 26, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3209, by voice vote, a quorum being present. On April 1, 1998, the full Committee met in open session and amended H.R. 2281, the "Digital Millennium Copyright Act" by adding H.R. 3209 to it. H.R. 2281 was signed by the President on October 28, 1998, and is Public Law 105-304.

No Electronic Theft Act, H.R. 2265

Introduced by Representative Bob Goodlatte, Mr. Coble, Mr. Frank of Massachusetts, Mr. Cannon, Mr. Delahunt, Mr. Gallegly, and Mr. Clement, H.R. 2265 reverses the practical consequences of *United States v. LaMacchia*, 871 F. Supp. 535 (D. Mass. 1994), which held, *inter alia*, that electronic piracy of copyrighted works may not be prosecuted under the federal wire fraud statute; and that criminal sanctions available under titles 17 and 18 of the U.S. Code for copyright infringement do not apply in instances in which a defendant does not realize a "commercial advantage or private financial gain."

On September 11, 1997, the Subcommittee held a hearing on H.R. 2265. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States, The Library of Congress; Kevin Di Gregory, Deputy Assistant Attorney General (Criminal Division), Department of Justice; Greg Wrenn, Corporate Counsel, Adobe Software; Brad Smith, Associate General Counsel, Microsoft Corporation; Sandra A. Sellers, Vice President (Enforcement and Education), Software Publishers Association; Cary Sher-

man, Senior Executive Vice President and General Counsel, Recording Industry Association of America; Fritz Attaway, Senior Vice President, Motion Picture Association of America; and David Nimmer, Private Attorney on behalf of the United States Telephone Association.

On September 30, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2265, amended, by voice vote, a quorum being present. On October 7, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 2265, as amended with additional full Committee amendments, by voice vote, a quorum being present (H. Rept. 105-339). On November 4, 1997, the House passed under suspension of the rules H.R. 2265 as amended. On November 13, 1997, the Senate passed H.R. 2265. On December 16, 1997, the President signed into law H.R. 2265. It is Public Law 105-147.

Copyright Term Extension Act, H.R. 2589 (S. 505)

Introduced by Subcommittee Chairman Coble, Mr. Frank of Massachusetts, Mr. Conyers, Mr. Gallegly, Mr. Goodlatte, Mr. Bono, Mr. Cannon, Mr. McCollum, Mr. Canady of Florida, Mr. Berman, Mr. Boucher, Ms. Lofgren, and Mr. Delahunt, H.R. 2589 will extend the term of copyright protection in all copyrighted works that have not fallen into the public domain by 20 years.

On June 27, 1997, the Subcommittee held an oversight hearing on the issue of copyright term extension. The Subcommittee received testimony regarding copyright term extension from the following witnesses: Fritz Attaway, General Counsel, Motion Picture Association of America; George David Weiss, Songwriter, Songwriters Guild of America; Frances Preston, President, Broadcast Music Incorporated; Julius Epstein, Author of "Casablanca," Writers Guild of America, West; and Professor Jerome Reichman, Vanderbilt Law School.

On September 30, 1997, the Subcommittee met in open session to mark up a Committee print which contained many provisions contained in H.R. 604, the "Copyright Term Extension Act of 1997." The Committee print was ordered favorably reported by voice vote, a quorum being present. On October 2, 1997, the Committee print was then introduced by Subcommittee Chairman Coble as a clean bill, H.R. 2589. On March 3, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2589, by voice vote, a quorum being present (H. Rept. 105-452). The House passed H.R. 2589, amended by amendment regarding music licensing offered by Mr. Sensenbrenner, by voice vote on March 25, 1998. The Senate companion bill, S. 505, was amended to contain the copyright term extension provisions in H.R. 2589 and a negotiated agreement on music licensing. The Senate passed S. 505 on October 7, 1998. The House passed under suspension of the rules S. 505 on October 7, 1998. The President signed S. 505 into law on October 27, 1998. It is Public Law 105-298.

Fairness in Music Licensing Act, H.R. 789 (S. 505)

Introduced by Representative James Sensenbrenner, for himself, Mr. Burr of North Carolina, Mr. Cunningham, Mr. Gillmor, Mr. Norwood, Mr. McHugh, Mr. Andrews, Mr. Ensign, Mr. Mascara,

Mr. Herger, Mr. Lewis of California, Mr. Burton of Indiana, Mr. Petri, Mr. Smith of New Jersey, Mr. Parker, Mr. McDermott (withdrew on March 18, 1997), Mr. Thornberry, Mr. Christensen, Mr. Inglis of South Carolina, Mr. Davis of Virginia, Mr. LaTourette, Mr. Ehlers, Mr. Ehrlich, Mr. Hoekstra, Ms. Jackson Lee of Texas, Mr. Peterson of Minnesota, Mr. LoBiondo, Mrs. Linda Smith of Washington, Mr. Holden, Mr. Schiff, Mr. Stump, Mr. Wynn, Mr. Calvert, Mr. Barton of Texas, Mr. Lewis of Kentucky, Mr. Baesler, Mr. Saxton, Mr. Wolf, Mr. Doyle, Mr. Spratt, Mr. Skeen, Mrs. Cubin, Mr. Knollenberg, Mr. Porter, Mr. Bachus, Mr. Hastert, Mr. Collins, Mr. Pickett, Mr. Duncan, Mr. Upton, Mr. Weller, Mr. Poshard, Mr. Crane, Mr. Metcalf, Ms. Pryce of Ohio, Mr. Salmon, Mrs. Emerson, Mr. Young of Alaska, Mr. McHale, Mr. Horn, Mr. Klug, Mr. Latham, Mr. Talent, Mr. Franks of New Jersey, Mr. Barcia of Michigan, Mr. Chambliss, Mr. Bartlett of Maryland, Mr. McInnis, Mr. Oberstar, Mr. Tiahrt, Mr. Packard, Mr. Bonilla, Mr. Skelton, Mr. Kolbe, Mr. Manzullo, Mr. Stearns, Mr. Gekas, Mr. Lipinski, Mr. Combest, Mr. Quinn, Mr. Walsh, Mr. Sam Johnson of Texas, Mr. Gilchrest, Mr. Dickey, Mr. Stenholm, Mr. Sessions, Mr. Hobson, Mr. Kleczka, Mr. Watts of Oklahoma, Mr. Nethercutt, Mr. McIntosh, Mr. Barrett of Nebraska, Ms. Dunn of Washington, Mr. Hayworth, Mr. Nussle, Mr. Pickering, Mr. Clyburn, Mr. Snowbarger, Mr. Moran of Kansas, Mr. Souder, Mr. Visclosky, Mr. Rush, Mr. Sununu, Mr. Ney, Mr. Neumann, Mr. Ballenger, Mr. Weldon of Pennsylvania, Mr. Pappas, Mr. Ewing, Mr. Shadegg, Mr. Chabot, Mr. Berry, Mrs. Roukema, Mr. Camp, Mr. Condit, Mr. Ramstad, Mr. Kind of Wisconsin, Mr. Spence, Mr. Taylor of North Carolina, Mr. Bereuter, Mr. Hilliard, Mr. Hill, Mr. Gallegly, Mrs. Northup, Mr. Crapo, Mr. Gutknecht, Mr. Frelinghuysen, Ms. Carson, Mr. Peterson of Pennsylvania, Mr. Shimkus, Mr. Pallone, Mr. White, Mr. Dan Schaefer of Colorado, Mr. Thune, Mr. Whitfield, Mr. Turner, Mr. Redmond, Mr. Graham, Ms. Danner, Mr. Istook, Mr. Deal of Georgia, Mr. Rahall, Mr. Boyd, Mr. Bunning of Kentucky, Mr. Pastor, Mr. Roemer, Mr. Hefley, Mr. Blagojevich, Mr. McNulty, Mr. Minge, Mr. Bob Schaffer, Mr. Pomeroy, Mr. Rohrabacher, Mr. Kasich, Mr. Lucas of Oklahoma, Mr. Hinojosa, Mr. Sanford, Mr. Paxon, and Mr. Hastings of Washington, H.R. 789 contained certain provisions which were incorporated into S. 505, the "Sonny Bono Copyright Term Extension Act."

On June 27, 1997, the Subcommittee held an oversight hearing on the issue of per program licenses, which are dealt with in H.R. 789. The Subcommittee received testimony from the following witnesses: Bob Sterling, President, Coalition to Save America's Gospel Music Heritage; Ed Atsinger, President, Salem Communications Corporation; and Dirk Hallemeier, Radio Station Owner, St. Louis Mid-American Gospel.

On July 17, the Subcommittee held an oversight hearing on the issue of music licensing in restaurants and retail and other establishments. The Subcommittee received testimony from the following witnesses: The Honorably Marybeth Peters, Register of Copyrights, Copyright Office of the United States, The Library of Congress; Robert Stoll, Administrator, Office of Legislative Affairs, United States Department of Commerce, Patent and Trademark Office; Wayland Holyfield, President, Nashville Songwriters' Asso-

ciation International, on behalf of the American Society of Composers Authors and Publishers; Mac Davis, Songwriter, on behalf of Broadcast Music Incorporated; Pat Collins, Senior Vice-President, Licensing, SESAC, Inc.; Debra Leach, Executive Director, National Licensed Beverage Association; Peter Kilgore, General Counsel, National Restaurant Association; Pete Madland, President, Wisconsin Tavern League, Owner of "Pete's Landing"; Thelma Showman, Owner, Thelma Showman's School of Dance"; and Gary Shapiro, President, Consumer Electronics Manufacturers Association.

The provisions contained in H.R. 789 regarding music licensing in restaurants and retail and other establishments were negotiated and the resulting agreement was incorporated into S. 505.

To make technical amendments to certain provisions of title 17 of the United States Code, H.R. 672

Introduced by Subcommittee Chairman Coble, H.R. 672 accomplishes many purposes. Some of its provisions will assist the U.S. Copyright Office in carrying out its duties, including giving the Office the ability to set reasonable fees for basic services, subject to congressional approval. Others correct or clarify the language in several recent amendments to the law so that Congress' original intent can be better achieved. None of the amendments contained in H.R. 672 change substantive copyright law. All of the amendments are non-controversial and technical or clarifying in nature.

The Subcommittee held no hearings on H.R. 672 because it viewed the bill as technical and noncontroversial, and it received broad bipartisan support.

On March 5, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 672, amended, by voice vote, a quorum being present. On March 12, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 672, as amended, a quorum being present (H. Rept. 105-25). H.R. 672 was passed by the House under suspension of the rules on March 18, 1997, by a recorded vote of 424 yeas and 2 nays. It was subsequently amended by the Senate. Those amendments were accepted by the House on November 4, 1997, sent to the President and H.R. 672 was signed into law on November 13, 1997. It is Public Law 105-80.

To amend title 17 of the United States Code to provide that the distribution before January 1, 1978, of a phonorecord shall not for any purpose constitute a publication of the musical work embodied therein, H.R. 1967 (H.R. 672)

Introduced by Subcommittee Chairman Coble, for himself, Mr. Hilleary, Mr. Frank of Massachusetts, and Mr. Bryant, H.R. 1967 resolves problems created by recent judicial interpretations of provisions of the 1909 Copyright Act. It makes clear that the distribution of a musical record, disc or tape before 1978 did not constitute a publication of the musical composition(s) embodied in that disc or tape.

On June 27, 1997, the Subcommittee held an oversight hearing on the issues contained in H.R. 1967. The Subcommittee received testimony from the following witnesses: Paul Williams, Songwriter, on behalf of the American Society of Composers, Authors and Pub-

lishers; and Ed Murphy, President, National Music Publishers Association.

On September 30, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1967, by voice vote, a quorum being present. On October 7, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 1967, by voice vote, a quorum being present (H. Rept. 105-325). On October 30, 1997, the Senate amended H.R. 672 to include the provisions contained in H.R. 1967. H.R. 672 is now Public Law 105-80.

Multichannel Video Competition and Consumer Protection Act, H.R. 2921

Introduced by Representative W.J. "Billy" Tauzin, for himself, Mr. Markey, Mr. Boucher, Mr. Whitfield, Mr. Shimkus, Mr. Norwood, Mr. Hall of Texas, Mr. Greenwood, Mr. Stearns, Mr. Hill, Mr. McHugh, Mr. Packard, Mr. Bonilla, Mr. Hinchey, Mr. John, Mr. Miller of Florida, Mr. Burr of North Carolina, Mr. Deal of Georgia, Mr. Sessions, Mr. LaFalce, Mr. Rahall, Mr. Walsh, Mr. Skelton, Mr. Callahan, Mr. Barcia of Michigan, Mrs. Cubin, Mr. Burton of Indiana, Mr. Stenholm, Mr. Smith of Oregon, Mr. McInnis, Mr. Hamilton, Mrs. Thurman, Mr. Spratt, Mr. Bishop, Mr. Boehner, Mr. Boswell, Mr. DeFazio, Mr. Petri, Mr. Nussle, Mr. Ballenger, Mr. Latham, Mr. Jones, Mr. Thornberry, Ms. Danner, Mr. Crapo, Mr. Largent, Mr. Clyburn, Mr. LaTourette, Mr. Bereuter, Mr. Dickey, Mr. Camp, Mr. Coburn, Mr. Frank of Massachusetts, Mr. Dan Schaefer of Colorado, Mr. Poshard, Mr. Klink, Mr. Gillmor, Mr. Berry, Mrs. Emerson, Mr. Barrett of Nebraska, Mr. Tanner, Mrs. Kelly, Mr. Solomon, Mr. Peterson of Minnesota, Mr. Stump, Mr. Nethercutt, Mr. Boyd, Mr. Goss, Mr. Taylor of North Carolina, Mr. Skeen, Mr. Rogan, Mr. Maloney of Connecticut, Mr. Upton, Mr. Young of Alaska, Mr. Combest, Mr. Oxley, Mr. Christensen, Mr. Wise, Mr. Hutchinson, Mrs. Morella, Mr. Horn, Mr. Parker, Mrs. Myrick, Ms. Eshoo, Mrs. Chenoweth, Mr. Kind of Wisconsin, Mr. Clement, Mr. Cook, Mr. Knollenberg, Mr. Moran of Kansas, Mr. Gejdenson, Mr. Traficant, Mr. Peterson of Pennsylvania, Mr. Lewis of Kentucky, Mr. Wolf, Mr. Hastert, Mr. Gutknecht, Mr. Bilbray, Mr. Pickering, Mr. Hilleary, Mr. Lucas of Oklahoma, Ms. Stabenow, Mr. Minge, Mr. McGovern, Mr. Stupak, Mr. Shays, Mr. Murtha, Mr. Kennedy of Massachusetts, Mr. Goodling, Mrs. Linda Smith of Washington, Mr. Cannon, Mr. Boehlert, Mr. Gilchrest, Mr. Weldon of Pennsylvania, Mr. Hefner, Mr. Davis of Florida, Mr. Collins, Mr. Lantos, Mr. Etheridge, Mrs. Fowler, Mr. Turner, Mr. Sandlin, Mr. Quinn, Mr. Ney, Mr. Hastings of Washington, Mr. Bateman, Ms. Eddie Bernice Johnson of Texas, Ms. Rivers, Mr. Aderholt, Mr. Kildee, Mr. Smith of Texas, Mr. Reyes, Mr. Ensign, Mr. Olver, Mr. Ewing, Mr. Pickett, Mr. Hayworth, Mr. Strickland, Mr. Sam Johnson of Texas, Mr. Neal of Massachusetts, Mr. Miller of California, Mr. Gilman, Mr. Thompson, Mr. Hulshof, Mr. Ganske, Mr. Klug, Mr. McIntyre, Mr. Blunt, Mr. Engel, Mr. Chambliss, Mr. Sanders, Ms. Kaptur, Mr. Lampson, Mr. Farr of California, Mr. Pomeroy, Ms. Slaughter, Mr. Deutsch, and Mr. Evans, H.R. 2921 is intended provide relief to consumers regarding an increase in the copyright fees satellite carriers must pay in order to obtain programming. The moratorium will provide

Congress the necessary time to evaluate what effect an increase in satellite fees would have on satellite carriers' ability to compete with cable television. This parity will lead to increased exposure of copyrighted programming to consumers, resulting in lower prices for cable and satellite services because such services will have to compete with each other to deliver desired programming directly to American homes.

On August 4, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2921, as amended, by voice vote, a quorum being present (H. Rept. 105-661, part 2). A scaled down version of H.R. 2921 was passed by the House under suspension of the rules on October 7, 1998. It was not taken up by the Senate.

Copyright Compulsory License Improvement Act, H.R. 3210

Introduced by Subcommittee Chairman Coble, H.R. 3210 is intended to improve the current copyright compulsory license applied to satellite carriers of copyrighted programming contained on television broadcast signals, and to provide for a new copyright compulsory license that will allow satellite carriers to retransmit a local broadcast signal into the same local market from which it originated for no copyright fee. This will essentially provide to satellite carriers the same opportunities as their cable competitors while also applying many of the same obligations. This parity will lead to increased exposure of copyrighted programming to consumers, resulting in lower prices for cable and satellite services because such services will have to compete with each other to deliver desired programming directly to American homes.

The Subcommittee held two oversight hearings on H.R. 3210. On October 30, 1997, the Subcommittee held an oversight hearing on copyright licensing regimes covering retransmission of broadcast signals. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register, U.S. Copyright Office, The Library of Congress; Chuck Hewitt, President, Satellite Broadcasting and Communications Association; William (Rik) Hawkins, Owner, Starpath of Hardin County, Elizabethtown, Kentucky; Steven J. Cox, Senior Vice President, New Ventures, DirecTV, Incorporated, El Segundo, California; James F. Goodmon, President and Chief Executive Officer, Capitol Broadcasting Company, Incorporated, Raleigh, North Carolina; Tom Howe, Director and General Manager of North Carolina University Center for Public Television, Public Broadcasting Service (PBS)/National Public Radio (NPR); Thomas J. Ostertag, General Counsel, Major League Baseball, Office of the Commissioner; Fritz E. Attaway, Senior Vice President, Motion Picture Association of America; Decker Anstrom, President, National Cable Television Association; and Wade Hargrove, Networks Affiliated Stations Alliance, Raleigh, North Carolina.

On February 4, 1998, the Subcommittee conducted another oversight hearing on copyright licensing regimes covering retransmission of broadcast signals. The Subcommittee received testimony from the following witnesses: Charles W. Ergen, President and Chief Executive Officer of Echostar Communications Corporation; Peter C. Boylan, III, President and Chief Executive Officer of

United Video Satellite Group; H. Thomas Casey, Chief Executive Officer and President of Primetime 24; Matthew M. Polka, President of the Small Cable Business Association; William Sullivan, Board of Directors of the National Association of Broadcasters; James J. Popham, Vice President and General Counsel of the Association of Local Television Stations; Bob Phillips, Chief Executive Officer of the National Rural Telecommunications Cooperative; and Marsha E. Kessler, Vice President, Copyright Royalty Distribution on behalf of the Motion Picture Association of America.

On March 18, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3210, as amended, by voice vote, a quorum being present. No further action was taken.

PATENTS

21st Century Patent System Improvement Act, H.R. 400

Introduced by Subcommittee Chairman Coble, for himself, Mr. Conyers, Mr. Goodlatte, Ms. Lofgren, Mr. Gekas, Mr. Cannon, Mr. Condit, Mrs. Kelly, Mr. Bilbray, Mr. Berman, Mr. Horn, Mr. Sensenbrenner, Mr. Towns, Mr. Hyde, Mr. Smith of Oregon, Mr. LaHood, Ms. DeGette, Mr. Hinchey, Mr. Lewis of Georgia, Mr. Wexler, Mr. Delahunt, Mr. Farr of California, Mrs. Meek of Florida, Mr. Houghton, Mr. Nadler, Ms. Furse, Mr. Frost, Mr. Chambliss, Mr. Dellums, Mrs. Lowey, Ms. Slaughter, Mr. Dicks, Mr. Vento, Mr. Ackerman, Mr. Gutknecht, and Mr. Brown of California, H.R. 400 contains several titles addressing and solving major problems threatening our patent system. With the exception of the title containing miscellaneous provisions, each title consists of an independent bill that was the subject of comprehensive hearings in the Subcommittee on Courts and Intellectual Property over the last two Congresses. Each of these titles also reflects changes that were made in response to valuable comments submitted by expert witnesses, Members, independent inventors, small businesses, large corporations, universities and research institutions, industry organizations, patent law associations, and the Patent and Trademark Office.

On February 26, 1997, the Subcommittee held a hearing on H.R. 400. The Subcommittee received testimony from the following witnesses: The Honorable Sue W. Kelly, U.S. Representative, 19th District of New York; The Honorable Duncan Hunter, U.S. Representative, 52nd District of California; The Honorable Dana Rohrabacher, U.S. Representative, 45th District of California; The Honorable Tom Campbell, 15th District of California; The Honorable Stephen Horn, U.S. Representative, 38th District of California; The Honorable Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, U.S. Department of Commerce; John R. Kirk, Chair, Section of Intellectual Property Law, American Bar Association; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Chuck Ludlam, Vice President for Government Relations, Biotechnology Industry Organization; Erwin "Bud" Berrier, President, Intellectual Property Owners; Mary Ann Alford, President, International Trademark Association; Alan F. Holmer, President, Pharmaceutical Research and Manufacturers of America; David L.

Hill, Chairman, Advisory Board, Alliance for American Innovation; Harold C. Wegner, Professor, The George Washington University National Law Center; Stephen H. Barram, Chief Executive Officer, Integrated Services, Inc. and Delegate, White House Conference on Small Business; Maureen Gilman, Director of Legislation, National Treasury Employees Union; and Ronald J. Stern, President, Patent Office Professional Association.

On March 5, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 400, amended, a quorum being present. On March 12, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 400, as amended, a quorum being present (H. Rept. 105-39). The House considered the bill H.R. 400 on April 17, 1997, and on April 23, 1997, agreed to an amendment by Ms. Kaptur that exempted small business, independent investors and universities from publication of patent application information until the patent is granted; specifying that patent information can be published before the patent is granted if the data has been made public in foreign countries, the application has been filed with the Patent and Trademark Office for 5 years or longer and the PTO determines that the public interest would be served by publication, or the inventor deliberately delays publication of the patent. By a recorded vote of 220 in favor and 193 opposed, H.R. 400 passed the House on April 23, 1997. H.R. 400 was reported to the Senate by the Senate Committee on the Judiciary on May 23, 1998. H.R. 400 was placed on the Senate Legislative Calendar but was not taken up for a vote.

Patent and Trademark Office Surcharge Extension Act of 1997, H.R. 673 (H.R. 400)

Introduced by Subcommittee Chairman Coble, Ms. Lofgren, Mr. Frank of Massachusetts, and Mr. Delahunt, H.R. 673 responds to an aspect of the budget proposed by the Administration on February 6, 1997, and to Congressional Appropriations actions for the past 6 years. The Administration's budget proposal would divert \$92 million in fiscal year 1998 from the United States Patent and Trademark Office, which is 100% user-fee funded and receives no tax revenue, to subsidize other areas of the government which are currently funded by tax dollars. In fiscal year 1999, the Administration proposed that \$116 million be diverted. In fiscal year 1997, Congressional appropriators diverted \$54 million; this was a significant increase over previous years. This legislation would correct this serious and growing problem without harming the budget, so that the PTO can use the all of the funds paid by applicants to process their applications.

On February 26, 1997, the Subcommittee held a hearing on H.R. 673, H.R. 811 and H.R. 400. The Subcommittee received testimony regarding all three bills from all of the witnesses. The witnesses are listed under H.R. 400.

The provisions of H.R. 673 were incorporated into H.R. 400.

Patent Term Restoration Act, H.R. 811

Introduced by Representative Dana Rohrabacher, for himself, Ms. Kaptur, Mr. Campbell, Mr. Hunter, Mr. Forbes, Mr. Abercrombie, Mr. Ackerman, Mr. Barr of Georgia (withdrew on March

6, 1997), Mr. Bartlett of Maryland, Mr. Burton of Indiana, Mr. Calvert, Mrs. Chenoweth, Mr. Condit, Mr. Cox of California, Mr. Cunningham, Mr. Davis of Virginia, Mr. Dellums, Mr. Doolittle, Mr. Duncan, Mr. Foley, Mr. Gillmor, Mr. Graham, Mr. Hansen, Mr. Hayworth, Mr. Largent, Mr. Mascara, Mr. Ney, Mr. Norwood, Mr. Paul, Mr. Royce, Mr. Sanford, Mr. Schiff, Mr. Smith of Michigan, Mr. Stearns, Mr. Tiahr, Mr. Traficant, Mr. Walsh, Mr. Wamp, Ms. Waters, Mr. Bonior, Mr. McDade, Mr. Ballenger, Mr. Cramer, Ms. Danner, Mr. Gibbons, Mr. LaTourette, Mr. McIntosh, Mr. Pombo, Mr. Scarborough, Mr. Talent, Mr. Young of Alaska, Mr. Lipinski, Mr. Miller of Florida, Mr. Dan Schaefer of Colorado, Mr. Stump, Mr. Dickey, Mr. Barcia of Michigan, Mr. Coburn, Mr. Sanders, Mr. Snowbarger, Mr. Smith of New Jersey, and Mr. Kucinich, H.R. 811 would alter the current patent law in such a way that the term of a patent would end on the later of (a) 17 years from the date of grant of the patent or (b) 20 years from the date on which the application for the patent was filed in the United States, except if the application contains a specific reference to an earlier filed application or applications, from the date on which the earliest of such non-provisional U.S. application was filed. It also contains a patent disclosure provision that states that in the event that a continuing patent application is filed that claims the benefit of the filing date of a prior application that was filed more than 60 months earlier, notices of the original patent application and the continuing patent application will be published and the public would be permitted to inspect and copy the original patent application and the continuing patent application.

On February 26, 1997, the Subcommittee held a hearing on H.R. 811, H.R. 673, and H.R. 400. The Subcommittee received testimony regarding all three bills from all of the witnesses. The witnesses are listed under H.R. 400.

On March 5, 1997, the Subcommittee ordered H.R. 811 tabled.

Patent and Trademark Office Reauthorization Act, H.R. 3723

Introduced by Subcommittee Chairman Coble, H.R. 3723 authorizes necessary appropriations for the Patent and Trademark Office (PTO) by adjusting the patent fee structure set forth in 35 U.S.C. §41, and to prevent the diversion of agency revenues for activities unrelated to PTO operations. The bill lowers patent and trademark application fees for the first time in history.

On April 30, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3723, amended, by voice vote, a quorum being present. On May 6, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 3723, as amended, by voice vote, a quorum being present (H. Rept. 105-528). H.R. 3723 passed the House under suspension of the rules by voice vote on May 12, 1998. The Senate passed H.R. 3723 on October 14, 1998.

The President signed H.R. 3723 on November 10, 1998. It is Public Law 105-358.

Plant Patents Amendments Act, H.R. 1197

Introduced by Representative Robert F. Smith of Oregon, for himself, Mr. Peterson of Pennsylvania, and Mr. Farr of California,

H.R. 1197 extends the same protection to plant parts as exists for plants under the Patent Act; and authorizes the Patent and Trademark Office (PTO) to implement a statewide computer network program, thereby enabling small inventors to have greater access to information in PTO depository libraries.

H.R. 1197 passed the House under suspension of the rules on October 9, 1998. It was subsequently amended by the Senate. The amendment was accepted by the House on October 16, 1998. H.R. 1197 was sent to the President and was signed into law on October 27, 1998. It is Public Law 105-289.

Technology Transfer Commercialization Act of 1997, H.R. 2544/To improve the ability of federal agencies to license federally owned inventions, H.R. 4859

H.R. 2544 was introduced by Representatives Constance A. Morella, Mr. Sensenbrenner, Mr. Brown of California, Mr. Barcia of Michigan, Mrs. Tauscher, and Mr. Cook. The Committee on the Judiciary did not conduct a markup of H.R. 2544, but in a letter from Chairman Hyde to Chairman Sensenbrenner, it did not waive its jurisdictional prerogative in this area. The Committee on the Judiciary was discharged from further consideration of the bill H.R. 2544. On July 14, 1998, H.R. 2544 passed the House under suspension of the rules.

H.R. 4859 was introduced by Representatives Constance A. Morella, and Mr. Brown of California. The Committee on the Judiciary was discharged from further consideration of the bill H.R. 4859. On October 20, 1998, H.R. 4859 passed the House.

To provide for the enactment of user fees proposed by the President in his budget submission under section 1105(a) of title 31, United States Code, for fiscal year 1999, H.R. 3989

H.R. 3989 was introduced by Representative Gerald Solomon. The Committee on the Judiciary was discharged from further consideration of the bill H.R. 3989 on June 5, 1998. H.R. 3989 failed passage by the House on June 5, 1998.

TRADEMARKS

Madrid Protocol Implementation Act, H.R. 567

Introduced by Subcommittee Chairman Coble, H.R. 567 implements the Madrid Protocol Agreement ("Protocol") which provides for an international registration system for trademarks.

On May 22, 1997, the Subcommittee held a hearing on H.R. 567. The Subcommittee received testimony from the following witnesses: The Honorable Bruce A. Lehman, Commissioner and Assistant Secretary, United States Patent and Trademark Office, United States Department of Commerce; Shaun Donnelly, Deputy Assistant Secretary, Trade Policy and Programs, United States Department of State, Bureau of Economics and Business Affairs; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; and David C. Stimpson, President, International Trademark Association.

On June 10, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 567 by voice vote, a quorum

being present. On June 18, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 567 by voice vote, a quorum being present (H. Rept. 105-199). H.R. 567 passed the House under suspension of the rules by voice vote on May 5, 1998.

Trade Dress Protection Act, H.R. 3163

Introduced by Subcommittee Chairman Coble, H.R. 3163 reasserts that trade dress provides protection for the appearance or configuration of a product. In a consumer society, much attention is paid to the appearance of those articles placed for sale to the public at large. Companies invest tremendous resources in designing the configuration and packaging so that the average consumer can locate and identify the goods or services as the product of a company they know and favor. The product's appearance, or trade dress, therefore plays a significant role in identifying the source of the product to the consumer. Trade dress is defined as the total image and overall appearance of a product, together with all the elements making up the overall image that serves to identify the product as presented to the consumer.

Traditionally, trade dress referred to product packaging or labeling, but has expanded to encompass the configuration or design of the product itself, as well as settings or styles of doing business. Prior to 1992, the Circuit Courts were split over whether trade dress could be protected if it was inherently distinctive, or if secondary meaning also had to be established to make it eligible for protection.

In 1992, the Supreme Court held that trade dress is protectible if it is inherently distinctive or if it has acquired secondary meaning. *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992). However, the Court did not specifically address the standard to be applied in determining whether a particular trade dress is inherently distinctive. In the years succeeding *Two Pesos*, courts throughout the country have struggled to settle on a standard for determining inherent distinctiveness for trade dress. H.R. 3163 addresses that issue.

On February 12, 1998, the Subcommittee held a hearing on H.R. 3163. The Subcommittee received testimony from the following witnesses: Jeffrey M. Samuels, Esq., Office of Jeffrey M. Samuels, P.C.; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; David C. Stimson, President, International Trademark Association; and Theodore H. Davis, Jr., Partner, Kilpatrick, Stockton, LLP, on behalf of the American Bar Association. No further action was taken on H.R. 3163.

Trademark Anticounterfeiting Act of 1998, H.R. 3891

Introduced by Representative Bob Goodlatte, H.R. 3891 safeguards the ability of manufacturers to exert better control over the use of their products with which valuable marks are associated by protecting the integrity of corresponding product identification codes contained in product packaging.

On May 21, 1998, the Subcommittee held a hearing on H.R. 3891. The Subcommittee received testimony from the following witnesses: Michael K. Kirk, Executive Director, American Intellectual

Property Law Association; Fred Mostert, President-Elect, International Trademark Association; John S. Bliss, President, International Anti-Counterfeiting Coalition; Jeffrey M. Samuels, Esq., Law Offices of Jeffrey M. Samuels, P.C.; Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., on behalf of the Intellectual Property Owners.

On June 4, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3891, amended, by voice vote, a quorum being present. On July 16, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 3891, as amended with additional full Committee amendments (H. Rept. 105-650). On September 28, 1998, H.R. 3891 did not pass the House under suspension of the rules, a two-thirds affirmative vote required, by a recorded vote of 245 in support and 167 in opposition.

Trademark Law Treaty Implementation Act, H.R. 1661 (S. 2193)

Introduced by Subcommittee Chairman Coble, H.R. 1661 contains changes which are necessary to bring U.S. law in compliance with The Trademark Law Treaty (“TLT”) so ratification can occur. TLT harmonizes procedures of national trademark offices by establishing maximum requirements a “contracting party” (member state or intergovernmental organization) can impose for trademark applications or for granting filing dates. The treaty also eliminates many formal requirements governing renewals, recordation of assignments, changes of names or addresses, powers of attorney, drawings, signatures, and the like. A key feature of the TLT is the elimination of the legalization of signatures on documents, except in the case of a surrender of registration. Other important TLT provisions improve the treatment of multi-class and “divisional” applications.

For the most part, H.R. 1661 does not change U.S. domestic substantive law. Rather, under the treaty, and like the United States, other countries must provide for 10-year periods of protection and renewal (no more, and no less) in international applications. This reform is consistent with a trend in the international trademark community. In addition, countries must provide for service mark registration. Again, this obligation dovetails with an ongoing trend, and is otherwise imposed on all members of the World Trade Organization (WTO).

On May 22, 1997, the Subcommittee held a hearing on H.R. 1661. The Subcommittee received testimony from the following witnesses: The Honorable Bruce Lehman, Commissioner and Assistant Secretary, United States Patent and Trademark Office, United States Department of Commerce; Shaun Donnelly, Deputy Assistant Secretary, Trade Policy and Programs, United States Department of State, Bureau of Economics and Business Affairs; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; and David C. Stimson, President, International Trademark Association.

On June 10, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1661, amended, by voice vote, a quorum being present. On June 18, 1997, the full Committee met in open session and ordered favorably reported the bill

H.R. 1661, as amended, by voice vote, a quorum being present (H. Rept. 105–194). H.R. 1661 passed the House under suspension of the rules by a recorded vote of 425 in favor and 0 in opposition. The Senate companion bill, S. 2193, passed the Senate on September 17, 1998. S. 2193 passed the House under suspension of the rules by voice vote on October 9, 1998. S. 2193 was signed into law on October 30, 1998, and is Public Law 105–330.

To amend the Trademark Act of 1946 with respect to the dilution of famous marks, H.R. 3119

Introduced by Representative Roy Blunt, H.R. 3119 would bar an owner of a famous mark from bringing an action based on dilution more than 1 year after the date of registration of a third party's otherwise infringing mark or its use in commerce, whichever is later.

On May 21, 1998, the Subcommittee held a hearing on H.R. 3119. The Subcommittee received testimony regarding H.R. 3119 from the following witnesses: The Honorable Roy Blunt, U.S. Representative, 7th District of Missouri, accompanied by Michael Ingram, President, Ingram Enterprises, Inc.; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Fred Mostert, President-Elect, International Trademark Association; and Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., on behalf of the Intellectual Property Owners. No further action was taken on H.R. 3119.

Registration of Insignia of American Indian Tribes, S. 2193 and H.R. 4328

Introduced by Senator Orrin Hatch, S. 2193 consists of changes to public law that will enable the United States to implement the Trademark Law Treaty. It also empowers the Commissioner of Patents and Trademarks to conduct a study of the official insignia of federally- and state-recognized native American tribes. S. 2193, passed the Senate on September 17, 1998. S. 2193 passed the House under suspension of the rules by voice vote on October 9, 1998. S. 2193 was signed into law on October 30, 1998, and is Public Law 105–330.

Introduced by Representative Frank R. Wolf, H.R. 4328, the Omnibus Appropriations Bill, contained a provision, section 210, prohibiting the Patent and Trademark Office from using any funds to process or register any application submitted with the Patent and Trademark Office for any mark identical to the official tribal insignia of any federally recognized Indian tribe for a period of 1 year from the date of enactment of H.R. 4328. H.R. 4328 is Public Law 105–277.

International Expropriation of Registered Marks, H.R. 4328

Introduced by Representative Frank R. Wolf, H.R. 4328, the Omnibus Appropriations bill, contained a provision, section 211, which states that no transaction or payment shall be authorized or approved pursuant to section 515.527 of title 31, Code of Federal Regulations, with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that is used in connection with a business

or assets that were confiscated unless the original owner of the mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented. This provision prohibits any U.S. court from recognizing, enforcing or otherwise validating any assertion of rights by a designated national based on common law rights or registration obtained under section 515.527 of a confiscated mark, trade name, or commercial name. It also prohibits any U.S. court from recognizing, enforcing or otherwise validating any assertion of treaty rights by a designated national or its successor-in-interest under the Trademark Act of 1946 for a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated unless the original owner of the mark or the bona fide successor-in-interest has expressly consented.

On May 21, 1998, the Subcommittee held an oversight hearing on the issue of international expropriation of registered marks. This issue was brought to the attention of the Congress by the Bacardi Corporation. It acquired a Cuban rum company along with its trademark, "Havana Club" from Cuban owners who fled the country. The trademark was expropriated by a Cuban state enterprise. Litigation as to who owns the trademark is still pending. Bacardi wanted Congress to amend the Lanham Act by specifying that the PTO could not refuse registration to an otherwise valid trademark if the applicant demonstrates that he/she or a predecessor in interest owned the mark after January 1, 1959; that the mark, or a business property associated with the mark, was expropriated without compensation; and that the owner or his/her predecessor in interest has not authorized another party to make exclusive use of the mark. The Bacardi proposal would also compel the PTO to deny registration, recordation, or recognition to a mark if an opposer (the rightful owner) demonstrates these same conditions.

The Subcommittee received testimony from the following witnesses: Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Fred Mostert, President-Elect, International Trademark Association; Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., and Ignacio E. Sanchez, Kelly, Drye & Warren, LLP.

Next Generation Internet Research Act of 1998, H.R. 3332 (S. 1609)

Introduced by Senator Frist, S. 1609 contained an amendment offered by Senator Leahy which created a study by the National Research Council, in cooperation with the Patent and Trademark Office, the National Telecommunications and Information Administration, and other Department of Commerce entities, on short-term and long-term effects on trademark rights of adding new generic top-level domains and related dispute resolution procedures.

On June 6, 1998, the Senate passed S. 1609 and it was referred to the House Committee on Science. The Committee on Science included the Leahy amendment to S. 1609 in H.R. 3332, the "Next Generation Research Act of 1998." H.R. 3332 was passed in the House under suspension of the rules on September 14, 1998. H.R. 3332 passed in the Senate on October 8, 1998. The President

signed H.R. 3332 into law on October 28, 1998. It is Public Law 105-305.

OTHER INTELLECTUAL PROPERTY RIGHTS

Security and Freedom Through Encryption (SAFE) Act, H.R. 695

Introduced by Representative Bob Goodlatte, for himself, Ms. Lofgren, Mr. DeLay, Mr. Boehner, Mr. Coble, Mr. Sensenbrenner, Mr. Bono, Mr. Pease, Mr. Cannon, Mr. Conyers, Mr. Boucher, Mr. Gekas, Mr. Smith of Texas, Mr. Inglis of South Carolina, Mr. Bryant, Mr. Chabot, Mr. Barr of Georgia, Ms. Jackson Lee of Texas, Ms. Waters, Mr. Ackerman, Mr. Baker, Mr. Bartlett of Maryland, Mr. Campbell, Mr. Chambliss, Mr. Cunningham, Mr. Davis of Virginia, Mr. Dickey, Mr. Doolittle, Mr. Ehlers, Mr. Engel, Ms. Eshoo, Mr. Everett (withdrew on July 30, 1997), Mr. Ewing, Mr. Farr of California, Mr. Gejdenson, Mr. Gillmor, Mr. Goode, Ms. Norton, Mr. Horn, Ms. Eddie Bernice Johnson of Texas (withdrew on May 13, 1997), Mr. Sam Johnson of Texas, Mr. Kolbe, Mr. McIntosh, Mr. McKeon, Mr. Manzullo, Mr. Matsui, Mr. Mica, Mr. Minge, Mr. Moakley, Mr. Nethercutt, Mr. Packard, Mr. Sessions, Mr. Upton, Mr. White, Ms. Woolsey, Mr. Hastings of Washington, Mr. Cook, Mr. Fox of Pennsylvania, Mrs. Morella, Mr. Bilbray, Mr. Solomon (withdrew on April 29, 1997), Mrs. Myrick, Mr. DeFazio, Mr. Watkins, Mr. Franks of New Jersey, Mr. Martinez, Mr. Shays, Mr. Nadler, Mr. Rothman (withdrew on July 24, 1997), Mr. Hostettler, Mr. Faleomavaega, Mrs. Linda Smith of Washington, Mr. Paxon, Mr. Weldon of Florida, Mr. Gordon, Mr. Hutchinson, Ms. Rivers, Mr. Snowbarger, Mrs. Tauscher, Mr. Delahunt, Mr. Rohrabacher, Mr. Cooksey, Mr. Moran of Virginia, Mr. Gallegly, Mr. Camp, Mr. Wexler, Mr. Weller, Mr. Sherman, Mr. Dreier, Mr. Calvert, Mr. Capps, Mr. Linder, Mr. McInnis, Mr. Graham, Mr. Thomas, Ms. McKinney, Ms. McCarthy of Missouri, Mr. Frank of Massachusetts, Mr. Sisisky, Mr. Forbes, Mr. Blunt, Mr. Istook, Mr. Pickering, Mr. Dooley of California, Mr. Latham, Mr. Cox of California, Mr. Roemer, Mr. Fazio of California, Mr. Adam Smith of Washington, Mr. Kind of Wisconsin, Mr. Ballenger, Mr. Ney, Mr. Salmon, Mr. Houghton, Mr. McHugh, Ms. Furse, Mr. Hastings of Florida, Mr. Diaz-Balart, Mr. King of New York, Ms. Slaughter, Mr. Frost, Mr. Burton of Indiana, Ms. Dunn of Washington, Ms. Christian-Green, Mr. English of Pennsylvania, Mr. Lampson, Mr. Brady, Mr. Smith of New Jersey, Mrs. Chenoweth, Mr. Coburn, Mrs. Cubin, Mr. Jones (withdrew on September 8, 1997), Mr. Bob Schaffer, Mr. Barton of Texas, Mr. Largent, Mr. Clement, Mr. Hilliard, Mr. Luther, Mr. Crapo, Mr. Rogan, Mr. Andrews, Mr. Bonilla, Ms. Ros-Lehtinen, Mr. Gutknecht, Mr. Hayworth, Mr. Bunning of Kentucky (withdrew on July 30, 1997), Mr. Sununu, Mr. Scarborough, Mr. Neumann, Mr. Sanford, Mr. Norwood, Ms. Pryce of Ohio, Mr. Lewis of Kentucky, Mr. Kasich, Mr. Archer, Mr. Hansen, Mr. Herger, Mr. Riley, Mr. Hill, Mr. Tauzin, Mr. Moran of Kansas, Mr. Burr of North Carolina, Mr. Blumenauer, Mr. Pomeroy, Mr. Riggs, Mr. Kingston, Mr. Miller of California, Mr. Duncan, Mr. Whitfield, Mr. Smith of Oregon, Mr. Quinn, Mr. Kennedy of Massachusetts, Mrs. Kelly, Mr. Metcalf, Mr. Markey, Mr. Neal of Massachusetts, Mrs. Emerson, Mr. Christensen, Mr. Watts of Oklahoma, Mr. Souder,

Mr. Pombo, Mr. Stenholm, Mr. Tiahrt, Mr. McGovern, Mr. Parker, Mr. Wicker, Mr. Barrett of Nebraska, Mr. Gephardt, Mr. Kim, Mrs. Johnson of Connecticut, Mr. Lucas of Oklahoma, Mr. Brown of California, Mr. Knollenberg, Mr. Talent, Mr. Tierney, Mr. Klug, Mr. Jenkins, Mr. Condit, Mr. Hall of Texas, Mr. Bachus, Mr. Crane, Mr. Wamp, Mr. Castle, Mr. LaHood, Mr. Goodling, Mr. Shimkus, Mr. Serrano, Mr. Holden, Mr. Hobson, Mr. Rahall, Mr. Thompson, Mr. Thune, Mr. Clyburn, Mr. Hilleary, Mr. Deal of Georgia, Mr. Collins, Mr. Dan Schaefer of Colorado, Mr. Thornberry (withdrew on September 4, 1997), Mr. Hall of Ohio, Mr. Livingston, Mr. Hoekstra, Mr. Wise, Mr. Filner, Mr. McDermott, Ms. Sanchez, Mrs. Thurman, Mr. Tanner, Mr. Pastor, Ms. Kaptur, Mr. Lewis of Georgia, Mr. Jackson of Illinois, Ms. Millender-McDonald, Mr. Cummings, Mr. Jefferson, Mr. Ford, Mr. Barrett of Wisconsin, Mr. Fattah, Mr. Barcia of Michigan, Ms. Holley of Oregon, Mrs. Northup, Mr. Vento, Mr. Bonior, Mrs. Clayton, Mrs. Kennelly of Connecticut, Mr. Pallone, Mr. Olver, Ms. Kilpatrick, Ms. DeLauro, Mrs. Meek of Florida, Ms. Stabenow, Mr. Stearns, Mr. Hefley (withdrew on July 30, 1997), Mr. Radanovich, Mr. Taylor of North Carolina, Mr. Walsh, Mr. Nussle, Mr. Davis of Illinois, and Mr. Rush, H.R. 695 makes a series of changes to U.S. encryption policy which will facilitate the use of encryption. Current policy does not restrict the domestic use, sale, or import of encryption. Section 2 of H.R. 695 generally codifies that policy by affirmatively prohibiting restrictions on the domestic use and sale of encryption. It also prohibits any mandatory key escrow system, allowing voluntary systems to develop in the marketplace, and provides criminal penalties for the knowing and willful use of encryption to avoid detection of other federal felonies.

At the same time, however, the export of strong encryption products is tightly restricted under the export control laws. Section 3 of H.R. 695 significantly relaxes those export controls. In addition, section 4 requires that the Attorney General compile statistics on instances in which these new policies may interfere with the enforcement of federal criminal laws.

On March 20, 1997, the Subcommittee held a hearing on H.R. 695. The Subcommittee received testimony from the following witnesses: The Honorable William Reinsch, Under Secretary, Bureau of Export Administration, Department of Commerce; The Honorable William Crowell, Deputy Director, National Security Agency; The Honorable Robert Litt, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; Mrs. Phyllis Schlafly, President, Eagle Forum; Ira Rubenstein, Senior Corporate Attorney, Microsoft Corporation, on behalf of the Business Software Alliance; Roberta Katz, Senior Vice-President, General Counsel, and Secretary, Netscape Communications Corporation, on behalf of the Information Technology Association of America and the Software Publishers Association; Jonathan Seybold, Chairman of the Executive Committee and Director, Pretty Good Privacy, Inc.; Thomas Morehouse, President and Chief Executive Officer, SourceFile, Inc.; Grover Norquist, President, Americans for Tax Reform; Philip Karn, Staff Engineer, Qualcomm, Inc.; Marc Rotenberg, Director, Electronic Privacy Information Center; and

Jerry Berman, Executive Director, Center for Democracy and Technology.

On April 30, 1997, the Subcommittee met in open session and ordered favorably reported the bill H.R. 695, by voice vote, a quorum being present. On May 14, 1997, the full Committee met in open session and ordered favorably reported the bill H.R. 695, amended, by voice vote, a quorum being present (H. Rept. 105–108, part 1). On July 25, 1997, the Committee on International Relations ordered favorably reported the bill H.R. 695, amended, to the House (H. Rept. 105–108, part 2). On September 12, 1997, the Committee on National Security ordered favorably reported the bill H.R. 695, amended, to the House (H. Rept. 105–108, part 3). On September 16, 1997, the Permanent Select Committee on Intelligence ordered favorably reported the bill H.R. 695, amended, to the House (H. Rept. 105–108, part 4). On September 29, 1997, the Committee on Commerce ordered favorably reported the bill H.R. 695, amended, to the House (H. Rept. 105–108, part 5). H.R. 695 was placed on the Union Calendar but it was not considered.

Vessel Hull Design Protection Act, H.R. 2696

Introduced by Subcommittee Chairman Coble and Mr. Shaw, H.R. 2696 offers limited protection for original designs of vessel hulls which are often misappropriated by persons who indulge in a marine industry practice known as “hull splashing.”

On October 23, 1997, the Subcommittee held a hearing on H.R. 2696. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register, Copyright Office of the United States; William T. Fryer, III, Professor, University of Baltimore School of Law; Mick Blackistone, Vice President, Government Relations, National Marine Manufacturers Association; Don Cramer, Corporate Counsel, Bayliner Marine Corporation; and J.J. Marie, President, Zodiak of North America, Inc.

On February 26, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2696, amended, by voice vote, a quorum being present. On March 3, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2696, as amended, by voice vote, a quorum being present (H. Rept. 105–436). H.R. 2696 passed the House under suspension of the rules on March 18, 1998. During the conference on H.R. 2281, the “Digital Millennium Copyright Act,” the provisions of H.R. 2696 were incorporated into the conference report on H.R. 2281, along with other additions. H.R. 2281 was signed by the President on October 28, 1998, and is Public Law 105–304.

Collections of Information Antipiracy Act, H.R. 2652

Introduced by Subcommittee Chairman Coble, Mr. Hall of Ohio, Mrs. Morella, Mr. Vento, Mr. LaHood, and Mrs. Tauscher, H.R. 2652 responds to a need to complement current copyright law with a misappropriation law which prevents the wholesale copying of another’s collection of information which harms the market of the original collector. The bill provides an incentive for the investment and development of collections of information while maintaining sufficient protections for continued access and use of collections by not-for-profit educational, library, research and scientific entities.

The Collections of Information Antipiracy Act prohibits the misappropriation of valuable commercial collections by unscrupulous competitors who grab data collected by others, repackage it, and market a product that threatens competitive injury to the original collection. This protection is modeled in part on the Lanham Act, which already makes similar kinds of unfair competition a civil wrong under federal law. Importantly, this bill would maintain existing protections for collections of information afforded by copyright and contract rights. It is intended to supplement these legal rights, not replace them.

On October 23, 1997, the Subcommittee held a hearing on H.R. 2652. The Subcommittee received testimony from the following witnesses: Paul Warren, Executive Publisher, Warren Publishing, Incorporated, on behalf of the Coalition Against Database Piracy; Laura D'Andrea Tyson, Former National Economic Advisor to the President and Former Chair of the White House Counsel on Economic Advisors, Consultant to Reed-Elsevier, Inc., and the Thomson Corporation; James G. Neal, Sheridan Director of the Milton S. Eisenhower Library, Johns Hopkins University; Dr. William A. Wulf, President, National Academy of Engineering, on behalf of the National Research Council; Professor Jerome A. Reichman, Visiting Professor, University of Michigan Law School, Professor of Law, Vanderbilt University, Senior Advisor to the National Research Council; and Dr. Robert S. Ledley, Director of Medical Computing, Biophysics Division, Georgetown University Medical Center.

On February 12, 1998, the Subcommittee held a hearing on H.R. 2652. The Subcommittee received testimony from the following witnesses: Robert Aber, Senior Vice President and General Counsel, Nasdaq Stock Market; Dr. Debra W. Stewart, Dean of the Graduate School, North Carolina State University, on behalf of the Association of American Universities; Richard Corlin, M.D., Speaker of the House of Delegates, American Medical Association; William Hammack, President, The Sunshine Pages; Professor Jane Ginsberg, Columbia University School of Law; Jonathan Band, Partner, Morrison & Foerester, LLP, on behalf of the On-line Banking Association; and Tim Casey, Information Technology Association of America.

On February 26, 1998, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2652, amended, by voice vote, a quorum being present. On March 3, 1998, the full Committee met in open session and ordered favorably reported the bill H.R. 2652, as amended, by voice vote, a quorum being present (H. Rept. 105-436). H.R. 2652 passed the House under suspension of the rules on March 18, 1998. The provisions of H.R. 2652 were incorporated by the House into H.R. 2281, the "Digital Millennium Copyright Act," but were not included in the conference report on H.R. 2281.

OVERSIGHT ACTIVITIES

Judicial Discipline and Misconduct

On May 15, 1998, the Subcommittee held an oversight hearing on the issue of judicial discipline and misconduct. The Honorable Bob Barr, U.S. Representative, 7th District of Georgia; The Honor-

able Tom DeLay, U.S. Representative, 22nd District of Texas; The Honorable John N. Hostettler, U.S. Representative, 8th District of Indiana; The Honorable Nita M. Lowey, U.S. Representative, 18th District of New York; Thomas Jipping, Director of the Center for Law & Democracy, Judicial Selection Monitoring Project, Free Congress Foundation; Charlotte Stout, Greenfield, Tennessee; Bruce Fein, McLean, Virginia; Lino Graglia, Professor, University of Texas School of Law; Roger Pilon, Director for the Center for Constitutional Studies, Cato Institute; and Wade Henderson, Executive Director, Leadership Conference, Washington, D.C.

Music Licensing in Restaurants and Retail and Other Establishments

On July 17, the Subcommittee held an oversight hearing on the issue of music licensing in restaurants and retail and other establishments. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States, The Library of Congress; Robert Stoll, Administrator, Office of Legislative Affairs, United States Department of Commerce, Patent and Trademark Office; Wayland Holyfield, President, Nashville Songwriters' Association International, on behalf of the American Society of Composers Authors and Publishers; Mac Davis, Songwriter, on behalf of Broadcast Music Incorporated; Pat Collins, Senior Vice-President, Licensing, SESAC, Inc.; Debra Leach, Executive Director, National Licensed Beverage Association; Peter Kilgore, General Counsel, National Restaurant Association; Pete Madland, President, Wisconsin Tavern League, Owner of "Pete's Landing"; Thelma Showman, Owner, Thelma Showman's School of Dance; and Gary Shapiro, President, Consumer Electronics Manufacturers Association.

Electronic Copyright Piracy

On March 26, 1998, the Subcommittee conducted an oversight hearing on privacy in electronic communications. The hearing focused on privacy over the Internet, privacy in electronic telecommunications, and whether and to what extent changes in the law or government regulation is necessary.

The Subcommittee received testimony from the following witnesses: Ambassador, David Aaron, Under Secretary of Commerce for International Trade, United States Department of Commerce; David Medine, Associate Director for Credit Practices, Bureau of Consumer Protection, Federal Trade Commission; Professor Fred H. Cate, Louis F. Niezen Faculty Fellow, Indiana University School of Law; Marc Rotenberg, Executive Director, Electronic Privacy Information Center; and Deirdre Mulligan, Staff Counsel, Center for Democracy and Technology.

Effect of Pre-1978 Distribution of Recordings Containing Musical Compositions

On June 27, 1997, the Subcommittee held an oversight hearing on the effect of pre-1978 distribution of recordings containing musical compositions. The Subcommittee received testimony from the following witnesses: Paul Williams, Songwriter, on behalf of the

American Society of Composers, Authors and Publishers; and Ed Murphy, President, National Music Publishers Association.

Copyright Term Extension

On June 27, 1997, the Subcommittee held an oversight hearing on the issue of copyright term extension. The Subcommittee received testimony regarding copyright term extension from the following witnesses: Fritz Attaway, General Counsel, Motion Picture Association of America; George David Weiss, Songwriter, Songwriters Guild of America; Frances Preston, President, Broadcast Music Incorporated; Julius Epstein, Author of "Casablanca," Writers Guild of America, West; and Professor Jerome Reichman, Vanderbilt Law School.

Copyright Per Program Licenses

On June 27, 1997, the Subcommittee held an oversight hearing on the issue of per program licenses, which are addressed in H.R. 789. The Subcommittee received testimony from the following witnesses: Bob Sterling, President, Coalition to Save America's Gospel Music Heritage; Ed Atsinger, President, Salem Communications Corporation; and Dirk Hallemeier, Radio Station Owner, St. Louis Mid-American Gospel.

Copyright Licensing Regimes Covering Retransmission of Broadcast Signals

On October 30, 1997, the Subcommittee held an oversight hearing on copyright licensing regimes covering retransmission of broadcast signals. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register, U.S. Copyright Office, The Library of Congress; Chuck Hewitt, President, Satellite Broadcasting and Communications Association; William (Rik) Hawkins, Owner, Starpath of Hardin County, Elizabethtown, Kentucky; Steven J. Cox, Senior Vice President, New Ventures, DirecTV, Incorporated, El Segundo, California; James F. Goodman, President and Chief Executive Officer, Capitol Broadcasting Company, Incorporated, Raleigh, North Carolina; Tom Howe, Director and General Manager of North Carolina University Center for Public Television, Public Broadcasting Service (PBS)/National Public Radio (NPR); Thomas J. Ostertag, General Counsel, Major League Baseball, Office of the Commissioner; Fritz E. Attaway, Senior Vice President, Motion Picture Association of America; Decker Anstrom, President, National Cable Television Association; and Wade Hargrove, Networks Affiliated Stations Alliance, Raleigh, North Carolina.

On February 4, 1998, the Subcommittee conducted another oversight hearing on copyright licensing regimes covering retransmission of broadcast signals. The Subcommittee received testimony from the following witnesses: Charles W. Ergen, President and Chief Executive Officer of EchoStar Communications Corporation; Peter C. Boylan, III, President and Chief Executive Officer of United Video Satellite Group; H. Thomas Casey, Chief Executive Officer and President of Primetime 24; Matthew M. Polka, President of the Small Cable Business Association; William Sullivan, Board of Directors of the National Association of Broadcasters;

James J. Popham, Vice President and General Counsel of the Association of Local Television Stations; Bob Phillips, Chief Executive Officer of the National Rural Telecommunications Cooperative; and Marsha E. Kessler, Vice President, Copyright Royalty Distribution on behalf of the Motion Picture Association of America.

Internet Domain Name Trademark Protection

On November 5, 1997, the Subcommittee conducted an oversight hearing on Internet domain name trademark protection. The Subcommittee received testimony from the following witnesses: The Honorable Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Patent and Trademark Office, United States Department of Commerce; Gabriel A. Battista, Chief Executive Officer, Network Solutions, Inc., Michael K. Kirk, Executive Director, American Intellectual Property Law Association; David Stimson, President, International Trademark Association; John Wood, Senior Internet Consultant, PRINCE, plc; and Douglas J. Wood, Executive Partner, Hall, Dickler, Kent, Friedman & Wood, on behalf of the Coalition for Advertising Supported Information and Entertainment.

Attorneys Fees and the Proposed Global Tobacco Settlement

On December 10, 1997, the Subcommittee held a hearing on attorneys fees and the proposed global tobacco settlement. The Subcommittee received testimony from the following witnesses: The Honorable Scott McInnis, U.S. Representative, 3rd District of Colorado; The Honorable Christopher Cox, U.S. Representative, 47th District of California; The Honorable Paul McHale, U.S. Representative, 15th District of Pennsylvania; Michael Moor, Attorney General, State of Mississippi; Richard F. Scruggs, Esq., Scruggs, Millette, Lawson, Bozeman & Dent; Joseph Rice, Esq., Ness, Motley, Loadholt, Richardson & Poole; C. Steven Yerrid, Esq., Yerrid, Knopik & Mudano.

Mass Torts and Class Action Lawsuits

On March 5, 1998, the Subcommittee held an oversight hearing on the subject of mass torts and class actions. The Subcommittee received testimony from the following witnesses: The Honorable James P. Moran, U.S. Representative, 8th District of Virginia; Richard L. Thornburgh, Esq., Kirkpatrick & Lockhart, LLP; The Honorable Anthony J. Scirica, United States Circuit Judge, U.S. Court of Appeals for the 3rd Circuit; John P. Frank, Esq., Lewis & Roca; Professor Susan P. Koniak, Boston University School of Law; Ralf G. Wellington, Esq., Schnader, Harrison, Segal & Lewis, LLP; Jack W. Martin, Vice President-General Counsel, Ford Motor Company; John L. McGoldrick, Senior Vice President for Law and Strategic Planning and General Counsel, Bristol-Meyers Squibb Company; Elizabeth J. Cabraser, Attorney at Law, Lief, Cabraser, Heinmann & Bernstein, LLP; and Dr. John B. Hendricks, President, Alabama Cryogenic Engineering, Inc.

U.S. Patent and Trademark Office

On March 19, 1998, the Subcommittee conducted an oversight hearing on the administration and operations of the Patent and

Trademark Office. The Subcommittee received testimony from the following witnesses: The Honorable Bruce A. Lehman, Assistant Secretary of Commerce & Commissioner of Patents and Trademarks, Patent and Trademark Office; David Stimson, President, International Trademark Association; Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Norman L. Balmer, President, Intellectual Property Owners and Chief Patent Counsel of Union Carbide Corporation; Roger N. Coe, Director, Patents and Licensing at Elkhart Site, Bayer Corporation, on behalf of the Section of Intellectual Property Law of the American Bar Association; Ronald J. Stern, President, Patent Office Professional Association; and Robert M. Tobias, National President, National Treasury Employees Union.

U.S. Copyright Office

On July 23, 1998, the Subcommittee held an oversight hearing on the administration and operation of the Copyright Office of the United States. The Subcommittee received testimony from the following witnesses: The Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States, The Library of Congress; and Shira Perlmutter, Associate Register for Policy and International Affairs, Copyright Office of the United States, The Library of Congress; accompanied by: David O. Carson, General Counsel, Copyright Office of the United States, The Library of Congress; Marilyn Kretsinger, Assistant General Counsel, Copyright Office of the United States, The Library of Congress; and Louis Mortimer, Chief Operating Office, Copyright Office of the United States, The Library of Congress.

Celebrity Imposters/Federal Right of Publicity

On May 21, 1998, the Subcommittee held an oversight hearing on “celebrity imposters”; or the issue of misappropriation of musical group “personas” and the resulting effect on authentic or original band members. It focused on a federal right of publicity and other legislative proposals that would proscribe fraudulent performances by individuals posing as celebrities or members of a celebrity band.

The Subcommittee received testimony from the following witnesses: Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Fred Mostert, President-Elect, International Trademark Association; Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., on behalf of the Intellectual Property Owners; Sam Moore, Member of Musical Group Sam & Dave; and Joe Terry, Member of Musical Group Danny & The Juniors.

State Commodity Commissions and Product Certification

On May 21, 1998, the Subcommittee held an oversight hearing on Representative Crapo’s proposal to amend the Lanham Act to prevent the advertising of potatoes grown in Idaho as “Idaho Potatoes” when they otherwise fail to meet those quality standards imposed by that state’s commodity commission.

The Subcommittee received testimony from the following witnesses: The Honorable Michael Crapo, U.S. Representative, 2nd District of Idaho; Michael K. Kirk, Executive Director, American

Intellectual Property Law Association; Fred Mostert, President-Elect, International Trademark Association; and Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., on behalf of Intellectual Property Owners.

International Expropriation of Registered Marks

On May 21, 1998, the Subcommittee held an oversight hearing on the issue of international expropriation of registered marks. This issue was brought to the attention of the Congress by the Bacardi Corporation. It acquired a Cuban rum company along with its trademark, "Havana Club" from Cuban owners who fled the country. The trademark was expropriated by a Cuban state enterprise. Litigation as to who owns the trademark is still pending. Bacardi wanted Congress to amend the Lanham Act by specifying that the PTO could not refuse registration to an otherwise valid trademark if the applicant demonstrates that he/she or a predecessor in interest owned the mark after January 1, 1959; that the mark, or a business property associated with the mark, was expropriated without compensation; and that the owner or his/her predecessor in interest has not authorized another party to make exclusive use of the mark. The Bacardi proposal would also compel the PTO to deny registration, recordation, or recognition to a mark if an opposer (the rightful owner) demonstrates these same conditions.

The Subcommittee received testimony from the following witnesses: Michael K. Kirk, Executive Director, American Intellectual Property Law Association; Fred Mostert, President-Elect, International Trademark Association; Garo A. Partoyan, General Counsel for Marketing and Technology, Mars, Inc., and Ignacio E. Sanchez, Kelly, Drye & Warren, LLP.

Patent Extension Review

On May 21, 1998, the Subcommittee held an oversight hearing on the issue of the process involved in patent extension review.

The Subcommittee received testimony from the following witnesses: Peter B. Hutt, Partner, Covington & Burling; Gerald F. Meyer, Former Acting Director and Deputy Director of the Federal Drug Administration's Center for Drug Evaluation and Research; and Bruce Downey, Chairman and Chief Executive Officer, Barr Laboratories, Inc.

U.S. Judicial Conference, Administrative Office of the United States Courts, and the Federal Judicial Center

On June 11, 1998, the Subcommittee held an oversight hearing on the administration and operation of the Judicial Conference of the United States, the Administrative Office of the United States Courts and the Federal Judicial Center. The Subcommittee received testimony from the following witnesses: The Honorable Wm. Terrell Hodges, Chairman, Executive Committee, Judicial Conference of the United States; Leonidas Ralph Mecham, Director, Administrative Office of the United States Courts; and the Honorable Rya W. Zobel, Director, Federal Judicial Center.

SUMMARY OF OVERSIGHT PLAN AND IMPLEMENTATION

Pursuant to clause 2(d) of Rule X of the House, the Committee on the Judiciary submitted, in February, 1997, an oversight plan including matters to be referred to the Subcommittee on Courts and Intellectual Property. Following is a summary of the portions of that plan relating to the Subcommittee and a summary of the Subcommittee's activities to implement the oversight plan.

Article III Courts

In its oversight plan, the Subcommittee proposed to continue to devote considerable time and resources to improving the delivery of justice by Article III Federal courts through its oversight responsibility for (1) the Administrative Office of the U.S. Courts; (2) the Federal Judicial Center; (3) the Judicial Conference of the United States; and (4) United States Attorneys within the Department of Justice.

Subcommittee hearings and legislation focused on the needs and recommendations of the Administrative Office of U.S. Courts and the federal judiciary, recommended changes under the Rules Enabling Act, judicial reform and discipline, existing and new arbitration programs in U.S. District Courts, and prosecutorial policies of U.S. Attorneys.

The U.S. Copyright System

The Subcommittee also proposed to continue to devote considerable time to oversee the operation of the copyright system in a world of ever changing technology, recognizing that it is vital to the protection of our copyright industry that the Subcommittee be vigilant in its exercise of its jurisdiction to carry out its constitutional mandate to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;" (Art. I, Sec. 8, cl. 8).

Subcommittee hearings and legislation focused on the operation of the U.S. Copyright Office, which is part of the Library of Congress, greater protection for copyrighted information that could be accessed by users of the internet, the licensing of musical works by performance rights licensing associations to bars, restaurants, and other venues, annual losses of U.S. property to international piracy and a protocol to the Berne Convention for the Protection of Literary and Artistic Works.

The U.S. Patent and Trademark Systems

The Subcommittee proposed to exercise its oversight responsibilities for the operation of the U.S. Patent and Trademark Office.

Subcommittee hearings and legislation focused on government corporation status for the USPTO, the cost to U.S. companies and inventors of applying for and obtaining separate patents in each of 150 or more countries, the fairness and status of reexamination procedures for applicants, the implementation of trademark treaties, and the effects of the new patent term.

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

LAMAR SMITH, Texas, *Chairman*

ELTON GALLEGLEY, California	MELVIN L. WATT, North Carolina
WILLIAM L. JENKINS, Tennessee	CHARLES E. SCHUMER, New York
EDWARD A. PEASE, Indiana	HOWARD L. BERMAN, California
CHRISTOPHER B. CANNON, Utah	ZOE LOFGREN, California
ED BRYANT, Tennessee	ROBERT WEXLER, Florida
SONNY BONO, California ¹	
JAMES E. ROGAN, California ²	
MARY BONO, California ³	

¹Sonny Bono, California, deceased January 5, 1998.

²James E. Rogan, California, assigned March 3, 1998, to fill the vacancy resulting from the death of Sonny Bono, California.

³Mary Bono, California, assigned June 17, 1998.

Tabulation and disposition of bills referred to the Subcommittee

Legislation referred to the Subcommittee	159
Legislation reported favorably to the full Committee	16
Legislation reported adversely to the full Committee	0
Legislation reported without recommendation to the full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	12
Legislation pending before the full Committee	6
Legislation discharged from the Committee	11
Legislation reported to the House	12
Legislation pending in the House	0
Legislation passed by the House	19
Legislation pending in the Senate	6
Legislation included in the Appropriations bill	3
Legislation vetoed by the President (not overridden)	0
Legislation enacted into public law	12
Legislation on which hearings were held	18
Days of hearings (legislative and oversight)	27
Private Bills:	
Claims bills referred to Subcommittee	34
Immigration bills referred to Subcommittee	40
Bill on which hearings were held	0
Claims bills heard/reported favorably to the full Committee	6
Immigration bills heard/reported favorably to the full Committee	10
Claims bills ordered reported to the House	6
Immigration bills ordered reported to the House	10
Claims bills which passed the House	6
Immigration bills which passed the House	9
Claims bills pending in the House	0
Immigration bills pending in the House	1
Claims bills pending in the Senate	5
Immigration bills pending in the Senate	0
Claims bills which became law	1
Immigration bills which became law	9

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Immigration and Claims has legislative and oversight jurisdiction over matters involving: immigration and naturalization, admission of refugees, treaties, conventions and

international agreements, claims against the United States, federal charters of incorporation, private immigration and claims bills, and other appropriate matters as referred by the Chairman of the Judiciary Committee.

PUBLIC LEGISLATION ENACTED INTO LAW

IMMIGRATION

S. 670—U.S. Citizenship for Children Born Abroad

On March 18, 1997, Representative Bill McCollum introduced H.R. 1109 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

On April 30, 1997, Senator Spencer Abraham introduced S. 670, a similar bill.

On May 8, 1997, the Senate Judiciary Committee ordered S. 670 favorably reported to the Senate.

On May 14, 1997, S. 670 passed the Senate by unanimous consent.

On July 15, 1997, the House Subcommittee on Immigration and Claims reported H.R. 1109 to the Judiciary Committee by voice vote.

On July 23, 1997, the House Judiciary Committee ordered H.R. 1109 reported to the House by voice vote.

On July 28, 1997, S. 670 was discharged from the House Judiciary Committee. On the same day, the House passed H.R. 1109 by voice vote under suspension of the rules and laid it on the table. The House then passed S. 670 by voice vote.

On August 8, 1997, the President signed S. 670 into law (Public Law 105-38).

S. 1198, the Religious Workers Act of 1997

“Special immigrant” visas (9,940 each year) are available for a number of different categories of aliens. One such category is religious worker. An alien (along with spouse and children) can qualify for a special immigrant visa if the alien has been a member for the immediately preceding 2 years of a religious denomination having a bona fide nonprofit, religious organization in the United States and seeks to enter the United States to (1) serve as a minister, (2) serve in a professional capacity in a religious vocation or occupation at the request of the organization, or (3) serve in a religious vocation or occupation at the request of the organization, and in each case has been carrying out such work continuously for at least the prior 2 years. The two non-minister categories are limited to 5,000 visas a year and were set to sunset on October 1, 1997. S. 1198, the “Religious Workers Act of 1997,” extended the sunset date to October 1, 2000.

In addition, S. 1198 allows the Secretary of State to waive non-immigrant visa fees for aliens coming to the United States for charitable purposes involving health or nursing care, the provision of food or housing, job training, or any other similar direct service or assistance to poor or otherwise needy individuals.

Finally, S. 1198 extended the deadline by which the Attorney General had to reduce the number of documents acceptable for new

hires to prove identity and work eligibility (as provided in section 412(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208)) from September 30, 1997, to March 30, 1998.

On September 5, 1997, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 2412, extending the sunset date for the non-minister religious worker special immigrant visas, making certain changes to the program (and to the nonimmigrant religious worker visa program), and extending the visa waiver pilot program and the Attorney General's deadline for reducing the number of acceptable documents for new hires.

On September 8, 1997, the Subcommittee on Immigration and Claims ordered H.R. 2412 reported by a voice vote.

On September 18, 1997, Senator Spencer Abraham introduced S. 1198. On the same day, S. 1198 was passed by the Senate as amended by unanimous consent.

On October 1, 1997, S. 1198 was passed by the House as amended under suspension of the rules by voice vote. On the same day, the Senate passed S. 1198 by unanimous consent as amended by the House.

On October 6, 1997, the President signed S. 1198 into law (Public Law 105-54).

H.R. 2464, Exempting Internationally Adopted Children 10 and Under from the Immunization Requirement of the Immigration and Nationality Act

Section 341 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, requires that immigrants, prior to lawful admission, have received vaccinations against specified communicable diseases. H.R. 2464 waives this requirement for alien children 10 years of age and under who are adopted by United States citizens if, prior to the admission of the child, the sponsor has executed an affidavit stating that within a specified time period the child will receive appropriate vaccinations.

On September 11, 1997, Representative Bill McCollum introduced H.R. 2464.

On September 15, 1997, the Subcommittee on Immigration and Claims was discharged from further consideration of H.R. 2464.

On September 17, 1997, the Judiciary Committee ordered H.R. 2464 reported as amended by voice vote.

On October 1, 1997, the Judiciary Committee reported H.R. 2464 (H. Rept. 105-289).

On October 21, 1997, the House passed H.R. 2464 under suspension of the rules by a vote of 420-0.

On November 4, 1997, the Senate passed H.R. 2464 by unanimous consent.

On November 12, 1997, the President signed H.R. 2464 into law (Public Law 105-73).

Nicaraguan Adjustment and Central American Relief Act of 1997

The Nicaraguan Adjustment and Central American Relief Act of 1997 provides certain nationalities with the opportunity to apply for relief from removal.

Section 202 of NACARA allows Nicaraguans and Cubans who have been physically present in the United States continuously since December 1, 1995, to apply for adjustment of status before April 1, 2000. Once granted lawful permanent resident status, their spouses, children and certain unmarried sons and daughters may apply for adjustment of status.

Section 203 of NACARA amends the transition rules established in section 309(c)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208). Prior to IIRIRA, aliens were eligible for suspension of deportation if they could establish continuous physical presence in the United States for 7 years, good moral character during the 7-year period, and extreme hardship to themselves or an immediate family member who was a citizen or permanent legal resident of the United States in the event the alien was deported. Time accrued during deportation proceedings counted toward the 7 years continuous physical presence. Since IIRIRA, aliens have been eligible for “cancellation of removal” if they establish continuous physical presence of 10 years, good moral character during the period, and exceptional and extremely unusual hardship to a citizen or lawfully resident family member if the alien is deported. In addition, the 10-year period must accrue before the alien receives a “notice to appear” for removal proceedings.

Section 203(a) of NACARA exempts certain categories of aliens from the new rules provided by section 309(c)(5) of IIRIRA. They will be processed under the old suspension of deportation standards. The exempted classes include the following aliens (provided such aliens have not been convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act): (1) Salvadorans who entered the United States on or before September 19, 1990, and who, on or before October 31, 1991, either registered for benefits under the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) or applied for Temporary Protected Status under section 244A of the INA; (2) Guatemalans who entered the United States on or before October 1, 1990, and registered for benefits under the ABC settlement on or before December 31, 1991; (3) Salvadorans and Guatemalans not included in the foregoing groups who applied for asylum on or before April 1, 1990; (4) the spouses or children of aliens described in the foregoing paragraphs at the time the alien’s application for relief is decided upon; (5) the adult, unmarried sons or daughters of aliens described in the foregoing paragraphs if the sons or daughters entered the United States on or before October 1, 1990; and (6) nationals of the Soviet Union (or any of its successor republics), Latvia, Estonia, Lithuania, Poland, Czechoslovakia (or its successor republics), Romania, Hungary, Bulgaria, Albania, East Germany, or Yugoslavia (or its successor republics) who entered the United States on or before December 31, 1990, and applied for asylum on or before December 31, 1991.

On November 19, 1997, the President signed the “District of Columbia Appropriations Act of 1998” into law (H.R. 2607, Public Law 105–100). NACARA was enacted into law as title II of the Act.

On November 13, 1997, the Senate passed S. 1565 by unanimous consent, which made technical corrections to NACARA. On the same day, the House passed S. 1565 by unanimous consent.

On December 2, 1997, the President signed S. 1565 into law (Public Law 105–139).

Expanded War Crimes Act of 1997

The “Expanded War Crimes Act of 1997” expanded the number of war crimes violation of which would subject the perpetrator to federal criminal penalties. The “War Crimes Act of 1996” had been enacted into law (Public Law 104–192) to carry out the obligation the United States incurred when it ratified the 1949 Geneva Conventions for the Protection of Victims of War to provide criminal penalties for grave breaches of the conventions. “The Expanded War Crimes Act of 1997” expanded the number of punishable offenses to include violations of certain articles of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, of common Article 3 of the 1949 Geneva Conventions (or any protocol to such conventions to which the United States is a party and which deals with non-international armed conflict), or of certain provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996, when the United States is a party to such Protocol.

On April 16, 1997, H.R. 1348, the “Expanded War Crimes Act of 1997,” was introduced by Representative Walter Jones.

On July 15, 1997, the Subcommittee on Immigration and Claims ordered H.R. 1348 reported by voice vote.

On July 23, 1997, the Judiciary Committee ordered H.R. 1348 favorably reported by a recorded vote of 17 to 4.

On July 25, 1997, the Judiciary Committee reported H.R. 1348 to the House (H. Rept. 105–204).

On July 29, 1997, the House passed H.R. 1348 under suspension of the rules by a vote of 391–32.

H.R. 1348 was placed (as section 583 of title V) in H.R. 2159, the “Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998,” which the President signed into law on November 26, 1997 (Public Law 105–118).

Sunset of Section 245(i) of the Immigration and Nationality Act

Section 245(i) of the Immigration and Nationality Act was adopted on a temporary basis by section 506(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1995 (Public Law 103–317). The section allowed aliens who were eligible for an immigrant visa but who were illegally present in the United States to adjust their status in the United States to that of lawful permanent residents upon payment of a penalty. In the absence of section 245(i), such aliens must pursue their visa applications at a U.S. embassy or consulate outside the United States and are potentially subject to the 3- and 10-year bars on admissibility instituted by section 301(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208). Section 245(i) was scheduled to sunset on September 30, 1997.

On July 29, 1997, the Senate passed S. 1022, “the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998,” which contained a permanent extension of section 245(i).

On September 30, 1997, the House passed H.R. 2267, “the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998,” which allowed section 245(i) to expire.

On October 1, 1997, the President signed a continuing resolution (H.J. Res. 94) into law that extended section 245(i) until October 23.

On October 23, 1997, the President signed a continuing resolution (H.J. Res. 97) into law that extended section 245(i) until November 7.

On October 29, 1997, the House defeated by a vote of 153–268 a motion to instruct conferees on the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” to support the House version of the bill allowing section 245(i) to expire.

On November 13, 1997, the House agrees to the conference report to H.R. 2267 by a vote of 282–110. On the same day, the Senate agreed to the conference report by unanimous consent. Sections 111(a)–(b) of title I of the conference report sunsetted section 245(i) as of January 14, 1998. However, the provisions allow aliens who had applied for immigrant visas before this date to be processed under section 245(i) (regardless of the date of processing). Section 111(c) allows aliens eligible to receive employment-based immigrant visas to adjust status in the U.S. if they were lawfully admitted and have not failed to maintain a lawful status, engaged in unauthorized employment, or otherwise violated the terms and conditions of their employment, for a period exceeding 180 days.

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119).

Fingerprints for Criminal Background Checks

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119). Title I of the Act provided that none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service (in this or subsequent fiscal years) could be used by it to accept, for the purpose of conducting criminal background checks on applicants for any immigration benefit (including naturalization), any FD–258 fingerprint card which has been prepared by or received from any entity other than an office of the INS, any state or local law enforcement agency, any U.S. consular officers or certain U.S. military offices. This provision was added because of concern with the integrity of fingerprints taken by private entities under INS’ “Designated Fingerprint Services” program. (*See Oversight Activities, Immigration—Safeguarding the Integrity of the Naturalization Process.*)

Criminal Background Checks for Naturalization Applications

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119). Title I of the Act provided that none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service (in this or subsequent fiscal years) could be used by it to complete adjudication of applications for naturalization unless it has received confirmation from the Federal Bureau of Investigation that full criminal background checks have been completed. This provision was added because of the wholesale breakdown during INS’ “Citizenship USA” program of the criminal background check process for naturalization applicants. (See Oversight Activities, Immigration—Improper Granting of U.S. Citizenship Without Conducting Criminal Background Checks and Safeguarding the Integrity of the Naturalization Process.)

Discipline of INS Employees

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119). Title I of the Act authorized the Attorney General (in fiscal year 1998) to impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, for any employee of the Immigration and Naturalization Service who violates policies and procedures set forth by the Department of Justice relative to the granting of citizenship or who willfully deceives the Congress or department leadership on any matter. This provision was added because of dissatisfaction with the disciplinary process regarding INS employees who deceived a Congressional task force delegation to the Miami District of the INS. (See Oversight Activities, Immigration—Deception of a Congressional Task Force Delegation to Miami District of INS (Krome).)

Philippine Army, Scouts, and Guerilla Veterans of World War II Naturalization Act of 1997

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119). Section 112 of title I of the Act waived certain naturalization requirements (regarding prior residence in the U.S. or prior permanent residence status) for individuals who applied for naturalization before February 3, 1995, and who served in the Philippine Army, a recognized Philippines guerilla unit, or in the Philippine Scouts during World War II.

Special Immigrant Status for Dependents on Juvenile Courts

On November 26, 1997, the President signed the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998” into law (H.R. 2267, Public Law 105–119). Section 113 of title I of the Act modified the provision of the Immigration and Nationality Act which provides special immigrant status to aliens who are dependents on U.S. juvenile courts,

who have been deemed eligible by such courts for long-term foster care and for whom it has been determined that it would not be their best interests to be returned to their home countries. Under section 113, the placements in foster care must be because of abuse, neglect, or abandonment, the Attorney General must expressly consent to the dependency orders serving as preconditions to the grants of special immigrant status, and no juvenile court can determine the custody status or placement of aliens in the actual or constructive custody of the Attorney General without the consent of the Attorney General.

S. 1161—Authorization of Appropriations for Refugee Assistance

On September 10, 1997, Senator Spencer Abraham introduced S. 1161 to authorize appropriations for refugee and entrant assistance for fiscal years 1998 and 1999. The bill passed the Senate by unanimous consent on the same date.

On October 1, 1997, the House failed to pass the bill under suspension of the rules by a vote of 230–193.

On November 13, 1997, the House passed the bill under suspension of the rules by unanimous consent.

On December 2, 1997, the President signed the bill into law (Public Law 105–136).

H.R. 1493, to Require the Attorney General to Establish a Program in Local Prisons to Identify, Prior to Arraignment, Criminal Aliens and Aliens Who Are Unlawfully Present in the United States

H.R. 1493 requires the Attorney General to detail Immigration and Naturalization Service employees to selected local governmental jails and prisons in order to identify, prior to arraignment, deportable criminal aliens and aliens unlawfully present in the United States (subject to such amounts as are provided in appropriations acts). The facilities would have to be located in areas that have a high concentration of such aliens. For fiscal year 1999, not less than 10 and not more than 25 areas can be determined to meet this standard. For fiscal year 2000, not less than 25 and not more than 50 can be so determined; for fiscal year 2001, not more than 75; for fiscal year 2002, not more than 100; and for fiscal year 2003 and subsequent fiscal years, 100 or such other number as may be specified in appropriations acts. For any fiscal year, not less than 20% of areas should be in states not contiguous to a land border. In addition, certain facilities in California shall be selected for participation.

On April 30, 1997, Representative Elton Gallegly introduced H.R. 1493.

On May 13, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 1493. Testimony was received from Representative Gallegly; Paul Virtue, Acting Executive Associate Commissioner for Programs, Immigration and Naturalization Service; Richard Bryce, Undersheriff, County of Ventura, California; and Randy Gaston, Chief of Police, Anaheim, California.

On July 24, 1997, the Subcommittee on Immigration and Claims ordered H.R. 1493 favorably reported to the Judiciary Committee,

with an amendment in the nature of a substitute (phasing in the program and making it subject to appropriations), by voice vote.

On September 9, 1997, the Judiciary Committee ordered H.R. 1493 favorably reported by voice vote. An amendment by Representative Chris Cannon, adding the interior states provision, was adopted by voice vote. An amendment by Representative Gallegly, providing that selected facilities must be ones that incarcerate or process individuals prior to their arraignment, was also adopted by voice vote.

On October 23, 1997, the Judiciary Committee reported H.R. 1493 to the House (H. Rept. 105-338).

On November 4, 1997, the House passed H.R. 1493 under suspension of the rules by a vote of 410-2.

On November 13, 1997, the Senate passed H.R. 1493 by unanimous consent.

On December 5, 1997, the President signed H.R. 1493 into law (Public Law 105-141).

S. 1178, Extending the Visa Waiver Pilot Program

S. 1178 extends the visa waiver pilot program through April 30, 2000. Under the pilot program, tourists and business visitors from certain countries can enter the United States for up to 90 days without first obtaining a visa. Before enactment of S. 1178, one of the conditions a country had to meet to be eligible for the pilot program was that for the preceding 2-year period, the average refusal rate for its nationals seeking temporary visitor visas to enter the United States had to be less than 2 percent, and the refusal rate for both years had to be less than 2½ percent. S. 1178 provides that a country can be eligible for the pilot program if the refusal rate during the previous full fiscal year was less than 3 percent. In addition, S. 1178 requires the Attorney General to implement a program to collect data regarding the total number of aliens whose authorized period of stay in the United States terminates, but who remain in the United States notwithstanding such termination.

On September 15, 1997, Senator Spencer Abraham introduced S. 1178.

On September 26, 1997, S. 1178 was passed by the Senate, as amended, by unanimous consent.

On September 30, 1997, House Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 2578. The bill would not have modified the refusal rate eligibility test as it existed and would have extended the visa waiver pilot program to September 30, 1999.

On October 1, 1997, the House Subcommittee on Immigration and Claims was discharged from consideration of H.R. 2578. On October 7, 1997, the House Judiciary Committee ordered H.R. 2578 favorably reported by voice vote. An amendment by Representative Barney Frank, which would have modified the refusal rate eligibility test, was defeated by a vote of 10-16.

On November 7, 1997, the House Judiciary Committee reported H.R. 2578 to the House (H. Rept. 105-387).

On March 25, 1998, the House passed Rules Committee resolution H. Res. 391 by a voice vote. On the same day, the House called up S. 1178 in lieu of H.R. 2578 and without objection struck all

after the enacting clause and inserted in lieu thereof the provisions of H.R. 2578. The House then passed S. 1178 by a vote of 407–0. The House had earlier agreed to an amendment by Representative Richard Pombo by a vote of 360–46 to modify the refusal rate eligibility test. The House also had agreed to an amendment by Lamar Smith, as modified, by a voice vote to extend the visa waiver pilot program to April 30, 2000.

On April 1, 1998, the Senate agreed to the House amendments to S. 1178 by unanimous consent.

On April 27, 1998, the President signed S. 1178 into law (Public Law 105–173).

H.R. 4658, Extending the Deadline for Implementation of an Automated Entry-Exit Control System under Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

H.R. 4658 extended the deadline for implementation of the automated entry-exit system required by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, at land and sea points of entry from October 1, 1998 to October 15, 1998.

On October 1, 1998, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 4658. On the same day, the Judiciary Committee was discharged from consideration of the bill and the House passed it by voice vote.

On October 8, 1998, the Senate passed H.R. 4658 by unanimous consent.

On October 15, 1998, the President signed H.R. 4658 into law (Public Law 105–259).

Amendment to Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Regarding Implementation of an Automated Entry-Exit Control System

This provision extended from September 30, 1998, until March 30, 2001, the deadline for implementation of the automated entry-exit control system at land and sea points of entry required by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208. It also required that the control system implemented not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border points of entry.

This modification was made by section 116 of the general provisions (Department of Justice) of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998.

The American Competitiveness and Workforce Improvement Act of 1998

Background

The H-1B Visa Program Prior to the American Competitiveness and Workforce Improvement Act of 1998

“H-1B” visas were available for workers coming temporarily to the United States to perform services in specialty occupations. Such occupations were ones that required “(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific speciality (or its equivalent) as a minimum for entry into the occupation in the United States.” The total number of aliens who could be issued visas or otherwise provided nonimmigrant status as H-1B workers during any fiscal year could not exceed 65,000. The period of authorized admission was up to 6 years. In fiscal year 1997, the 65,000 cap was reached for the first time on September 1. In fiscal year 1998, the cap was reached on May 11.

The H-1B program’s mechanism for protecting American workers was not based on a lengthy pre-arrival review of the availability of suitable American workers. Instead, an employer filed a “labor condition application” making certain basic attestations (promises) and the Secretary of Labor then investigated complaints alleging noncompliance.

There were four attestations:

(1) The employer will pay H-1B aliens wages that are the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment, and the employer will provide working conditions for H-1B aliens that will not adversely affect those of workers similarly employed.

(2) There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

(3) At the time of the filing of the application, the employer has provided notice of the filing to the bargaining representative of the employer’s employees in the occupational classification and area for which the H-1B aliens are sought, or if there is no such bargaining representative, the employer has posted notice in conspicuous locations at the place of employment.

(4) The application will contain a specification of the number of aliens sought, the occupational classification in which the aliens will be employed, and the wage rate and conditions under which they will be employed.

Departmental investigations as to whether an employer had failed to fulfill its attestations or had misrepresented material facts in its application were triggered by complaints filed by aggrieved persons or organizations. Investigations could be conducted where there was reasonable cause to believe that a violation had occurred.

An employer was subject to penalties for failing to fulfill the attestations—for willfully failing to pay the required wage, for there

being a strike or lockout, for substantially failing to provide notice or provide all required information in an application—and for making a misrepresentation of material fact in an application. Penalties included administrative remedies (including civil monetary penalties not to exceed \$1,000 per violation) that the Secretary of Labor determined to be appropriate and a bar for at least 1 year on the Attorney General's ability to approve petitions filed by the employer for alien workers (both immigrant and nonimmigrant). In addition, the Secretary of Labor had to order an employer to provide H-1B nonimmigrants with back pay where wages were not paid at the required level, regardless of whether other penalties were imposed.

Labor Department Concerns

In 1995, then Secretary of Labor Robert Reich stated that:

Our experience with the practical operation of the H-1B program has raised serious concerns . . . that what was conceived as a means to meet temporary business needs for unique, highly skilled professionals from abroad is, in fact, being used by some employers to bring in relatively large numbers of foreign workers who may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce. Some employers . . . seek the admission of scores, even hundreds of [H-1B aliens], especially for work in relatively low-level computer-related and health care occupations. These employers include "job contractors," some of which have a workforce composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers.

The State of the Labor Market for Information Technology Workers

There is a widespread belief that the United States is facing a severe shortage of workers who are qualified to perform skilled information technology jobs. This belief has been fostered, in part, by a number of studies designed to document a shortage of information technology workers, including *Help Wanted: The IT Workforce Gap at the Dawn of a New Century* (by the Information Technology Association of America), *America's New Deficit: The Shortage of Information Technology Workers* (by the U.S. Commerce Department), and *Help Wanted 1998: A Call for Collaborative Action for the New Millennium* (by ITAA). These studies estimate that there are up to 346,000 vacancies in information technology professions. However, in March of 1998, the U.S. General Accounting Office issued a report criticizing the methodology of *Help Wanted and America's New Deficit*. GAO found that Commerce's study had "serious analytical and methodological weaknesses that undermine the credibility of its conclusions that a shortage of [information technology] workers exists."

It is possible that there currently exists a significant shortage of information technology workers. The evidence for such a shortage

is inconclusive. However, because the success of our economy is so indebted to advances in computer technology, the industry should be given the benefit of the doubt. Claims that there is a shortage and that it can only be alleviated through an increase of foreign workers through the H-1B program should be accepted.

The Act

The American Competitiveness and Workforce Improvement Act of 1998 modifies the H-1B visa quota as follows: 1999—115,000, 2000—115,000, 2001—107,500, 2002 and following years—65,000.

The employers most prone to abusing the H-1B program are called “job contractors” or “job shops.” Much, or all, of their workforces are composed of foreign workers on H-1B visas. Many of these companies make no pretense of looking for American workers and are in business to contract their H-1Bs out to other companies. The companies to which the H-1Bs are contracted benefit in that the wages paid to the foreign workers are often well below what comparable Americans would receive. Also, the companies don’t have to shoulder the obligations of being the legally recognized employers—the job contractors/shops remain the official employers.

Under the Act, two new attestations—the no-lay off/non-displacement and recruitment attestations—will apply principally to job contractors/shops, defined in the bill (for larger companies) as those employers 15% or more of whose workforces are composed of H-1B workers. These businesses, designated as “H-1B-dependent,” will be subject to the attestations in those instances where they petition for H-1Bs without masters degrees in high technology fields or where they plan to pay the H-1Bs less than \$60,000 a year. Thus, the attestations are being targeted to hit the companies most likely to abuse the system—job contractors/shops who are seeking aliens without extraordinary talents (only bachelors degrees) or offering relatively low wages (below \$60,000). Other employers, who use a relatively small number of H-1Bs, will not have to comply with the new attestations unless they have been found to have willfully violated the rules of the H-1B program.

The no-lay off attestation prohibits an employer from laying off an American worker from a job that is essentially the equivalent of the job for which an H-1B alien is sought during the period beginning 90 days before and ending 90 days after the employer files a visa petition for the alien. The recruitment attestation requires an employer to have taken good faith steps to recruit American workers (using industry-wide recruitment standards) for the job an H-1B alien will perform and to offer the job to an American worker who applies and is equally or better qualified than the alien. The attestations sunset after 2001.

The Labor Department will enforce all aspects of the program except in instances where an American worker claims that a job should have been offered to him or her instead of an H-1B alien. In such cases, an arbitrator appointed by the Federal Mediation and Conciliation Service will decide the issue.

The Labor Department will be able to investigate an employer using the H-1B program without having received a complaint from an aggrieved party in certain circumstances where it receives spe-

cific and credible information that provides reasonable cause to believe that the employer has committed a willful failure to meet conditions of the H-1B program, has shown a pattern or practice of failing to meet the conditions, or has substantially failed to meet the conditions that affects multiple employees.

An employer must offer an H-1B alien benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as the employer offers to American workers.

Potential penalties include back pay, civil monetary penalties of \$1,000 per violation (\$5,000 per willful violation, and \$35,000 per violation where a willful violation was committed along with the improper layoff of an American worker), and debarment from the H-1B program for from 1 to 3 years.

A \$500 fee per alien will be charged to all employers except universities and certain other institutions. The funds will go for scholarship assistance for students studying mathematics, computer science, or engineering, for federal job training services, and for administrative and enforcement expenses. The fee will sunset after 2001.

Procedural History

On February 25, 1998, the Immigration Subcommittee of the Senate Judiciary Committee held a hearing on the H-1B visa program.

On March 6, 1998, Senator Spencer Abraham introduced S. 1723, the "American Competitiveness Act."

On April 2, 1998, the Senate Judiciary Committee ordered S. 1723 favorably reported with an amendment in the nature of a substitute.

On April 21, 1998, the House Subcommittee on Immigration and Claims held a hearing, part of which was in regard to the H-1B visa program (*See Oversight Hearings—Immigration*).

On April 28, 1998, House Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 3736, the "Workforce Improvement and Protection Act of 1998." The bill would have increased the H-1B quota to 95,000 in 1998, 105,000 in 1999, and 115,000 in 2000. It would have applied the two new attestations to all employers and contained no fee provision.

On April 30, 1998, the House Subcommittee on Immigration and Claims ordered H.R. 3736 reported to the House Judiciary Committee by voice vote.

On May 11, 1998, the Senate Judiciary Committee reported S. 1723 to the Senate (S. Rept. 105-186).

On May 18, 1998, the Senate passed S. 1723, as amended, by a vote of 78-20.

On May 20, 1998, the House Judiciary Committee ordered H.R. 3736 favorably reported to the House by a vote of 23-4. Eleven amendments were adopted by voice vote. An amendment by Representative James Rogan striking the no-lay off attestation and the recruitment attestation was defeated by a vote of 7-24.

On July 29, 1998, the House Judiciary Committee reported H.R. 3736 to the House (H. Rept. 105-657).

On September 24, 1998, the House passed the House Rules Committee resolution (H. Res. 513), as amended, by voice vote. Under

the rule, the base text represented a compromise worked out by Senator Abraham and Representative Smith and the Administration that was similar to what was eventually enacted into law as the American Competitiveness and Workforce Improvement Act of 1998. On the same day, the House passed H.R. 3736 by a vote of 288–133. An amendment by Representative Melvin Watt was defeated by a vote of 177–242. The amendment embodied the Judiciary Committee-reported bill with the addition of a fee on employers.

The American Competitiveness and Workforce Improvement Act of 1998 was contained in title IV of Division C of H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998. The Act was slightly modified from the form that passed the House in order to fully reflect the terms of the compromise worked out between Congress and the Administration.

NATO Special Immigrant Amendments

The Immigration and Nationality Act makes available 9,940 immigrant visas a year for “special immigrants,” a category that includes many different types of aliens. One group in this category is composed of retired long-time officers or employees in the United States of certain international organizations (and certain spouses and unmarried sons and daughters of the retired officers/employees, certain unmarried sons and daughters of present officers/employees and certain surviving spouses of deceased officers/employees). The NATO Special Immigrant Amendments makes civilian employees of the North Atlantic Treaty Organization and their immediate family members eligible for special immigrant visas on the same terms as these individuals.

On January 9, 1997, Representative Owen Pickett introduced H.R. 429, the “NATO Special Immigrant Amendments of 1997.”

On May 13, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 429. Testimony was received from Representative Owen Pickett; Paul Virtue, Acting Executive Commissioner for Programs, U.S. Immigration and Naturalization Service; and Colin Wright, NATO Civilian Coalition.

On October 6, 1997, the Subcommittee on Immigration and Claims ordered H.R. 429 reported to the Judiciary Committee by voice vote.

On October 29, 1997, the Judiciary Committee ordered H.R. 429 favorably reported to the House by voice vote.

On February 3, 1998, the Judiciary Committee reported H.R. 429 (H. Rept. 105–410).

On February 24, 1998, the House passed H.R. 429, as amended, under suspension of the rules by voice vote.

On September 24, 1998, H.R. 429 was included as part of H.R. 3736 as passed by the House.

H.R. 429 was included as section 421 of subtitle B of title IV of Division C of H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998.

Haitian Refugee Immigration Fairness Act of 1998

The Haitian Refugee Immigration Fairness Act of 1998 allows certain Haitians to apply for adjustment of status by April 1, 2000. Haitians present in the United States on December 31, 1995, who: (1) filed for asylum on or before December 31, 1995; (2) were paroled into the U.S. on or before December 31, 1995, after being identified as having a credible fear of persecution or for emergent reasons or reasons deemed strictly in the public interest; or (3) were children and who (a) arrived in U.S. without parents and have remained without parents while in the U.S., (b) became orphaned subsequent to arrival in the U.S., or (c) were abandoned by parents or guardians prior to April 1, 1998, and have remained abandoned. Once the principal applicant is granted lawful permanent resident status, his or her spouse, child or certain unmarried sons or daughters may apply for adjustment of status as well. The Immigration and Naturalization Service estimates that approximately 49,700 Haitians will be granted relief under this provision.

The Haitian Refugee Immigration Fairness Act of 1998 is identical to S. 1504, introduced by Senator Bob Graham on November 9, 1997, and reported to the Senate by the Committee on the Judiciary with an amendment in the nature of a substitute on April 23, 1998. S. 1504 was included in the Senate-passed version of H.R. 4104, the fiscal year 1999 appropriations bill for the Treasury Department, Postal Service, and other entities.

The Haitian Refugee Immigration Fairness Act of 1998 was enacted into law as title IX of the "Treasury and General Government Appropriations, 1999," contained in H.R. 4328, "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999" (Public Law 105-277), which the President signed into law on October 21, 1998.

Modification of Border Crossing Card Program

To remedy the problem of old, unreliable, and counterfeit border crossing cards (used by frequent short-term visitors from Mexico), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, mandated the issuance of new border crossing cards containing a machine readable biometric identifier (i.e. a fingerprint). The 1996 Act stated that the old, non-biometric border crossing cards would no longer be valid after September 30, 1999. In 1998, the State Department began accepting applications for the new border crossing cards, called "Laser Visas," at its consulates in Mexico. The State Department also began charging a fee of \$45 per application.

Section 410 of the general provisions of title IV of the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999," contained in H.R. 4328, "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999" (Public Law 105-277), which the President signed into law on October 21, 1998, modifies three aspects of the border crossing card program: (1) extends the statutory deadline from September 30, 1999 to September 30, 2001; (2) reduces the application fee from \$45 to \$13 for Mexican children under 15 who have at least one parent possessing or applying for a Laser Visa; and (3) requires the State Department to accept

Laser Visa applications in the following Mexican border towns: Nogales, Nuevo Laredo, Ciudad Acuna, Piedras Negras, Agua Prieta, and Reynosa.

Investor Visas

Almost 10,000 “employment creation” immigrant visas a year are available for individuals who will invest specified amounts of money to start new businesses that will create jobs in the United States. There have been allegations that some aliens have used the program to obtain U.S. citizenship without making the necessary contributions that Congress intended. Title I of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, requires the Immigration and Naturalization Service to report within 90 days on any legislative remedies needed by INS to provide it with the tools to ensure that aliens taking advantage of this program actually make, and are personally liable for, the required investments and are sufficiently involved in the management of the businesses.

Injury and Death-Related Benefits for Immigration Officers

Section 109(b) of the general provisions (Department of Justice) of title I of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, grants Immigration and Naturalization Service officers the same injury and death-related benefits as those already possessed by agents of the Federal Bureau of Investigation and the Drug Enforcement Agency.

Exemption of Inspection Fees for Cruise Ship Passengers

Section 114 of the general provisions (Department of Justice) of title I of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, expands the exemption from inspection fees for cruise ship passengers to include ships originating from a State that go into international waters or ports.

Exemption of Certain Iraqi Asylees from Adjustment Cap

Section 128 of the general provisions (Department of Justice) of title I of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, exempts Iraqi asylees airlifted to Guam in 1996 and 1997

from the statutory 10,000-per-year cap on adjustments to permanent resident status.

Denial of Visas to Haitians Involved in Certain Killings

Section 616 of title VI of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, forbids the use of appropriated funds in the Act to grant visas to Haitians involved in extrajudicial and political killings in Haiti.

Sense of Congress Regarding U.S. Residence Obtained by El Salvadoran Killers

Section 595 of title V of the “District of Columbia Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, regards El Salvadorans who were involved in the 1980 murders of four American churchwomen and later granted permanent residence in the United States. It is the sense of Congress that, among other things, information relevant to the murders should be made public to the fullest extent possible and that the Attorney General should review the circumstances under which those involved in the murders or the subsequent cover-up obtained residence in the United States and submit a report to Congress by January 1, 1999.

Consular Authorities of the Department of State

Chapter 2 of title XXII of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998, makes a number of changes to the law regarding consular officers. In addition, it allows consular officers to deny visas to aliens responsible for confiscating or expropriating property owned by U.S. nationals and makes inadmissible aliens who have assisted international child abductors (and certain relatives).

Refugees and Migration

Chapter 3 of title XXII of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999,” contained in H.R. 4328, “Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999” (Public Law 105–277), which the President signed into law on October 21, 1998: (1) forbids the use of funds appropriated by the Act to effect the involuntary return of aliens to countries where they have a well-founded fear of persecution, except as permitted by international refugee law, (2) requires the promulgation of regulations within 120 days to implement (with certain exceptions) the United Nations Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, which for-

bids the involuntary return of aliens to countries where there are substantial grounds to believe that they may be tortured; (3) provides that (for fiscal year 1999) adult unmarried children of Vietnamese reeducation camp internees are eligible for refugee status under the Orderly Departure Program for Vietnamese refugees (On November 13, 1997, Representative Christopher Smith introduced H.R. 3037, containing similar language. On the same date, the House passed the bill by voice vote under suspension of the rules.); and (4) requires semiannual reports from the State Department to Congress on the Cuban government's compliance (or lack thereof) with its treaty obligations regarding the treatment of migrants who have been returned to Cuba.

Limitation on Funding for Regulations Regarding State Driver's License Integrity

Section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, sets forth a process for the establishment of future standards for driver's licenses and other state-issued identity documents that will be acceptable to the federal government for identification purposes. This provision was designed to combat the fraudulent use of these documents by illegal aliens. The National Highway Transportation Safety Agency was charged with developing regulations to implement three requirements: (1) the application process must include presentation of acceptable evidence of identity; (2) the license must contain security features designated to limit tampering and counterfeiting; and (3) the social security number of the bearer must be displayed visually or electronically on the document or it must be verified at the time of application.

NHTSA published interim regulations implementing section 656(b) on June 17, 1998. Language prohibiting NHTSA's use of appropriated funds to implement a final rule during fiscal year 1999 was included in section 362 of title III of the "Department of Transportation and Related Agencies Appropriations Act, 1999," contained in H.R. 4328, "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999" (Public Law 105-277), which the President signed into law on October 21, 1998.

H.R. 2431, Freedom from Religious Persecution Act

The immigration-related provisions of H.R. 2431 deny visas to aliens who have committed acts of religious persecution, require guidelines ensuring fair treatment of asylum and refugee claims based on religious persecution, require training on religious persecution for immigration officers, immigration judges, and foreign service officers, and require studies and reports on the effects of expedited removal procedures on asylum claims.

On September 8, 1997, Representative Frank Wolf introduced H.R. 2431, the "Freedom from Religious Persecution Act of 1997." The bill as introduced contained provisions making it easier for aliens claiming religious persecution to obtain asylum or refugee status, requiring training on religious persecution for immigration officers, requiring the Attorney General to submit annual reports on religious persecution claims, requiring a period of public com-

ment and review on annual refugee admissions, and denying entry visas to aliens who committed acts of religious persecution.

On March 24, 1998, the Subcommittee on Immigration and Claims held a hearing on H.R. 2431. Testimony was received from Paul Virtue, General Counsel, Immigration and Naturalization Service; Alan Kreczko, Principal Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State; Nancy Sambaiew, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, U.S. Department of State; Mark Krikorian, Executive Director, Center for Immigration Studies; James Robb, Evangelicals for Immigration Reform; and Mark Franken, Executive Director, U.S. Catholic Conference Migration and Refugee Services

On April 30, 1998, the Subcommittee on Immigration and Claims by voice vote struck all the immigration-related provisions from H.R. 2431 and reported the bill to the Judiciary Committee.

On May 6, 1998, the Judiciary Committee conducted a markup of H.R. 2431 at which Subcommittee on Immigration and Claims Chairman Lamar Smith introduced an amendment in the nature of a substitute that differed from the original bill in that it removed provisions granting asylum preferences to aliens claiming religious persecution, and added provisions requiring training on religious persecution for immigration judges, implementation of guidelines to ensure fair treatment of asylum and refugee claims based on religious persecution, and the conduct of studies and submission of reports on the effects of expedited removal procedures on asylum claims. The Committee ordered H.R. 2431 favorably reported by voice vote to the House.

On May 8, 1998, the Judiciary Committee reported H.R. 2431 to the House (H. Rept. 105-480, part III).

On May 14, 1998, the House passed H.R. 2431 by a vote of 375-41 with one "present."

On October 9, 1998, the Senate passed an amended version of H.R. 2431 by a vote of 98-0. The Senate version contained the immigration-related language to be enacted into law.

On October 10, 1998, the House passed the Senate version of H.R. 2431 under suspension of the rules by voice vote.

On October 27, 1998, the President signed H.R. 2431 into law (Public Law 105-292).

H.R. 4293, the Irish Peace Process Cultural and Training Program Act

H.R. 4293 creates a new work-authorized cultural exchange visa. The bill allows the issuance of 4,000 visas per year for 3 successive years, with visa duration of 3 years and no waivers of inadmissibility, to aliens age 35 or younger from Northern Ireland and the border counties of the Republic of Ireland in order to provide such individuals with the experience of living and working in a multicultural society while obtaining valuable work skills.

On July 21, 1998, Representative James T. Walsh introduced H.R. 4293. The bill as introduced established a 60-month duration for the new visas, contained no limit on visa issuance, and waived certain grounds of inadmissibility.

On October 7, 1998, the House suspended the rules and passed H.R. 4293 (as amended to its final version) by voice vote.

On October 8, 1998, the Senate passed the House-passed version of H.R. 4293 by unanimous consent.

On October 30, 1998, the President signed H.R. 4293 into law (Public Law 105–319).

H.R. 4821, Extending into Fiscal Year 1999 the Visa Processing Period for Diversity Applicants Whose Visa Processing Was Suspended Due to Embassy Bombings

H.R. 4821 extends into fiscal year 1999 the visa processing period for diversity visa applicants whose visa processing was suspended during fiscal year 1998 due to the bombing of two United States embassies. The annual diversity visa lottery provides applicants from countries that are under-represented in other legal immigration programs with the opportunity to apply for immigrant visas. Applicants selected in the annual diversity visa lottery must complete their applications and be issued a visa by the end of the fiscal year for which they are selected—otherwise, their applications expire. Through no fault of their own, hundreds of diversity visa applicants who had been selected in the lottery lost the opportunity to complete their applications and obtain a visa because of disruption to their cases at the United States Embassies at Nairobi, Kenya, and Dar Es Salaam, Tanzania, which were destroyed by terrorist bombings on August 7, 1998, and at the United States Embassy at Tirana, Albania, which was closed in response to terrorists threats related to the August 7 bombings. H.R. 4821 allows these applicants to complete their applications during fiscal year 1999. It makes no changes in the requirements for diversity visas and did not guarantee the affected applicants a visa. The visa numbers used by the affected applicants will be charged to the regular diversity visas allocation for fiscal year 1999.

On October 13, 1998, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 4821.

On October 15, 1998, the House passed H.R. 4821 under suspension of the rules by a voice vote.

On October 21, 1998, the Senate passed H.R. 4821 by unanimous consent.

On November 10, 1998, the President signed H.R. 4821 into law (Public Law 105–360).

CLAIMS

H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act of 1998

H.R. 1023 provides compassionate payments to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to the contaminated blood product anti-hemophilic factor. The Act establishes a \$750 million “Ricky Ray Hemophilia Relief Fund,” which will fund the payments. Each eligible individual will receive a \$100,000 payment. The following persons will be eligible for this payment: (1) an individual with a blood-clotting disorder who used anti-hemophilic factor at any time between July 1, 1982, and December 31, 1987; (2) a lawful spouse or former lawful spouse during the stated time pe-

riod; or (3) an individual who acquired HIV from the mother during pregnancy. In the case of a deceased individual, payment will be made to the surviving spouse, children, or parents, in that order. If the individual is not survived by any of these individuals the payment will revert back to the fund.

On March 11, 1997, Representative Porter Goss introduced H.R. 1023.

On October 24, 1997, the Subcommittee on Immigration and Claims was discharged from consideration of H.R. 1023.

On October 29, 1997, the Judiciary Committee ordered H.R. 1023 favorably reported to the House with amendment by voice vote.

On March 25, 1998, the Judiciary Committee reported H.R. 1023 to the House as H. Rept. 105-465 (Part I).

On May 7, 1998, the Committee on Ways and Means reported H.R. 1023 to the House with amendment as H. Rept. 105-465 (Part II).

On May 13, 1998, the Committee on Commerce was discharged from consideration of H.R. 1023.

On May 19, 1998, the House passed H.R. 1023 by a voice vote.

On September 23, 1998, the Senate Committee on Labor and Human Resources ordered H.R. 1023 favorably reported to the Senate.

On October 21, 1998, the Senate passed H.R. 1023 by unanimous consent.

On November 12, 1998, the President signed H.R. 1023 into law (Public Law 105-369).

ACTION ON OTHER PUBLIC LEGISLATION

LEGISLATION PASSED BY THE HOUSE

H.R. 2027, Regarding Canadian Border Boat Landing Permits

Currently, American and Canadian small boat operators and passengers returning to the United States from Canadian waters must either enter through a port-of-entry or possess approved I-68 (Canadian Border Boat Landing Permit) forms issued by the Immigration and Naturalization Service for \$16 and good for 1 year. While the I-68 form allows individuals on boats to enter the United States without being inspected at each docking, the persons are physically inspected and entered into INS records once a year when applying for the forms at INS offices.

In order not to inhibit recreational and tourist boating excursions from American shores which often cross into Canadian waters while at the same time not facilitating unauthorized entry into the United States, H.R. 2027 provides that in the case of a United States citizen traveling on a small boat on a trip between the United States and Canada of not more than 72 hours duration, the citizen need not obtain a I-68 permit if the citizen is not the owner or operator of the boat and carries a U.S. passport for the duration of the trip. The bill would create a pilot project lasting through the end of 1998. At the conclusion of the pilot, the INS will provide Congress a report indicating whether the pilot has had any impact on illegal immigration into the United States.

On June 24, 1997, Representative Steven LaTourette introduced H.R. 2027.

On June 26, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 2027. Testimony was received from Representative Steven LaTourette; Donna Kay Barnes, Chief Inspector, Division of Inspections, Immigration and Naturalization Service; Elaine Dickinson, Director, State Affairs, Boat Owners Association of the United States; and Rolf Ting, President, Greater Cleveland Boating Association.

On July 15, 1997, the Subcommittee on Immigration and Claims ordered H.R. 2027 reported to the Judiciary Committee by voice vote.

On July 23, 1997, the Judiciary Committee ordered H.R. 2027 favorably reported to the House by voice vote.

On September 18, 1997, the Judiciary Committee reported H.R. 2027 to the House (H. Rept. 105-257).

On September 23, 1997, the House passed H.R. 2027 under suspension of the rules by a vote of 412-5.

No further action was taken on H.R. 2027 in the 105th Congress.

H.R. 2570, the Forced Abortion Condemnation Act

H.R. 2570 would have prohibited the Secretary of State from issuing any visa to, and the Attorney General from admitting to the United States, any Chinese national who has been found to have been involved in the enforcement of population control policies resulting in a woman being forced to undergo an abortion against her will, or resulting in a man or woman being forced to undergo sterilization against his or her will. The President would have been authorized to waive such prohibitions if waiver was in the national interest of the United States and the Congress was notified in writing.

On September 29, 1997, Representative Tillie Fowler introduced H.R. 2570.

On November 6, 1997, the House passed H.R. 2570 (as amended) by a vote of 415-1.

No further action was taken on H.R. 2570 in the 105th Congress.

H.R. 2920, Amending Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as to Implementation of an Automated Entry-Exit Control System

H.R. 2920 would have extended the deadline for implementation of the automated entry-exit system at land borders required by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, from September 30, 1998, until September 30, 1999, and would have required that the system implemented not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border points of entry.

On November 7, 1997, Representative Gerald Solomon introduced H.R. 2920.

On November 10, 1997, the House passed H.R. 2920 by a vote of 325 to 90.

On July 30, 1998, the Senate amended H.R. 2920 and passed the amended bill by unanimous consent.

No further action was taken in the 105th Congress (*but see* Amendment to section 110 of the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996 Regarding an Automated Entry-Exit Control System in Public Legislation Enacted into Law).

H.R. 967, Requiring the Denial of Visas to Chinese Government Officials Responsible for Religious Persecution

On March 6, 1997, Representative Benjamin Gilman introduced H.R. 967, which in part required the denial of visas to Chinese government officials responsible for religious persecution.

On July 24, 1997, the Subcommittee held a hearing on H.R. 967. Testimony was received from Representative Gilman and Martin Dannenfelser, Jr., Assistant to the President for Government Relations, Family Research Council.

On October 7, 1997, the Judiciary Committee was discharged from consideration of H.R. 967.

On November 6, 1997, the House passed H.R. 967 by a vote of 366–54.

H.R. 992, the Tucker Act Shuffle Relief Act

H.R. 992 was designed to end the “Tucker Act Shuffles” that currently can bounce property owners between U.S. District Courts and the Court of Federal Claims when seeking redress against the federal government for the taking of their property (as provided in the Fifth Amendment to the U.S. Constitution). The bill would have ended the Tucker Act Shuffles by (1) granting both U.S. District Courts and the Court of Federal Claims the power to determine all claims—whether for monetary relief or other relief (such as injunctive and declaratory relief) and including related tort claims—arising out of federal agency actions alleged to constitute takings (or not to constitute takings only because the actions were not in accordance with lawful authority), (2) granting the Court of Federal Claims the power to provide all remedies, and (3) repealing section 1500 of section 28 of the U.S. Code. Under the bill, a property owner would elect which court should hear and determine the claims as to him or herself and all appeals would be heard by the U.S. Court of Appeals for the Federal Circuit.

On March 6, 1997, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 992, the “Tucker Act Shuffle Relief Act of 1997.”

On September 10, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 992. Testimony was received from Michael Noone, Catholic University of America, Columbus School of Law; Stephen Kinnard, Skadden, Arps, Slate, Meagher & Flom; John Echeverria, Georgetown University Law Center; Eleanor Acheson, Assistant Attorney General, Office of Policy Development, U.S. Department of Justice; the Honorable Loren Smith, Chief Judge, U.S. Court of Federal Claims; Nancie Marzulla, President and Chief Legal Counsel, Defenders of Property Rights; Wallace Klusmann; and Edward Baird, Jr., Wilcox & Baird. Additional material was received from Ms. Marzulla.

On October 6, 1997, the Subcommittee on Immigration and Claims ordered H.R. 992 reported to the Judiciary Committee, with an amendment in the nature of a substitute, by voice vote.

On October 7, 1997, the Judiciary Committee ordered H.R. 992 reported to the House by a vote of 17–13. An amendment by Rep-

representative Melvin Watt to grant U.S. District Courts, but not the Court of Federal Claims, jurisdiction to determine all claims arising out of alleged takings, and to strike the repeal of section 1500, was defeated by a vote of 12–16.

On March 3, 1998, the Judiciary Committee reported H.R. 992 to the House (H. Rept. 105–424).

On March 11, 1998, the House passed a Rules Committee resolution (H. Res. 382) by voice vote.

On March 12, 1998, the House passed H.R. 992 by a vote of 230–180. The House adopted an amendment by Representative Lamar Smith by voice vote that clarified that the bill did not override federal preclusive review statutes. The House rejected an amendment by Representative Melvin Watt, largely similar to his Judiciary Committee amendment, by a vote of 206–206.

No further action was taken on H.R. 992 during the 105th Congress.

H.R. 2759, the Health Professional Shortage Area Nursing Relief Act

H.R. 2759 would have created a new temporary registered nurse visa program designated “H–1C” that would have provided up to 500 visas a year and that would have sunsetted in 4 years. To be able to petition for an alien, an employer would have had to meet four basic conditions. First, the employer would have had to be located in a health professional shortage area as designated by the Department of Health and Human Services. Second, the employer would have had to have at least 190 acute care beds. Third, a certain percentage (35%) of the employer’s patients would have had to be Medicare patients. Fourth, a certain percentage (28%) of patients would have had to be Medicaid patients. The bill contained the most important protections for American nurses that had been contained in the expired H–1A temporary registered nurse visa program and had added additional ones of its own.

On October 29, 1997, Representative Bobby Rush introduced H.R. 2759.

On November 5, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 2759. Testimony was received from Representative Bobby Rush; Neil Sampson, Acting Associate Administrator for Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services; Ron Campbell, Vice President for Patient Care Services, St. Bernard Hospital and Health Care Center, Chicago, Illinois; Cheryl Peterson, Associate Director for Federal Government Relations, American Nurses Association; and Mark Stauder, President and Chief Operating Officer, Mercy Regional Medical Center, Laredo, Texas.

On February 4, 1998, the Subcommittee on Immigration and Claims ordered H.R. 2759 reported, as amended, to the Judiciary Committee by voice vote.

On March 24, 1998, the Judiciary Committee ordered H.R. 2759 favorably reported by voice vote. An amendment by Representative Conyers was adopted by voice vote. In addition to modifying the H–1C program, the amendment provided that the certification requirement for alien health care workers found in section 212(a)(5)(C) of

the Immigration and Nationality Act would not apply to aliens who held full and unrestricted licenses as nurses or physical therapists in the state of intended employment.

On August 3, 1998, the Judiciary Committee reported H.R. 2759 to the House (H. Rept. 105-668). On the same day, the House passed H.R. 2759, as amended, under suspension of the rules by voice vote.

A modified version of H.R. 2759 was included in S. 2260, the Senate-passed version of the fiscal 1999 appropriations bill for the Departments of Commerce, Justice and State.

No further action was taken on H.R. 2759 in the 105th Congress.

LEGISLATION REJECTED BY THE HOUSE OF REPRESENTATIVES

H.R. 1428, the Voter Eligibility Verification Pilot Program Act

Section 216 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, provided that it shall be unlawful for any alien to vote in any federal election. Violators of this provision can be fined, imprisoned for not more than 1 year, or both. In addition, the Act made an alien who has voted in violation of federal, state, or local law inadmissible to the United States and deportable if here.

There is currently no satisfactory way for local registrars to ensure that noncitizens are not on their voting rolls or for the Justice Department to enforce the criminal penalties. Attempts have been made to check voting rolls against Immigration and Naturalization Service records. However, INS data at best can only tell that a voter is a legal alien or a naturalized citizen. INS data cannot tell whether a voter is a native-born U.S. citizen or an illegal alien.

H.R. 1428 would have required the Attorney General, in consultation with the Commissioner of Social Security, to establish a pilot program that would respond to inquiries made by state or local officials with responsibility for determining individuals' qualifications to vote in order to verify these individuals' citizenship. The pilot program would have lasted until September 30, 2001, and would have operated in, at a minimum, the states of California, New York, Texas, Florida, and Illinois. Use of the system would have been voluntary and the system would have had to have reasonable safeguards against its resulting in unlawful discriminatory practices based on national origin or citizenship status, including the selective or unauthorized use of the system.

Under the verification system, the Social Security Administration would compare names, dates of birth, and social security numbers against SSA records in order to confirm (or not confirm) the correspondence of the names and numbers, and whether the individuals were citizens. In cases where the SSA could not provide confirmation of individuals' citizenship, the INS would then compare the names and dates of birth against INS records in order to confirm or not confirm the correspondence of the names and dates of birth and whether the individuals were citizens. Procedures were provided for rejecting voter registration applications and removing names from lists of eligible voters when citizenship was not verified.

On April 24, 1997, Representative Stephen Horn introduced H.R. 1428.

On June 25, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 1428. Testimony was received from Representative Stephen Horn; David Ogden, Associate Deputy Attorney General, U.S. Department of Justice; Sandy Crank, Associate Commissioner for Policy and Planning, Social Security Administration; Daniel Stein, Executive Director, Federation for American Immigration Reform; Theresa LePore, Supervisor of Elections, West Palm Beach, Florida; and Becky Cain, President, the League of Women Voters.

On February 12, 1998, the House failed to pass H.R. 1428 under suspension of the rules (a two-thirds vote required for passage) by a vote of 210(in favor)–200(opposed). The bill the House considered was different from that introduced by Representative Horn in a number of ways, primarily in that the verification system was made into a pilot program.

No further action was taken on H.R. 1428 in the 105th Congress.

LEGISLATION PASSED BY THE JUDICIARY COMMITTEE

H.R. 371, the Hmong Veterans Naturalization Act of 1997

The Hmong are a mountain people from southern China and parts of Burma, Laos, Thailand, and Vietnam. Hmong soldiers fought the Communist Pathet Lao movement in Laos, and many Hmong later assisted U.S. forces during the Vietnam War. After the war ended in 1975, the Pathet Lao gained control of Laos and persecuted and imprisoned many of the Hmong allies of the United States. Between 130,000 and 150,000 Laotian Hmong have entered the U.S. as refugees since 1975. Many Hmong refugees have found it difficult to naturalize because of their difficulty in learning English (because their language did not have a written form until recent decades). In order to naturalize, permanent residents must generally demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

H.R. 371 would have exempted naturalization applicants from the English requirement if they served with special guerilla units or irregular forces operating from bases in Laos in support of the United States during the Vietnam War (or were spouses or widows of such persons on the day on which such persons applied for admission as refugees). The bill would also have provided these aliens with special consideration as to the civics requirement for naturalization (Naturalization applicants must demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.).

The bill would have required aliens to submit documentation of their, or their spouse's, service with a special guerilla unit, or irregular forces which the Attorney General would evaluate. The bill provided that a maximum of 45,000 permanent residents could take advantage of the benefits provided by the bill. This provision was added as an anti-fraud measure, given the extreme difficulty in determining which Hmong actually served in guerilla units. This

number is the outside range of the number of Hmong who actually should qualify under the bill.

On January 7, 1997, Representative Bruce Vento introduced H.R. 371.

On June 26, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 371. Testimony was received from Congressman Bruce Vento; Louis D. Crocetti, Jr., Associate Commissioner for Examinations, Immigration and Naturalization Service; Susan Haigh, Ramsey County Commissioner, St. Paul, Minnesota; Mark Pratt; and Mark Krikorian, Executive Director, Center for Immigration Studies.

On June 11, 1998, the Subcommittee on Immigration and Claims ordered H.R. 371 reported to the Judiciary Committee as an amendment in the nature of a substitute by voice vote.

On June 17, 1998, the Judiciary Committee ordered H.R. 371 reported to the House by a vote of 20–9. The Committee rejected by a vote of 11–18 an amendment by Representative Melvin Watt that would have struck the 45,000 cap.

No further action on H.R. 371 was taken in the 105th Congress.

LEGISLATION PASSED BY THE SUBCOMMITTEE

H.R. 2413, the Immigration Technical Corrections Act of 1997

H.R. 2413 would have made various technical corrections to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Immigration Act of 1990, and the Immigration and Nationality Act of 1952.

On September 5, 1997, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 2413.

On September 8, 1997, the Subcommittee on Immigration and Claims ordered H.R. 2413 reported to the Judiciary Committee by voice vote.

No further action on H.R. 2413 was taken in the 105th Congress.

H.R. 3410, the Temporary Agricultural Worker Act of 1998

H.R. 3410 would have set up a 24-month agricultural guestworker pilot program that would have operated as an alternative to the current H–2A program. The pilot program would have allowed up to 20,000 aliens to be admitted or provided status in a fiscal year. The pilot would have operated in no less than 5 geographically and agriculturally diverse areas designated by the Secretary of Agriculture. The pilot would not have required growers applying for guestworkers to engage in positive recruitment efforts for domestic workers, as does the current H–2A program.

In order that any illegally overstaying pilot program aliens would not have contributed to an overall increase in immigration to the United States, the bill contained a numerical offset. Beginning in the second fiscal year of the pilot program's operation, (1) the number of available unskilled worker immigrant visas (currently 5,000–10,000 per year) would have been reduced by one-half of the number of the previous fiscal year's pilot program aliens (up to 5,000), and (2) the number of available diversity immigrant visas (currently 50,000–55,000 per year) would have been reduced by one-

half of the number of the previous fiscal year's pilot program aliens (up to 5,000).

On March 10, 1998, Representative Robert Smith introduced H.R. 3410.

On March 12, 1998, the Subcommittee on Immigration and Claims ordered H.R. 3410 reported to the Judiciary Committee by voice vote.

No further action on H.R. 3410 was taken in the 105th Congress.

H.R. 2837, Citizenship Integrity and Backlog Reduction Act

On November 6, 1997, Subcommittee on Immigration and Claims Chairman Lamar Smith and Senate Immigration Subcommittee Chairman Spencer Abraham introduced H.R. 2837/S.1382, the "Naturalization Reform Act of 1997." This bill addressed the naturalization process integrity problems caused by the INS' "Citizenship USA" program in 1995 and 1996. The bill contained provisions preventing deportable criminals from receiving citizenship, increasing the "good moral character" period required for citizenship, improving the integrity of required applicant interviews and criminal background checks, requiring inspections and controls of citizenship testing contractors, improving accountability over green cards and naturalization certificates, clarifying and expanding the process of denaturalizing wrongdoers who were mistakenly granted citizenship, and mandating continued oversight of the naturalization program.

On March 5, 1998, the Subcommittee on Immigration and Claims held a hearing on H.R. 2837. Testimony was received from Paul Virtue, General Counsel, Immigration and Naturalization Service; James S. Angus, Acting Executive Director, Office of Naturalization Operations, Department of Justice; Richard Estrada, Dallas Morning News, Former Member of the U.S. Commission on Immigration Reform; Robert Hill, Venable Baetjer Howard & Civiletti, LLP, Former Member of the U.S. Commission on Immigration Reform; Michael Teitelbaum, Alfred P. Sloan Foundation, Former Member of the U.S. Commission on Immigration Reform; Rosemary Jenks, Center for Immigration Studies; and Mark Hetfield, Project Coordinator, Hebrew Immigrant Aid Society. On March 19, 1998, the Subcommittee conducted a follow-up hearing at which James Angus, Acting Executive Director, Office of Naturalization Operations, Immigration and Naturalization Service, and Edward Murphy, deputy director of the office, testified regarding the pending caseload of naturalization applications.

On June 11, 1998, the Subcommittee on Immigration and Claims reported H.R. 2837 to the Judiciary Committee by a vote of 5-2. An amendment in the nature of a substitute, offered by Chairman Smith was adopted. The amendment changed the name of the bill to the "Citizenship Integrity and Backlog Reduction Act of 1998," and incorporated modifications suggested at the Subcommittee's hearings. The amendment in the nature of a substitute replaced the "good moral character" provision with a provision strengthening the procedure for determining "good moral character," replaced the citizenship testing provision with a provision centralizing and standardizing citizenship testing and providing study aids therefor, expanded the oversight provisions of the naturalization process to

ensure expeditious processing, improved customer service and continued process integrity, and added new provisions reducing application backlogs by providing additional funding and eliminating redundant background checks.

No further action on H.R. 2837 was taken in the 105th Congress.

H.R. 4264, Restructuring the Immigration and Naturalization Service

During the 105th Congress, several different entities presented plans for restructuring the Immigration and Naturalization Service. Some plans were introduced as bills (H.R. 2588, H.R. 3904, H.R. 4363) and others were merely published in reports by non-governmental organizations, such as the Carnegie Endowment for International Peace. On May 21, 1998, the Subcommittee on Immigration and Claims held an oversight hearing regarding the various plans for restructuring. All Subcommittee members who were present and all witnesses who testified at the hearing agreed that the INS as it exists today does not perform adequately.

On July 17, 1998, Representative Harold Rogers introduced H.R. 4264. H.R. 4264 would remove the enforcement components of the INS and place them in a new "Bureau of Enforcement and Border Affairs" in the Department of Justice. The enforcement components include the Border Patrol, Investigations, Detention and Deportation, Intelligence and Inspections. Under H.R. 4264, the INS would retain the service components, which perform operations such as the adjudication of applications for benefits such as naturalization, visa petitions, and asylum.

On July 30, 1998, the Subcommittee on Immigration and Claims amended H.R. 4264 and reported it favorably to the Judiciary Committee by voice vote.

No further action on H.R. 4264 was taken in the 105th Congress.

HEARINGS ON PUBLIC LEGISLATION NOT PROCESSED

IMMIGRATION

H.R. 231 and H.R. 471

On May 13, 1997, the Subcommittee on Immigration and Claims held hearings on H.R. 231, a bill introduced by Representative Bill McCollum which would have improved the integrity of the social security card, and H.R. 471, a bill introduced by Representative Elton Gallegly which would have prevented work experience gained while ineligible to work from being used by an alien to help procure an H-1B visa (hearings were also held on H.R. 1493 and H.R. 429). Testimony on H.R. 231 was received from Representative McCollum; Sandy Crank, Associate Commissioner for Policy and Planning, Social Security Administration; Roy Beck; Rosemary Jenks, Senior Fellow, Center for Immigration Studies; and Stephen Moore, the CATO Institute. Testimony on H.R. 471 was received from Representative Gallegly; Paul Virtue, Immigration and Naturalization Service; and Mark Krikorian, Executive Director, Center for Immigration Studies.

H.R. 7

On June 25, 1997, the Subcommittee on Immigration and Claims held a hearing on H.R. 7, a bill introduced by Representative Brian Bilbray that would have ended the right to birthright citizenship (a hearing was also held on H.R. 1428). Testimony on H.R. 7 was received from Representative Bilbray; Dawn Johnsen, Acting Assistant Attorney General for Office of Legal Counsel, U.S. Department of Justice; Dr. Edward Erler, California State University at San Bernardino; Pam Slater, Chairwoman, San Diego County Board of Supervisors, San Diego, California; Phil Peters, Alexis de Tocqueville Institute; and Gwat Bhattacharjie.

H.R. 1543, H.R. 2172

On July 24, 1997, the Subcommittee on Immigration and Claims held hearings on H.R. 1543, a bill introduced by Representative Ronald Dellums which would have allowed aliens to receive student visas in certain instances to study in publically funded adult education programs, and on H.R. 2172, a bill introduced by Representative Barney Frank, which would have allowed aliens to receive student visas to study at public elementary or secondary schools if the schools consent and no federal funds are used to pay the cost of the education (a hearing was also held on H.R. 967). Testimony on H.R. 1543 was received from Representative Dellums; Jacquelyn A. Bednarz, Special Assistant to the Associate Commissioner for Examinations, Immigration and Naturalization Service; Cora Jckowski, ESL Coordinator and Foreign Student Advisor, Central High Community School, Granite School District, Salt Lake City, Utah; and Judy Judd Price, Center Director, ELS Language Centers. Testimony on H.R. 2172 was received from Representative Frank; Jacquelyn A. Bednarz; Rodney Barker, Member, Newton, Massachusetts School Committee; and K.C. McAlpin, Deputy Director, Federation for American Immigration Reform.

H.R. 225

On June 4, 1998, the Subcommittee on Immigration and Claims held a hearing on H.R. 225, a bill introduced by Representative Bill McCollum that would have created a nonimmigrant visitor's visa for certain aliens at least 55 years of age. Testimony was received from Representative McCollum; Paul Virtue, General Counsel, Immigration and Naturalization Service; Steve Beckham, Federal Liaison, South Carolina Department of Parks, Recreation and Tourism; and Ethel Laird (Canadian citizen).

CLAIMS

H.R. 3022

On June 18, 1998, the Subcommittee on Immigration and Claims held a hearing on H.R. 3022, which would amend title 10, United States Code, to authorize the settlement and payment of claims against the United States for injury to and death of members of the U.S. Armed Forces and Department of Defense civilian employees arising from incidents in which claims are settled for injury to and death of foreign nationals. The hearing also reviewed H.R. 2986, which was for the relief of the survivors of an incident when

United States fighter aircraft mistakenly shot down 2 helicopters in Iraq. Testimony was received from Representative Mac Collins; Elijah B. Bowron, Assistant Comptroller General for Special Investigations, Office of Special Investigations, U.S. General Accounting Office, accompanied by Don Fulwider and Don Wheeler, Deputy Directors, Investigations; Captain Elliott L. Bloxom, Director of Compensation, Military Personnel Policy, Office of Under Secretary of Defense (Personnel and Readiness), U.S. Department of Defense, accompanied by Frances Adams, Chief, International Torts Branch, Tort Claims and Litigation Division, Air Force Legal Services Agency; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice; Mrs. Cornelia Bass; Mrs. Georgia Bergmann; and Lt. Col. (Ret.) Robert McKenna.

H.R. 3539

On June 25, 1998, the Subcommittee on Immigration and Claims held a hearing on H.R. 3539, the "Radiation Workers Justice Act of 1998." H.R. 3539 would have amended the Radiation Exposure Compensation Act of 1990 to expand the number of individuals who may receive payment under the Act to include above ground uranium miners and uranium millers, and made changes to the Act to reflect inadequacies in the program that have become apparent over time. Testimony was received from Representative Bill Redmond; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice; Lawrence J. Fine, M.D., Director, Division of Surveillance, Hazard Evaluations and Field Studies, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, U.S. Department of Health and Human Services; Dr. David Coultos, Health Science Center, University of New Mexico; Dr. Susan E. Dawson, Department of Sociology, Utah State University, accompanied by Dr. Gary E. Madsen, Utah State University; Mr. Paul Robinson, S.W. Research & Information Center; Honorable Thomas Atcitty, President, The Navajo Nation, accompanied by E. Cooper Brown; Honorable Roland Johnson, Governor, Pueblo of Laguna, accompanied by Tribal Councilman Larry Lente; the Honorable Reginald Pascual, Governor, Pueblo of Acoma, accompanied by Tribal Councilman David Villo; Mr. Paul Hicks, New Mexico Uranium Workers Council, accompanied by Kevin Martinez and Earl Chavez, Chairman, Cibola County Commission; and Curtis Freeman, Utah Uranium Workers Council.

FEDERAL CHARTERS

Subcommittee Policy on New Federal Charters

On March 13, 1997, the Subcommittee on Immigration and Claims adopted the following policy concerning the granting of new federal charters:

The Subcommittee will not consider any legislation to grant new federal charters because such charters are unnecessary for the operations of any charitable, non-profit organization and falsely imply to the public that a chartered organization and its activities carry a congressional "seal of approval," or that the Federal Government is in some way responsible for its op-

erations. The Subcommittee believes that the significant resources required to properly investigate prospective chartered organizations and monitor them after their charters are granted could and should be spent instead on the Subcommittee's large range of legislative and other substantive policy matters. This policy is not based on any decision that the organizations seeking federal charters are not worthwhile, but rather on the fact that federal charters serve no valid purpose and therefore ought to be discontinued.

This policy represented a continuation of the Subcommittee's informal policy, which was put in place at the start of the 101st Congress and continued through the 102nd–104th Congresses, against granting new federal charters to private, non-profit organizations.

A federal charter is an Act of Congress passed for private, non-profit organizations. The primary reasons that organizations seek federal charters are to have the honor of federal recognition and to use this status in fundraising. These charters grant no new privileges or legal rights to organizations. At the conclusion of the 104th Congress, approximately 90 private, non-profit organizations had federal charters over which the Judiciary Committee has jurisdiction. About half of these had only a federal charter, and were not incorporated in any state and thus not subject to any state regulatory requirements.

Those organizations chartered more recently are required by their charters to submit annual audit reports to Congress, which the Subcommittee sends to the General Accounting Office to determine if the reports comply with the audit requirements detailed in the charter. The GAO does not conduct an independent or more detailed audit of chartered organizations.

Amendment to the American Legion Charter

S. 1377 amended the federal charter of the American Legion to change one of the qualifying dates for membership from December 22, 1961 to February 28, 1961.

On November 5, 1997, Senator Orrin Hatch introduced S. 1377. On the same day, the Senate passed the bill by unanimous consent.

On November 8, 1997, the House passed S. 1377 under suspension of the rules by voice vote.

On November 20, 1997, the President signed S. 1377 into law (Public Law 105–110).

S. 1759, Federal Charter for the American GI Forum

S. 1759 granted a federal charter to the American GI Forum of the United States. The American GI Forum of the United States is an Hispanic veterans family organization that has been in existence for 50 years. The organization has more than 100,000 members in 500 chapters in 32 states and Puerto Rico. Although predominantly Hispanic, the American GI Forum is open to all veterans and their families.

The House Subcommittee of jurisdiction suspended the granting of federal charters to private, nonprofit organizations in 1989. However, it came to the attention of the Committee that the circumstances surrounding the American GI Forum were such that an exception to the moratorium was appropriate. The American GI

Forum was founded in 1948 in response to a lack of respect and representation available to Hispanic veterans within already established veterans organizations.

In the 1960s, the American GI Forum looked into obtaining a federal charter, as was possessed by its contemporaries, the American Legion and the Veterans of Foreign Wars. It was told that it could not obtain one because its membership was not limited to veterans only. However, prior to the American GI Forum's inquiry, many charters had been given to organizations that were not limited to veterans, such as the National Conference on Citizenship in 1953, Little League Baseball, Inc. in 1955, the Boys Clubs of America in 1956, and the Big Brothers/Sisters of America in 1958.

The American GI Forum made inquiries again in 1992 about obtaining a federal charter and was informed of the current moratorium on the granting of any new federal charters.

When looking at the historical record, it appeared that general societal prejudice against Hispanics during the 1950s and 1960s prevented the American GI Forum from receiving a federal charter.

The American GI Forum's history and situation is unique. So, as a matter of policy, the Committee felt it was appropriate to make an exception to the moratorium on the granting of federal charters in this instance.

On March 13, 1998, Senator Orrin Hatch introduced S. 1759.

On May 12, 1998, Representative Ciro Rodriguez introduced H.R. 3843, its companion bill.

On July 23, 1998, the Subcommittee on Immigration and Claims favorably reported H.R. 3843 by voice vote to the Judiciary Committee.

On July 31, 1998, the Senate passed S. 1759, as amended, by unanimous consent.

On August 3, 1998, the House passed S. 1759 under suspension of the rules by voice vote.

On August 13, 1998, the President signed S. 1759 into law (Public Law 105-231).

PRIVATE CLAIMS AND PRIVATE IMMIGRATION LEGISLATION

During the 105th Congress, the Subcommittee on Immigration and Claims received 34 private claims bills and 40 private immigration bills. The Subcommittee held no hearings on these bills. The Subcommittee recommended six private claims bills and 10 private immigration bills to the Judiciary Committee. The Committee ordered all these bills reported favorably to the House. The House passed all but one private immigration bill. Of these, one private claims bill and nine private immigration bills were passed by the Senate and signed into law by the President.

OVERSIGHT ACTIVITIES

IMMIGRATION

Implementation of Title III of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

On February 11, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on the implementation of Title III

of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Testimony was received from Paul Virtue, Acting Executive Associate Commissioner, Programs, Immigration and Naturalization Service, accompanied by David Martin, General Counsel; Paul W. Schmidt, Chairman, Board of Immigration Appeals; and Michael J. Creppy, Chief Immigration Judge, Executive Office for Immigration Review.

Deception of a Congressional Task Force Delegation to Miami District of INS (Krome)

On February 27, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on deception of a Congressional task force delegation to the Miami District of the Immigration and Naturalization Service. Testimony was received from Stephen Colgate, Assistant Attorney General for Administration, U.S. Department of Justice; and Doris Meissner, Commissioner, Immigration and Naturalization Service, accompanied by William Slattery, Executive Associate Commissioner, and Chris Sale, Deputy Commissioner.

Improper Granting of U.S. Citizenship Without Conducting Criminal Background Checks

On March 5, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on the improper granting of U.S. citizenship without conducting criminal background checks. Testimony was received from Stephen Colgate, Assistant Attorney General for Administration, U.S. Department of Justice; Dawn Johnsen, Acting Assistant Attorney General for the Office of Legal Counsel, U.S. Department of Justice; Laurie E. Ekstrand, Associate Director for Administration of Justice, General Government Division, General Accounting Office; Gary Ahrens, KPMG Peat Marwick LLP; Doris M. Meissner, Commissioner, Immigration and Naturalization Service; David Rosenberg, Citizenship USA Program Director, Immigration and Naturalization Service; Louis D. Crocetti, Associate Commissioner for Examinations, Immigration and Naturalization Service; and David Martin, General Counsel, Immigration and Naturalization Service.

Border Security and Deterring Illegal Entry into the U.S.

On April 23, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on border security and deterring illegal entry into the United States. Testimony was received from Representative Silvestre Reyes; Alan Bersin, United States Attorney, Southern District of California, Attorney General's Representative to the Southwest Border, accompanied by Donnie Marshall, Chief of Operations, Drug Enforcement Administration, and Thomas Kneir, Deputy Assistant Director of the Criminal Investigative Division, Federal Bureau of Investigation; George Regan, Acting Assistant Commissioner for Enforcement, Immigration and Naturalization Service, accompanied by Joseph Greene, District Director—Denver, Colorado, James Bailey, Assistant Regional Director for Intelligence for Central Region (Dallas, Texas), Jose Garza, Chief Border Patrol Agent, McAllen, Texas Sector, Louis F. Nardi, Director, Smuggling/Criminal Organizations Branch, and Anne

Veysey, Employer Sanctions Specialist; Samuel Banks, Deputy Commissioner, U.S. Customs Service, U.S. Department of the Treasury; Jonathan Winer, Deputy Assistant Secretary of State, International Narcotics Matters and Law Enforcement Affairs, U.S. Department of State; Richard J. Gallo, Senior Special Agent, U.S. Department of Agriculture; Dr. Roy Godson, Professor of Government, Georgetown University, President, National Strategy Information Center; Robert Heiserman, Denver, Colorado; Elisa Massimino, Director, Washington, D.C. Office, Lawyers Committee for Human Rights.

Safeguarding the Integrity of the Naturalization Process

On April 30, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on safeguarding the integrity of the naturalization process. Testimony was received from Stephen Colgate, Assistant Attorney General for Administration, U.S. Department of Justice; Gary Ahrens, Principal, KPMG Peat Marwick LLP; Norman Rabkin, Director, Administration of Justice Issues, General Government Division, General Accounting Office; Dennis Kurre, Deputy Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation; Doris Meissner, Commissioner, Immigration and Naturalization Service, accompanied by Chris Sale, Deputy Commissioner, and David Martin, General Counsel; Representative Ileana Ros-Lehtinen; Rosemary Jenks, Senior Fellow, Center for Immigration Studies; and Gary Rubin, Director—Public Policy, New York Association for New Americans.

Visa Fraud and Immigration Benefits Application Fraud

On May 20, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on visa fraud and immigration benefits application fraud. Testimony was received from Mary Ryan, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State, accompanied by Ed Vasquez, Consular Affairs, Fraud Prevention Program, and Thomas McKeever, Diplomatic Security, Criminal Investigations Division; Paul W. Virtue, Acting Executive Associate Commissioner for Programs, Immigration and Naturalization Service, accompanied by William Yates, Director, Eastern Service Center (Vermont), Gideon Epstein, Chief Forensic Document Analyst, Forensic Documents Laboratory, William West, Chief, Investigative Division Special Operations Unit, Miami District, and Michael Cutler, Senior Special Agent, New York District; Michael R. Bromwich, Inspector General, U.S. Department of Justice; and Benjamin Nelson, Director, International Relations and Trade Issues, National Security and International Affairs Division, U.S. General Accounting Office.

Visa Waiver Pilot Program

On June 17, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on the visa waiver pilot program. Testimony was received from Representative Jay Kim; Representative Neil Abercrombie; Representative Barney Frank; Mary Ryan, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State; Michael Cronin, Assistant Commissioner, Office of Inspections, Immigration and Naturalization Service; William S. Norman,

President and CEO, Travel Industry Association of America; Janet Thomas, Director of Facilitation, Air Transport Association of America; and Tami Overby, Executive Director, American Chamber of Commerce in Korea.

Institutional Hearing Program

On July 15, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on the Immigration and Naturalization Service's Institutional Hearing Program to remove incarcerated criminal aliens. Testimony was received from Norman J. Rabkin, Director, Evi Rezmovic, Assistant Director, Jay Jennings, Senior Evaluator, and Fred Berry, Senior Evaluator, Administration of Justice Issues, U.S. General Accounting Office; Paul Virtue, Executive Associate Commissioner, Programs and Lydia St. John-Mellado, IHP Coordinator, Immigration and Naturalization Service; Michael Creppy, Chief Immigration Judge and Michael McGoings, Assistant Chief Immigration Judge, Executive Office for Immigration Review; John Clark, Asst. Director, Community Corrections & Detention, and James Zangs, Administrator, Detention Services Branch, Federal Bureau of Prisons; Joe Sandoval, Secretary, California Youth and Adult Correctional Agency; David Padilla, Chief, Management, Analysis & Evaluation Branch, California Department of Corrections; Kelly Tucker, Correctional Services Administrator, Florida Department of Corrections; Anthony J. Annucci, Deputy Commissioner and Counsel and David Clark, Program Research Specialist, New York State Department of Correctional Services; and Catherine McVey, Asst. Director, Programs & Services Division, Texas Department of Criminal Justice.

Temporary Agricultural Work Visa Program

On September 24, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on temporary agricultural work visa programs. Testimony was received from Bob Vice, President, California Farm Bureau Federation; Jim Holt, McGuinness & Williams; John Hancock; and Bruce Goldstein, Executive Director, Farmworker Justice Fund.

Final Report of the Commission on Immigration Reform

On November 7, 1997, the Subcommittee on Immigration and Claims held an oversight hearing on the final report of the Commission on Immigration Reform. Testimony was received from Shirley Hufstedler, Chair, U.S. Commission on Immigration Reform, accompanied by Michael Teitelbaum, Vice Chair, Robert Charles Hill, Commissioner, the Honorable Bruce Morrison, Commissioner, and Susan Martin, Executive Director.

Immigration and the American Workforce for the 21st Century

On April 21, 1998, the Subcommittee on Immigration and Claims held an oversight hearing on immigration and the American workforce for the 21st century. Testimony was received from John Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor; Carlotta Joyner, Director, Education and Employment Issues, Health, Education, and Human Services Division, U.S. General Accounting Of-

rice; Harris Miller, President, Information Technology Association of America; Dr. Norman Matloff, Department of Computer Science, University of California at Davis; Daniel Sullivan, Senior Vice President for Human Resources, QUALCOMM; William Payson, The Senior Staff; Darryl Hatano, Vice President for International Trade and Government Affairs, Semiconductor Industry Association; Peggy Taylor, Director, Department of Legislation, AFL-CIO; Dr. Richard Lariviere, Vice President of International Programs, University of Texas at Austin; Dr. George Borjas, John F. Kennedy School of Government, Harvard University; Dr. Georges Vernez, the RAND Corporation; and Alan Reynolds, the Hudson Institute.

Alternative Proposals to Restructure the Immigration and Naturalization Service

On May 21, 1998, the Subcommittee on Immigration and Claims held an oversight hearing on alternative proposals to restructure the Immigration and Naturalization Service. Testimony was received from Representative Harold Rogers; Representative Silvestre Reyes; Doris Meissner, Commissioner, Immigration and Naturalization Service; Robert L. Brown, Chairman, Immigration Directors' Association; Susan Martin, Former Director, Commission on Immigration Reform; Demetrios Papademetriou, Senior Associate, International Migration Policy Program, Carnegie Endowment for International Peace; Richard Gallo, First Vice-President, Federal Law Enforcement Officers Association; and Diana Aviv, Director, Council of Jewish Federations.

Alternative Technologies for Implementation of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 at Land Borders

On July 23, 1998, the Subcommittee on Immigration and Claims held an oversight hearing on alternative technologies for implementation of section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 at land borders. Testimony was received from Michael J. Hrinyak, Deputy Assistant Commissioner for Inspections, Immigration and Naturalization Service; Ann Cohen, Vice President, Government Services, EDS; Paul Clark, Chief Scientist, Information Technology, DynCorp; Donald Brady, Vice President, Transcore; Robert Mocny, Former SENTRI Team Leader, Immigration and Naturalization Service; Joseph O'Gorman, National Team Leader for Land Border Passenger Processing, U.S. Customs Service; Joseph Elias, Program Manager, Calspan Operations; Anthony Braunscheidel, Business Development Manager, Peace Bridge Authority, Buffalo, New York.

Problems Related to Criminal Aliens in Utah

On July 27, 1998, the Subcommittee on Immigration and Claims held an oversight field hearing in Salt Lake City, Utah, on problems related to criminal aliens in Utah. Testimony was received from Mary Callaghan, Commissioner, Salt Lake County Commission; Aaron Kennard, Sheriff, Salt Lake County; David J. Schwendiman, United States Attorney, District of Utah, U.S. Department of Justice; Mark Reed, Regional Director, Central Region, Immigration and Naturalization Service, accompanied by Michael

Comfort, Acting District Director, Denver District Office, and Meryl Rogers, Officer in Charge, Salt Lake City Suboffice.

Oversight Investigation of the Death of Esequiel Hernandez, Jr.

In June 1997, the Subcommittee began an investigation into the death of Esequiel Hernandez, Jr., an 18-year-old high school student who was herding goats near the border town of Redford, Texas, when he was shot and killed by United States Marines performing counter-drug border surveillance for the United States Border Patrol. The Subcommittee's investigation required the issuance of subpoenas duces tecum by Judiciary Committee Chairman Hyde to the U.S. Justice and Defense Departments.

The Subcommittee issued a report in November 1998 that concluded that Hernandez' death was attributable to a series of failures on the part of Justice Department and Defense Department personnel, who were negligent in providing training and preparing for the border surveillance mission or who failed to respond adequately to an emergency situation as it developed. After Hernandez' death, agency personnel compounded their previous errors by withholding information and impeding investigations in an effort to avoid accountability that, unfortunately, was largely successful.

The Marine Corps, to its credit, conducted a detailed internal investigation of the shooting and disciplined a number of officers in the chain of command. However, the four Marines in the team that killed Hernandez suffered no adverse consequences despite significant and disturbing evidence that they may have been guilty of serious wrongdoing.

Neither the Border Patrol nor its parent agencies, the Immigration and Naturalization Service and the United States Department of Justice, conducted an internal review comparable to that undertaken by the Marine Corps. No Justice Department personnel were held accountable for negligence or wrongdoing regarding the death of Esequiel Hernandez, Jr.

The report is available as *Report of Chairman Lamar Smith to Subcommittee on Immigration and Claims, Oversight Investigation of the Death of Esequiel Hernandez, Jr.*, 105th Cong., 2nd Sess. (Ser. No. 11 1998)

Refugee Consultations

I. Fiscal Year 1998

On September 10, 1997, Members of the Judiciary Committee met with Deputy Secretary of State Strobe Talbott and other Administration officials to discuss the Administration's proposal for refugee admissions in fiscal year 1998. That proposal was as follows:

Areas of Origin:	<i>Proposed Ceiling</i>
Africa	7,000
East Asia	14,000
Europe:	
Former Yugoslavia	25,000
Former Soviet Union	21,000
Latin America/Caribbean	4,000
Near East/South Asia	4,000

	<i>Proposed Ceiling</i>
Unallocated Reserve	3,000
Total	78,000

On September 30, 1997, President Clinton issued Presidential Determination No. 97-37, which put into force a fiscal year 1998 worldwide refugee ceiling of 83,000, including an additional 5,000 unfunded reserve numbers allocated to the former Soviet Union that were not in the original proposal.

By letter dated June 8, 1998, the Department of State advised the Chairman of the Judiciary Committee of plans to use for admissions from the former Yugoslavia up to 3,000 numbers from the unallocated reserve, and up to 1,000 numbers from the unfunded reserve allocated to the former Soviet Union.

By letter dated September 29, 1998, the Department of State advised the Chairman of the Judiciary Committee of plans to use over 30,000 total numbers for admissions from the former Yugoslavia, and over 23,000 total numbers for admissions from the former Soviet Union, for a total of approximately 54,000 European admissions in fiscal year 1998. The State Department anticipated that this increase in European admissions would be offset by shortfalls in other categories, and that total admissions for fiscal year 1998 would be about 77,000.

II. Fiscal Year 1999

On September 17, 1998, Members of the Judiciary Committee met with Secretary of State Madeleine Albright and other Administration officials to discuss the Administration's proposal for refugee admissions in fiscal year 1999. That proposal was as follows:

Areas of Origin:	<i>Proposed Ceiling</i>
Africa	12,000
East Asia	9,000
Europe:	
Former Yugoslavia	25,000
NIS/Baltics	23,000
Latin America/Caribbean	3,000
Near East/South Asia	4,000
Unallocated Reserve	2,000
Total	78,000

On September 30, 1998, President Clinton issued Presidential Determination No. 98-39, which put into force a fiscal year 1999 worldwide refugee ceiling of 78,000. This final determination was identical to the Administration's original proposal.

CLAIMS

Health Care Initiatives Pursued Under False Claims Act that Impact Hospitals

On April 28, 1998, the Subcommittee on Immigration and Claims held an oversight hearing on health care initiatives pursued under the False Claims Act that impact hospitals. Testimony was received from Donald Stern, U.S. Attorney for the District of Massachusetts and Chair, Attorney General's Advisory Committee, U.S. Department of Justice; Lewis Morris, Assistant Inspector General for Legal Affairs, and Dr. Robert Berenson, Director, Center for Health Care Plans and Providers Administration, U.S. Department

of Health and Human Services; Gordon Sprenger, Executive Officer, Allina Health Systems; Don Ritchie, Administrator, Guadalupe Valley Hospital; William Lane, President, Holy Family Hospital; Terry Cameron, Senior Vice President, Medicode; and Ruth Blacker, Member, National Legislative Counsel, American Association of Retired Persons.

SUBCOMMITTEE ON THE CONSTITUTION

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois	ROBERT SCOTT, Virginia
BOB INGLIS, South Carolina	MAXINE WATERS, California
ED BRYANT, Tennessee	JOHN CONYERS, Jr., Michigan
WILLIAM L. JENKINS, Tennessee	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	MELVIN L. WATT, North Carolina
BOB BARR, Georgia	
ASA HUTCHINSON, Arkansas	

Tabulation and disposition of bills referred to the Subcommittee

Legislation referred to Subcommittee	153
Legislation reported favorably to full Committee	10
Legislation referred adversely to full Committee	0
Legislation reported without recommendation to full Committee	0
Legislation reported as original measure to the full Committee	0
Legislation discharged from the Subcommittee	1
Legislation pending before the full Committee	2
Legislation reported to the House	7
Legislation discharged from the full Committee	8
Legislation pending in the House	1
Legislation passed the House	8
Legislation pending in the Senate	3
Legislation failed passage by the House	4
Legislation vetoed by the President (not overridden)	1
Legislation enacted into public law	2
Legislation on which hearings were held	13
Days of hearings (legislative and oversight)	27

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee has legislative and oversight responsibility for the Civil Rights Division and the Community Relations Service of the Department of Justice, as well as the U.S. Commission on Civil Rights and the Office of Government Ethics. General legislative and oversight jurisdiction of the Subcommittee includes civil and constitutional rights, civil liberties and personal privacy, federal regulation of lobbying, private property rights, federal ethics laws, and proposed constitutional amendments.

LEGISLATION

Assisted Suicide

On June 5, 1998, the Chairman of the Judiciary Committee, Henry J. Hyde, introduced the "Lethal Drug Abuse Prevention Act of 1998" (H.R. 4006), a bill to clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, or euthanasia, of any individual. The Subcommittee held a hearing on July 14, 1998. The following witnesses testified: Representatives Earl Blumenauer; Tom A. Coburn, M.D.; Peter A. DeFazio; Elizabeth Furse; Darlene Hooley; James L. Oberstar; Joe Pitts; Diane Coleman, President, Not Dead Yet; N. Gregory Hamilton, M.D., Physi-

cians for Compassionate Care; Prof. Herbert Hendin, M.D., New York Medical College; John A. Kitzhaber, Governor, State of Oregon; Calvin H. Knowlton, Ph.D., Pharmacist, American Pharmaceutical Association; Thomas J. Marzen, General Counsel, National Legal Center for the Medically Dependent & Disabled, Inc.; Edmund D. Pellegrino, M.D., Center for Clinical Bioethics, Georgetown University Medical Center; Dr. Douglas Pisano, Division of Pharmaceutical Services, Massachusetts College of Pharmacy and Allied Health Science; and Thomas R. Reardon, M.D., Chair, American Medical Association.

On July 22, 1998, the Subcommittee ordered favorably reported to the full Committee the bill H.R. 4006 as amended, by a vote of 6–5. On August 4, 1998, the full Committee ordered favorably reported the bill as amended to the full House by a voice vote. H. Rept. 105–683, part 1. On September 14, 1998, the Committee on Rules granted a modified open rule providing for the consideration of H.R. 4006. No further action was taken on the measure.

On March 11, 1997, Representative Ralph Hall introduced the “Assisted Suicide Funding Restriction Act of 1997” (H.R. 1003), which would clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide. The bill was referred to the Committee on Commerce; and in addition to the Committees on Ways and Means, the Judiciary, Education and the Workforce, Government Reform and Oversight, Resources, and International Relations. On April 2, 1997, H.R. 1003 was referred to the Subcommittee. On April 8, 1997, H.R. 1003 was reported to the House, amended, by the Committee on Commerce (H. Rept. 105–46, part 1) and the other committees were discharged from further consideration. H.R. 1003 passed the House, as amended, by a vote of 398 yeas–16 nays and then passed the Senate on April 16, 1997, by a vote of 99 yeas–0 nays. H.R. 1003, was then signed into law on April 30, 1997, by the President (Public Law 105–12).

Child Custody Protection Act

On April 1, 1998, Representative Ileana Ros-Lehtinen introduced the “Child Custody Protection Act” (H.R. 3682), a bill to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions. On May 21, 1998, the Subcommittee held a hearing on H.R. 3682. Testimony was received from the following witnesses: Representatives Ileana Ros-Lehtinen; James L. Oberstar; Nita Lowey; Lincoln Diaz-Balart; Sheila Jackson Lee; Christopher H. Smith; Joyce Farley of Dushore, Pennsylvania; Eileen Roberts, Mothers Against Minors’ Abortion; Reverend Katherine Hancock Ragsdale, Episcopalian Priest; Professor Teresa Collett, Professor of Law, South Texas College of Law; Professor Stephen Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; and Mr. Robert Graci, Office of the Attorney General of Pennsylvania.

On June 11, 1998, the Subcommittee met in open session and ordered reported the bill H.R. 3682, as amended, by a vote of 7–2. On June 17, and June 23, 1998, the full Committee met in open session and ordered reported favorably the bill, H.R. 3682 with an amendment in the nature of a substitute, by a recorded vote of 17–10. H. Rept. 105–605. H.R. 3682 passed the House on July 15,

1998, by a vote of 276–150. The Senate Judiciary Committee reported favorably an identical bill, S. 1645, but no further action was taken on the measure.

Citizen Protection Act

On February 5, 1998, Representative Asa Hutchinson introduced the “Citizen Protection Act of 1998” (H.R. 3168), a bill to clarify that bail bond sureties and bounty hunters are subject to both civil and criminal liability for violations of Federal rights under existing Federal civil rights law. On March 12, 1998, the Subcommittee held hearing. Witnesses testifying before the Subcommittee were Representative Asa Hutchinson; Sen. Robert Torricelli; Pamela Reed of Coventry, Rhode Island; Jrae Mason of Jackson Heights, New York; Jerry Gerig of Acworth, Georgia; Linda Childs of Plattsburg, Missouri; Edwin Soltz, Attorney at Law, Overland Park, Kansas; Leslie Hagin, National Association of Criminal Defense Lawyers; Jerry Watson, Legal Counsel, National Association of Bail Insurance Companies; Armando Roche, President, Professional Bail Agents of the United States; Jonathan Drimmer, Attorney, Washington, D.C.; Frank Slaton, Bounty Hunter, Newport News, Virginia; and R. Gil Kerlikowske, Police Commissioner, Buffalo, New York.

On April 30, 1998, the Subcommittee ordered favorably reported H.R. 3168 to the full Committee, as amended, by voice vote. However, the bill failed in full Committee on May 6, 1998, by a vote of 11–12.

Reform of Laws Governing Lobbying

On January 30, 1998, S. 758, “The Lobbying Disclosure Technical Amendments Act of 1997,” which passed the Senate on November 13, 1997, was referred to the Subcommittee. On March 18, 1998, the Committee on the Judiciary was discharged from further action and the House passed S. 758 under suspension of the rules by voice vote. S. 758 was signed into law as Public Law 105–166 by the President on April 6, 1998.

Fair Housing

On April 17, 1997, the Subcommittee held a hearing on H.R. 589, the “Fair Housing Reform and Freedom of Speech Act of 1997” and related issues to examine concerns over recent federal agency actions and court decisions involving the interpretation of the Fair Housing Act Amendments of 1988. Some of these actions and decisions had been criticized as failing to carefully balance the need to protect against discrimination in housing with the ability of local jurisdictions to enact reasonable zoning restrictions and the rights of individuals in communities to have a voice in the process by which site decisions are made. H.R. 589, a bill to amend the Fair Housing Act regarding local and State laws and regulations governing residential care facilities, was introduced by Representatives Brian Bilbray (R–CA) and Jane Harman (D–CA). On February 25, 1998, the Subcommittee ordered reported to the full Committee by a vote of 7 yeas to 5 nays H.R. 3206, the Fair Housing Amendments Act of 1998, a bill to amend the Fair Housing Act, and for other purposes, which was also introduced by Representatives

Brian Bilbray (R-CA), Charles T. Canady (R-FL), and Jane Harman (D-CA). No further action was taken on the measure.

Racial and Gender Preferences—The Civil Rights Act

The “Civil Rights Act of 1997” was introduced in the House of Representatives (H.R. 1909) on June 17, 1997, and in the Senate (S. 950) on June 23, 1997. Subcommittee Chairman Charles T. Canady was the lead sponsor of this legislation in the House. H.R. 1909 would prohibit the federal government from discriminating against or granting any preferences to any person or group based in whole or in part on race, color, ethnicity, or sex in federal employment or contracting or the administration of any federal program. On June 26, 1997, the Subcommittee held a hearing on H.R. 1909. Witnesses at the hearing were Sen. Mitch McConnell; Del. Eleanor Holmes Norton; Representatives Tom Campbell; Marge Roukema; Patsy Mink; Tillie Fowler; Tom Lamprecht, President, Atlantic Coast Communications; Susan Prager, Dean, UCLA School of Law; Michael Cornelius, Vice President, Malcolm Drilling, Inc.; Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium; Gail Heriot, Professor, University of San Diego School of Law; Randy Pech, Adarand Constructors, Inc.; Marina Laverdy, Executive Director, Latin American Management Association; Anita K. Blair, General Counsel, Independent Women’s Forum.

On July 9, 1997, the Subcommittee ordered H.R. 1909 favorably reported, without amendments, by a voice vote. On November 6, 1997, the full Committee tabled the bill by a vote of 17–9. No further legislative activity occurred regarding H.R. 1909 during the 105th Congress.

Religious Freedom

The Subcommittee held a number of hearings on the issue of the protection of religious freedom in the wake of the *Boerne v. Flores* Supreme Court case striking down portions of the Religious Freedom Restoration Act. The Subcommittee held the first hearing on July 14, 1997. The witnesses at this hearing were: Thomas C. Berg, Associate Professor of Law, Cumberland Law School, Samford University; Mark E. Chopko, General Counsel, U.S. Catholic Conference; Charles W. Colson, President, Prison Fellowship Ministries; Douglas Laycock, Associate Dean for Research, University of Texas Law School; Marc D. Stern, Director, Legal Department, American Jewish Congress; Jeff Sutton, Solicitor, State of Ohio; and Oliver Thomas, Special Counsel for Religious and Civil Liberties, National Council of Churches of Christ in the U.S.A.

On February 26, 1998, the Subcommittee held a second hearing on “The Need for Federal Protection of Religious Freedom after *Boerne v. Flores*.” The witnesses at this hearing were: Zari Wigfall, Van Nuys, California; Reverend Richard Hamlin, Evangelical Reformed Church, Tacoma, Washington; Reverend Patrick J. Wilson III, Minister of Community Development, Congress of Black Churches, Inc.; Reverend John Wimberly, Jr., Western Presbyterian Church, Washington, D.C.; Evelyn Smith, Chico, California; Jason Mesiti, Brookline, New Hampshire; Suzanne Brown, Brookline, New Hampshire; Rabbi Chaim Rubin, Los Angeles, Cali-

fornia; Dr. Richard Robb, Ypsilanti, Michigan; Reverend Richard Steel, Cedar Bayou Baptist Church, Baytown, Texas; and Reverend Donald W. Brooks, Diocese of Tulsa, Oklahoma.

On March 26, 1998, the Subcommittee held a third hearing on "The Need for Federal Protection of Religious Freedom after *Boerne v. Flores*, II." The witnesses at this hearing were: Marc Stern, Director, Legal Department, American Jewish Congress; Mark Chopko, General Counsel, U.S. Catholic Conference; Dr. Dean Ahmed, American Muslim Council; Steve McFarland, Director, Center for Law and Religious Freedom; Isaac Jaroslawicz, Executive Director/Director of Legal Affairs, The Adolph Institute; Barry Fisher, Former Chairman, American Bar Association Subcommittee on Religious Freedom; and Von Keetch, Counsel, The Church of Jesus Christ of Latter-day Saints.

On June 16, 1998, the Subcommittee held a fourth hearing on the issue of protecting religious freedom. The focus of the hearing was H.R. 4019, the "Religious Liberty Protection Act of 1998." The witnesses at this hearing were: Professor Douglas Laycock, Associate Dean for Research, University of Texas Law School; Professor Thomas C. Berg, Associate Professor of Law, Cumberland Law School, Samford University; Professor Christopher L. Eisgruber, New York University School of Law; Professor Marci Hamilton, Benjamin N. Cardozo School of Law, Yeshiva University; Gene Schaerr, Attorney, Sidley & Austin, Washington, DC; Marc Stern, Director, Legal Department, American Jewish Congress; and Professor W. Cole Durham, Brigham Young University Law School.

On July 14, 1998, the Subcommittee held a fifth hearing on protecting religious freedom, again focusing on H.R. 4019, the "Religious Liberty Protection Act of 1998." The witnesses at this hearing were: Patrick Nolan, President, Justice Fellowship; William Dodson, Director, Government Relations, Southern Baptist Convention; Michael P. Farris, President, Home School Legal Defense Association; Colby M. May, Senior Counsel, Office of Governmental Affairs, American Center for Law and Justice; Steven T. McFarland, Director, Center for Law & Religious Freedom; Bruce D. Shoulson, Attorney at Law, Lowenstein Sandler, P.C.; The Reverend Elenora Giddings Ivory, Director, Washington Office, Presbyterian Church (U.S.A.); Steven K. Green, J.D., Ph.D., Legal Director, Americans United for Separation of Church and State; Professor Jamin Raskin, Washington College of Law, American University; and Professor Douglas Laycock, Associate Dean for Research, University of Texas Law School.

On August 6, 1998, the Subcommittee ordered favorably reported H.R. 4019 by voice vote, amended. No further action was taken on the measure.

Partial-Birth Abortion Ban Act

On March 11, 1997, the Subcommittee held a joint oversight hearing with the Senate Committee on the Judiciary on partial birth abortion. H.R. 929, the "Partial-Birth Abortion Ban Act of 1997," which bans abortions in which a living baby is partially vaginally delivered before killing the baby and completing the delivery was held at full Committee and never referred to the Subcommittee. On March 12, 1997, the full Committee met in open

session and ordered favorably reported H.R. 929 with amendments by a vote of 20–11.

Because an agreement could not be reached on H.R. 929, H.R. 1122, the “Partial-Birth Abortion Ban Act of 1997” was introduced by the Committee on Rules on March 19, 1997. H.R. 1122 is identical to H.R. 1833, the Partial-Birth Abortion Ban Act of 1995, which was passed in the 104th Congress. On March 20, 1997, the House passed H.R. 1122 by a vote of 295–136. On October 8, 1997, the House passed the Senate amended version of H.R. 1122 by a vote of 296–132. The President vetoed the Partial-Birth Abortion Ban Act on October 10, 1997.

On July 23, 1998, the House voted to override the President’s veto of H.R. 1122 by a vote of 296–132. The Senate voted 64–36 on H.R. 1122 on September 18, 1998, failing to override the President’s veto (two-thirds vote required).

U.S. Commission on Civil Rights

The United States Commission on Civil Rights is designed to serve as an independent, bipartisan, fact-finding agency of the executive branch. The Commission was first established as a temporary agency under the Civil Rights Act of 1957. The authorization for the U.S. Commission on Civil Rights expired on September 30, 1996.

On July 17, 1997, the Subcommittee held an oversight hearing on the United State Commission on Civil Rights. This hearing focused on repairing the Commission’s management and fiscal controls. Witnesses testifying were: Cornelia Blanchette, Associate Director, Employment and Education Issues, General Accounting Office; Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Carl Anderson, Commissioner, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; and Bill Allen, former Chairman, U.S. Commission on Civil Rights.

On January 28, 1998, the Subcommittee chairman, Representative Canady, introduced the “Civil Rights Commission Act of 1998,” (H.R. 3117), a bill to authorize the United States Commission on Civil Rights. On February 4, 1998, the Subcommittee ordered favorably reported H.R. 3117 to the full Committee by a voice vote. On March 4, 1998, the full Committee ordered favorably reported H.R. 3117, amended, to the House by a voice vote. H. Rept. 105–439. The bill passed the House, as amended, under suspension of the rules on March 18, 1998. The Senate took no further action on this bill.

Displaying the Ten Commandments

On March 3, 1997, Representative Robert B. Aderholt introduced a resolution, H. Con. Res. 31, expressing the sense of Congress regarding the display of the Ten Commandments by Judge Roy S. Moore, a judge on the circuit court of the State of Alabama. On March 3, 1997, H. Con. Res. 31 was referred to the Committee and to the Committee on Transportation and Infrastructure; and to the Subcommittee. H. Con. Res. 31 was discharged from the Committees on March 4, 1997, and taken up under suspension of the rules. The House agreed to the resolution by a vote of 295–125. On March

6, 1997, H. Con. Res. 31 was referred to the Senate Committee on Governmental Affairs.

Contributions of Martin Luther King, Jr.

On March 19, 1998, Representative J.C. Watts introduced a resolution, H. Con. Res. 247, recognizing the contributions of the Reverend Dr. Martin Luther King, Jr. to the civil society of the United States and the world. H. Con. Res. 247 was referred to the Subcommittee on March 20, 1998. On April 1, 1998, H. Con. Res. 247 was called up by unanimous consent discharging the Committee on the Judiciary and passed the House by voice vote. H. Con. Res. 247 was referred to the Senate Committee on the Judiciary on April 2, 1998.

Flag

On February 12, 1998, Representative Ken Bentsen introduced a bill, H.R. 3216, which would amend the Act commonly known as the "Flag Code" to add the Martin Luther King, Jr. holiday to the list of days on which the flag should especially be displayed. On March 11, 1998, H.R. 3216 was referred to the Subcommittee on the Constitution. On October 21, 1998, the Judiciary Committee was discharged by unanimous consent and the bill passed the House by voice vote.

Emancipation of African Slaves in Danish West Indies

On June 25, 1998, Del. Donna M. Christian-Green introduced a resolution, H. Res. 495, relating to the recognition of the historical significance of the emancipation of African slaves in what is now the United States Virgin Islands, and urging all Virgin Islanders and Americans to maintain their unwavering commitment to preserve, protect, and defend human rights and freedom. On June 25, 1998, H. Res. 495 was referred to the Subcommittee, was discharged from the Committee, and was agreed to by the House by voice vote.

CONSTITUTIONAL AMENDMENTS

Term Limits

On January 22, 1997, the Subcommittee on the Constitution held a hearing on proposing an amendment to the Constitution of the United States limiting the terms of office for Members of the Senate and the House of Representatives. The witnesses were Representatives Joe Barton; Bill McCollum; John Dingell; Tillie Fowler; Bill Frenzel, guest scholar, Governmental Studies Program, Brookings Institution; Prof. John Hibbing, University of Nebraska-Lincoln; Paul Jacob, Executive Director, U.S. Term Limits; Thomas E. Mann, Director, Governmental Studies Program, Brookings Institution; Cleta Deatherage Mitchell, Director and General Counsel, Americans Back in Charge Foundation; Sen. Fred Thompson; and George Will, nationally syndicated columnist and television commentator.

On January 30, 1997, H.J. Res. 2 was held at the full Committee. On February 4, 1997, H.J. Res. 2 was ordered to be reported to the House without recommendation by a 19-12 vote, and was reported

to the House by the full Committee on February 6, 1997. H. Rept. 105–2. On February 12, 1997, the House failed to approve H.J. Res. 2 by the necessary two-thirds vote, 217–211.

Flag Protection

On April 30, 1997, the Subcommittee on the Constitution held a hearing on H.J. Res. 54, a joint resolution proposing an amendment to the Constitution of the United States authorizing the Congress to prohibit the physical desecration of the flag of the United States. The witnesses were Representative Gary Ackerman; Patrick Brady, Chairman, Citizens Flag Alliance; Norman Dorsen, Stokes Professor of Law, New York University School of Law; Representative Martin Frost; Lawrence J. Korb, Director, Center for Public Policy Education, Brookings Institution; Alan G. Lance, Attorney General, State of Idaho; Representative William O. Lipinski; Richard D. Parker, Professor of Law, Harvard University; Roger Pilon, Founder and Director, Center for Constitutional Studies, CATO Institute; Maribeth Seely, Teacher, Sandystone Walpack School, Layton, NJ; Carole Shields, President, People for the American Way; Representatives John M. Shimkus; David E. Skaggs; Gerald B.H. Solomon; Francis J. Sweeney, Financial Secretary, Steamfitters Local Union 449, Pittsburgh, PA; Carol Van Kirk, Nebraska American Legion Auxiliary; and Representative Robert K. Zukowski, Wisconsin State Legislature.

On May 8, 1997, the Subcommittee on the Constitution met in open session and held a markup on H.J. Res. 54, and ordered H.J. Res. 54 reported favorably to the full Committee, without amendment, by a voice vote. On May 14, 1997, the full Committee met in open session and ordered H.J. Res. 54 reported favorably to the full House, without amendment by a recorded vote of 20–9. H. Rept. 105–121.

The House passed H.J. Res. 54 on June 12, 1997 by a vote of 310–114. Although reported by the Senate Committee on the Judiciary June 24, 1998 (S. Rept. 105–298), the Senate did not vote on the resolution.

Religious Freedom Amendment

In addition to numerous hearings in the 104th Congress, the Subcommittee held a hearing on July 22, 1997 on H.J. Res. 78, “Proposing an Amendment to the Constitution Restoring Religious Freedom,” designed to restore the right of religious persons to acknowledge their beliefs, heritage, and traditions on public property, to engage in voluntary school prayer, and to have an equal opportunity to participate in government programs, activities, or benefits. Witnesses testifying at the hearing were: Representatives Ernest J. Istook, Jr.; Chet Edwards; Tom Campbell; Walter Capps; Sanford Bishop; Craig Parshall, Special Legal Counsel, Concerned Women for America; Reverend Barry W. Lynn, Executive Director, Americans United for Separation of Church and State; Jim Henderson, Senior Counsel, American Center for Law and Justice; Dr. Derek H. Davis, Director, J.M. Dawson Institute of Church-State Studies; Prof. Mark Scarberry, Pepperdine University School of Law; William Murray, Americans for School Prayer; Reverend Tim-

othy McDonald, Iconium Baptist Church; and Rabbi Aryeh Spero, Congregational Rabbi.

On October 27, 1997, the Subcommittee met in open session and reported favorably H.J. Res. 78, with an amendment in the nature of a substitute offered by Mr. Hutchinson, by a vote of 8 to 4, a reporting quorum being present.

On March 4, 1998, the full Committee ordered favorably reported H.J. Res. 78, as amended, by a recorded vote of 16–11. H. Rept. 105–543. On June 4, 1998, the House failed to pass the resolution by a vote of 224–203 (two-thirds vote required).

Tax Limitation Amendment

On March 11, 1997, Representative Joe Barton introduced the first resolution proposing an amendment to the Constitution of the United States with respect to tax limitation, H.J. Res. 62. On March 18, 1997, the Subcommittee held a hearing on H.J. Res. 62. Witnesses testifying before the Subcommittee were Representatives John Shadegg; Charles B. Rangel; James C. Miller, Counsel, Citizens for a Sound Economy; Robert Greenstein, Executive Director, Center for Budget and Policy Priorities; Dr. Barry Poulson, University of Colorado; Dean Samuel Thompson, University of Miami School of Law; Prof. Michael Rappaport, University of San Diego School of Law; and Daniel Mitchell, McKenna Senior Fellow, Heritage Foundation. On March 18, 1997, the Subcommittee was discharged from further consideration. On April 8, 1997, the full Committee ordered H.J. Res. 62 favorably reported to the House, amended (H. Rept. 105–50). On April 15, 1997, H.J. Res. 62 was called up by the House, as amended, and failed to pass by a vote of 233–190 (two-thirds vote required).

On February 26, 1998, Representative Joe Barton introduced a related joint resolution proposing an amendment to the Constitution of the United States with respect to tax limitations, H.J. Res. 111, which was referred to the Subcommittee on March 6, 1998. On April 22, 1998, the resolution was considered by the House but failed passage by a vote of 238–186 (two-thirds vote required).

Electoral College

On September 4, 1997, the Subcommittee held a hearing on two resolutions, H.J. Res. 28, sponsored by Representative Ray LaHood, and H.J. Res. 43, sponsored by Representative Tom Campbell, amendments to the Constitution of the United States that would abolish the electoral college and to provide for the direct popular election of the President and the Vice President of the United States. Witnesses testifying were Representative Ray LaHood; Delegate Robert A. Underwood, Guam; Becky Cain, President, League of Women Voters; Prof. Judith Best, State University of New York-Cortland; Prof. Akhil Amar, Yale University Law School; Curtis Gans, Director, Committee for the Study of the American Electorate; and Walter Berns, Resident Fellow, American Enterprise Institute. No further action was taken on the measure.

Alternatives to Article V

On March 25, 1998, the Subcommittee held a hearing on H.J. Res. 84, an amendment to the Constitution of the United States to

provide a procedure by which the States may propose constitutional amendments. Witnesses testifying before the Subcommittee were Representative Tom Bliley; George Allen, former Governor of Virginia; Mickey Edwards, former Member of Congress; Prof. Nelson Lund, acting Associate Dean of Academic Affairs, George Mason University School of Law. No further action was taken on the measure.

Campaign Spending

On May 14, 1998, Representative Tom DeLay introduced a resolution, H.J. Res. 119, to the Constitution which would limit campaign spending. On May 21, 1998, H.J. Res. 119 was referred to the Subcommittee. The resolution was discharged from the Committee on May 21, 1998. H.J. Res. 119 was considered by the House June 10, 1998, and failed to pass June 11, 1998, by a vote of 29 yeas–345 nays–51 “present.”

OVERSIGHT ACTIVITIES

Impeachment

On November 9, 1998, the Subcommittee held an oversight hearing on the “Background and History of Impeachment,” in connection with the impeachment inquiry of President William Jefferson Clinton, pursuant to H. Res. 581. Witnesses testifying were: William Van Alstyne, Professor of Law, Duke University School of Law; Charles J. Cooper, Esq., Cooper, Carvin & Rosenthal; Stephen B. Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; Gary L. McDowell, Director of the Institute for U.S. Studies, University of London; Jonathan R. Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School; Hon. Griffin B. Bell, 72nd Attorney General of the United States; John O. McGinnis, Professor of Law, Yeshiva University, Cardozo School of Law; Forrest McDonald, Distinguished University Research Professor, University of Alabama; Richard D. Parker, Williams Professor of Law, Harvard University Law School; John C. Harrison, Associate Professor of Law, University of Virginia; Michael J. Gerhardt, Professor of Law, College of William & Mary School of Law; Cass R. Sunstein, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago School of Law; Laurence H. Tribe, Ralph S. Tyler, Jr. Professor of Constitutional Law, Harvard University Law School; Daniel H. Politt, Graham Kenan Professor of Law Emeritus, University of North Carolina Law School; Matthew Holden, Henry L. and Grace M. Doherty Professor of Government and Foreign Affairs, University of Virginia; Susan Low Bloch, Professor of Law, Georgetown University Law Center; Father Robert F. Drinan, S.J., Professor of Law, Georgetown University Law Center; Jack N. Rakove, Coe Professor of History and American Studies, Stanford University; and Arthur M. Schlesinger, Jr., Professor of History, City University of New York.

United States Commission on Civil Rights

On July 17, 1997, the Subcommittee held an oversight hearing on the United States Commission on Civil Rights. This hearing fo-

cused on repairing the Commission's management and fiscal controls. Witnesses testifying were: Cornelia Blanchette, Associate Director, Employment and Education Issues, General Accounting Office; Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Carl Anderson, Commissioner, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; and Bill Allen, former Chairman, U.S. Commission on Civil Rights.

Clinton Administration Adarand Review

On June 12, 1995, the Supreme Court decided *Adarand Constructors v. Peña*, 115 S.Ct. 2097 (1995). There are dozens, perhaps hundreds of federal programs that classify citizens on the basis of race and treat them differently based on the color of their skin. Prior to *Adarand*, constitutional challenges to such laws triggered the so-called intermediate scrutiny test, under which they would be sustained if the government could show that they were substantially related to an important government interest. See, e.g., *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990). In *Adarand*, the court held for the first time that federal racial classifications—like such classifications enacted by state and local governments, see *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)—are subject to the strict scrutiny test, which requires them to be narrowly tailored to serve a compelling government interest.

Adarand thus marked a sea-change in the constitutional limits on the ability of the federal government to classify citizens based on skin color or ethnicity. On July 19, 1995, President Clinton signed an executive order instructing the Administration to undertake a comprehensive review of all federal programs to determine what changes would be required by *Adarand*.

That review, and the Administration's view of *Adarand* in general, has been a focus of the Subcommittee's oversight of the Civil Rights Division of the Department of Justice. On May 20, 1997, the Subcommittee held a hearing on the Civil Rights Division. Witnesses testifying before the Subcommittee were Isabelle Katz Pinzler, acting Assistant Attorney General of the United States, Civil Rights Division; Michael Carvin, Attorney, Cooper & Carvin; Prof. Pamela Karlon, University of Virginia Law School; Wayne Flick, Attorney, Latham & Watkins; Prof. Linda Gottfredson, University of Delaware; Weldon Latham, Attorney, Shaw, Pittman, Potts & Trowbridge; and Lawrence Stratton, Adjunct Professor, Georgetown University Law School.

On February 25, 1998, the Subcommittee held a second hearing on the Division's past and present role in ending civil rights discrimination. The witnesses at this hearing were Roger Clegg, General Counsel, Center for Equal Opportunity; Martha Davis, Legal Director, NOW Legal Defense and Education Fund; Charles M. Hinton, Jr., City Attorney, Garland, Texas; Michael Kennedy, General Counsel, Associated General Contractors of America; Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice; Stan Pottinger, Former Assistant Attorney General for Civil Rights, U.S. Department of Justice; Morton Rosenberg, American Law Division, Congressional Research Service.

On July 17, 1998, the Subcommittee held a third hearing on the Civil Rights Division of the U.S. Department of Justice. This hearing focused on the Administration's new regulations regarding racial preferences, as well as President Clinton's Executive Order adding "sexual orientation" to the list of protected classes entitled to affirmative action in federal employment. Witnesses included Clint Bolick, Vice President and Director of Litigation, Institute for Justice; Donald Devine, Former Director, U.S. Office of Personnel Management; Wayne S. Flick, Attorney, Latham & Watkins; Kim M. Keenan, Attorney, Fair Employment Council of Greater Washington; Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice; Shawna Smith, Executive Director, National Fair Housing Alliance; and John Sullivan, Associate Director, Project on Civil Rights and Public Contracts, University of Maryland.

Respective Roles of Congress and Article III Courts

On January 29, 1998, the Subcommittee held a hearing regarding Congress, the Courts and the Constitution. Witnesses testifying before the Subcommittee were Representatives Ron Lewis; John N. Hostettler; Barney Frank; Tom Campbell; Prof. David P. Currie, Edward H. Levi, Distinguished Service Professor, University of Chicago School of Law; Louis Fisher, Senior Specialist in Separation of Powers, Congressional Research Service; Prof. Neal Devins, College of William and Mary School of Law; Prof. Matthew Franck, Radford University; Prof. Neil Kinkopf, Case Western Reserve University Law School; Nadine Strossen, President, American Civil Liberties Union; and Prof. Robert L. Clinton, Southern Illinois University.

Private Property Rights

On September 23, 1997, the Subcommittee held an oversight hearing regarding State Approaches to Protecting Private Property Rights. Witnesses testifying before the Subcommittee were Dean Saunders, former Florida State Representative; Richard Russman, New Hampshire State Senator; Bob Turner, Texas State Representative; Jane Jayman, Deputy General Counsel, Florida League of Cities, Inc.; Chip Campsen, South Carolina State Representative; Nancie Marzulla, President and Chief Legal Counsel, Defenders of Property Rights; Prof. Harvey Jacobs, Chair, Department of Urban and Regional Planning, University of Wisconsin at Madison; and Prof. Steven J. Eagle, George Mason University School of Law.

The First Amendment and Campaign Finance Reform

The Subcommittee held two oversight hearings regarding campaign finance. The first hearing was held on February 27, 1997 titled "Free Speech and Campaign Finance Reform." Witnesses testifying were Senator Mitch McConnell; Representatives Richard Gephardt and Barney Frank; Ira Glasser, Executive Director, American Civil Liberties Union; James Bopp, Attorney, Bopp, Coleson & Bostrom; Lloyd N. Cutler, Attorney, Wilmer, Cutler & Pickering; Prof. Burt Neuborne, New York University School of Law; Brent Thompson, Executive Director, Fair Government Foundation; Brad-

ley Smith, CATO Institute; Gene Karpinski, U.S. Public Interest Research Group; and Dave Mason, fellow, The Heritage Foundation.

A second hearing was held on September 18, 1997, titled the "First Amendment and Restrictions on Issue Advocacy." Witnesses testifying before the Subcommittee were James Buchen, Senior Vice President, Wisconsin Manufacturers and Commerce; Steve Merican, Attorney, Americans for Limited Terms; George Dunst, Legal Counsel, State Elections Board of Wisconsin; James Bopp, Jr., Attorney, National Right to Life and Wisconsin Right to Life; Prof. Joel M. Gora, Dean, Brooklyn Law School and General Counsel, New York Civil Liberties Union; Josh Rosenkranz, Executive Director, Brennan Center for Justice, New York University; Prof. Bradley A. Smith, Capital University Law School; Norm Ornstein, American Enterprise Institute; and Don Simon, Executive Vice President and General Counsel, Common Cause.

Americans with Disabilities Act

On May 12, 1997, the Subcommittee held an oversight hearing on the application of the Americans with Disabilities Act to Medical Licensure and Judicial Officers. The Subcommittee heard from the following witnesses: Ray Q. Baumgarner, Federation of State Medical Boards and the State Medical Board of Ohio; Kay Jaison, Psychiatrist, John Hopkins University; Susan Spaulding, President, Federation of State Medical Boards; Prof. Chai Feldblum, Georgetown University Law Center; Stan Ingram, Board Attorney, Mississippi State Board of Medical Licensure; D. Culver Smith, III, Attorney and former Chairman, Judicial Nominating Commission, Fifteenth Judicial Circuit of Florida; and Richard S. Brown, Judge, Wisconsin State Court of Appeals.